

City of Fayetteville, Arkansas

113 West Mountain Street

Fayetteville, AR 72701

(479) 575-8323



City Council Final Agenda

Tuesday, December 20, 2022

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 Mark Kinion Ward 2

Council Member Mike Wiederkehr Ward 2

Council Member Sloan Scroggin 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:**PUBLIC REGISTRATION LINK:**

[HTTPS://US06WEB.ZOOM.US/WEBINAR/REGISTER/WN_W9XNGHAIRZQR9BXCPCNXXAIA](https://us06web.zoom.us/join/9171111111)
WEBINAR ID: 818 4889 5709

CALL TO ORDER**ROLL CALL****PLEDGE OF ALLEGIANCE****MAYOR' S ANNOUNCEMENTS, PROCLAMATIONS AND RECOGNITIONS**

1. SERVICE RECOGNITION FOR COUNCIL MEMBER KINION AND COUNCIL MEMBER SCROGGIN (2022-234)

CITY COUNCIL MEETING PRESENTATIONS, REPORTS AND DISCUSSION ITEMS

1. NOMINATING COMMITTEE REPORT: (2022-189)

PROPOSED AGENDA ADDITIONS**A. CONSENT****A.1. APPROVAL OF THE DECEMBER 6, 2022 CITY COUNCIL MEETING MINUTES
(2022-190)****A.2. WILLIAMS TRACTOR, INC.:**

A RESOLUTION TO APPROVE THE PURCHASE OF A BOBCAT E50 EXCAVATOR FROM WILLIAMS TRACTOR, INC. IN THE AMOUNT OF \$68,908.50, PLUS ANY APPLICABLE SALES TAXES AND FREIGHT CHARGES, PURSUANT TO A SOURCEWELL COOPERATIVE PURCHASING CONTRACT, AND TO APPROVE A BUDGET ADJUSTMENT (2022-192)

A.3. G.W. VAN KEPPEL COMPANY:

A RESOLUTION TO AUTHORIZE THE PURCHASE OF A CONCRETE MIXING TRUCK FROM G.W. VAN KEPPEL COMPANY FOR THE AMOUNT OF \$333,801.00 PLUS ANY APPLICABLE TAXES AND FREIGHT CHARGES, PURSUANT TO A SOURCEWELL COOPERATIVE PURCHASING CONTRACT, AND TO APPROVE A BUDGET ADJUSTMENT (2022-193)

A.4. BID 23-01 TIME STRIPING, INC.:

A RESOLUTION TO AWARD BID #23-01 AND AUTHORIZE THE PURCHASE OF PAVEMENT MARKING INSTALLATION FROM TIME STRIPING, INC. IN VARIABLE AMOUNTS AND FOR VARYING UNIT PRICES AS NEEDED THROUGH THE END OF 2023 (2022-194)

A.5. BID 23-02 SWEETSER CONSTRUCTION, INC.:

A RESOLUTION TO AWARD BID #23-02 AND AUTHORIZE THE PURCHASE OF CURB AND GUTTER CONSTRUCTION SERVICES FROM SWEETSER CONSTRUCTION, INC. IN VARIABLE AMOUNTS AND FOR VARYING UNIT PRICES AS NEEDED THROUGH THE END OF 2023 (2022-196)

A.6. BID #23-03 BUILDING EXTERIORS, INC.:

A RESOLUTION TO AWARD BID #23-03 AND AUTHORIZE THE PURCHASE OF TREE PLANTING SERVICES FROM BUILDING EXTERIORS, INC. IN VARIABLE AMOUNTS AND FOR VARYING UNIT PRICES AS NEEDED THROUGH THE END OF 2023 (2022-197)

A.7. BID 23-04 EMERY SAPP & SONS, INC.:

A RESOLUTION TO AWARD BID # 23-04 AND AUTHORIZE THE PURCHASE OF ASPHALT PAVING SERVICES FROM EMERY SAPP & SONS, INC. ON AN AS NEEDED BASIS THROUGH THE END OF 2023 (2022-198)

A.8. BID 23-05 APAC-CENTRAL, INC.:

A RESOLUTION TO AWARD BID #23-05 AND AUTHORIZE THE PURCHASE OF CONCRETE MATERIALS FROM APAC-CENTRAL, INC. AS PRIMARY SUPPLIER IN VARIABLE AMOUNTS AND FOR VARYING UNIT PRICES AND TO AUTHORIZE THE USE OF OTHER BIDDERS BASED ON PRICE AND AVAILABILITY AS NEEDED THROUGH THE END OF 2023 (2022-199)

A.9. BID 23-06 HUNT-ROGERS MATERIALS, LLC:

A RESOLUTION TO AWARD BID #23-06 AND AUTHORIZE THE PURCHASE OF AGGREGATE MATERIALS FROM HUNT-ROGERS MATERIALS, LLC AS PRIMARY SUPPLIER AND TO AUTHORIZE THE USE OF OTHER BIDDERS BASED ON PRICE AND AVAILABILITY AS NEEDED THROUGH THE END OF 2023 (2022-200)

A.10. 2023 TRANSPORTATION DIVISION ASPHALT MATERIALS:

A RESOLUTION TO AUTHORIZE THE PURCHASE OF ASPHALT MATERIALS FOR USE BY THE TRANSPORTATION DIVISION ON AN AS NEEDED BASIS THROUGH THE END OF 2023 (2022-201)

A.11. BID 23-08 WINWATER FORT SMITH:

A RESOLUTION TO AWARD BID #23-08 AND AUTHORIZE THE PURCHASE OF PLASTIC DRAINAGE PIPE FROM WINWATER FORT SMITH IN VARIABLE AMOUNTS AND FOR VARYING UNIT PRICES AS NEEDED THROUGH THE END OF 2023 (2022-202)

A.12. BID 23-09 SCURLOCK INDUSTRIES:

A RESOLUTION TO AWARD BID #23-09 AND AUTHORIZE THE PURCHASE OF CONCRETE DRAINAGE PIPE AND STRUCTURES FROM SCURLOCK INDUSTRIES OF FAYETTEVILLE IN VARIABLE AMOUNTS AND FOR VARYING UNIT PRICES AS NEEDED THROUGH THE END OF 2023 (2022-203)

A.13. BID 23-10 INDUSTRIAL PRECAST, INC.:

A RESOLUTION TO AWARD BID #23-10 AND AUTHORIZE THE PURCHASE OF PRECAST MODULAR BLOCK RETAINING WALL UNITS FROM INDUSTRIAL PRECAST, INC. IN VARIABLE AMOUNTS AND FOR VARYING UNIT PRICES AS NEEDED THROUGH THE END OF 2023 (2022-204)

A.14. BID 23-11 EMERY SAPP & SONS, INC.:

A RESOLUTION TO AWARD BID #23-11 AND AUTHORIZE THE PURCHASE OF HIGH PERFORMANCE COLD MIX ASPHALT FROM EMERY SAPP & SONS, INC. AS NEEDED THROUGH THE END OF 2023 (2022-205)

A.15. BID 23-13 GEVEKO MARKINGS, INC.:

A RESOLUTION TO AWARD BID #23-13 AND AUTHORIZE THE PURCHASE OF PREFORMED THERMOPLASTIC PAVEMENT MARKINGS FROM GEVEKO MARKINGS, INC. AS PRIMARY SUPPLIER AND FROM ENNIS-FLINT, INC. AS SECONDARY SUPPLIER IN VARIABLE AMOUNTS AND FOR VARYING UNIT PRICES AS NEEDED THROUGH THE END OF 2023 (2022-206)

A.16. BID 23-14 J&S LIGHTING & CONTROLS D/B/A PREMIER LIGHTING GROUP:

A RESOLUTION TO AWARD BID #23-14 AND AUTHORIZE THE PURCHASE OF LIGHTS, FIXTURES, AND POLES FROM J&S LIGHTING & CONTROLS D/B/A PREMIER LIGHTING GROUP IN VARIABLE AMOUNTS AND FOR VARYING UNIT PRICES AS NEEDED THROUGH THE END OF 2023 (2022-207)

A.17. BID 23-15 TRULOVE DIRT WORKS, LLC:

A RESOLUTION TO AWARD BID #23-15 AND AUTHORIZE THE PURCHASE OF TRUCK HAULING SERVICES FROM TRULOVE DIRT WORKS, LLC AS NEEDED THROUGH THE END OF 2023 (2022-208)

A.18. FAYETTEVILLE POLICE DEPARTMENT POLICIES:

A RESOLUTION TO APPROVE FAYETTEVILLE POLICE DEPARTMENT POLICIES

22.3 SECONDARY EMPLOYMENT, 41.2.11 USE OF DEPARTMENTAL VEHICLES, AND 46.1.2 CRITICAL INCIDENTS (2022-195)

A.19. AMENDMENT TO CONTRACT-SMITH TWO WAY RADIO COMMUNICATIONS, LLC:

A RESOLUTION TO APPROVE THE FIRST AMENDMENT TO THE TOWER SPACE AND GROUND LEASE AGREEMENT BETWEEN THE CITY AND SMITH TWO WAY RADIO COMMUNICATIONS, LLC FOR THE RADIO TOWER SITE LOCATED AT 3300 WEST DINSMORE TRAIL TO PROVIDE FOR THE ATTACHMENT OF NEW EQUIPMENT, INCREASE THE ANNUAL COST BY \$8,400.00, AND EXTEND THE LENGTH OF THE AGREEMENT BY FIVE THREE-YEAR RENEWABLE TERMS (2022-210)

A.20. DEPARTMENT OF PUBLIC SAFETY MEMORANDUM OF UNDERSTANDING GRANT AWARD:

A RESOLUTION TO APPROVE A MEMORANDUM OF UNDERSTANDING WITH THE DEPARTMENT OF PUBLIC SAFETY AND ACCEPT A 2022 ARKANSAS DEPARTMENT OF PUBLIC SAFETY EQUIPMENT GRANT AWARD IN THE AMOUNT OF \$100,000.00 FOR THE POLICE DEPARTMENT, AND TO APPROVE A BUDGET ADJUSTMENT (2022-237)

A.21. FAYETTEVILLE FIRE DEPARTMENT POLICY AOP-101:

A RESOLUTION TO APPROVE POLICY AOP-101, GENERAL INFORMATION AND INTRODUCTION OF THE FAYETTEVILLE FIRE DEPARTMENT ADMINISTRATIVE OPERATING PROCEDURES (2022-214)

A.22. RENEWAL CONTRACT FOR STARTUP JUNKIE CONSULTING, LLC:

A RESOLUTION TO APPROVE THE THIRD AND FINAL TWO YEAR RENEWAL CONTRACT WITH STARTUP JUNKIE CONSULTING, LLC TO PROVIDE ECONOMIC DEVELOPMENT CONSULTING SERVICES IN THE AREAS OF ENTREPRENEURSHIP AND INNOVATION IN THE TOTAL AMOUNT OF \$300,000.00 (2022-209)

A.23. CHANGE ORDER NO. 9 FLINTCO, LLC - POLICE HEADQUARTERS BOND PROJECT:

A RESOLUTION TO APPROVE CHANGE ORDER NO. 9 TO THE CONSTRUCTION MANAGER AT RISK CONTRACT WITH FLINTCO, LLC FOR THE POLICE HEADQUARTERS PROJECT IN THE AMOUNT OF \$380,381.00, AND TO APPROVE A BUDGET ADJUSTMENT - POLICE HEADQUARTERS BOND PROJECT (2022-215)

A.24. AMENDMENT 9 ENVIRONMENTAL CONSULTING OPERATIONS, INC.:

A RESOLUTION TO APPROVE AMENDMENT NO. 9 TO THE CONTRACT WITH ENVIRONMENTAL CONSULTING OPERATIONS, INC. IN THE AMOUNT OF \$65,500.00 FOR WETLANDS MITIGATION SITE MONITORING AND MANAGEMENT IN 2023 (2022-216)

A.25. 2023 FAYETTEVILLE YOUTH CENTER, INC. CONTRACT:

A RESOLUTION TO AUTHORIZE A CONTRACT BETWEEN THE CITY OF FAYETTEVILLE, ARKANSAS AND FAYETTEVILLE YOUTH CENTER, INC. IN THE AMOUNT OF \$225,000.00 TO PROVIDE PUBLIC RECREATION SERVICES FOR THE YOUTH AND CITIZENS OF FAYETTEVILLE FOR 2023, WITH AUTOMATIC RENEWALS FOR UP TO FOUR ADDITIONAL ONE YEAR TERMS (2022-217)

A.26. 2023 ARKANSAS AND THE AREA AGENCY ON AGING OF NORTHWEST ARKANSAS CONTRACT:

A RESOLUTION TO AUTHORIZE A CONTRACT BETWEEN THE CITY OF FAYETTEVILLE, ARKANSAS AND THE AREA AGENCY ON AGING OF NORTHWEST ARKANSAS IN THE AMOUNT OF \$145,804.00 TO PROVIDE PUBLIC RECREATION SERVICES FOR THE SENIOR CITIZENS OF FAYETTEVILLE FOR 2023, WITH AUTOMATIC RENEWALS FOR UP TO FOUR ADDITIONAL ONE YEAR TERMS (2022-218)

A.27. PARKS, NATURAL RESOURCES, AND CULTURAL AFFAIRS DEPARTMENT:

A RESOLUTION TO APPROVE A BUDGET ADJUSTMENT IN THE TOTAL AMOUNT OF \$13,337.00 RECOGNIZING DONATION REVENUE FROM CITIZENS AND LOCAL BUSINESSES TO THE PARKS, NATURAL RESOURCES, AND CULTURAL AFFAIRS DEPARTMENT (2022-226)

A.28. BID #21-72 COMFORT SYSTEMS USA, INC. - WILSON POOL REPAIRS:

A RESOLUTION TO APPROVE A PROPOSAL FROM COMFORT SYSTEMS USA, INC. IN THE AMOUNT OF \$180,944.00, PURSUANT TO BID #21-72, FOR PLUMING REPAIR AT WILSON PARK POOL, TO APPROVE A PROJECT CONTINGENCY IN THE AMOUNT OF \$40,000.00, AND TO APPROVE A BUDGET ADJUSTMENT (2022-224)

A.29. CURTIS H. SYKES MEMORIAL GRANT PROGRAM AWARD:

A RESOLUTION TO AUTHORIZE ACCEPTANCE OF A CURTIS H. SYKES MEMORIAL GRANT PROGRAM AWARD IN THE AMOUNT OF \$2,457.00 FROM THE ARKANSAS STATE ARCHIVES AND THE BLACK HISTORY COMMISSION OF ARKANSAS FOR THE PURCHASE OF THE NELSON HACKETT HISTORICAL MARKER, AND TO APPROVE A BUDGET ADJUSTMENT (2022-225)

A.30. ANIMAL SERVICES DIVISION DONATION REVENUE:

A RESOLUTION TO APPROVE A BUDGET ADJUSTMENT IN THE AMOUNT OF \$47,474.00 REPRESENTING DONATION REVENUE TO THE ANIMAL SERVICES DIVISION (2022-227)

A.31. CHANGE ORDER NO. 3 DEMX ARCHITECTURE:

A RESOLUTION TO APPROVE CHANGE ORDER NO. 3 TO THE PROFESSIONAL ARCHITECTURAL SERVICES AGREEMENT WITH DEMX ARCHITECTURE IN THE AMOUNT OF \$32,250.00 FOR ADDITIONAL SERVICES RELATED TO THE WILSON PARK RESTROOM/HUB BUILDING (2022-228)

A.32. COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM INCOME AND DONATIONS:

A RESOLUTION TO APPROVE A BUDGET ADJUSTMENT IN THE TOTAL AMOUNT OF \$29,969.00 REPRESENTING COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM INCOME AND DONATIONS FROM CITIZENS AND LOCAL BUSINESSES, AND ALLOCATING USE FUND BALANCE FUNDS (2022-232)

A.33. 2023 COMMUNITY ACCESS TELEVISION, INC. D/B/A YOUR MEDIA CONTRACT:

A RESOLUTION TO APPROVE A CONTRACT WITH COMMUNITY ACCESS TELEVISION, INC. D/B/A YOUR MEDIA IN THE AMOUNT OF \$207,307.00 FOR THE PROVISION OF PUBLIC ACCESS TELEVISION SERVICES AND THE OPERATION OF THE PUBLIC ACCESS TELEVISION CHANNEL THROUGH 2023 (2022-235)

B. UNFINISHED BUSINESS

B.1. RAZE AND REMOVAL OF STRUCTURE AT 3301 SOUTH COACH ROAD:

A RESOLUTION TO ORDER THE RAZING AND REMOVAL OF A DILAPIDATED AND UNSAFE STRUCTURE ON PROPERTY OWNED BY KEVIN ROY CALHOUN LOCATED AT 3301 SOUTH COACH ROAD IN THE CITY OF FAYETTEVILLE, ARKANSAS, AND TO APPROVE A BUDGET ADJUSTMENT IN THE AMOUNT OF \$17,500.00 (2022-236)

AT THE DECEMBER 6, 2022 CITY COUNCIL MEETING, THIS RESOLUTION WAS TABLED TO THE DECEMBER 20, 2022 CITY COUNCIL MEETING.

B.2. RZN 22-048 (1657 N. VANDEVENTER AVENUE, OSBORNE):

AN ORDINANCE TO REZONE THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 22-048 LOCATED AT 1657 NORTH VANDEVENTER AVENUE IN WARD 2 FOR APPROXIMATELY 0.67 ACRES FROM RSF-4, RESIDENTIAL SINGLE FAMILY, 4 UNITS PER ACRE TO RMF-24, RESIDENTIAL MULTI-FAMILY, 24 UNITS PER ACRE (2022-259)

AT THE DECEMBER 6, 2022 CITY COUNCIL MEETING, THIS ORDINANCE WAS LEFT ON THE SECOND READING.

B.3. RZN 22-045 (WEST OF N. BOX AVENUE):

AN ORDINANCE TO REZONE THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 22-045 LOCATED WEST OF NORTH BOX AVENUE IN WARD 3 FOR APPROXIMATELY 1.81 ACRES FROM RSF-4, RESIDENTIAL SINGLE-FAMILY, 4 UNITS PER ACRE TO RI-12, RESIDENTIAL INTERMEDIATE, 12 UNITS PER ACRE (2022-260)

AT THE DECEMBER 6, 2022 CITY COUNCIL MEETING, THIS ORDINANCE WAS LEFT ON THE FIRST READING.

C. NEW BUSINESS

C.1. AMEND §118.01, §118.02, §151.01, §159.01, §163.18 AND §164.26:

AN ORDINANCE TO AMEND §118.01 APPLICABILITY AND §118.02 ENTRY UPON BUSINESS REGISTRY AND ISSUANCE OF BUSINESS LICENSE OF THE FAYETTEVILLE CITY CODE, TO AMEND §151.01 DEFINITIONS, §159.01 FEES/SCHEDULE, AND §163.18 SHORT-TERM RENTALS OF THE UNIFIED DEVELOPMENT CODE, AND TO ENACT §164.26 TYPE 2 SHORT-TERM RENTALS IN NON-RESIDENTIAL AND MIXED USE ZONING DISTRICTS FOR THE PURPOSE OF INCREASING FEES FOR CONDITIONAL USE PERMITS AND TYPE 2 SHORT-TERM RENTAL BUSINESS LICENSES, AMENDING THE REGULATIONS FOR TYPE 2 SHORT TERM RENTALS BASED ON ZONING DISTRICT, AND REMOVING OUTDATED AND UNNECESSARY PROVISIONS RELATED TO THE 12 MONTH START-UP PERIOD (2022-238)

C.2. AMERICAN RESCUE PLAN ACT NONPROFIT ASSISTANCE APPLICATIONS:

A RESOLUTION TO APPROVE FOUR AMERICAN RESCUE PLAN ACT NONPROFIT ASSISTANCE APPLICATIONS IN THE TOTAL AMOUNT OF \$252,745.29 TO PROVIDE ECONOMIC ASSISTANCE TO NONPROFIT ORGANIZATIONS UTILIZING AMERICAN RESCUE PLAN ACT FUNDS (2022-234)

C.3. RZN 2022-050 (682 W. STONE ST/KEVLIN):

AN ORDINANCE TO REZONE THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 22-050 LOCATED AT 682 WEST STONE STREET IN WARD 2 FOR APPROXIMATELY 0.11 ACRES FROM RMF-40, RESIDENTIAL MULTI-FAMILY, 40 UNITS PER ACRE TO RI-U, RESIDENTIAL INTERMEDIATE-URBAN (2022-219)

C.4. RZN 2022-049 (EAST OF S. GARLAND AVE/KEVLIN):

AN ORDINANCE TO REZONE THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 22-049 LOCATED EAST OF SOUTH GARLAND AVENUE IN WARD

1 FOR APPROXIMATELY 0.45 ACRES FROM RSF-4, RESIDENTIAL SINGLE-FAMILY, 4 UNITS PER ACRE AND I-1, HEAVY COMMERCIAL AND LIGHT INDUSTRIAL TO RI-U, RESIDENTIAL INTERMEDIATE-URBAN (2022-220)

C.5. CONDEMNATION AND POSSESSION - STANLEY W. SMITH REVOCABLE LIVING TRUST:

A RESOLUTION TO AUTHORIZE THE CITY ATTORNEY TO SEEK CONDEMNATION AND POSSESSION OF CERTAIN LANDS OWNED BY THE STANLEY W. SMITH REVOCABLE LIVING TRUST NEEDED FOR THE MIDTOWN CORRIDOR PROJECT (2022-221)

C.6. CONDEMNATION AND POSSESSION - CHARLES N. MAYES:

A RESOLUTION TO AUTHORIZE THE CITY ATTORNEY TO SEEK CONDEMNATION AND POSSESSION OF CERTAIN LANDS OWNED BY CHARLES N. MAYES NEEDED FOR THE MIDTOWN CORRIDOR PROJECT (2022-222)

D. CITY COUNCIL AGENDA SESSION PRESENTATIONS

E. CITY COUNCIL TOUR

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.

Chair
Sarah Bunch
Council Member
Ward 3 Position 2

Vice Chair
Mark Kinion
Council Member
Ward 2 Position 1



Sonia Harvey
Council Member
Ward 1 Position 1

Teresa Turk
Council Member
Ward 4 Position 1

Nominating Committee Report December 20, 2022

**Council Members Present – Chair Sarah Bunch, Sonia Harvey and Teresa Turk.
Council Member Mark Kinion was not present during the Nominating Committee Interviews.**

The Nominating Committee recommends the following candidates for appointment:

ACTIVE TRANSPORTATION ADVISORY COMMITTEE

Melissa Rowe – One Unexpired Citizen-at-Large Term Ending (03/31/24)
David Criswell – One Citizen-at-Large Term Ending (12/31/24)
Daniel Greim – One Citizen-at-Large Term Ending (12/31/24)
Claude Terrell – One Citizen-at-Large Term Ending (12/31/24)

AIRPORT BOARD

Zane Chenault – One Citizen-at-Large Term Ending (12/31/27)

ANIMAL SERVICES ADVISORY BOARD

Page Summers – One Unexpired Citizen-at-Large Term Ending (06/30/23)
Steve Wolverton – One Unexpired Business Representative Term Ending (06/30/25)
Miranda Anthony – One Unexpired Licensed Veterinarian/Veterinary Professional Term Ending (06/30/25)

AUDIT COMMITTEE

Charles Leflar – One Citizen-at-Large Term Ending (12/31/25)

BLACK HERITAGE PRESERVATION COMMISSION

Vacant – Two Citizen-at-Large Terms Ending (12/31/25)

COMMUNITY DEVELOPMENT AND ASSISTANCE PROGRAMS ADVISORY BOARD

Matthew McMillian – One Unexpired Local Small Business Representative Term Ending (03/31/25)

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS

Elizabeth Stinnett – One Unexpired Term Ending (03/31/27)

ENERGY IMPROVEMENT DISTRICT NO. 1

Vacant – One Citizen-at-Large Term Ending (12/31/24)

ENVIRONMENTAL ACTION COMMITTEE

Alex Mauroner – One Citizen-at-Large Term Ending (12/31/25)

HOUSING AUTHORITY BOARD OF COMMISSIONERS

Vacant – One Unexpired Citizen-at-Large Term Ending (12/28/23)

Jonathan Wood – One Citizen-at-Large Term Ending (12/28/27)

PARKS AND RECREATION ADVISORY BOARD

Hugh Kincaid – One Citizen-at-Large Term Ending (12/31/25)

Sarah Downing – One Citizen-at-Large Term Ending (12/31/25)

Steve Sheeley – One Citizen-at-Large Term Ending (12/31/25)

PUBLIC FACILITIES BOARD

Vacant – One Citizen-at-Large Term Ending (12/31/27)

URBAN FORESTRY ADVISORY BOARDS

Lacey Jennen – One Citizen-at-Large Term Ending (12/31/24)

Coy Morris – One Citizen-at-Large Term Ending (12/31/24)

Tas Zinck – One Citizen At Large Term Ending (12/31/24)

Vacant – One Tree Service Community Representative Term Ending (12/31/24)

RESOLUTION NO. _____

A RESOLUTION TO APPROVE THE PURCHASE OF A BOBCAT E50 EXCAVATOR FROM WILLIAMS TRACTOR, INC. IN THE AMOUNT OF \$68,908.50, PLUS ANY APPLICABLE SALES TAXES AND FREIGHT CHARGES, PURSUANT TO A SOURCEWELL COOPERATIVE PURCHASING CONTRACT, AND TO APPROVE A BUDGET ADJUSTMENT

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 purchase of a Bobcat E50 Excavator from Williams Tractor, Inc. in the amount of \$68,908.50, plus any applicable sales taxes and freight charges, pursuant to a Sourcewell cooperative purchasing contract.

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

2022-1099

Legistar File ID

12/20/2022

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

Terry Gulley

11/21/2022

FLEET OPERATIONS (770)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Authorize the purchase of a Bobcat E50 Excavator for the Sourcewell contract price of \$68,908.50 through Williams Tractor of Springdale, AR; and to approve a budget adjustment.

Budget Impact:

9700.770.1920-5802.00

Shop

Account Number

Fund

02077

Construction Equipment

Project Number

Project Title

Budgeted Item? Yes

Current Budget \$ 220,000.00

Funds Obligated \$ 85,084.85

Current Balance **\$ 134,915.15**

Does item have a cost? Yes

Item Cost \$ 68,908.50

Budget Adjustment Attached? Yes

Budget Adjustment \$ 69,000.00

Remaining Budget **\$ 135,006.65**

V20210527

Purchase Order Number: _____

Previous Ordinance or Resolution # _____

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



MEETING OF DECEMBER 20, 2022

TO: Mayor and City Council

THRU: Chris Brown, Public Works Director

FROM: Terry Gulley, Assistant Public Works Director - Operations

DATE: November 16, 2022

SUBJECT: Purchase of an Excavator for Water & Sewer

RECOMMENDATION:

Authorize the purchase of a Bobcat E50 Excavator for the Sourcewell contract price of \$68,908.50 through Williams Tractor of Springdale, AR; and to approve a budget adjustment.

BACKGROUND:

Unit 831 is a Bobcat E45 Excavator and has been in service since March of 2018. It is halfway through its life expectancy but currently requires some costly repairs.

DISCUSSION:

The estimate for repairs from the manufacturer's authorized repair facility is \$37,593.38. Fleet has collected \$31,316.06 life-to-date for the replacement of this unit. Considering the cost of the required repairs, Fleet can purchase a new unit for less than it would cost to repair the unit. Fleet recommends replacement instead of repairing the unit.

BUDGET/STAFF IMPACT:

The replacement for unit 831 was not budgeted until 2027. However, moving this replacement up is the most cost-effective approach at this time. A budget adjustment is being submitted to utilize Fleet's fund balance for this purchase.

ATTACHMENTS:

Sourcewell Quote
Budget Adjustment



Product Quotation

Quotation Number: NEW

Date:

Ship to	Bobcat Dealer	Bill To
Williams / Bobcat 2501 N Shiloh Dr Fayetteville, AR 72704 Phone: (479) 841-2401 Email: tbailey@williamstractor.com	Williams Tractor Inc, Fayetteville, AR 4190 South 48th Street Springdale AR 72762 Phone: (479) 442-8284 Fax: (479) 442-6013 Contact: Tim Bailey Phone: 479-442-8284 Fax: dwightwilliams E Mail: tbailey@williamstractor.com	Williams / Bobcat 2501 N Shiloh Dr Fayetteville, AR 72704 Phone: (479) 841-2401

Description	Part No	Qty	Price Ea.	Total
E50 R2-Series Bobcat Compact Excavator	M3319	1	\$75,415.00	\$75,415.00
Auto-Idle	Dozer Blade with Float			
Auto-Shift, 2-Speed Travel	Engine/Hydraulic Monitor with Shutdown			
Auxiliary Hydraulics with Selectable Flow	Fingertip Auxiliary Hydraulic Control			
W/ Arm Mounted Flush Face Quick Couplers	Fingertip Boom Swing Control			
Canopy	Horn			
Includes: Cup Holder, Retractable Seat Belt,	Hydraulic Joystick Controls			
Vinyl Suspension Seat	Keyless Start			
Roll Over Protective Structure (ROPS) - Meets	Rubber Tracks			
Requirements of ISO 12117-2: 2008	Spark Arrestor			
Tip Over Protective Structure (TOPS) - Meets	Standard 5 in. Display			
Requirements of ISO 12117: 2000	Turbocharged, Tier 4, Non DPF			
Falling Object Protective Structure (FOPS) - Meets	Vandalism Protection			
Requirements of ISO 10262	Work Lights			
Control Console Locks	X-Change Attachment Mounting System			
Control Pattern Selector Valve (ISO/STD)	Warranty: 2 years, or 2000 hours whichever occurs first			
P70 Performance Package	M3319-P06-P70	1	\$5,383.00	\$5,383.00
Long Arm	Angle Blade			
C11 Comfort Package	M3319-P07-C11	1	\$310.00	\$310.00
Open Canopy	Vinyl Suspension Seat			
Motion Alarm				
Bobcat Hydr. Clamp, Class IV; E42R2, E50R2 & E60R2	7419569	1	\$3,396.00	\$3,396.00
24" MX4 XCHG TEETH	7311868	1	\$1,901.00	\$1,901.00
Total of Items Quoted				\$86,405.00
Dealer P.D.I.				\$250.00
Freight Charges				\$2,194.00
Dealer Assembly Charges				\$0.00
Other Charges: Material and Logistics				\$5,981.00
Discount Sourcewell				(\$25,921.50)
Quote Total - US dollars				\$68,908.50

Notes:

All prices subject to change without prior notice or obligation. This price quote supersedes all preceding price quotes.



WT EQUIPMENT

4190 S. 48th Street • Springdale, AR 72762

Phone (479) 442-8284

www.wtequip.com



Ship To: IN STORE PICKUP

Unit 831

Invoice To: CITY OF FAYETTEVILLE
1525 S HAPPY HOLLOW
FAYETTEVILLE AR 72701

Branch 01 - WT-SPRINGDALE		
Date 10/04/2022	Time 9:00:45 (O)	Page 1
Account No FAYET001	Phone No 4794443495	Inv No 02 001066
Ship Via		Purchase Order
Tax ID No		
		Salesperson BG1

ESTIMATE EXPIRY DATE: 11/02/2022

SERVICE ESTIMATE - NOT AN INVOICE

Stock #: BC9185 EXCAVATOR

MS #: B2VY13602

Make: BC Model: E45

Is to have the following work done

swing problems

ADDITIONAL DESCRIPTION:

swing problems

Part#	Description	Qty	Price	Amount
BC7020242	MOTOR, SLEW	1	7613.19	7613.19
BC6903117	HYD FLUID	2	69.49	138.98

MISCELLANEOUS CHARGES:

Description	Price	Amount
SS-TRACTOR SERV		

Parts:	7752.17
Labor:	1250.00
Miscellaneous:	50.00
AR CITY TAX	165.44
AR COUNTY TAX	103.41
AR STATE TAX	537.68
Discount:	905.22-
TOTAL:	8953.48

Authorization: _____

Good for thirty (30) days from date of quote.

Thank You For Your Business!



WT EQUIPMENT

4190 S. 48th Street • Springdale, AR 72762

Phone (479) 442-8284

www.wtequip.com



Ship To: IN STORE PICKUP

Invoice To: CITY OF FAYETTEVILLE
1525 S HAPPY HOLLOW
FAYETTEVILLE AR 72701

Unit 831

Branch 01 - WT-SPRINGDALE		
Date 10/24/2022	Time 14:42:43 (O)	Page 1
Account No FAYET001	Phone No 4794443495	Inv No 04 001066
Ship Via		Purchase Order
Tax ID No		
		Salesperson BG1

ESTIMATE EXPIRY DATE: 11/02/2022

SERVICE ESTIMATE - NOT AN INVOICE

Stock #: BC9185 EXCAVATOR

MS #: B2VY13602

Make: BC Model: E45

Is to have the following work done

updated

swing problems

CAUSE:

ALL BOLT HOLES FOR UPPERSTRUCTURE TO SUPPORT SLEW MOTOR WERE DAMAGED.

CORRECTION:

REMOVE ENGINE

REMOVE ALL HYDRAULIC CONTROLS AND COMPONENTS.

REMOVE ALL CAB COMPONENTS

REMOVE ALL BODY PANELS

REMOVE ROPS

SEPERATE MACHINE AND INSTALL BOOM SECTION AND ALL COMPONENTS ON NEW UPPERSTRUCTURE

INSTALL NEW SLEWING MOTOR

TEST RUN VERIFY NO HYDRAULIC OR ENGINE OIL LEAKS FROM REMOVING AND REPLACING ALL ITEMS.

INSTALL NEW BUSHINGS FOR BOOM SECTION ON NEW UPPERSTRUCTURE.

ADDITIONAL DESCRIPTION:

swing problems

FOUND SLEWING MOTOR HAS RIPPED ALL BOLTS OUT OF MAIN FRAME.

UPPERSTRUCTURE ALONE WEIGHS 1300LBS, BETWEEN SHIPPING OF SLEW MOTOR AND UPPERSTRUCTURE FRIEGHT CHARGES ARE GOING TO BE CLOSE TO 1000 DUE TO WEIGHT ISSUES FOR BOTH OF THEM.

Part#	Description	Qty	Price	Amount
BC7020242	MOTOR, SLEW	1	7613.19	7613.19
BC6903117	HYD FLUID	2	69.49	138.98
BC7323149	UPPERSTRUCTURE	1	18266.94	18266.94
BC7198707	BUSHING, PIVOT	2	193.43	386.86
FRT	FREIGHT	1	1000.00	1000.00

Good for thirty (30) days from date of quote.

Thank You For Your Business!



WT EQUIPMENT

4190 S. 48th Street • Springdale, AR 72762

Phone (479) 442-8284

www.wtequip.com



Ship To: IN STORE PICKUP

Invoice To: CITY OF FAYETTEVILLE
1525 S HAPPY HOLLOW
FAYETTEVILLE AR 72701

Branch 01 - WT-SPRINGDALE		
Date 10/24/2022	Time 14:42:43 (O)	Page 2
Account No FAYET001	Phone No 4794443495	Inv No 04 001066
Ship Via		Purchase Order
Tax ID No		
		Salesperson BG1

ESTIMATE EXPIRY DATE: 11/02/2022

SERVICE ESTIMATE - NOT AN INVOICE

MISCELLANEOUS CHARGES:	Description	Price	Amount
	SS-TRACTOR SERV		

Parts:	27405.97
Labor:	10500.00
Miscellaneous:	50.00
AR CITY TAX	704.21
AR COUNTY TAX	440.13
AR STATE TAX	2288.67
Discount:	3795.60-
TOTAL:	37593.38

Authorization: _____

Good for thirty (30) days from date of quote.

Thank You For Your Business!

Budget Year	Division	Adjustment Number
2022	FLEET OPERATIONS (770)	
	/Org2	
	Requestor: Terry Gulley	

Unit 831 (WSEW_F071) has repairs that are too costly to pay for. Instead it will be replaced with the purchase of a Bobcat E50 Excavator for the Sourcwell contract price of \$68,908.50 through Williams Tractor of Springdale, AR.

	COUNCIL DATE:	12/20/2022
	LEGISTAR FILE ID#:	2022-1099
	Holly Black	
	11/22/2022 11:21 AM	
	Budget Director	Date
	TYPE:	D - (City Council)
	JOURNAL #:	
	GLDATE:	12/20/2022
	CHKD/POSTED:	/
RESOLUTION/ORDINANCE		

[illegible]

RESOLUTION NO. _____

A RESOLUTION TO AUTHORIZE THE PURCHASE OF A CONCRETE MIXING TRUCK FROM G.W. VAN KEPPEL COMPANY FOR THE AMOUNT OF \$333,801.00 PLUS ANY APPLICABLE TAXES AND FREIGHT CHARGES, PURSUANT TO A SOURCEWELL COOPERATIVE PURCHASING CONTRACT, AND TO APPROVE A BUDGET ADJUSTMENT

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 purchase of a Cemen-Tech Concrete Mixing Truck from G.W. Van Keppel Company of Van Buren for the total amount of \$333,801.00 plus any applicable taxes and freight charges, pursuant to a Sourcewell cooperative purchasing contract.

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

2022-1100

Legistar File ID

12/20/2022

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

Terry Gulley

11/21/2022

FLEET OPERATIONS (770)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Authorize the purchase of a Cemen Tech concrete mixing truck for the Sourcewell contract price of \$333,801.00 through the G.W. Van Keppel Company of Van Buren, AR; and to approve a budget adjustment.

Budget Impact:

9700.770.1920-5802.00

Shop

Account Number

Fund

02077

Construction Equipment

Project Number

Project Title

Budgeted Item? Yes

Current Budget \$ 220,000.00

Funds Obligated \$ 85,084.85

Current Balance **\$ 134,915.15**

Does item have a cost? Yes

Item Cost \$ 333,801.00

Budget Adjustment Attached? Yes

Budget Adjustment \$ 334,000.00

Remaining Budget **\$ 135,114.15**

V20210527

Purchase Order Number: _____

Previous Ordinance or Resolution # _____

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



MEETING OF DECEMBER 20, 2022

TO: Mayor and City Council

THRU: Chris Brown, Public Works Director

FROM: Terry Gulley, Assistant Public Works Director - Operations

DATE: November 16, 2022

SUBJECT: Purchase of Concrete Truck for Transportation

RECOMMENDATION:

Authorize the purchase of a Cemen Tech concrete mixing truck for the Sourcewell contract price of \$333,801.00 through the G.W. Van Keppel Company of Van Buren, AR; and to approve a budget adjustment.

BACKGROUND:

Due to the difficulty of scheduling and obtaining a consistent supply of concrete from local suppliers the Division has explored potential solutions that would provide a timely and consistent supply of materials to both our sidewalk construction crew and also provide help on some of the smaller trails projects.

DISCUSSION:

The purchase of this vehicle will provide these solutions for both of their needs. It will reduce the down time we are currently experiencing due to supply issues and increase the efficiency of both programs. Another benefit of this vehicle is the ability to provide smaller yardage of concrete to sidewalk repairs that do not require full truck loads. This has been extremely difficult to obtain from vendors in a timely manner. Therefore, we recommend that the Equipment Committee approve the purchase of this vehicle for the Transportation Division.

BUDGET/STAFF IMPACT:

This expansion purchase was not previously budgeted. A budget adjustment is being requested to utilize funds from Transportation's Fund Balance.

ATTACHMENTS:

Sourcewell Quote
Budget Adjustment



THE G. W. VAN KEPPEL COMPANY

2218 Industrial Park RD, Van Buren, AR 72956 Phone: 479-474-5281 Fax: 479-474-6048

10.25.22

City of Fayetteville Arkansas
Attn: Les McGaugh

The GW Van Keppel Company is pleased to present the Following Cemen-Tech M30 / Freightliner Chassis for your consideration.

CEMEN TECH M30 / FREIGHTLINER CHASSIS

360° SWIVEL CHUTE

- 360° SWIVEL CHUTE WITH 24" SHORT CHUTE. ACCEPTS STANDARD MIDDLE AND END CHUTES.

6 YARD PACKAGE

- INCLUDES 6 YARD BIN, 65 CUBIC FOOT CEMENT BIN AND 430 GALLON WATER TANK

ACCU-PRINTER II (AP2)

- ADVANCED SECOND-GENERATION ELECTRONIC TICKET PRINTER THAT EXPANDS THE CAPABILITIES OF THE ORIGINAL ACCUPRINTER. TOUCHSCREEN DISPLAY ALONG WITH THE ABILITY TO STORE MORE MIX DESIGNS AS WELL AS UPLOAD MIX DESIGNS AND DOWN LOAD MIX DATA THROUGH USB PORT. INCLUDES WATER RECORDING METER AND TICKET PRINTER.

ALUMINUM CHUTES

- TWO ALUMINUM CHUTES IN LIEU OF STANDARD CHUTES. INCLUDES BRACKET TO STORE CHUTES WHILE NOT IN USE.

CALIBRATION KIT (1/4 YARD)

- 1/4 YARD ALUMINUM, COLLAPSIBLE YIELD BOX WITH DIGITAL SCALE AND MEASURING CUPS TO AID IN CALIBRATION OF THE UNIT.

FIBER CHOPPER

- FIBER CHOPPER CUTS, PROPORTIONS, AND DISPENSES HIGH STRENGTH AR GLASS FIBER. DISPENSING RATE UP TO 18 OZ. OF FIBER PER MINUTE.

HYDRAULIC OIL COOLER-AIR

- FAN OIL COOLER TO LOWER HYDRAULIC OIL TEMPERATURE FOR OPERATION IN HIGH AMBIENT HEAT CONDITIONS, EXTENDED OPERATION, OR WHEN MIX WATER CAN NOT BE USED. 1

MIXER DIAPER

- MIXER DIAPER UNDER MIXING THROAT TO CATCH MATERIALS AND PREVENT THEM FROM SPILLING. STANDARD COLOR IS YELLOW.

NIGHT OPERATING LIGHTS (LED) - QTY 5

- NIGHT OPERATING LIGHTS ALLOW SAFE OPERATION OF THE UNIT AFTER DARK. INCLUDES 5 LED TYPE FLOOD LIGHTS. ON/OFF SWITCH WILL BE LOCATED IN THE CONTROL PANEL.

SOURCEWELL PURCHASE

- GOVERNMENT ENTITIES CAN PURCHASE CEMEN TECH EQUIPMENT DIRECTLY THROUGH SOURCEWELL, A COOPERATIVE PURCHASING AGENCY, ELIMINATING THE REQUIREMENT OF SOLICITING A BID. CEMEN TECH CONTRACT #060122-CMT. **4% DISCOUNT APPLIED TO TOTAL PURCHASE PRICE.**

SPRAY ON AGGREGATE BIN LINER

- SPRAY ON HEAVY DUTY TWO COMPONENT MODIFIED POLYUREA PROTECTIVE COATING. PROTECTS AND SEALS AGGREGATE BIN TO ADD WEARD LIFE AND PREVENTS CORROSION. 1

TARP - BLACK MESH

- ELECTRIC MOTOR OPERATED MESH TARP TO HELP SECURE YOUR AGGREGATES DURING TRANSIT. SWITCH WILL BE MOUNTED ON THE BIN SUPPORT.

STROBE LIGHTS - ONE FRONT & ONE REAR

- ONE FRONT AND ONE REAR MOUNTED STROBE CAUTION LIGHT. STROBE WILL BE MOUNTED ON THE BACK OF THE UNIT ON THE DRIVER'S SIDE, AND ON THE FRONT WATER TANK CAGE. SWITCH LOCATION WILL BE LOCATED IN THE CAB IF THE UNIT IS MOUNTED ON A TRUCK CHASSIS. THE SWITCH WILL BE LOCATED IN THE MIXER CONTROL PANEL IF THE UNIT IS MOUNTED ON A TRAILER.

THIRD ADMIXTURE SYSTEM (HIGH RANGE)

- USED FOR ADMIXES THAT REQUIRE 5 OUNCES OR MORE ADDITION RATE PER 100 LBS OF CEMENT. THE ADMIX MUST BE DILUTED TO ACHIEVE PROPER CONSISTENCY AND FLOW RATE THROUGH THE FLOW METER. SYSTEM INCLUDES A 35 GALLON (132 LITER) POLY TANK, ELECTRIC PUMP AND MECHANICAL FLOW METER WITH BUILT IN ADJUSTABLE SETTINGS.

TRANSMISSION INTEGRATION - AUTOMATIC (INCLUDES ROLL AND POUR CAPABILITY)

- TRANSMISSION INTEGRATION - AUTOMATIC (INCLUDES ROLL AND POUR CAPABILITY) 1 WIRELESS REMOTE CONTROL
- FULL FUNCTION WIRELESS REMOTE CONTROL TO OPERATE THE UNIT INDEPENDENT FROM THE CONTROL PANEL. INCLUDES E-STOP BUTTON IN CONTROL PANEL

WATER FILL PIPE WITH AIR GAP

- PREVENT WATER BACK FLOW WHEN FILLING. INCLUDES STRAINER AND CHECK VALVE. NOT OFFERED ON INSULATED WATER TANK

VIBRATORS - STONE SIDE

- STONE SIDE VIBRATORS ENSURE FLOW OF FINE MATERIALS AND SMALLER STONE SHOULD THEY BE REQUIRED FOR SPECIAL MIX DESIGNS. COMMONLY USED IN FLOWABLE FILL AND LATEX APPLICATIONS

TRUCK SECTION:

MOUNTING – CEMEN TECH INCORPORATED SUPPLIED TRUCK

CEMEN TECH PROVIDED CHASSIS. PROVIDE QUALITY WORKMANSHIP AND PROPERLY MOUNT UNIT TO APPROPRIATE CHASSIS.

TRUCK PURCHASE 1 111862.00

2024 FREIGHTLINER

- M2-106 CUMMINS L9 350HP ALLSION 3000RDS AUTO TRANSMISSION 135CT NO PUSHER

TOTAL UNIT PRICE - \$333,801.00

- This Vehicle is subject to FET and Sales Tax unless the City of Fayetteville is exempt

THIS PRICE IS FOB CITY OF FAYETTEVILLE SHOP AND INCLUDES INITIAL CALIBRATION, START-UP AND TRAINING FOR CITY OF FAYETTEVILLE.

ONE YEAR WARRANTY ON BED AND COMPONENTS EXCLUDING WEAR ITEMS FROM CTI

TRUCK WARRANTY IS STANDARD FREIGHTLINER WARRANTY THROUGH FREIGHTLINER DEALER

LEAD TIME: 270 DAYS / SUBJECT TO CHASSIS AVAILABILITY

AGAIN THANK YOU FOR THIS OPPORTUNITY TO SERVE YOU!

BUD EARP
TERRITORY MANAGER
GW VAN KEPPEL CO

CUSTOMER ACCEPTANCE Vendor will accept PO in place of
PRINT NAME signature
DATE _____

Budget Year	Division	Adjustment Number
2022	FLEET OPERATIONS (770)	
	/Org2	
	Requestor: Terry Gulley	

The expansion purchase of a Cemen Tech concrete mixing truck for the Sourcewell contract price of \$333,801.00 was not previously budgeted. Utilizing funds from Transportation's Fund Balance.

	COUNCIL DATE:	12/20/2022
	LEGISTAR FILE ID#:	2022-1100
	Holly Black	
	11/22/2022 11:03 AM	
	Budget Director	Date
	TYPE:	D - (City Council)
	JOURNAL #:	
	GLDATE:	12/20/2022
	CHKD/POSTED:	/
RESOLUTION/ORDINANCE		

v.20221019

RESOLUTION NO. _____

A RESOLUTION TO AWARD BID #23-01 AND AUTHORIZE THE PURCHASE OF PAVEMENT MARKING INSTALLATION FROM TIME STRIPING, INC. IN VARIABLE AMOUNTS AND FOR VARYING UNIT PRICES AS NEEDED THROUGH THE END OF 2023

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 awards Bid #23-01 and authorizes the purchase of pavement marking installation from Time Striping, Inc. in variable amounts and for varying unit prices as shown in the bid sheet attached to this Resolution as needed through the end of 2023.

City of Fayetteville Staff Review Form

2022-1101

Legistar File ID

12/20/2022

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

Terry Gulley

11/21/2022

TRANSPORTATION SERVICES (410)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

A RESOLUTION TO AWARD BID 23-01 AND AUTHORIZE THE PURCHASE OF PAVEMENT MARKING INSTALLATION FROM TIME STRIPING, INC IN VARIABLE AMOUNTS AND FOR VARYING UNIT PRICES AS NEEDED THROUGH THE END OF 2023.

Budget Impact:

Account Number		Fund	
Project Number		Project Title	
Budgeted Item?	Yes	Current Budget	\$ -
		Funds Obligated	\$ -
		Current Balance	\$ -
Does item have a cost?	Yes	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: The "item cost" and "current budget" boxes have been left blank because these items will vary depending upon fluctuating needs based on citizen service requests received, construction projects approved, and other variable factors.



MEETING OF DECEMBER 20, 2022

TO: Mayor and City Council

THRU: Chris Brown, Public Works Director
Susan Norton, Chief of Staff

FROM: Terry Gulley, Assistant Public Works Director - Operations

DATE: November 21, 2022

SUBJECT: **A RESOLUTION TO AWARD BID 23-01 AND AUTHORIZE THE PURCHASE OF PAVEMENT MARKING INSTALLATION FROM TIME STRIPING, INC IN VARIABLE AMOUNTS AND FOR VARYING UNIT PRICES AS NEEDED THROUGH THE END OF 2023.**

RECOMMENDATION:

A resolution to award Bid 23-01 and authorize the purchase of pavement marking installation from Time Striping, Inc. in variable amounts and for varying unit prices as needed through the end of 2023.

BACKGROUND:

The purchase of bulk construction materials and services is necessary to maintain current infrastructure and to implement the projects outlined in the Capital Improvements Program and Annual Budget and Work Program.

DISCUSSION:

Sealed bids in accordance with State statutes, City ordinances, and purchasing procedures were publicly read and the results are attached to this memo.

BUDGET/STAFF IMPACT:

Funds for the acquisition of materials and services have been budgeted in various capital projects within the Sales Tax Capital Improvements Fund and Street Fund operating programs.

Attachments:

Bid 23-01, Pavement Marking Installation Tabulation



BID TABULATION

Bid 23-01, Construction - Pavement Marking Installation

DEADLINE: Wednesday, November 2, 2022 at 2:00 PM

				Time Striping, Inc	
				Total	\$281,075.00
Line #	Description	QTY	UOM	Unit	Extended
1	Reflectorized Paint Marking WHITE 4"	60000	LF	\$0.45	\$27,000.00
2	Reflectorized Paint Marking YELLOW 4"	200000	LF	\$0.45	\$90,000.00
3	Reflectorized Paint Marking WHITE 6"	4500	LF	\$0.55	\$2,475.00
4	Reflectorized Paint Marking YELLOW 6"	10000	LF	\$0.55	\$5,500.00
5	Reflectorized Paint Marking WHITE 8"	500	LF	\$0.65	\$325.00
6	Reflectorized Paint Marking YELLOW 8"	500	LF	\$0.65	\$325.00
7	Reflectorized Paint Marking WHITE 12"	2000	LF	\$5.00	\$10,000.00
8	Reflectorized Paint Marking Arrows WHITE	150	EA	\$75.00	\$11,250.00
9	Reflectorized Paint Marking (Words Only: Lane, etc.)	26	EA	\$100.00	\$2,600.00
10	Reflectorized Paint Marking - (Symbols only: Bike, ADA, etc.)	20	EA	\$100.00	\$2,000.00
11	Reflectorized Paint Marking - YELLOW/WHITE (4" walk-behind trail striping)	30000	LF	\$0.55	\$16,500.00
12	Reflectorized Paint Marking - YELLOW/WHITE (4" walk-behind parking lot striping)	10000	LF	\$0.75	\$7,500.00
13	Green Bicycle Lane Coating - Cycle Grip	3000	SF	\$10.00	\$30,000.00
14	Thermoplastic Marking Installation (City will provide material)	25	EA	\$50.00	\$1,250.00
15	Thermoplastic Marking - WHITE - 4"	1000	LF	\$3.00	\$3,000.00
16	Thermoplastic Marking - YELLOW - 4"	2500	LF	\$3.00	\$7,500.00
17	Thermoplastic Marking - WHITE - 6"	1000	LF	\$3.50	\$3,500.00
18	Thermoplastic Marking - YELLOW - 6"	2500	LF	\$3.50	\$8,750.00
19	Thermoplastic Marking - WHITE - 8"	200	LF	\$4.00	\$800.00
20	Thermoplastic Marking - YELLOW - 8"	200	LF	\$4.00	\$800.00
21	Thermoplastic Marking - WHITE - 12"	500	LF	\$8.00	\$4,000.00
22	Thermoplastic Marking - WHITE - 24"	250	LF	\$16.00	\$4,000.00
23	Thermoplastic Marking - GREEN - 24"	250	LF	\$32.00	\$8,000.00
24	Thermoplastic Marking - WORDS (Only, Lane, Stop, etc.)	10	EA	\$400.00	\$4,000.00
25	Thermoplastic Marking - ARROWS	10	EA	\$350.00	\$3,500.00
26	Thermoplastic Marking - SYMBOLS (Bike, ADA, Shared Lane, etc.)	10	EA	\$400.00	\$4,000.00
27	Pavement Marking Removal - Media Blasting	2500	SF	\$6.00	\$15,000.00
28	Pavement Marking Removal - Grinding	2500	SF	\$3.00	\$7,500.00

* NOTICE: Bid award is contingent upon vendor meeting minimum specifications and formal authorization by City Officials.

Amanda Beilfuss Digitally signed by Amanda Beilfuss
Date: 2022.11.03 11:06:00 -05'00'

Amanda Beilfuss, Sr. Purchasing Agent

Les McGaugh Digitally signed by Les McGaugh
Date: 2022.11.18 10:56:02 -06'00'

Les McGaugh, Purchasing Director

RESOLUTION NO. _____

A RESOLUTION TO AWARD BID #23-02 AND AUTHORIZE THE PURCHASE OF CURB AND GUTTER CONSTRUCTION SERVICES FROM SWEETSER CONSTRUCTION, INC. IN VARIABLE AMOUNTS AND FOR VARYING UNIT PRICES AS NEEDED THROUGH THE END OF 2023

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 awards Bid #23-02 and authorizes the purchase of curb and gutter construction services from Sweetser Construction, Inc. in variable amounts and for varying unit prices as shown in the bid sheet attached to this Resolution as needed through the end of 2023.

City of Fayetteville Staff Review Form

2022-1103

Legistar File ID

12/20/2022

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

Terry Gulley

11/21/2022

TRANSPORTATION SERVICES (410)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

A RESOLUTION TO AWARD BID 23-02 AND AUTHORIZE THE PURCHASE OF CONCRETE CONSTRUCTION SERVICES FROM SWEETSER CONSTRUCTION, INC. IN VARIABLE AMOUNTS AND FOR VARYING UNIT PRICES AS NEEDED THROUGH THE END OF 2023.

Budget Impact:

Account Number

Fund

Project Number

Project Title

Budgeted Item? Yes

Current Budget

\$ -

Funds Obligated

\$ -

Current Balance

\$ -

Does item have a cost? Yes

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: The "item cost" and "current budget" boxes have been left blank because these items will vary depending upon fluctuating needs based on citizen service requests received, construction projects approved, and other variable factors.



MEETING OF DECEMBER 20, 2022

TO: Mayor and City Council

THRU: Chris Brown, Public Works Director
Susan Norton, Chief of Staff

FROM: Terry Gulley, Assistant Public Works Director - Operations

DATE: November 21, 2022

SUBJECT: **A RESOLUTION TO AWARD BID 23-02 AND AUTHORIZE THE PURCHASE OF CONCRETE CONSTRUCTION SERVICES FROM SWEETSER CONSTRUCTION, INC. IN VARIABLE AMOUNTS AND FOR VARYING UNIT PRICES AS NEEDED THROUGH THE END OF 2023.**

RECOMMENDATION:

A resolution to award Bid 23-02 and authorize the purchase of concrete construction services from Sweetser Construction, Inc. in variable amounts and for varying unit prices as needed through the end of 2023.

BACKGROUND:

The purchase of bulk construction materials and services is necessary to maintain current infrastructure and to implement the projects outlined in the Capital Improvements Program and Annual Budget and Work Program.

DISCUSSION:

Sealed bids in accordance with State statutes, City ordinances, and purchasing procedures were publicly read and the results are attached to this memo.

BUDGET/STAFF IMPACT:

Funds for the acquisition of materials and services have been budgeted in various capital projects within the Sales Tax Capital Improvements Fund and Street Fund operating programs.

Attachments:

Bid 23-02, Construction - Concrete Tabulation



BID TABULATION
Bid 23-02, Construction - Concrete
 DEADLINE: Wednesday, November 2, 2022 at 2:00 PM

				Sweetser Construction, Inc.	
				Total	\$821,750.00
Line #	Description	QTY	UOM	Unit	Extended
1	Curb and Gutter Construction - Type A (See Appendix G)	2500	LF	\$34.00	\$85,000.00
2	Curb and Gutter Construction - Type D (See Appendix G)	5000	LF	\$34.00	\$170,000.00
3	Curb and Gutter Construction - Modified (See Appendix G)	750	LF	\$32.00	\$24,000.00
4	4" Thick Concrete - Sidewalk (See Appendix C)	1000	SY	\$76.00	\$76,000.00
5	6" Thick Concrete - Sidewalk Driveway Aprons (See Appendix C)	500	SY	\$90.00	\$45,000.00
6	Concrete Pavement Repair - 9" Thick (See Appendix F)	250	SY	\$125.00	\$31,250.00
7	Concrete Pavement Repair - Colored Concrete per detail ST8 (See Appendix F)	250	SY	\$165.00	\$41,250.00
8	(4') Drop Inlet - Type C or MO (See Appendix H)	10	EA	\$5,000.00	\$50,000.00
9	(5') Drop Inlet - Type C or MO (See Appendix H)	10	EA	\$6,500.00	\$65,000.00
10	(6') Drop Inlet - Type C or MO (See Appendix H)	5	EA	\$7,200.00	\$36,000.00
11	(4') Junction Box - Type C or MO (See Appendix H)	5	EA	\$4,500.00	\$22,500.00
12	(5') Junction Box - Type C or MO (See Appendix H)	5	EA	\$6,000.00	\$30,000.00
13	(6') Junction Box - Type C or MO (See Appendix H)	5	EA	\$6,900.00	\$34,500.00
14	(4') Drop Inlet Extension (See Appendix H)	15	EA	\$2,000.00	\$30,000.00
15	(5') Area Inlet (See Appendix H)	5	EA	\$7,500.00	\$37,500.00
16	Drop Inlet Back Opening (See Appendix H)	5	EA	\$7,800.00	\$39,000.00
17	4" Thick Concrete - ADA Ramp, Landing Truncated Domes (See Appendix E)	50	SY	\$95.00	\$4,750.00
18	Remove and Replace 4" Thick Concrete - Sidewalk Driveway Aprons (See Appendix D)	1000	SY	No Bid	No Bid
19	Remove and Replace 4" Thick Concrete - ADA Ramps and Landings (See Appendix D)	100	SY	No Bid	No Bid
20	Remove and Replace 6" Thick Concrete - Sidewalk Driveway Aprons (See Appendix D)	500	SY	No Bid	No Bid
21	Remove 18" - 24" Curb and Gutter and Replace with 18" Curb and Gutter	500	LF	No Bid	No Bid

* NOTICE: Bid award is contingent upon vendor meeting minimum specifications and formal authorization by City Officials.

Amanda Beilfuss Digitally signed by Amanda Beilfuss
 Date: 2022.11.03 11:07:41 -05'00'

 Amanda Beilfuss, Sr. Purchasing Agent

Les McGaugh Digitally signed by Les McGaugh
 Date: 2022.11.18 10:57:16 -06'00'

 Les McGaugh, Purchasing Director

RESOLUTION NO. _____

A RESOLUTION TO AWARD BID #23-03 AND AUTHORIZE THE PURCHASE OF TREE PLANTING SERVICES FROM BUILDING EXTERIORS, INC. IN VARIABLE AMOUNTS AND FOR VARYING UNIT PRICES AS NEEDED THROUGH THE END OF 2023

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 awards Bid #23-03 and authorizes the purchase of tree planting services from Building Exteriors, Inc. in variable amounts and for varying unit prices as shown in the bid sheet attached to this Resolution as needed through the end of 2023.

City of Fayetteville Staff Review Form

2022-1104

Legistar File ID

12/20/2022

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

Terry Gulley

11/21/2022

TRANSPORTATION SERVICES (410)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

A RESOLUTION TO AWARD BID 23-03 AND AUTHORIZE THE PURCHASE OF TREE PLANTING SERVICES FROM BUILDING EXTERIORS IN VARIABLE AMOUNTS AND FOR VARYING UNIT PRICES AS NEEDED THROUGH THE END OF 2023.

Budget Impact:

Account Number		Fund	
Project Number		Project Title	
Budgeted Item?	Yes	Current Budget	\$ -
		Funds Obligated	\$ -
		Current Balance	\$ -
Does item have a cost?	Yes	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: The "item cost" and "current budget" boxes have been left blank because these items will vary depending upon fluctuating needs based on citizen service requests received, construction projects approved, and other variable factors.



MEETING OF DECEMBER 20, 2022

TO: Mayor and City Council

THRU: Chris Brown, Public Works Director
Susan Norton, Chief of Staff

FROM: Terry Gulley, Assistant Public Works Director - Operations

DATE: November 21, 2022

SUBJECT: A RESOLUTION TO AWARD BID 23-03 AND AUTHORIZE THE PURCHASE OF TREE PLANTING SERVICES FROM BUILDING EXTERIORS IN VARIABLE AMOUNTS AND FOR VARYING UNIT PRICES AS NEEDED THROUGH THE END OF 2023.

RECOMMENDATION:

A resolution to award Bid 23-03 and authorize the purchase of tree planting services from Building Exteriors in variable amounts and for varying unit prices as needed through the end of 2023.

BACKGROUND:

The purchase of bulk construction materials and services is necessary to maintain current infrastructure and to implement the projects outlined in the Capital Improvements Program and Annual Budget and Work Program.

DISCUSSION:

Sealed bids in accordance with State statutes, City ordinances, and purchasing procedures were publicly read and the results are attached to this memo.

BUDGET/STAFF IMPACT:

Funds for the acquisition of materials and services have been budgeted in various capital projects within the Sales Tax Capital Improvements Fund and Street Fund operating programs.

Attachments:

Bid 23-03, Tree Planting Tabulation



BID TABULATION
Bid 23-03, Construction - Tree Planting
 DEADLINE: Wednesday, November 2, 2022 at 2:00 PM

				Building Exteriors		Titan Lawn & Landscape LLC	
				Total	\$153,450.00	\$195,649.00	
Line #	Description	QTY	UOM	Unit	Extended	Unit	Extended
1	Mulch installed per project planting detail for each. 2" - 3" (shall be no more than 3")	1	LS	\$7,125.00	\$7,125.00	\$4,800.00	\$4,800.00
2	Water as needed, to ensure establishment through 1-Year Guarantee after acceptance	1	LS	\$21,750.00	\$21,750.00	\$3,600.00	\$3,600.00
3	Large/Medium Tree Species (2" caliper trees shall be used)	300	Each	\$295.00	\$88,500.00	\$451.44	\$135,432.00
4	Small Tree Species (4' Tall)	175	Each	\$185.00	\$32,375.00	\$257.56	\$45,073.00
5	Shrub Species (3-Gallon)	25	Each	\$48.00	\$1,200.00	\$89.76	\$2,244.00
6	Tree Staking (if needed) with notification to City staff.	1	LS	\$2,500.00	\$2,500.00	\$4,500.00	\$4,500.00

* NOTICE: Bid award is contingent upon vendor meeting minimum specifications and formal authorization by City Officials.

*** Titan Lawn & Landscape LLC's bid has been deemed unresponsive.

Amanda Beilfuss Digitally signed by Amanda Beilfuss
Date: 2022.11.03 13:24:39 -05'00'

Amanda Beilfuss, Sr. Purchasing Agent

Les McGaugh Digitally signed by Les McGaugh
Date: 2022.11.18 10:58:39 -06'00'

Les McGaugh, Purchasing Director

RESOLUTION NO. _____

A RESOLUTION TO AWARD BID # 23-04 AND AUTHORIZE THE PURCHASE OF ASPHALT PAVING SERVICES FROM EMERY SAPP & SONS, INC. ON AN AS NEEDED BASIS THROUGH THE END OF 2023

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 awards Bid # 23-04 and authorizes the purchase of asphalt paving services from Emery Sapp & Sons, Inc. on an as needed basis through the end of 2023.

City of Fayetteville Staff Review Form

2022-1105

Legistar File ID

12/20/2022

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

Terry Gulley

11/21/2022

TRANSPORTATION SERVICES (410)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

A RESOLUTION TO AWARD BID 23-04 AND AUTHORIZE THE PURCHASE OF ASPHALT PAVING SERVICES FROM EMERY SAPP & SONS D/B/A HUTCHENS CONSTRUCTION COMPANY, LLC AS NEEDED THROUGH THE END OF 2023.

Budget Impact:

Account Number		Fund	
Project Number		Project Title	
Budgeted Item?	Yes	Current Budget	\$ -
		Funds Obligated	\$ -
		Current Balance	\$ -
Does item have a cost?	Yes	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: The "item cost" and "current budget" boxes have been left blank because these items will vary depending upon fluctuating needs based on citizen service requests received, construction projects approved, and other variable factors.



MEETING OF DECEMBER 20, 2022

TO: Mayor and City Council

THRU: Chris Brown, Public Works Director
Susan Norton, Chief of Staff

FROM: Terry Gulley, Assistant Public Works Director - Operations

DATE: November 21, 2022

SUBJECT: **A RESOLUTION TO AWARD BID 23-04 AND AUTHORIZE THE PURCHASE OF ASPHALT PAVING SERVICES FROM EMERY SAPP & SONS D/B/A HUTCHENS CONSTRUCTION COMPANY, LLC AS NEEDED THROUGH THE END OF 2023.**

RECOMMENDATION:

A resolution to award Bid 23-04 and authorize the purchase of asphalt paving services from Emery Sapp & Sons d/b/a Hutchens Construction Company, LLC as needed through the end of 2023.

BACKGROUND:

The purchase of bulk construction materials and services is necessary to maintain current infrastructure and to implement the projects outlined in the Capital Improvements Program and Annual Budget and Work Program.

DISCUSSION:

Sealed bids in accordance with State statutes, City ordinances, and purchasing procedures were publicly read and the results are attached to this memo.

BUDGET/STAFF IMPACT:

Funds for the acquisition of materials and services have been budgeted in various capital projects within the Sales Tax Capital Improvements Fund and Street Fund operating programs.

Attachments:

Bid 23-04, Asphalt Paving Tabulation



BID TABULATION

Bid 23-04, Construction - Asphalt Paving

DEADLINE: Wednesday, November 2, 2022 at 2:00 PM

				Emery Sapp & Sons, Inc. dba Hutchens Construction Company	
				Total	\$884,300.00
Line #	Description	QTY	UOM	Unit	Extended
1	Asphalt Paving Overlay - Superpave 9.5mm Surface with Tack (See Appendix A)	5000	Ton	\$176.86	\$884,300.00

* NOTICE: Bid award is contingent upon vendor meeting minimum specifications and formal authorization by City Officials.

Amanda Beilfuss Digitally signed by Amanda Beilfuss
Date: 2022.11.03 13:43:39 -05'00'

Amanda Beilfuss, Sr. Purchasing Agent

Les McGaugh Digitally signed by Les McGaugh
Date: 2022.11.18 11:10:52 -06'00'

Les McGaugh, Purchasing Director

RESOLUTION NO. _____

A RESOLUTION TO AWARD BID #23-05 AND AUTHORIZE THE PURCHASE OF CONCRETE MATERIALS FROM APAC-CENTRAL, INC. AS PRIMARY SUPPLIER IN VARIABLE AMOUNTS AND FOR VARYING UNIT PRICES AND TO AUTHORIZE THE USE OF OTHER BIDDERS BASED ON PRICE AND AVAILABILITY AS NEEDED THROUGH THE END OF 2023

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 awards Bid #23-05 and authorizes the purchase of concrete materials from APAC-Central, Inc. as primary supplier in variable amounts and for varying unit prices as specified in the bid sheet attached to this Resolution and further authorizes the use of other bidders based on price and availability as needed through the end of 2023.

City of Fayetteville Staff Review Form

2022-1106

Legistar File ID

12/20/2022

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

Terry Gulley

11/21/2022

TRANSPORTATION SERVICES (410)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

A RESOLUTION TO AWARD BID 23-05 AND AUTHORIZE THE PURCHASE OF CONCRETE MATERIALS FROM APAC-CENTRAL, INC. AS PRIMARY SUPPLIER IN VARIABLE AMOUNTS AND FOR VARYING UNIT PRICES AND TO AUTHORIZE THE USE OF OTHER BIDDERS BASED ON PRICE AND AVAILABILITY AS NEEDED THROUGH THE END OF 2023.

Budget Impact:

Account Number		Fund	
Project Number		Project Title	
Budgeted Item?	Yes	Current Budget	\$ -
		Funds Obligated	\$ -
		Current Balance	\$ -
Does item have a cost?	Yes	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: The "item cost" and "current budget" boxes have been left blank because these items will vary depending upon fluctuating needs based on citizen service requests received, construction projects approved, and other variable factors.



MEETING OF DECEMBER 20, 2022

TO: Mayor and City Council

THRU: Chris Brown, Public Works Director
Susan Norton, Chief of Staff

FROM: Terry Gulley, Assistant Public Works Director - Operations

DATE: November 21, 2022

SUBJECT: **A RESOLUTION TO AWARD BID 23-05 AND AUTHORIZE THE PURCHASE OF CONCRETE MATERIALS FROM APAC-CENTRAL, INC. AS PRIMARY SUPPLIER IN VARIABLE AMOUNTS AND FOR VARYING UNIT PRICES AND TO AUTHORIZE THE USE OF OTHER BIDDERS BASED ON PRICE AND AVAILABILITY AS NEEDED THROUGH THE END OF 2023.**

RECOMMENDATION:

A resolution to award Bid 23-05 and authorize the purchase of concrete materials from APAC-Central, Inc. as primary supplier in variable amounts and for varying unit prices and to authorize the use of other bidders based on price and availability as needed through the end of 2023.

BACKGROUND:

The purchase of bulk construction materials and services is necessary to maintain current infrastructure and to implement the projects outlined in the Capital Improvements Program and Annual Budget and Work Program.

DISCUSSION:

Sealed bids in accordance with State statutes, City ordinances, and purchasing procedures were publicly read and the results are attached to this memo.

BUDGET/STAFF IMPACT:

Funds for the acquisition of materials and services have been budgeted in various capital projects within the Sales Tax Capital Improvements Fund and Street Fund operating programs.

Attachments:

Bid 23-05, Concrete Materials Tabulation



BID TABULATION
Bid 23-05, Concrete Materials
 DEADLINE: Wednesday, November 2, 2022 at 2:00 PM

				PRIMARY		SECONDARY		SECONDARY	
				APAC-Central, Inc.		Standard Materials Group		Tune Concrete (Tune)	
				\$813,930.00		\$826,770.00		\$846,175.00	
Line #	Description	QTY	UOM	Unit	Extended	Unit	Extended	Unit	Extended
1	3500 PSI 3/4" Max Aggregate Size, 4" Slump	500	CY	\$143.00	\$71,500.00	\$146.50	\$73,250.00	\$145.00	\$72,500.00
2	4000 PSI 3/4" Max Aggregate Size, 4" Slump	4000	CY	\$145.00	\$580,000.00	\$149.50	\$598,000.00	\$148.00	\$592,000.00
3	4000 PSI 1" Max Aggregate Size, 4" Slump	500	CY	\$146.00	\$73,000.00	\$147.00	\$73,500.00	\$146.00	\$73,000.00
4	4000 PSI 1" Max Aggregate Size With Fiber Reinforcement, 4" Slump	100	CY	\$152.00	\$15,200.00	\$154.00	\$15,400.00	\$154.00	\$15,400.00
5	4000 PSI 3/4" Max Aggregate Size, 4" Slump, High Early, 7 Bag Mix	100	CY	\$165.00	\$16,500.00	\$149.50	\$14,950.00	\$154.00	\$15,400.00
6	4000 PSI ARDOT Class 5 7 1/2 Sack High Early, 1" Aggregate, 4" Slump	100	CY	\$170.00	\$17,000.00	\$147.00	\$14,700.00	\$163.00	\$16,300.00
7	Hydration Stabilizer Admixture - Price To Be Added To Concrete	100	CY	No Bid	No Bid	\$3.50	\$350.00	\$6.00	\$600.00
8	5500 PSI 1" Max Aggregate Size, 4" Slump	100	CY	\$180.00	\$18,000.00	\$155.00	\$15,500.00	\$163.00	\$16,300.00
9	Flowable Fill	50	CY	\$110.00	\$5,500.00	\$116.00	\$5,800.00	\$146.00	\$7,300.00
10	1% Calcium Chloride Admixture - Price To Be Added To Concrete	100	CY	\$5.00	\$500.00	\$3.50	\$350.00	\$5.00	\$500.00
11	2% Calcium Chloride Admixture - Price To Be Added To Concrete	60	CY	\$8.00	\$480.00	\$7.00	\$420.00	\$10.00	\$600.00
12	Air Entraining Admixture - Price To Be Added To Concrete	2500	CY	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid
13	Hot Water - Price To Be Added To Concrete	500	CY	\$7.00	\$3,500.00	\$6.00	\$3,000.00	\$6.00	\$3,000.00
14	Chilled Water - Price To Be Added To Concrete	500	CY	No Bid	No Bid	\$6.00	\$3,000.00	\$8.00	\$4,000.00
15	Ice - Price To Be Added To Concrete	100	CY	\$10.00	\$1,000.00	\$15.00	\$1,500.00	\$15.00	\$1,500.00
16	Exposed Aggregate 3/8" - Price To Be Added To Concrete	50	CY	\$25.00	\$1,250.00	\$12.00	\$600.00	\$15.00	\$750.00
17	Exposed Aggregate 1/2" - Price To Be Added To Concrete	50	CY	\$27.00	\$1,350.00	\$25.00	\$1,250.00	\$15.00	\$750.00
18	Type I Portland Cement	100	Tons	No Bid	No Bid	No Bid	No Bid	\$200.00	\$20,000.00
19	Concrete Sand	100	Tons	\$35.00	\$3,500.00	\$35.00	\$3,500.00	\$35.00	\$3,500.00
20	Masonry Sand	50	Tons	\$37.00	\$1,850.00	No Bid	No Bid	\$35.00	\$1,750.00
21	Mobilization Fee (After Hours Weekends)	1	EA	\$3,500.00	\$3,500.00	\$1,500.00	\$1,500.00	\$1,000.00	\$1,000.00
22	Colored Concrete Washout Fee (Per Truck)	1	EA	\$300.00	\$300.00	\$200.00	\$200.00	\$25.00	\$25.00
What is the guaranteed deliver time from receipt of order?				45 Minutes		24 Hours		24 Hours	

* NOTICE: Bid award is contingent upon vendor meeting minimum specifications and formal authorization by City Officials.

Amanda Beilfuss Digitally signed by Amanda Beilfuss
 Date: 2022.11.16 10:56:10 -06'00'

 Amanda Beilfuss, Sr. Purchasing Agent

Les McGaugh Digitally signed by Les McGaugh
 Date: 2022.11.18 11:13:06 -06'00'

 Les McGaugh, Purchasing Director

RESOLUTION NO. _____

A RESOLUTION TO AWARD BID #23-06 AND AUTHORIZE THE PURCHASE OF AGGREGATE MATERIALS FROM HUNT-ROGERS MATERIALS, LLC AS PRIMARY SUPPLIER AND TO AUTHORIZE THE USE OF OTHER BIDDERS BASED ON PRICE AND AVAILABILITY AS NEEDED THROUGH THE END OF 2023

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 awards Bid #23-06 and authorizes the purchase of aggregate materials from Hunt-Rogers Materials, LLC as primary supplier and authorizes the use of other bidders based on price and availability as needed through the end of 2023.

City of Fayetteville Staff Review Form

2022-1107

Legistar File ID

12/20/2022

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

Terry Gulley

11/21/2022

TRANSPORTATION SERVICES (410)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

A RESOLUTION TO AWARD BID 23-06 AND AUTHORIZE THE PURCHASE OF AGGREGATE MATERIALS FROM HUNT-ROGERS MATERIALS, LLC AS PRIMARY SUPPLIER AND TO AUTHORIZE THE USE OF OTHER BIDDERS BASED ON PRICE AND AVAILABILITY AS NEEDED THROUGH THE END OF 2023.

Budget Impact:

Account Number		Fund	
Project Number		Project Title	
Budgeted Item?	Yes	Current Budget	\$ -
		Funds Obligated	\$ -
		Current Balance	\$ -
Does item have a cost?	Yes	Item Cost	\$ -
		Budget Adjustment	\$ -
Budget Adjustment Attached?	No	Remaining Budget	\$ -

V20210527

Purchase Order Number: _____

Previous Ordinance or Resolution # _____

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments: The "item cost" and "current budget" boxes have been left blank because these items will vary depending upon fluctuating needs based on citizen service requests received, construction projects approved, and other variable factors.



MEETING OF DECEMBER 20, 2022

TO: Mayor and City Council

THRU: Chris Brown, Public Works Director
Susan Norton, Chief of Staff

FROM: Terry Gulley, Assistant Public Works Director - Operations

DATE: November 21, 2022

SUBJECT: **A RESOLUTION TO AWARD BID 23-06 AND AUTHORIZE THE PURCHASE OF AGGREGATE MATERIALS FROM HUNT-ROGERS MATERIALS, LLC AS PRIMARY SUPPLIER AND TO AUTHORIZE THE USE OF OTHER BIDDERS BASED ON PRICE AND AVAILABILITY AS NEEDED THROUGH THE END OF 2023.**

RECOMMENDATION:

A resolution to award Bid 23-06 and authorize the purchase of aggregate materials from Hunt-Rogers Materials, LLC as primary supplier and to authorize the use of other bidders based on price and availability as needed through the end of 2023.

BACKGROUND:

The purchase of bulk construction materials and services is necessary to maintain current infrastructure and to implement the projects outlined in the Capital Improvements Program and Annual Budget and Work Program.

DISCUSSION:

Sealed bids in accordance with State statutes, City ordinances, and purchasing procedures were publicly read and the results are attached to this memo.

BUDGET/STAFF IMPACT:

Funds for the acquisition of materials and services have been budgeted in various capital projects within the Sales Tax Capital Improvements Fund and Street Fund operating programs.

Attachments:

Bid 23-06, Aggregate Materials Tabulation



BID TABULATION

Bid 23-06, Aggregate Materials

DEADLINE: Wednesday, November 2, 2022 at 2:00 PM

** Awarding By Line Item **

				Hunt-Rogers Materials LLC.		APAC-Central, Inc.	
				Total			
				\$453,750.00		\$511,250.00	
Line #	Description	QTY	UOM	Unit	Extended	Unit	Extended
1	Class 7 Base (SB-2) - Includes Wet And Dry	30000	Ton	\$10.50	\$315,000.00	\$10.50	\$315,000.00
2	Concrete Aggregate - 1.5 Inches	500	Ton	\$15.00	\$7,500.00	\$20.00	\$10,000.00
3	Concrete Aggregate - 3/4 Inch	500	Ton	No Bid	No Bid	\$22.50	\$11,250.00
4	"B" Stone - 3 to 5 Inches	2500	Ton	\$12.50	\$31,250.00	\$11.50	\$28,750.00
5	Abrasives/Grit (1/4 Inch Chips)	500	Ton	No Bid	No Bid	\$15.50	\$7,750.00
6	Shot Rock	500	Ton	\$8.00	\$4,000.00	\$11.00	\$5,500.00
7	Rip Rap Limestone	1500	Ton	\$24.00	\$36,000.00	\$23.50	\$35,250.00
8	Abrasives/Grit (1/4 Inch Clean Chips)	500	Ton	No Bid	No Bid	\$45.50	\$22,750.00
9	Select Embankment (Hillside Gravel)	15000	CY	\$4.00	\$60,000.00	\$5.00	\$75,000.00
	Where is plant location for pickup by City staff or its designee?			15557 Hamesting Rd. Fayetteville, AR. or 21202 N. Parsons Rd. Springdale, Ar.		Puppy Creek Road	
	What is the maximum guaranteed wait time to load?			15min		45 minutes	

* NOTICE: Bid award is contingent upon vendor meeting minimum specifications and formal authorization by City Officials.

Amanda Beilfuss Digitally signed by Amanda Beilfuss
Date: 2022.11.16 10:57:53 -06'00'

Amanda Beilfuss, Sr. Purchasing Agent

Les McGaugh Digitally signed by Les McGaugh
Date: 2022.11.18 11:13:37 -06'00'

Les McGaugh, Purchasing Director

RESOLUTION NO. _____

A RESOLUTION TO AUTHORIZE THE PURCHASE OF ASPHALT MATERIALS FOR USE BY THE TRANSPORTATION DIVISION ON AN AS NEEDED BASIS THROUGH THE END OF 2023

WHEREAS, Ark. Code Ann. § 14-58-104(14) provides that the City may purchase “motor fuels, oil, asphalt, asphalt oil, and natural gas” without soliciting bids; and

WHEREAS, because price volatility in the crude oil market affects the cost of asphalt, the Transportation Division proposes to solicit and accept bids on at least a quarterly basis without the need for further approval of the City Council through calendar year 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 authorizes the purchase of asphalt materials for use by the Transportation Division through the end of 2023, and authorizes the Transportation Division to solicit informal bids or quotes on at least a quarterly basis without the need for further approval of the City Council.

City of Fayetteville Staff Review Form

2022-1108

Legistar File ID

12/20/2022

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

Terry Gulley

11/21/2022

TRANSPORTATION SERVICES (410)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

A RESOLUTION TO AUTHORIZE THE PURCHASE OF ASPHALT MATERIALS FOR USE BY THE TRANSPORTATION DIVISION ON AN AS NEEDED BASIS THROUGH THE END OF 2023.

Budget Impact:

Account Number

Fund

Project Number

Project Title

Budgeted Item? Yes

Current Budget

\$ -

Funds Obligated

\$ -

Current Balance

\$ -

Does item have a cost? Yes

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: The "item cost" and "current budget" boxes have been left blank because these items will vary depending upon fluctuating needs based on citizen service requests received, construction projects approved, and other variable factors.



MEETING OF DECEMBER 20, 2022

TO: Mayor and City Council

THRU: Chris Brown, Public Works Director
Susan Norton, Chief of Staff

FROM: Terry Gulley, Assistant Public Works Director - Operations

DATE: November 21, 2022

SUBJECT: A RESOLUTION TO AUTHORIZE THE PURCHASE OF ASPHALT MATERIALS FOR USE BY THE TRANSPORTATION DIVISION ON AN AS NEEDED BASIS THROUGH THE END OF 2023.

RECOMMENDATION:

A resolution to authorize the purchase of asphalt materials for use by the Transportation Division on an as needed basis through the end of 2023.

BACKGROUND:

The purchase of bulk construction materials and services is necessary to maintain current infrastructure and to implement the projects outlined in the Capital Improvements Program and Annual Budget and Work Program.

DISCUSSION:

Sealed bids in accordance with State statutes, City ordinances, and purchasing procedures were publicly read and the results are attached to this memo.

BUDGET/STAFF IMPACT:

Funds for the acquisition of materials and services have been budgeted in various capital projects within the Sales Tax Capital Improvements Fund and Street Fund operating programs.

Attachments:

Bid 23-07, Asphalt Materials Tabulation



BID TABULATION

Bid 23-07, Asphalt Materials - Quarter 1

DEADLINE: Wednesday, November 2, 2022 at 2:00 PM

					SECONDARY		PRIMARY	
					APAC-Central, Inc.		Emery Sapp & Sons, Inc. dba Hutchens Construction Company	
					\$912,750.00		\$1,045,230.00	
Line #	Description	QTY	UOM	Total	Unit	Extended	Unit	Extended
Section 1: Type 2 Surface					\$372,000.00		\$511,000.00	
1.1	Asphalt Concrete Hot Mix Surface Course Type 2, per AHTD 1996 Specifications, PG 64-22, With Millings and Shingles Allowed (RAP/RAS)	3000	Ton		No Bid		\$69.00	
1.2	Asphalt Concrete Hot Mix Surface Course Type 2 per AHTD 1996 Specifications, PG 64-22, With Millings Only (RAP)	2000	Ton		\$91.00		\$72.00	
1.3	Asphalt Concrete Hot Mix Surface Course Type 2 per AHTD 1996 Specifications, PG 64-22, No Millings or Shingles (Virgin)	2000	Ton		\$95.00		\$80.00	
Section B: Type 2 Binder					\$43,500.00		\$36,000.00	
2.1	Asphalt Concrete Hot Mix Binder Course Type 2 per AHTD 1996 Specifications, PG 64-22, With Millings or Shingles (RAP/RAS)	500	Ton		\$87.00		\$72.00	
Section C: Superpave Surface 9.5MM					\$101,500.00		\$170,500.00	
3.1	Asphalt Concrete Hot Mix Course 9.5mm as per AHTD 2014 Specifications, PG 64-22, With Millings or Shingles (RAP/RAS)	1000	Ton		No Bid		\$83.00	
3.2	Asphalt concrete Hot Mix Course 9.5mm as per AHTD 2014 Specifications, PG 64-22, With Millings Only (RAP)	500	Ton		\$99.00		\$86.00	
3.3	Asphalt concrete Hot Mix Course 9.5mm as per AHTH Specifications, PG 70-22, With Millings Only (RAP)	500	Ton		\$104.00		\$89.00	
Section D: Superpave Surface 12.5MM					\$209,000.00		\$176,000.00	
4.1	Asphalt concrete Hot Mix Surface Course 12.5mm as per AHTD 2014 Specifications, PG 64-22, With Millings and Shingles (RAP/RAS)	500	Ton		No Bid		\$85.00	
4.2	Asphalt concrete Hot Mix Surface Course 12.5mm as per AHTD 2014 Specifications, PG 64-22, With Millings Only (RAP)	500	Ton		\$96.00		\$82.00	
4.3	Asphalt concrete Hot Mix Surface Course 12.5mm as per AHTD 2014 Specifications, PG 70-22, With Millings Only (RAP)	500	Ton		\$101.00		\$87.00	
4.4	Asphalt concrete Hot Mix Surface Course 12.5mm as per AHTD 2014 Specifications, PG 76-22, With Millings Only (RAP). Pre-Oct 2018	500	Ton		\$110.00		No Bid	
4.5	Asphalt concrete Hot Mix Surface Course 12.5mm as per AHTD 2014 Specifications, PG 76-22, No Millings or Shingles (Virgin)	500	Ton		\$111.00		\$98.00	
Section E: Other Items					\$186,750.00		\$151,725.00	
5.1	Asphalt concrete Hot Mix Surface Course 4.75mm as per AASHTO recommendation, PG 64-22, No Millings or Shingles (Virgin)	1500	Ton		\$109.00		\$89.00	
5.2	Tack Oil (IN GALLONS)	2500	Gallon		\$9.00		\$7.00	
5.3	START UP PRICE FOR PLANT - Estimated One (1) Event Each Year	1	LS		\$750.00		\$725.00	
5.4	Delivery - Cost per Ton	4500	Ton		No Bid		No Bid	
Section F: Asphalt Millings for Sale - Through 12/31/2023							\$5.00	
6.1	Asphalt Millings (Picked Up By Vendor From City of Fayetteville)	1	Ton		No Bid		No Bid	
6.2	Asphalt Millings (Delivered To Vendor at Convenience of City Staff)	1	Ton		No Bid		\$5.00	
	Where is the plant location address?				Puppy Creek Road		Springdale Asphalt Plant (SOAP) 17137 Pleasure Heights Road, Springdale, AR	
	What is the maximum guaranteed wait time to load?				45 minutes		15 min.	

* NOTICE: Bid award is contingent upon vendor meeting minimum specifications and formal authorization by City Officials.

Amanda Beilfuss Digitally signed by Amanda Beilfuss
Date: 2022.11.04 14:09:59 -05'00'

Amanda Beilfuss, Sr. Purchasing Agent

Les McGaugh Digitally signed by Les McGaugh
Date: 2022.11.18 11:14:03 -06'00'

Les McGaugh, Purchasing Director

RESOLUTION NO. _____

A RESOLUTION TO AWARD BID #23-08 AND AUTHORIZE THE PURCHASE OF PLASTIC DRAINAGE PIPE FROM WINWATER FORT SMITH IN VARIABLE AMOUNTS AND FOR VARYING UNIT PRICES AS NEEDED THROUGH THE END OF 2023

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 awards Bid #23-08 and authorizes the purchase of plastic drainage pipe from Winwater Fort Smith in variable amounts and for varying unit prices as shown in the bid sheet attached to this Resolution as needed through the end of 2023.

City of Fayetteville Staff Review Form

2022-1109

Legistar File ID

12/20/2022

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

Terry Gulley

11/21/2022

TRANSPORTATION SERVICES (410)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

A RESOLUTION TO AWARD BID 23-08 AND AUTHORIZE THE PURCHASE OF HDPE DRAINAGE PIPE FROM WINWATER FORT SMITH IN VARIABLE AMOUNTS AND FOR VARYING UNIT PRICES AS NEEDED THROUGH THE END OF 2023.

Budget Impact:

Account Number		Fund	
Project Number		Project Title	
Budgeted Item?	Yes	Current Budget	\$ -
		Funds Obligated	\$ -
		Current Balance	\$ -
Does item have a cost?	Yes	Item Cost	\$ -
		Budget Adjustment	\$ -
Budget Adjustment Attached?	No	Remaining Budget	\$ -

V20210527

Purchase Order Number: _____

Previous Ordinance or Resolution # _____

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments: The "item cost" and "current budget" boxes have been left blank because these items will vary depending upon fluctuating needs based on citizen service requests received, construction projects approved, and other variable factors.



MEETING OF DECEMBER 20, 2022

TO: Mayor and City Council

THRU: Chris Brown, Public Works Director
Susan Norton, Chief of Staff

FROM: Terry Gulley, Assistant Public Works Director - Operations

DATE: November 21, 2022

SUBJECT: A RESOLUTION TO AWARD BID 23-08 AND AUTHORIZE THE PURCHASE OF HDPE DRAINAGE PIPE FROM WINWATER FORT SMITH IN VARIABLE AMOUNTS AND FOR VARYING UNIT PRICES AS NEEDED THROUGH THE END OF 2023.

RECOMMENDATION:

A resolution to award Bid 23-08 and authorize the purchase of HDPE drainage pipe from Winwater Fort Smith in variable amounts and for varying unit prices as needed through the end of 2023.

BACKGROUND:

The purchase of bulk construction materials and services is necessary to maintain current infrastructure and to implement the projects outlined in the Capital Improvements Program and Annual Budget and Work Program.

DISCUSSION:

Sealed bids in accordance with State statutes, City ordinances, and purchasing procedures were publicly read and the results are attached to this memo.

BUDGET/STAFF IMPACT:

Funds for the acquisition of materials and services have been budgeted in various capital projects within the Sales Tax Capital Improvements Fund and Street Fund operating programs.

Attachments:

Bid 23-08, HDPE Drainage Pipe Tabulation

BID TABULATION

Bid 23-08, HDPE Drainage Pipe

DEADLINE: Wednesday, November 2, 2022 at 2:00 PM

				Winwater Fort Smith	
				Total	\$111,063.24
Line #	Description	QTY	UOM	Unit	Extended
Section A: Plastic Drainage Pipe					\$59,385.84
1.1	Plastic Drainage Pipe N-12 Soil Tight (15 Inches)	100	LF	\$11.28	
1.2	Plastic Drainage Pipe N-12 Soil Tight (18 Inches)	500	LF	\$14.35	
1.3	Plastic Drainage Pipe N-12 Soil Tight (24 Inches)	500	LF	\$23.61	
1.4	Plastic Drainage Pipe N-12 Soil Tight (30 Inches)	300	LF	\$34.95	
1.5	Plastic Drainage Pipe N-12 Soil Tight (36 Inches)	100	LF	\$47.39	
1.6	Plastic Drainage Pipe N-12 Soil Tight (42 Inches)	60	LF	\$68.78	
1.7	Plastic Drainage Pipe N-12 Soil Tight (48 Inches)	60	LF	\$74.91	
1.8	Flared End Section (15 Inches)	2	EA	\$238.20	
1.9	Flared End Section (18 Inches)	2	EA	\$319.97	
1.10	Flared End Section (24 Inches)	2	EA	\$410.69	
1.11	Flared End Section (30 Inches)	2	EA	\$721.05	
1.12	Flared End Section (36 Inches)	2	EA	\$1,157.89	
1.13	Flared End Section (42 Inches)	2	EA	\$2,263.16	
1.14	Flared End Section (48 Inches)	2	EA	\$2,605.26	
Section B: High Performance Plastic Drainage Pipe					\$51,677.40
2.1	Plastic Drainage Pipe High Performance (15 Inches)	100	LF	\$12.99	
2.2	Plastic Drainage Pipe High Performance (18 Inches)	300	LF	\$17.49	
2.3	Plastic Drainage Pipe High Performance (24 Inches)	300	LF	\$29.69	
2.4	Plastic Drainage Pipe High Performance (30 Inches)	500	LF	\$45.78	
2.5	Plastic Drainage Pipe High Performance (36 Inches)	60	LF	\$56.29	
2.6	Plastic Drainage Pipe High Performance (42 Inches)	60	LF	\$69.96	
2.7	Plastic Drainage Pipe High Performance (48 Inches)	60	LF	\$95.99	
	What is the guaranteed delivery time from receipt of order?				3-4 weeks

* NOTICE: Bid award is contingent upon vendor meeting minimum specifications and formal authorization by City Officials.

Amanda Beilfuss Digitally signed by Amanda Beilfuss
Date: 2022.11.04 16:47:10 -05'00'

Amanda Beilfuss, Sr. Purchasing Agent

Les McGaugh Digitally signed by Les McGaugh
Date: 2022.11.18 11:14:42 -06'00'

Les McGaugh, Purchasing Director

RESOLUTION NO. _____

A RESOLUTION TO AWARD BID #23-09 AND AUTHORIZE THE PURCHASE OF CONCRETE DRAINAGE PIPE AND STRUCTURES FROM SCURLOCK INDUSTRIES OF FAYETTEVILLE IN VARIABLE AMOUNTS AND FOR VARYING UNIT PRICES AS NEEDED THROUGH THE END OF 2023

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 awards Bid #23-09 and authorizes the purchase of concrete drainage pipe and structures from Scurlock Industries of Fayetteville in variable amounts and for varying unit prices as shown in the bid sheet attached to this Resolution as needed through the end of 2023.

City of Fayetteville Staff Review Form

2022-1110

Legistar File ID

12/20/2022

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

Terry Gulley

11/21/2022

TRANSPORTATION SERVICES (410)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

A RESOLUTION TO AWARD BID 23-09 AND AUTHORIZE THE PURCHASE OF PRECAST DRAINAGE PIPE & STRUCTURES FROM SCURLOCK INDUSTRIES OF FAYETTEVILLE AS PRIMARY SUPPLIER IN VARIABLE AMOUNTS AND FOR VARYING UNIT PRICES AS NEEDED THROUGH THE END OF 2023.

Budget Impact:

Account Number		Fund	
Project Number		Project Title	
Budgeted Item?	Yes	Current Budget	\$ -
		Funds Obligated	\$ -
		Current Balance	\$ -
Does item have a cost?	Yes	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: The "item cost" and "current budget" boxes have been left blank because these items will vary depending upon fluctuating needs based on citizen service requests received, construction projects approved, and other variable factors.



MEETING OF DECEMBER 20, 2022

TO: Mayor and City Council

THRU: Chris Brown, Public Works Director
Susan Norton, Chief of Staff

FROM: Terry Gulley, Assistant Public Works Director - Operations

DATE: November 21, 2022

SUBJECT: **A RESOLUTION TO AWARD BID 23-09 AND AUTHORIZE THE PURCHASE OF PRECAST DRAINAGE PIPE & STRUCTURES FROM SCURLOCK INDUSTRIES OF FAYETTEVILLE AS PRIMARY SUPPLIER IN VARIABLE AMOUNTS AND FOR VARYING UNIT PRICES AS NEEDED THROUGH THE END OF 2023.**

RECOMMENDATION:

A resolution to award Bid 23-09 and authorize the purchase of precast drainage pipe and structures from Scurlock Industries of Fayetteville as primary supplier in variable amounts and for varying unit prices as needed through the end of 2023.

BACKGROUND:

The purchase of bulk construction materials and services is necessary to maintain current infrastructure and to implement the projects outlined in the Capital Improvements Program and Annual Budget and Work Program.

DISCUSSION:

Sealed bids in accordance with State statutes, City ordinances, and purchasing procedures were publicly read and the results are attached to this memo.

BUDGET/STAFF IMPACT:

Funds for the acquisition of materials and services have been budgeted in various capital projects within the Sales Tax Capital Improvements Fund and Street Fund operating programs.

Attachments:

Bid 23-09, Precast Drainage Pipe & Structures Tabulation



BID TABULATION

Bid 23-09, Precast Drainage Pipe & Structures

DEADLINE: Wednesday, November 2, 2022 at 2:00 PM

				Scurlock Industries of Fayetteville	
				Total	\$525,516.00
Line #	Description	QTY	UOM	Unit	Extended
Section A: Reinforced Concrete Pipe & Flared End Section Concrete					\$77,465.00
1.1	Reinforced Concrete Pipe, Class III, Round (15 inches)	90	FT	\$21.00	
1.2	Reinforced Concrete Pipe, Class III, Round (18 inches)	180	FT	\$26.00	
1.3	Reinforced Concrete Pipe, Class III, Round (24 inches)	180	FT	\$36.00	
1.4	Reinforced Concrete Pipe, Class III, Round (30 inches)	45	FT	\$55.00	
1.5	Reinforced Concrete Pipe, Class III, Round (36 inches)	45	FT	\$81.00	
1.6	Reinforced Concrete Pipe, Class III, Round (42 inches)	45	FT	\$104.00	
1.7	Reinforced Concrete Pipe, Class III, Round (48 inches)	45	FT	\$125.00	
1.8	Flared End Section Concrete, Round (15 inches)	2	EA	\$385.00	
1.9	Flared End Section Concrete, Round (18 inches)	2	EA	\$420.00	
1.10	Flared End Section Concrete, Round (24 inches)	2	EA	\$525.00	
1.11	Flared End Section Concrete, Round (30 inches)	2	EA	\$640.00	
1.12	Flared End Section Concrete, Round (36 inches)	2	EA	\$1,100.00	
1.13	Flared End Section Concrete, Round (42 inches)	2	EA	\$1,500.00	
1.14	Flared End Section Concrete, Round (48 inches)	2	EA	\$1,800.00	
1.15	Reinforced Concrete Pipe, Class III, Elliptical (14" X 23")	75	FT	\$48.00	
1.16	Reinforced Concrete Pipe, Class III, Elliptical (19" X 30")	75	FT	\$52.00	
1.17	Reinforced Concrete Pipe, Class III, Elliptical (24" X 38")	75	FT	\$73.00	
1.18	Reinforced Concrete Pipe, Class III, Elliptical (29" X 45")	75	FT	\$108.00	
1.19	Reinforced Concrete Pipe, Class III, Elliptical (34" X 53")	45	FT	\$141.00	
1.20	Reinforced Concrete Pipe, Class III, Elliptical (38" X 60")	45	FT	\$174.00	
Section B: Reinforced Concrete Junction and Inlet Boxes					\$156,025.00
2.1	Reinforced Concrete Junction Box - No Top (4' x 4' x 4')	10	EA	\$3,425.00	
2.2	Reinforced Concrete Junction Box - No Top (5' x 5' x 5')	5	EA	\$4,300.00	
2.3	Reinforced Concrete Junction Box - No Top (6' x 6' x 6')	5	EA	\$5,255.00	
2.4	Reinforced Concrete Inlet Box - No Top (4' x 4' x 4')	10	EA	\$3,200.00	
2.5	Reinforced Concrete Inlet Box - No Top (5' x 5' x 5')	5	EA	\$3,900.00	
2.6	Reinforced Concrete Inlet Box - No Top (6' x 6' x 6')	5	EA	\$4,500.00	
Section C: Reinforced Concrete Culvert Boxes					\$292,026.00
3.1	Reinforced Concrete Culvert Box - With Top (2.5' Rise x 5' Span)	42	LF	\$450.00	
3.2	Reinforced Concrete Culvert Box - With Top (3' Rise x 8' Span)	42	LF	\$596.00	
3.3	Reinforced Concrete Culvert Box - With Top (3' Rise x 12' Span)	42	LF	\$915.00	
3.4	Reinforced Concrete Culvert Box - With Top (3' Rise x 16' Span)	42	LF	\$1,300.00	
3.5	Reinforced Concrete Culvert Box - With Top (4' Rise x 4' Span)	42	LF	\$450.00	
3.6	Reinforced Concrete Culvert Box - With Top (4' Rise x 8' Span)	42	LF	\$640.00	
3.7	Reinforced Concrete Culvert Box - With Top (4' Rise x 9' Span)	42	LF	\$682.00	
3.8	Reinforced Concrete Culvert Box - With Top (4' Rise x 12' Span)	42	LF	\$925.00	
3.9	Reinforced Concrete Culvert Box - With Top (5' Rise x 12' Span)	42	LF	\$995.00	
What is the guaranteed delivery time from receipt of order?				TBD based on customer need and availability of steel in the market.	

* NOTICE: Bid award is contingent upon vendor meeting minimum specifications and formal authorization by City Officials.

Amanda Beilfuss Digitally signed by Amanda Beilfuss
Date: 2022.11.07 13:02:22 -06'00'

Amanda Beilfuss, Sr. Purchasing Agent

Les McGaugh Digitally signed by Les McGaugh
Date: 2022.11.18 11:15:20 -06'00'

Les McGaugh, Purchasing Director

RESOLUTION NO. _____

A RESOLUTION TO AWARD BID #23-10 AND AUTHORIZE THE PURCHASE OF PRECAST MODULAR BLOCK RETAINING WALL UNITS FROM INDUSTRIAL PRECAST, INC. IN VARIABLE AMOUNTS AND FOR VARYING UNIT PRICES AS NEEDED THROUGH THE END OF 2023

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 awards Bid #23-10 and authorizes the purchase of precast modular block retaining wall units from Industrial Precast Inc., in variable amounts and for varying unit prices as shown in the bid sheet attached to this Resolution as needed through the end of 2023.

City of Fayetteville Staff Review Form

2022-1111

Legistar File ID

12/20/2022

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

Terry Gulley

11/21/2022

TRANSPORTATION SERVICES (410)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

A RESOLUTION TO AWARD BID 23-10 AND AUTHORIZE THE PURCHASE OF PRECAST MODULAR BLOCK RETAINING WALL UNITS FROM INDUSTRIAL PRECAST, INC. IN VARIABLE AMOUNTS AND FOR VARYING UNIT PRICES AS NEEDED THROUGH THE END OF 2023.

Budget Impact:

Account Number

Fund

Project Number

Project Title

Budgeted Item? Yes

Current Budget

\$ -

Funds Obligated

\$ -

Current Balance

\$ -

Does item have a cost? Yes

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: The "item cost" and "current budget" boxes have been left blank because these items will vary depending upon fluctuating needs based on citizen service requests received, construction projects approved, and other variable factors.



MEETING OF DECEMBER 20, 2022

TO: Mayor and City Council

THRU: Chris Brown, Public Works Director
Susan Norton, Chief of Staff

FROM: Terry Gulley, Assistant Public Works Director - Operations

DATE: November 21, 2022

SUBJECT: **A RESOLUTION TO AWARD BID 23-10 AND AUTHORIZE THE PURCHASE OF PRECAST MODULAR BLOCK RETAINING WALL UNITS FROM INDUSTRIAL PRECAST, INC. IN VARIABLE AMOUNTS AND FOR VARYING UNIT PRICES AS NEEDED THROUGH THE END OF 2023.**

RECOMMENDATION:

A resolution to award Bid 23-10 and authorize the purchase of precast modular block retaining wall units from Industrial Precast, Inc. in variable amounts and for varying unit prices as needed through the end of 2023.

BACKGROUND:

The purchase of bulk construction materials and services is necessary to maintain current infrastructure and to implement the projects outlined in the Capital Improvements Program and Annual Budget and Work Program.

DISCUSSION:

Sealed bids in accordance with State statutes, City ordinances, and purchasing procedures were publicly read and the results are attached to this memo.

BUDGET/STAFF IMPACT:

Funds for the acquisition of materials and services have been budgeted in various capital projects within the Sales Tax Capital Improvements Fund and Street Fund operating programs.

Attachments:

Bid 23-10, Precast Modular Block Retaining Wall Units Tabulation

BID TABULATION

Bid 23-10, Precast Modular Block Retaining Wall Units

DEADLINE: Wednesday, November 2, 2022 at 2:00 PM

				Industrial Precast Inc.	
				Total	\$247,425.00
Line #	Description	QTY	UOM	Unit	Extended
Section A: Limestone Face (Without Added Color)					\$100,175.00
1.1	Full Top Block 28"	100	EA	\$135.00	
1.2	Half Top Block 28"	25	EA	\$100.00	
1.3	Half Middle Block 28"	25	EA	\$100.00	
1.4	Full Middle Block 28"	250	EA	\$150.00	
1.5	Full Base Block 28"	25	EA	\$150.00	
1.6	Full Middle Block 41"	50	EA	\$165.00	
1.7	Half Middle Block 41"	10	EA	\$105.00	
1.8	Full Base Block 41"	25	EA	\$165.00	
1.9	Full Middle Block 60"	25	EA	\$185.00	
1.10	Half Middle Block 60"	10	EA	\$125.00	
1.11	Full Base Block 60"	10	EA	\$185.00	
1.12	52" XL Block	10	EA	\$285.00	
1.13	72" XL Block	10	EA	\$325.00	
1.14	96" XL Block	10	EA	\$375.00	
1.15	Freestanding Middle Block 24"	25	EA	\$145.00	
1.16	Freestanding Middle End Block 24"	10	EA	\$145.00	
1.17	Freestanding Top End Block 24"	10	EA	\$145.00	
1.18	Freestanding top Block 24"	10	EA	\$145.00	
1.19	Garden Top Block 24"	10	EA	\$145.00	
Section B: LedgeStone Face (Without Added Color)					\$100,175.00
2.1	Full Top Block 28"	100	EA	\$135.00	
2.2	Half Top Block 28"	25	EA	\$100.00	
2.3	Half Middle Block 28"	25	EA	\$100.00	
2.4	Full Middle Block 28"	250	EA	\$150.00	
2.5	Full Base Block 28"	25	EA	\$150.00	
2.6	Full Middle Block 41"	50	EA	\$165.00	
2.7	Half Middle Block 41"	10	EA	\$105.00	
2.8	Full Base Block 41"	25	EA	\$165.00	
2.9	Full Middle Block 60"	25	EA	\$185.00	
2.10	Half Middle Block 60"	10	EA	\$125.00	
2.11	Full Base Block 60"	10	EA	\$185.00	
2.12	52" XL Block	10	EA	\$285.00	
2.13	72" XL Block	10	EA	\$325.00	
2.14	96" XL Block	10	EA	\$375.00	
2.15	Freestanding Middle Block 24"	25	EA	\$145.00	
2.16	Freestanding Middle End Block 24"	10	EA	\$145.00	
2.17	Freestanding Top End Block 24"	10	EA	\$145.00	
2.18	Freestanding top Block 24"	10	EA	\$145.00	
2.19	Garden Top Block 24"	10	EA	\$145.00	
Section C: Bin Blocks					\$29,375.00
3.1	Full Bin Block - 2' x 2' x 6'	100	EA	\$250.00	
3.2	Half Bin Block - 2' x 2' x 3'	25	EA	\$175.00	
Section D: Hollow Core Blocks					\$10,700.00
4.1	F-HC Hollow Core	50	EA	\$145.00	
4.2	F-CHC Corner Hollow Core	10	EA	\$145.00	
4.3	F-HHC Half Hollow Core	10	EA	\$100.00	
4.4	F-HCHC Half-Corner Hollow Core	10	EA	\$100.00	
Section E: Color and Seal					\$7,000.00
5.1	Cost Per Block to Color and Seal	350	EA	\$20.00	
	What is the guaranteed delivery time from receipt of order?				30 days full loads 48K only

* NOTICE: Bid award is contingent upon vendor meeting minimum specifications and formal authorization by City Officials.

Amanda Beilfuss Digitally signed by Amanda Beilfuss
Date: 2022.11.16 11:01:07 -06'00'

Amanda Beilfuss, Sr. Purchasing Agent

Les McGaugh Digitally signed by Les McGaugh
Date: 2022.11.18 11:15:56 -06'00'

Les McGaugh, Purchasing Director

RESOLUTION NO. _____

A RESOLUTION TO AWARD BID #23-11 AND AUTHORIZE THE PURCHASE OF HIGH PERFORMANCE COLD MIX ASPHALT FROM EMERY SAPP & SONS, INC. AS NEEDED THROUGH THE END OF 2023

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 awards Bid #23-11 and authorizes the purchase of high performance cold mix asphalt from Emery Sapp & Sons D/B/A Hutchens Construction Co. as set forth in the bid sheet attached to this Resolution as needed through the end of 2023.

City of Fayetteville Staff Review Form

2022-1112

Legistar File ID

12/20/2022

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

Terry Gulley

11/21/2022

TRANSPORTATION SERVICES (410)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

A RESOLUTION TO AWARD BID 23-11 AND AUTHORIZE THE PURCHASE OF HIGH-PERFORMANCE COLD MIX ASPHALT FROM EMERY SAPP & SONS D/B/A HUTCHENS CONSTRUCTION COMPANY, LLC AS NEEDED THROUGH THE END OF 2023.

Budget Impact:

Account Number

Fund

Project Number

Project Title

Budgeted Item? Yes

Current Budget

\$ -

Funds Obligated

\$ -

Current Balance

\$ -

Does item have a cost? Yes

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: The "item cost" and "current budget" boxes have been left blank because these items will vary depending upon fluctuating needs based on citizen service requests received, construction projects approved, and other variable factors.



MEETING OF DECEMBER 20, 2022

TO: Mayor and City Council

THRU: Chris Brown, Public Works Director
Susan Norton, Chief of Staff

FROM: Terry Gulley, Assistant Public Works Director - Operations

DATE: November 21, 2022

SUBJECT: **A RESOLUTION TO AWARD BID 23-11 AND AUTHORIZE THE PURCHASE OF HIGH-PERFORMANCE COLD MIX ASPHALT FROM EMERY SAPP & SONS D/B/A HUTCHENS CONSTRUCTION COMPANY, LLC AS NEEDED THROUGH THE END OF 2023.**

RECOMMENDATION:

A resolution to award Bid 23-11 and authorize the purchase of high-performance cold mix asphalt from Emery Sapp & Sons d/b/a Hutchens Construction Company, LLC as needed through the end of 2023.

BACKGROUND:

The purchase of bulk construction materials and services is necessary to maintain current infrastructure and to implement the projects outlined in the Capital Improvements Program and Annual Budget and Work Program.

DISCUSSION:

Sealed bids in accordance with State statutes, City ordinances, and purchasing procedures were publicly read and the results are attached to this memo.

BUDGET/STAFF IMPACT:

Funds for the acquisition of materials and services have been budgeted in various capital projects within the Sales Tax Capital Improvements Fund and Street Fund operating programs.

Attachments:

Bid 23-11, High Performance Cold Mix Tabulation



BID TABULATION

Bid 23-11, High Performance Cold Mix

DEADLINE: Wednesday, November 2, 2022 at 2:00 PM

				PRIMARY		SECONDARY	
				Emery Sapp & Sons, Inc. dba Hutchens Construction Company		APAC-Central, Inc.	
				Total			
				\$56,000.00		\$70,000.00	
Line #	Description	QTY	UOM	Unit	Extended	Unit	Extended
1	High Performance Cold Mix - For pick up by the City of Fayetteville from Vendor's location. (*UPM - Mix*)	400	Ton	\$140.00	\$56,000.00	\$175.00	\$70,000.00
	Where is the plant location for pickup by City staff or its designee?			Springdale Asphalt Plant (SOAP) 17137 Pleasure Heights Road, Springdale, AR 72764-2630		Sharps Quarry - Puppy Creek Road - Lowell	

* NOTICE: Bid award is contingent upon vendor meeting minimum specifications and formal authorization by City Officials.

Amanda Beilfuss Digitally signed by Amanda Beilfuss
Date: 2022.11.16 11:03:12 -06'00'

Amanda Beilfuss, Sr. Purchasing Agent

Les McGaugh Digitally signed by Les McGaugh
Date: 2022.11.18 11:16:38 -06'00'

Les McGaugh, Purchasing Director

RESOLUTION NO. _____

A RESOLUTION TO AWARD BID #23-13 AND AUTHORIZE THE PURCHASE OF PREFORMED THERMOPLASTIC PAVEMENT MARKINGS FROM GEVEKO MARKINGS, INC. AS PRIMARY SUPPLIER AND FROM ENNIS-FLINT, INC. AS SECONDARY SUPPLIER IN VARIABLE AMOUNTS AND FOR VARYING UNIT PRICES AS NEEDED THROUGH THE END OF 2023

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 awards Bid #23-13 and authorizes the purchase of preformed thermoplastic pavement markings from Geveko Markings, Inc. as primary supplier and from Ennis-Flint, Inc. as secondary supplier in variable amounts and for varying unit prices as shown in the bid sheet attached to this Resolution as needed through the end of 2023.

City of Fayetteville Staff Review Form

2022-1113

Legistar File ID

12/20/2022

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

Terry Gulley

11/21/2022

TRANSPORTATION SERVICES (410)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

A RESOLUTION TO AWARD BID 23-13 AND AUTHORIZE THE PURCHASE OF PREFORMED THERMOPLASTIC PAVEMENT MARKINGS FROM GEVEKO MARKINGS, INC. AS PRIMARY SUPPLIER AND ENNIS-FLINT, INC. AS SECONDARY SUPPLIER IN VARIABLE AMOUNTS AND FOR VARYING UNIT PRICES AS NEEDED THROUGH THE END OF 2023.

Budget Impact:

Account Number		Fund	
Project Number		Project Title	
Budgeted Item?	Yes	Current Budget	\$ -
		Funds Obligated	\$ -
		Current Balance	\$ -
Does item have a cost?	Yes	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: The "item cost" and "current budget" boxes have been left blank because these items will vary depending upon fluctuating needs based on citizen service requests received, construction projects approved, and other variable factors.



MEETING OF DECEMBER 20, 2022

TO: Mayor and City Council

THRU: Chris Brown, Public Works Director
Susan Norton, Chief of Staff

FROM: Terry Gulley, Assistant Public Works Director - Operations

DATE: November 21, 2022

SUBJECT: **A RESOLUTION TO AWARD BID 23-13 AND AUTHORIZE THE PURCHASE OF PREFORMED THERMOPLASTIC PAVEMENT MARKINGS FROM GEVEKO MARKINGS, INC. AS PRIMARY SUPPLIER AND ENNIS-FLINT, INC. AS SECONDARY SUPPLIER IN VARIABLE AMOUNTS AND FOR VARYING UNIT PRICES AS NEEDED THROUGH THE END OF 2023.**

RECOMMENDATION:

A resolution to award Bid 23-13 and authorize the purchase of preformed thermoplastic pavement markings from Geveko Markings, Inc. as primary supplier and Ennis-Flint, Inc. as secondary supplier in variable amounts and for varying unit prices as needed through the end of 2023.

BACKGROUND:

The purchase of bulk construction materials and services is necessary to maintain current infrastructure and to implement the projects outlined in the Capital Improvements Program and Annual Budget and Work Program.

DISCUSSION:

Sealed bids in accordance with State statutes, City ordinances, and purchasing procedures were publicly read and the results are attached to this memo.

BUDGET/STAFF IMPACT:

Funds for the acquisition of materials and services have been budgeted in various capital projects within the Sales Tax Capital Improvements Fund and Street Fund operating programs.

Attachments:

Bid 23-13, Preformed Thermoplastic Pavement Markings Tabulation



BID TABULATION
Bid 23-13, Preformed Thermoplastic Pavement Markings
 DEADLINE: Wednesday, November 2, 2022 at 2:00 PM

Line #	Description	QTY	UOM	PRIMARY		SECONDARY			
				Geveko Markings Inc		Ennis-Flint, Inc.		Preform LLC	
				\$64,446.15		\$143,008.20		\$245,968.30	
			Total	Unit	Extended	Unit	Extended	Unit	Extended
1	Preformed Thermoplastic Pavement Markings (shall be constituted of white long line, high skid material, 125 mil, in a variety of widths from 4" to 24"), including shipping	7000	SF	\$2.62	\$18,340.00	\$2.49	\$17,430.00	\$2.85	\$19,950.00
2	TP 21 - Running bond decorative prick thermoplastic pavement markings (2' x 2' pieces, 7 sq. ft. pack shall include sealer kit), including shipping. (Brick Red with White grout lines)	2800	SF	\$8.21	\$22,988.00	\$31.89	\$89,292.00	\$50.00	\$140,000.00
3	TP 36 - Border for decorative brick thermoplastic pavement markings (14 sq. ft. per pack to include sealer kit), including shipping. (Brick Red with White grout lines)	1400	SF	\$8.21	\$11,494.00	\$15.94	\$22,316.00	\$50.00	\$70,000.00
4	Premark Sealer Kit	10	Packs	\$0.01	\$0.10	\$85.00	\$850.00	\$80.00	\$800.00
5	Preformed thermoplastic contrast shared lane marking (white with green background) - per MUTCD, including shipping	5	EA	\$203.61	\$1,018.05	\$247.08	\$1,235.40	\$278.00	\$1,390.00
6	FHWA standard straight 125 mil white thermoplastic arrow, including shipping	20	EA	\$62.88	\$1,257.60	\$63.68	\$1,273.60	\$77.36	\$1,547.20
7	FHWA standard left 125 mil white thermoplastic arrow, including shipping	50	EA	\$72.92	\$3,646.00	\$73.84	\$3,692.00	\$89.71	\$4,485.50
8	Premark contrast bike lane straight arrow (white with green background)	20	EA	\$142.56	\$2,851.20	\$172.98	\$3,459.60	\$194.89	\$3,897.80
9	Premark contrast bike lane bicycle rider - or equal (white with green background)	20	EA	\$142.56	\$2,851.20	\$172.98	\$3,459.60	\$194.89	\$3,897.80

* NOTICE: Bid award is contingent upon vendor meeting minimum specifications and formal authorization by City Officials.

Amanda Beilfuss Digitally signed by Amanda Beilfuss
 Date: 2022.11.08 12:06:05 -06'00'
 Amanda Beilfuss, Sr. Purchasing Agent

Les McGaugh Digitally signed by Les McGaugh
 Date: 2022.11.18 11:17:10 -06'00'
 Les McGaugh, Purchasing Director

RESOLUTION NO. _____

A RESOLUTION TO AWARD BID #23-14 AND AUTHORIZE THE PURCHASE OF LIGHTS, FIXTURES, AND POLES FROM J&S LIGHTING & CONTROLS D/B/A PREMIER LIGHTING GROUP IN VARIABLE AMOUNTS AND FOR VARYING UNIT PRICES AS NEEDED THROUGH THE END OF 2023

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 awards Bid #23-14 and authorizes the purchase of lights, fixtures, and poles from J&S Lighting & Controls D/B/A Premier Lighting Group in variable amounts and for varying unit prices as shown in the bid sheet attached to this Resolution as needed through the end of 2023.

City of Fayetteville Staff Review Form

2022-1114

Legistar File ID

12/20/2022

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

Terry Gulley

11/21/2022

TRANSPORTATION SERVICES (410)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

A RESOLUTION TO AWARD BID 23-14 AND AUTHORIZE THE PURCHASE OF LIGHTS, FIXTURES, AND POLES FROM J&S LIGHTING & CONTROLS D/B/A PREMIER LIGHTING GROUP IN VARIABLE AMOUNTS AND FOR VARYING UNIT PRICES AS NEEDED THROUGH THE END OF 2023.

Budget Impact:

Account Number		Fund	
Project Number		Project Title	
Budgeted Item?	Yes	Current Budget	\$ -
		Funds Obligated	\$ -
		Current Balance	\$ -
Does item have a cost?	Yes	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: The "item cost" and "current budget" boxes have been left blank because these items will vary depending upon fluctuating needs based on citizen service requests received, construction projects approved, and other variable factors.



MEETING OF DECEMBER 20, 2022

TO: Mayor and City Council

THRU: Chris Brown, Public Works Director
Susan Norton, Chief of Staff

FROM: Terry Gulley, Assistant Public Works Director - Operations

DATE: November 21, 2022

SUBJECT: **A RESOLUTION TO AWARD BID 23-14 AND AUTHORIZE THE PURCHASE OF LIGHTS, FIXTURES, AND POLES FROM J&S LIGHTING & CONTROLS D/B/A PREMIER LIGHTING GROUP IN VARIABLE AMOUNTS AND FOR VARYING UNIT PRICES AS NEEDED THROUGH THE END OF 2023.**

RECOMMENDATION:

A resolution to award Bid 23-14 and authorize the purchase of lights, fixtures, and poles from J&S Lighting & Controls d/b/a Premier Lighting Group in variable amounts and for varying unit prices as needed through the end of 2023.

BACKGROUND:

The purchase of bulk construction materials and services is necessary to maintain current infrastructure and to implement the projects outlined in the Capital Improvements Program and Annual Budget and Work Program.

DISCUSSION:

Sealed bids in accordance with State statutes, City ordinances, and purchasing procedures were publicly read and the results are attached to this memo.

BUDGET/STAFF IMPACT:

Funds for the acquisition of materials and services have been budgeted in various capital projects within the Sales Tax Capital Improvements Fund and Street Fund operating programs.

Attachments:

Bid 23-14, Lighting Tabulation

BID TABULATION

Bid 23-14, Lighting

DEADLINE: Wednesday, November 2, 2022 at 2:00 PM

				Premier Lighting Group (J&S Lighting & Controls)	
				Total	\$639,000.00
Line #	Description	QTY	UOM	Unit	Extended
1	Visionaire Lighting Model# ODN-1-L-T2-48LC-5-4K-UNV-UAM-BK-C5/H3-Trail Fixture	25	EA	\$1,325.00	\$33,125.00
2	Visionaire Lighting Model# N2F-L-L1TA-T2-32LC-5-4K-UNV-PT-BK-FIN1-FBC (BLACK)-Street Fixture	50	EA	\$1,725.00	\$86,250.00
3	Visionaire Lighting Model# N2F-L-L1TA-T2-32LC-5-4K-UNV-PT-CC-FIN1-FBC (RAL 70-22)-Street Fixture	50	EA	\$1,810.00	\$90,500.00
4	Visionaire Lighting Model# N2F-L-HTL1NL-(type)-32LC-5-4K-UNV-PT-BK-FIN1-FBC (BLACK)-Street Fixture	50	EA	\$1,785.00	\$89,250.00
5	Visionaire Lighting Model# N2F-L-HTL1NL-(type)-48LC-5-4K-UNV-PT-BK-FIN1-FBV (BLACK)-Street Fixture	50	EA	\$1,895.00	\$94,750.00
6	Visionaire Lighting Model# VA-100-M-S1-4-BK-Trail Arm	25	EA	\$205.00	\$5,125.00
7	Alliance Composites, Inc. Model# D3TS15F00NCA0254/BAS-0012-JAX-Direct bury 12 ft. exposed, 16 in. black decorative base, 4" O.D. Tenon	25	EA	\$650.00	\$16,250.00
8	Visionaire Lighting Model# RNTFA-5R-.188-14-AKB-343-T3R-BLACK- DCB-4-5RF-BLACK (14 ft. Pole)-Street Pole and Base	25	EA	\$1,815.00	\$45,375.00
9	Visionaire Lighting Model# RNTFA-5R-.188-12-AKB-343-T3R-BLACK- DCB-4-5RF-BLACK (12 ft. Pole)-Street Pole and Base	25	EA	\$1,710.00	\$42,750.00
10	Visionaire Lighting Model# RNTFA-5R-.188-14-AKB-343-T3R-CC-DCB-4-5RF-RAL 70-22 (14 ft. Pole)-Street Pole Base	25	EA	\$1,950.00	\$48,750.00
11	Visionaire Lighting Model# RNTFA-5R-.188-12-AKB-343-T3R-CC-DCB-4-5RF-RAL 70-22 (12 ft. Pole)-Street Pole Base	25	EA	\$1,880.00	\$47,000.00
12	Visionaire Lighting Model# RNTFA-4R-.188-8.5-AKB-343-T3R-CC-DCB-4-5RF-RAL 70-22 (8'-6" ft. Pole)-Street Pole Base	25	EA	\$1,595.00	\$39,875.00
Notes from Supplier				Minimum order of 10 on all custom color (cc) items (line items 3, 10, 11, and 12)	

* NOTICE: Bid award is contingent upon vendor meeting minimum specifications and formal authorization by City Officials.

Amanda Beilfuss Digitally signed by Amanda Beilfuss
Date: 2022.11.08 08:54:30 -06'00'

Amanda Beilfuss, Sr. Purchasing Agent

Les McGaugh Digitally signed by Les McGaugh
Date: 2022.11.18 11:17:37 -06'00'

Les McGaugh, Purchasing Director

RESOLUTION NO. _____

A RESOLUTION TO AWARD BID #23-15 AND AUTHORIZE THE PURCHASE OF TRUCK HAULING SERVICES FROM TRULOVE DIRT WORKS, LLC AS NEEDED THROUGH THE END OF 2023

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 awards Bid #23-15 and authorizes the purchase of truck hauling services from Trulove Dirt Works, LLC as needed through the end of 2023.

City of Fayetteville Staff Review Form

2022-1115

Legistar File ID

12/20/2022

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

Terry Gulley

11/21/2022

TRANSPORTATION SERVICES (410)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

A RESOLUTION TO AWARD BID 23-15 AND AUTHORIZE THE PURCHASE OF TRUCK HAULING SERVICES FROM TRULOVE DIRT WORKS, LLC AS NEEDED THROUGH THE END OF 2023.

Budget Impact:

Account Number

Fund

Project Number

Project Title

Budgeted Item? Yes

Current Budget

\$ -

Funds Obligated

\$ -

Current Balance

\$ -

Does item have a cost? Yes

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: The "item cost" and "current budget" boxes have been left blank because these items will vary depending upon fluctuating needs based on citizen service requests received, construction projects approved, and other variable factors.



MEETING OF DECEMBER 20, 2022

TO: Mayor and City Council

THRU: Chris Brown, Public Works Director
Susan Norton, Chief of Staff

FROM: Terry Gulley, Assistant Public Works Director - Operations

DATE: November 21, 2022

SUBJECT: A RESOLUTION TO AWARD BID 23-15 AND AUTHORIZE THE PURCHASE OF TRUCK HAULING SERVICES FROM TRULOVE DIRT WORKS, LLC AS NEEDED THROUGH THE END OF 2023.

RECOMMENDATION:

A resolution to award Bid 23-15 and authorize the purchase of truck hauling services from Trulove Dirt Works, LLC as needed through the end of 2023.

BACKGROUND:

The purchase of bulk construction materials and services is necessary to maintain current infrastructure and to implement the projects outlined in the Capital Improvements Program and Annual Budget and Work Program.

DISCUSSION:

Sealed bids in accordance with State statutes, City ordinances, and purchasing procedures were publicly read and the results are attached to this memo.

BUDGET/STAFF IMPACT:

Funds for the acquisition of materials and services have been budgeted in various capital projects within the Sales Tax Capital Improvements Fund and Street Fund operating programs.

Attachments:

Bid 23-15, Truck Hauling Services Tabulation



BID TABULATION
Bid 23-15, Truck Hauling Services
 DEADLINE: Wednesday, November 2, 2022 at 2:00 PM

				Trulove Dirt Works, LLC	
				Total	\$367,430.00
Line #	Description	QTY	UOM	Unit	Extended
1	Truck Hauling Services - Asphalt Hauling: Hot mix asphalt from plant to paver. Truck bed shall be clean and free of contaminates. No trailer hitches protruding past rear tires. BIDDER SHALL BE WILLING TO HAUL ASPHALT.	3000	Hours	\$104.98	\$314,940.00
2	Truck Hauling Services - Miscellaneous Hauling: Excavation/construction debris which may include rock, dirt, chunks of concrete, etc. EXCLUDES ASPHALT.	500	Hours	\$104.98	\$52,490.00
	How much notice is required by the City before services are requested?			1 day	

* NOTICE: Bid award is contingent upon vendor meeting minimum specifications and formal authorization by City Officials.

Amanda Beilfuss Digitally signed by Amanda Beilfuss
 Date: 2022.11.16 11:07:49 -06'00'

 Amanda Beilfuss, Sr. Purchasing Agent

Les McGaugh Digitally signed by Les McGaugh
 Date: 2022.11.18 11:24:34 -06'00'

 Les McGaugh, Purchasing Director

RESOLUTION NO. _____

A RESOLUTION TO APPROVE FAYETTEVILLE POLICE DEPARTMENT POLICIES 22.3
SECONDARY EMPLOYMENT, 41.2.11 USE OF DEPARTMENTAL VEHICLES, AND
46.1.2 CRITICAL INCIDENTS

**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
Fayetteville Police Department policies 22.3 Secondary Employment; 41.2.11 Use of
Department Vehicles; and 46.1.2 Critical Incidents.

City of Fayetteville Staff Review Form

2022-1102

Legistar File ID

12/20/2022

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

Mike Reynolds

11/21/2022

POLICE (200)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Council to approve a resolution adopting Fayetteville Police Policies 22.3 Secondary Employment; 41.2.11 Use of Departmental Vehicles; and 46.1.2 Critical Incidents.

Budget Impact:

Account Number

Fund

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 DECEMBER 20, 2022

TO: Mayor and City Council
FROM: Mike Reynolds, Chief of Police
DATE: November 15, 2022
SUBJECT: Police Department Policy

A handwritten signature in black ink, reading "Mike Reynolds".

RECOMMENDATION:

Council approves a resolution adopting Fayetteville Police Policies 22.3 Secondary Employment; 41.2.11 Use of Department Vehicles; and 46.1.2 Critical Incidents.

BACKGROUND:

The Fayetteville Police Department is currently in the process of reviewing policies and updating as necessary to make changes as recommended and to meet best practices and accreditation standards.

DISCUSSION:

Fayetteville Police Policy 22.3, Secondary Employment, is an existing policy that contains changes to increase the efficiency of our operations. Fayetteville Police Policy 41.2.11, Use of Department Vehicle, is an existing policy that contains changes to update department protocols. Fayetteville Police Policy 46.1.2, Critical Incidents, is an existing policy that contains changes to reflect new accreditation standards..

BUDGET/STAFF IMPACT:

These policies will not have any impact on budget or staff at this time.

Attachments:

Fayetteville Police Policy 22.3 Secondary Employment
Fayetteville Police Policy 41.2.11 Use of Department Vehicles
Fayetteville Police Policy 46.1.2 Critical Incidents.

POLICIES, PROCEDURES, AND RULES

Subject: 22.3 Secondary Employment	Effective Date:
Reference: Arkansas Statute 12-9-102	Version: 5 6
CALEA: 22.2.4, 22.2.5	No. Pages: 3

I. Purpose

To establish guidelines for secondary employment by members of the Fayetteville Police Department (FPD).

II. Policy

It is the policy of the Fayetteville Police Department FPD to allow agency personnel to engage in approved secondary employment opportunities within the guidelines of this policy [CALEA 22.2.4].

III. Definitions

- A. Extra-Duty Employment – secondary employment wherein the actual or potential use of law enforcement powers is anticipated.
- B. Off-Duty Employment – secondary employment wherein the actual or potential use of law enforcement powers is not anticipated.

IV. Departmental Limitations

- A. Employees may not engage in employment that is a threat to the status and dignity of law enforcement as a professional occupation. Employment representing such a threat includes, but is not limited to: [CALEA 22.2.4]
 - 1. Employment at establishments that promote obscenity or pornography as defined by the Arkansas Criminal Code.
 - 2. Any employment where the dispensing or consumption of alcoholic beverages is the primary function of the business. This prohibition does not include approval obtained by the Chief of Police for working special events where alcoholic beverage permits have been granted.
 - 3. Any employment where gambling occurs as the main source of activity. (This does not include civic fund-raising events where the proceeds are used to support legitimate charities or other nonprofit agencies).
 - 4. Any employment where the employer is involved in a labor or civil rights dispute.

5. Any employment with individuals or companies of questionable business interest where there could be a decrease in trust and confidence from the public.
 6. Any employment whereby the nature of such employment would interfere with the performance of official duties, jeopardize in any manner the impartial position of the department or create a liability concern that might involve the employee violating any procedure, ordinance or law.
 7. Any employment that might present potential conflicts of interest for employees between the departmental duties and their duties for a secondary employer.
 8. Any employment that creates a decrease in trust and confidence from the public.
- B. To be eligible for secondary employment, employees must be in good standing with the department. The employee's history of past ~~disciplinary actions~~ **performance** shall be taken into consideration by the Chief of Police when determining eligibility.
- C. Employees must have completed the Field Training Program before being eligible to work extra-duty employment.
- D. Employees absent from duty, due to sickness, may not engage in secondary employment during the hours in which they were regularly scheduled to work.
- E. Employees on light duty status, extended sick leave (more than three consecutive days), worker's compensation, FMLA, administrative leave or suspension are not authorized to work any extra-duty employment without the written consent of the Chief of Police.
- F. Employees will not engage in any secondary employment that might affect the objectivity and independence of their judgment or conduct in performing their official duties and responsibilities.
- G. Work hours for all secondary employment must be scheduled in a way that does not conflict nor interfere with the employee's official performance of duty. Special consideration will not be given to scheduling of the employee's duty hours to accommodate secondary employment.
- H. All employees of the department engaged in secondary employment are subject to call out in case of emergency and will be expected to leave any other employment in such situations.
- I. Employees will not report to duty physically or mentally exhausted to the point where their performance is affected because of any secondary employment.
- J. Extra-duty employment is limited to within the corporate limits of the City of Fayetteville. Off-duty employment may be authorized outside the city limits.

V. Guidelines

- A. All employees must complete an annual review of FPD Policy 22.3 (Secondary Employment) and sign off on the requirements and expectations for participating in secondary employment.
- B. For all secondary employment assignments for sworn employees that are scheduled through the Special Operations Division, the Chief of Police or his/her designee will approve the assignment in writing before it is posted or filled. Sworn employees will not have to complete a Request for Approval Of Secondary Employment Outside Department form for assignments scheduled through the Special Operations Division.
- C. The following criteria must be completed on all secondary employment assignments or requests for sworn employees that are not scheduled through the Special Operations Division.
 - 1. A Request for Approval Of Secondary Employment Outside Department form must be completed in the Laserfiche software, and sworn employees must sign the form, indicating they understand the expectation for the assignment. prior to seeking secondary employment.
 - 2. The Request for Approval of Secondary Employment Outside Department form shall also contain the significant aspects of the secondary employment job the employee is seeking [CALEA 22.2.5 e.].
 - 3. The Request for Approval Of Secondary Employment Outside Department form will automatically be routed via Laserfiche to the Chief of Police or his/her designee through the employee's chain of command [CALEA 22.2.5 a.].
 - 4. Within 72 hours, the sworn employee will receive an email through the Laserfiche software approving or denying the secondary employment request.
 - 5. The Chief of Police, or his/her designee, will have final approval or disapproval authority for the requests of secondary employment.
 - 6. Sworn employees are not authorized to work secondary employment assignments until the Chief of Police or his/her designee approves the secondary employment request, so sworn employees are strongly encouraged to submit these requests as early as possible.
 - 7. On-going secondary employment requests must be resubmitted at the beginning of each calendar year.
 - 8. A copy of all secondary employment forms will be routed in the Laserfiche software to the Administrative Captain administrative assistant in the Administration Division for record retention. Records for secondary employment assignments shall be kept for a period of five years. for filing and review for adherence of this policy [CALEA 22.2.5 d.]
- D. Non-sworn employees are required to submit an Outside Employment Request form through their chain of command to the Chief of Police or his/her designee and the City Attorney, in compliance with City of Fayetteville Policy and Procedure HR-15.
 - 1. The Outside Employment Forms are located in the City of Fayetteville Intranet (COFI) under the "Forms" tab.
 - 2. The Chief of Police, or his/her designee, will have final approval or disapproval authority for non-sworn employee requests of secondary employment. , and no

~~employee shall work such employment until authorization has been obtained~~
[CALEA 22.2.5 c.].

3. ~~Non-sworn employees are not authorized to work secondary employment assignments until the Chief of Police or his/her designee approves the Outside Employment Request.~~
 4. ~~On-going secondary employment assignments for non-sworn employees must be resubmitted at the beginning of each year.~~
 5. ~~The Dispatch Manager shall keep copies of all Outside Employment forms for the Central Dispatch Center employees. The administrative assistant in the Administration Division will keep the Outside Employment forms for all other non-sworn employees of the department. Records for secondary employment assignments for non-sworn employees shall be kept for a period of five years~~
[CALEA 22.2.5 d.].
- E. Once granted, approval for secondary employment can be revoked or annual renewal denied when, in the judgment of the employee's chain of command, the secondary employment becomes incompatible with departmental employment or adversely affects the employee's job performance or efficiency [CALEA 22.2.5 c.].

VI. Accountability

- A. All employees engaged in extra-duty employment, uniformed or plain clothes, shall abide by the Policies, Procedures and Rules of the Fayetteville Police Department [CALEA 22.2.5 b.].
- B. Officers wearing his/her uniform off-duty are a representative of the department. As such, the member shall avoid non-police related job duties that would tend to detract from the professional image of the Fayetteville Police Department. Officers must conduct themselves at all times in a manner consistent with public respect for the uniform of the department [CALEA 22.2.5 b.].
- C. Arrests made while engaging in secondary employment, will be turned over to the on-duty patrol shift for transport. The extra-duty or off-duty officer shall complete all necessary and required reports detailing the facts of the case.
- D. All sworn personnel working secondary employment are required to take enforcement action, within the jurisdiction of the department, in an emergency. Under no circumstances shall an officer refuse a request due to being "off-duty" [CALEA 22.2.5 b.].
- E. All sworn personnel who are working an approved secondary employment job and engage in the duties of a law enforcement officer, as defined by Arkansas Statute 12-9-102, shall be considered "on-duty" and shall be compensated by the City of Fayetteville.
- F. The secondary employer will not be allowed to compensate sworn personnel for any time the employee was paid by the City of Fayetteville. It is the responsibility of the sworn employee to reconcile their work time through the City's timekeeping software and their secondary employer.

POLICIES, PROCEDURES, AND RULES

Subject: 41.2.11 Use of Department Vehicles	Effective Date:
Reference: 41.2.8, 41.2.13	Version: 5 6
CALEA: 41.3.1, 41.3.2, 53.1.1	No. Pages: 4

I. Purpose

The purpose of this policy is to establish guidelines for the use and operation of vehicles owned, leased or operated by the Fayetteville Police Department (FPD).

II. Policy

All employees ~~Officers and employees~~ of this department shall operate department vehicles in a legal, safe and courteous manner. Employees shall not abuse or misuse department vehicles and equipment. Employees are responsible for the care and maintenance of vehicles in their control. Employees shall make proper use of vehicle safety equipment while operating department owned or authorized vehicles.

III. Procedures

A. Vehicle Safety/ **Maintenance** Inspection - Patrol vehicles shall be inspected on a daily basis by the officer assigned to the vehicle. [CALEA 53.1.1]

1. Deficiencies shall be noted and brought to the attention of a supervisor to make a determination as to whether the vehicle should be removed from service until repaired.
2. Repair requests will be completed **through the on** vehicle maintenance requests **process**.
- ~~3. Equipment required for patrol vehicles will be replenished or repaired upon inspection or as needed.~~
3. The inspection will be documented **through the on** vehicle inspection **forms process**.

B. Vehicle Equipment

1. Patrol vehicles will be conspicuously marked and outfitted with the following specifications: [CALEA 41.3.1]
 - a. Exterior mounted operational emergency lights
 - b. Siren
 - c. Agency's name in reflective materials
 - d. Unit number
 - e. Reflective striping on sides
2. Equipment required for patrol vehicles will be replenished or repaired upon inspection or as needed [CALEA 41.3.2].

- a. The department will assign a primary and secondary supervisor to monitor equipment needs and deficiencies through the use of inspections and the daily vehicle inspection process. Assigned supervisors will be listed on the Duty Assignment Roster.
 - b. Vehicles will be inspected daily by officers **for equipment** assigned to the unit. Officers are required daily to report any vehicle deficiencies or deficient items in writing to their shift supervisor.
 - c. Those supervisors assigned as primary on the Duty Assignment Roster for unit supplies/unit inspections will oversee an annual inspection of vehicles and vehicle equipment and report the results through memorandum to the Patrol Captain.
 - d. Items reported as being deficient will be replenished by a shift supervisor through the Quartermaster System.
3. Equipment for patrol vehicles to maintain operational readiness includes but is not limited to [CALEA 41.3.2]:
- a. Fire extinguisher
 - b. Tire deflation device
 - e. **Spare tire/jack**
 - d. 50 ft. measuring tape and rolling tape measure
 - e. Blanket
 - f. Crime scene tape
 - g. Paper towels and bags
 - h. Personal protective equipment – gloves, masks, shoe covers, tyvex suit
 - i. Radar unit and tuning forks
 - j. **Digital camera**
 - k. VL removal tool
 - l. Prisoner leg straps/belly chain
 - m. First Aid Kit
 - n. Disinfectant
 - o. **Automated External Defibrillator**
 - p. **Ballistic helmet / Body armor**
 - q. **Air purifying respirator mask**
 - r. **Portable breath test (PBT)**
 - s. **Glow sticks**
 - t. **Cardiopulmonary resuscitation (CPR) mask**
 - u. **Traffic cones**
4. Supervisor patrol vehicles will contain a door entry breaching kit. [CALEA 41.3.2]:
- C. Take Home Units- Officers will be assigned either a marked or unmarked vehicle for use according to the responsibilities of the officer's position and the needs of the department (i.e. canine units, drug task force officers, etc.).
1. To serve as a crime deterrent, take home units that are marked will be parked in the officer's driveway or an openly prominent location at the officer's residence.
 2. The assignment of a take home unit is a privilege, not a right, and can be revoked at any time. Assignment of a take home unit is determined by the Chief of Police **or his/her designee**.
 3. No alcoholic beverages are to be consumed **or carried** in department vehicles, nor are they to be driven after the officer has been consuming alcoholic beverages.

4. While off duty, officers ~~will~~ **shall** not take law enforcement action to address a minor violation. ~~The off duty officer in a marked unit should be prepared to assist in traffic control on motor vehicle collisions until assigned officers arrive.~~
 5. While off duty, officers in marked take home units shall:
 - a. Carry their credentials and service weapon,
 - b. Dress in such a manner as to not discredit the department should they have to perform in a professional capacity, and
 - c. Be prepared to assist in traffic control on motor vehicle collisions until assigned officers arrive.
 6. Use of take home vehicles is limited to commuting to and from work, court, training, and other approved functions or other de minimis use.
 7. ~~Take home vehicles can be driven to department approved extra jobs requiring the performance of law enforcement duties.~~
 - a. ~~Assigned vehicles will not be used to patrol private property. The vehicle will be parked at a suitable location while security/protective services are being performed.~~
- D. Command vehicles are assigned to **the Deputy Chief of Police and Captains** whose responsibilities are critical to the operational efficiency of the police department, and the use of command vehicles is determined by the Chief of Police. **The Deputy Chief of Police and captains** must be able to communicate with the department at all times and are subject to immediate response when needed. Command vehicles may be marked or unmarked as determined by the Chief of Police.
- E. Special Purpose Vehicles [CALEA 41.1.3]
1. Motorcycles, bicycles, the ERT Transport Vehicle, and any other non-conventional vehicles shall be considered special-purpose vehicles of the Fayetteville Police Department and shall be treated accordingly.
 2. The above mentioned special-purpose vehicles shall only be operated by authorized and assigned personnel that have completed or are undergoing required training as determined by the Fayetteville Police Department. In the event of a life threatening situation, sworn personnel not typically authorized may make use of a special-purpose vehicle.
 3. The supervisor assigned over the unit of primary use of each special-purpose vehicle shall be responsible for required maintenance and for the determination and upkeep of required equipment to be kept in or on the vehicle.
- F. Vehicle Operation
1. Employees shall operate department vehicles in a careful and prudent manner. Unsafe, negligent or reckless driving is prohibited. Traffic laws and department policies shall be followed unless emergency circumstances warrant otherwise.
 2. Department vehicles will be kept clean and serviceable at all times (i.e. washed, vacuumed, fueled, etc.).
 3. Seatbelt usage – refer to 41.2.13
 4. When parked and/or unattended, department vehicles, when practical, shall be properly secured by:
 - a. Locking the doors
 - b. Ensuring the windows are up
 - c. Ensuring any firearm in the vehicle is locked/secured

5. Due to the nature of law enforcement work, officers are allowed to eat and/or drink in department vehicles; however, the vehicles must be kept clean of debris and trash by the end of the shift.
6. Passengers will generally be limited to police officers, city employees or other governmental officials. ~~Exceptions to this rule include detainees, persons needing assistance, persons authorized in a ride along, persons assisting the officer or other persons with approval of a supervisor.~~ However, limited transportation of others is permissible, such as the transportation of an immediate family member to school or work or other incidental transportation needs. ~~Exceptions to this rule include detainees, persons needing assistance, persons authorized in a ride along, persons assisting the officer or other persons with approval of a supervisor.~~ ~~Employees cannot engage in police activity when family members are being transported in a department vehicle.~~
7. Formal citizen ride along passengers in patrol vehicles must be authorized by written approval of the Chief or his/her designees. Authorization and protocol for a formal citizen ride along program are as follows:
 - a. An "Indemnify, Defend and Hold Harmless" agreement must be signed by the citizen wishing to participate in a ride along.
 - b. The citizen shall only be permitted to ride with personnel approved by a supervisor.
 - c. The citizen shall be at least eighteen years of age prior to approval.
 - d. Sworn supervisors acting as the Chief's designee must sign the form to complete the requirement of written approval.
 - e. The supervisor shall route the completed form to the administrative secretary by the end of their shift. The form shall be filed and stored in Police Administration.
 - f. The citizen shall follow the directives of the patrol officer to whom they may be assigned.
 - g. The citizen shall remain in the patrol unit unless the officer directs the citizen that it is safe to exit the unit. The citizen shall not exit the vehicle on any "high risk" calls to which they may be assigned. This includes family violence calls unless no elements of risk are present nor are expected and only a reporting procedure is necessary.
 - h. Under no circumstances will a citizen be present in a patrol vehicle involved in any aspect of a pursuit.
8. Employees are prohibited from taking department vehicles outside the city limits of Fayetteville. Exceptions to this rule include:
 - a. Following up on an investigation, with supervisor approval
 - b. Police pursuit (Further reference can be made to 41.2.8, Pursuit policy)
 - c. Completing an assignment, with supervisor approval
 - d. Picking up supplies
 - e. Going to court
 - f. Take home units authorized by the Chief of Police or her/her designee
 - g. Attending meetings, training, etc.
9. Department vehicles may only be used for secondary employment when it is for a pressing public need, and not solely to benefit the private employer. Request to use police vehicles for secondary employment must be approved by the Chief or Deputy Chief of Police prior to any such use.
 - a. Before approving the use of department vehicles, the following factors will be considered:
 - 1) The threat or perceived threat of violence at the location or in the area;

- 2) The deterrent to crime;
 - 3) The crime rate at the location or in the area;
 - 4) The call volume at the location or in the area;
 - 5) Criminal activity, such as drug activity, public intoxication, disorderly conduct, and assaults at the location or in the area, and;
 - 6) The availability of vehicles.
- b. Take home vehicles can be driven to department approved extra jobs requiring the performance of law enforcement duties.
- 1) Assigned vehicles will not be used to patrol private property. The vehicle will be parked at a suitable location while security/protective services are being performed.

POLICIES, PROCEDURES, AND RULES

Subject: 46.1.2 Critical Incidents	Effective Date:
Reference:	Version: 2
CALEA: 46.1.2, 46.1.1, 46.1.3, 46.1.4, 46.1.5, 46.1.6, 46.1.7, 46.1.9, 46.2.1 NT, 46.2.6 NT, 46.2.7, 46.3.1 NT, 46.3.2	No. Pages: 6

I. PURPOSE

The Fayetteville Police Department must have guidelines for response to critical incidents. Critical incidents are situations, sometimes of an emergency nature, that result from disasters, both natural, and man-made, and civil disturbances. Critical incidents also include special events requiring Fayetteville Police Department personnel assignments. The Fayetteville Police Department will follow the standard Incident Command System (ICS) protocols within the structure of the National Incident Management System (NIMS) [CALEA 46.1.2]. Not every incident will require the activation of the entire ICS protocol.

II. DEFINITIONS

- A. Continuity of operations plan (COOP) and Continuity of Government Plan (COG) are efforts to assure that the capability exists to continue essential agency functions throughout any potential emergency. The primary objectives of these plans are to ensure the continuous performance of a department or agency's essential functions/operations during an emergency, protect essential facilities/equipment/vital records/and other assets, reduce or mitigate disruptions to operation, assess and minimize damage and losses, facilitate decision-making during an emergency, achieve a timely and orderly recovery from an emergency, and resumption of full service to the community [46.1.135-e].

III. POLICY

A. Critical Incidents

- 1. The Patrol Captain is responsible for coordinating the planning functions for response to an unusual occurrence. The first officers to arrive on the scene will be responsible for the initial response, assessment, and required notifications [CALEA 46.1.1].
- 2. The Chief of Police or his/her designee will appoint personnel to fill the command function when it is necessary to utilize the ICS. The command function will address the following at a minimum: [CALEA 46.1.3]

- a. Activating the incident command system;
 - b. Establishing a command post;
 - c. Initiating the notification and mobilization of additional agency personnel;
 - d. Obtaining support from other agencies;
 - e. Establishing a unified command;
 - f. Establishing a staging area, if necessary;
 - g. Providing public information and maintaining media relations;
 - h. Maintaining the safety of all affected personnel; and
 - i. Preparing an after-action report.
3. The Chief of Police or his/her designee will appoint personnel to fill the operations function when it is necessary to utilize the ICS. The operations function will be responsible for coordinating the following: [CALEA 46.1.4]
 - a. Establishing perimeters;
 - b. Conducting evacuations;
 - c. Maintaining command post and scene security;
 - d. Providing for detainee transportation, processing, and confinement;
 - e. Directing and controlling traffic; and
 - f. Conducting post-incident investigation.
4. The Chief of Police or his/her designee will appoint personnel to fill the planning function when it is necessary to utilize the ICS. The planning function will address the following at a minimum: [CALEA 46.1.5]
 - a. Preparing a documented incident action plan;
 - b. Gathering and disseminating information and intelligence;
 - c. Participating in a COOP / COG; and
 - d. Planning post-incident demobilization.
5. The Chief of Police or his/her designee will appoint personnel to the logistics function when it is necessary to utilize the ICS. The logistics function will be responsible for coordinating the needs of the following: [CALEA 46.1.6]
 - a. Communications;
 - b. Transportation;
 - c. Medical support;
 - d. Supplies; and
 - e. Specialized team and equipment.
6. The Chief of Police or his/her designee will appoint personnel to fill the finance/administration function when it is necessary to utilize the ICS. The finance/administration function will address the following at a minimum: [CALEA 46.1.7]
 - a. Recording personnel time;
 - b. Procuring additional resources;

- c. Recording expenses;
 - d. Documenting injuries and liability issues; and
 - e. Preparing appropriate reimbursement documents if applicable.
7. All sworn personnel will receive training in Critical Incident Response. The Training Division will establish and schedule annual refresher training for all sworn officers and affected non-sworn personnel in emergency procedures that will specifically target the understanding and practical application of the Incident Command System and the department's role in the Emergency Plan for the City of Fayetteville. The department will strive to conduct or participate in one training exercise per year. Personnel will be assigned to participate in the exercise, while maintaining patrol and investigative staffing. Participation will be documented [CALEA 46.1.9 a., b.].
 8. An exercise and assessment of the Continuity of Operations Plan (COOP) shall be completed every four years to evaluate the appropriate needs of the FPD. Considerations should be given to ensuring the continuous performance of the FPD's essential functions and operations during emergency or other critical circumstances. This includes protection of facilities, equipment, vital records, and other assets [CALEA 46.1.13].

B. Special Operations

1. Sworn personnel will usually be the first to encounter a situation involving a critical incident and will initiate procedures in an attempt to resolve the situation by implementing the following measures: [CALEA 46.2.1 NT]
 - a. Dispatch enough personnel to the scene to effectively contain and isolate the situation;
 - b. Attempt to prevent escalation of the situation;
 - c. Take any action deemed necessary to preserve life;
 - d. Should the on-scene incident commander determine that an event requires specialized units to supplement patrol functions, the scene will be secured, and an appropriate perimeter established. The Communications Division will contact the requested specialized units for response [CALEA 46.2.1 a., b. NT].
 - e. The on-scene incident commander will coordinate the various specialized units with other personnel. Cooperation is an expectation for all involved personnel and providing for the safety of officers is a paramount goal [CALEA 46.2.1 d., e. NT].
2. Deployment of specialized units CALEA 46.2.1 c. NT]:
 - a. Emergency Response Team (ERT) – deployed upon authorization of a captain or higher ranking officer; refer to policy.
 - b. Crisis Negotiation Team (CNT) – deployed upon authorization of a captain or higher ranking officer.
 - c. Criminal Investigation Division (CID)– deployed upon the request of supervisory personnel.
 - d. Tactical Dispatch Team – deployed upon authorization of a captain or higher

- ranking officer.
 - e. Bomb Squad – supervisory personnel may request assistance from an authorized bomb squad.
 - f. Public Information Officer (PIO) - deployed upon the request of supervisory personnel.
 - g. ~~K9~~ Canine Division- deployed upon the request of supervisory personnel.
 - h. Any other unit- deployed upon the request of supervisory personnel.
3. All **very important person** (VIP) security requests will be made to the department's **Special Operations Division (SOD)** ~~events~~-supervisor who will coordinate the security detail and all employees assigned. A VIP is defined as a very important person, dignitary, famous personality, notorious person, or any other person in need of special security. The following guidelines in VIP security detail will be addressed: [CALEA 46.2.6]
- a. The **SOD** ~~special events~~ supervisor will have access to all department equipment and vehicles for the purposes of VIP security.
 - b. Travel routes and alternate routes will be planned in consideration to safety and time. Potential problems will be specifically detailed.
 - c. An inspection of the area for the security detail will be conducted prior to the arrival of **the** VIP when necessary. Gathering intelligence will be a key component during inspections.
 - d. The **SOD** ~~special events~~ supervisor will ensure coordination with other city departments and outside agencies.
 - e. Emergency first aid, ambulance services, and medical facilities will be identified in planning meetings that take place prior to VIP security details. These entities will be given advanced notice and may be used as part of planning the detail.
 - f. The **SOD** ~~special events~~ supervisor will assign a radio channel for the department's communication radio system that will preclude interference from normal operations.
 - g. Personnel assigned to VIP security detail may have specific identification designations such as lapel pins or armbands. The chosen designations should facilitate identification of authorized security personnel.
4. The Fayetteville Police Department will ensure that at least one supervisor is assigned to special events, and that supervisor will be responsible for event planning and coordinating. Fayetteville Police Department supervisors will adhere to the following special events guidelines: [CALEA 46.2.7]
- a. Under the direction of the special events supervisor, estimates for traffic, parking, crowd-control, and criminal problems will be assessed for special events. This supervisor or delegate will meet or confer with representatives of participating organizations, planning committees, and other departments to coordinate plans and exchange information as necessary.
 - b. The department will establish contingency plans for traffic direction and control prior to major special events.
 - c. Personnel assigned to any division within the department may be used to ensure

this department meets and performs its obligations and duties at any event. The special events supervisor will ensure that appropriate relief of assigned personnel occurs with the assistance of other supervisory levels of the event and supervisors working in normal operations.

- d. Logistical requirements will be addressed to ensure the safety of those in attendance. Requirements that must be considered are fixed post assignments, roving post assignments, barricades and their positioning, traffic direction and control, and emergency personnel and vehicle access. When necessary, the special events supervisor will coordinate with the ERT supervisor for required tactical and special needs.
 - e. The special events supervisor shall ensure coordination occurs in respect to Fayetteville Police Department personnel and outside agencies.
 - f. The special events supervisor will coordinate with the department's PIO to address the news media.
5. The supervisor assigned to the critical incident and/or special event will ensure that an after-action report is completed using an after-action report template. An after-action report template will be readily accessible to all sworn personnel. Completed after-action reports will be filed on the agency's computer network with the event title as a reference [CALEA 46.1.3 i.].

C. Homeland Security

1. The Fayetteville Police Department maintains liaison with other organizations for the exchange of information relating to terrorism:
 - a. Information gathered through hotlines such as Crime Stoppers, emergency (911), or non-emergency telephone lines shall be evaluated and forwarded to the Criminal Investigation Division and if necessary, to the Patrol Division and appropriate state, federal, or private agencies.
2. It is the policy of Fayetteville Police Department that each officer take part in gathering and reporting information related to terrorism:
 - a. Any officer receiving information concerning possible terrorism activities will immediately notify the supervisor on duty and complete a written report.
 - b. The supervisor will determine the validity of the information and the appropriate response from the department, which may include notification of the patrol captain, CID, other local law enforcement agencies, or the appropriate state, federal, or private agencies.
3. The Fayetteville Police Department will provide terrorism awareness information within its service area: [CALEA 46.3.1]
 - a. Information pertinent to Fayetteville and the surrounding area shall be disseminated throughout the various task forces, boards, departments, and community awareness methods whenever information is found to be credible.

- b. The information shall be shared with persons and/or organizations holding proper security clearance and on a need to know basis, depending on the information gathered so as not to provoke a panic or misinformation from the information being disseminated.
 - c. Secure information shall only be disseminated to appropriate personnel.
- 4. As part of training provided for all sworn personnel in critical incident response, awareness level training for events involving hazardous materials will be provided. Officers should be provided with basic knowledge to recognize a hazardous situation for which they can implement basic procedures to have authorities with the required technical abilities assess the situation [CALEA 46.3.2].
- 5. The Fayetteville Police Department shall make every attempt to comply with state and federal law and guidelines established by the Department of Homeland Security when responding to and reporting chemical, biological, radiological, and nuclear (CBRN) events.
- 6. The Fayetteville Police Department quartermaster will be responsible with continuously maintaining and storing an adequate amount of communicable disease control supplies for use by first responders. These supplies will be made available for each patrol unit and shall be part of the department's vehicle inspection process governed in FPD Policy 41.1.11 that is overseen by assigned primary and secondary supervisors. **Reference FPD Policy 41.2.11 for a complete list of equipment for patrol vehicles maintained for operational readiness.** **The following supplies will be issued including, but not limited to:**
 - a. Latex gloves
 - b. Face shields
 - c. Appropriate protective clothing
 - d. Shoe covers
 - e. Dust masks
 - f. Hand sanitizer
 - g. Container for supplies

RESOLUTION NO. _____

A RESOLUTION TO APPROVE THE FIRST AMENDMENT TO THE TOWER SPACE AND GROUND LEASE AGREEMENT BETWEEN THE CITY AND SMITH TWO WAY RADIO COMMUNICATIONS, LLC FOR THE RADIO TOWER SITE LOCATED AT 3300 WEST DINSMORE TRAIL TO PROVIDE FOR THE ATTACHMENT OF NEW EQUIPMENT, INCREASE THE ANNUAL COST BY \$8,400.00, AND EXTEND THE LENGTH OF THE AGREEMENT BY FIVE THREE-YEAR RENEWABLE TERMS

WHEREAS, on December 21st, 2010 the City Council passed Resolution No. 233-10 approving two tower space and ground lease agreements with Smith Communications, LLC for antennas to improve the range and coverage for its police and emergency services radio network; and

WHEREAS, the original lease agreement is set to expire in 2025 and additional space on the radio tower is needed for an upgrade in the microwave dish size and new equipment to connect to the Central Dispatch Center to the radio system from the new police headquarters; and

WHEREAS, this amendment adds five three-year renewable terms to the original tower lease agreement, extending the final lease expiration date to December 31, 2038 and will increase the current tower lease agreement by \$8,400.00 which has been budgeted.

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 First Amendment to the Radio Tower Site Lease Agreement for the radio tower site located at 3300 West Dinsmore Trail between the City of Fayetteville, Arkansas and Smith Two Way Radio Communications, LLC to provide for the attachment of new equipment, increase the annual cost by \$8,400.00, and extend the length of the agreement by five three-year renewable terms.

City of Fayetteville Staff Review Form

2022-1118

Legistar File ID

12/20/2022

City Council Meeting Date - Agenda Item Only

N/A for Non-Agenda Item

Mike Reynolds

11/28/2022

CENTRAL DISPATCH (260)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Staff recommends approval of an amendment to the Radio Tower Site Lease Agreement with Smith Two Way Radio Communications LLC for the radio tower site located at 3300 W. Dinsmore Trail. The lease agreement will also include an extension to the length of the contract for five three-year renewable terms. The increased costs associated with this amendment are \$8,400 annually, and they have been budgeted within the City's 2023 approved operating budget.

Budget Impact:

1010.090.6600-5309.00

General

Account Number

Fund

Project Number

Project Title

Budgeted Item? Yes

Current Budget \$ 53,185.00

Funds Obligated \$ -

Current Balance \$ 53,185.00

Does item have a cost? No

Item Cost \$ -

Budget Adjustment Attached? No

Budget Adjustment \$ -

Remaining Budget \$ 53,185.00

V20210527

Purchase Order Number:

Previous Ordinance or Resolution #

Change Order Number:

Approval Date:

Original Contract Number:

Comments:



MEETING OF DECEMBER 20, 2022

TO: Mayor and City Council

THRU: Mike Reynolds, Chief of Police

A handwritten signature in black ink, appearing to read "Mike Reynolds".

FROM: Kathleen Stocker, Dispatch Manager

DATE: November 28, 2022

SUBJECT: Radio Tower Site Lease Agreement Amendment (3300 W Dinsmore Trail)

RECOMMENDATION:

Staff recommends approval of an amendment to the Radio Tower Site Lease Agreement with Smith Two Way Radio Communications LLC for the radio tower site located at 3300 W. Dinsmore Trail. The lease agreement will also include and extension to the length of the contract for five three-year renewable terms. The increased costs associated with this amendment are \$8,400 annually, and they have been budgeted within the City's 2023 approved operating budget.

BACKGROUND:

In 2010, the City entered into a lease agreement with Smith Two Way Radio Communications LLC for the use of radio tower space at 3300 W. Dinsmore Trail via Resolution 233-10. The original lease agreement contained five three-year renewable terms, which is set to expire in 2025.

DISCUSSION:

Additional space on the radio tower is needed for an upgrade in the microwave dish size and new equipment to connect the Central Dispatch Center to the radio system from the new police headquarters at 1800 N Stephen Carr Memorial Blvd. This amendment includes an extension of five three-year renewable terms to the original tower lease agreement, and if approved, will extend the final lease expiration date to December 31, 2038. This amendment will increase the amount of the current tower lease agreement by \$8,400 to a total 2023 cost of \$53,185. Funding for the total cost of \$53,185 has been budgeted and approved in the City's 2023 operating budget.

BUDGET/STAFF IMPACT:

The additional cost for the tower space was included in the City's 2023 annual budget, which was approved by City Council on November 15, 2022. The amended contract will increase the cost Eight Thousand Four Hundred (\$8,400.00) per year. This amendment has no effect on current staffing.

Attachments:

Tower Lease Amendment and Current Tower Lease Agreement

FIRST AMENDMENT TO TOWER SPACE AND GROUND LEASE AGREEMENT

THIS FIRST AMENDMENT TO TOWER SPACE AND GROUND LEASE AGREEMENT ("FIRST Amendment"), dated as of the latter of the signature dates below, is by and between the City of Fayetteville, a municipality organized and existing under the laws of the State of Arkansas, (hereinafter referred to as "CITY OF FAYETTEVILLE" or "Lessee") and Smith Communications, LLC, a limited liability company organized and existing under the laws of the State of Arkansas, (hereinafter referred to as "SMITH" or "Lessor").

WHEREAS, Lessor and Lessee entered into a TOWER SPACE AND GROUND LEASE AGREEMENT dated December 21, 2010, and commenced January 1, 2011, whereby Lessor agreed to lease to Lessee a certain portion or portions of the of the Fulbright Wireless Communications Facility located at 3450 N. Hemlock Avenue, Fayetteville, Washington County Arkansas, said property being more specifically described in the attached Exhibit "B" which is incorporated herein by reference (hereinafter referred to as the "Leased Premises").

WHEREAS, Lessee and Lessor, in their mutual interest, wish to amend the Agreement as set forth below accordingly.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessee and Lessor agree as follows:

1. To modify **Exhibit "A"** to reflect the needed increase in tower equipment. (Updated Exhibit "A" attached).
2. To modify **SECTION TWO TERM** to add five (5) additional three (3) year renewal terms effective January 1, 2023 extending final lease expiration date to December 31, 2038, unless terminated prior by written notification per original agreement **SECTION FIVE**.
3. To modify **SECTION THREE RENT** to increase the current rent amount effective January 1, 2023, by an additional Seven Hundred and No/100 Dollars (\$700.00) per month or a total of Eight Thousand Four Hundred and No/100 (\$8400.00) per year, for the increase in tower equipment as documented in the updated "Exhibit A" hereto attached.
4. **Other Terms and Conditions Remain.** In the event of any inconsistencies between the Agreement and this First Amendment, the terms of this First Amendment shall control. Except as expressly set forth in this First Amendment, the Agreement otherwise is

unmodified and remains in full force and effect. Each reference in the Agreement to itself shall be deemed also to refer to this First Amendment.

5. **Capitalized Terms.** All capitalized terms used but not defined herein shall have the same meanings as defined in the Agreement.

IN WITNESS, WHEREOF, the parties have caused their properly authorized representatives to execute and seal this Third Amendment on the dates set forth below.

LESSOR:

CITY OF FAYETTEVILLE

By: _____

Lioneld Jordan

Title: Mayor

LESSEE:

SMITH COMMUNICATIONS, LLC

By: _____

Michael B Smith

Title: President

LIMITED LIABILITY COMPANY ACKNOWLEDGEMENT

STATE OF ARKANSAS)

) SS.

COUNTY OF WASHINGTON)

BE IT REMEMBERED, That on this 29th day of Nov, 2022 before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Michael B. Smith of **Smith Communications, LLC**, a Limited Liability Company duly formed under the provisions of the **Arkansas** Limited Liability Company Act, who is personally known to me to be the such member(s) and who is personally known to me to be the same person(s) who executed as such member(s) the foregoing instrument on behalf of said company, and such person(s) duly acknowledged the execution of same to be the act and deed of said company.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

My Commission Expires:

4-9-2030




Notary Public

INDIVIDUAL ACKNOWLEDGEMENT

STATE OF ARKANSAS)

) SS.

COUNTY OF WASHINGTON)

BE IT REMEMBERED, That on this _____ day of _____, 2022. before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Lioneld Jordan, who is personally known to me (or satisfactorily proven) to be the same person(s) who executed the within instrument of writing and duly acknowledged the execution of same.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

My Commission Expires: _____

Notary Public

EXHIBIT A
(Leased Premises & Updated Equipment Rights)

Existing (1) Rx Antenna w/TMA, (1) 3/8" coax & 1-1/4" coax @ 195'

Existing (1) Tx Antenna w/TMA, (1) 5/8" coax & (1) 7/8" coax @ 160'

Upgrading (1) existing 2' dish w/ice shield @ 145' to 3' dish w/ ice shield @ 145'
(Fay Disp to Dinsmore)

Upgrading and Relocating (1) existing 4' dish w/ice shield @ 77' to 6' dish w/ice shield @ 80'
(Dinsmore to L03 ASP)

Upgrading and Relocating (1) existing 2' dish w/ice shield @ 60' to 3' dish w/ice shield @ 70'
(Dinsmore to Sequoyah)

Adding (1) new 4' dish w/ice shield (height to be determined at later time)

NO CHANGE TO GROUND SPACE

RESOLUTION NO. 233-10

A RESOLUTION TO APPROVE TWO TOWER SPACE AND GROUND LEASE AGREEMENTS WITH SMITH COMMUNICATIONS, LLC FOR A TOTAL ANNUAL RENT OF \$36,000.00

WHEREAS, the Fayetteville Police Department needs additional tower space for new antennas to improve the range and coverage for its police and emergency services radio network; and

WHEREAS, use of two of Smith Communications, LLC's radio towers is the most cost effective way to mount the needed antennas in the proper location and height.

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 two Tower Space and Ground Lease Agreements with Smith Communications, LLC (both are attached) for a total annual rent of \$36,000.00 and authorizes Mayor Jordan to sign those leases.

PASSED and **APPROVED** this 21st day of December, 2010.

APPROVED:

ATTEST:

By:


LIONELD JORDAN, Mayor

By:


SONDRA E. SMITH, City Clerk/Treasurer



Revised
12-14-10

TOWER SPACE AND GROUND LEASE AGREEMENT

**Smith Two-Way Radio, Inc.
Tower and Wireless Communications Facility**

Located at:

**3300 Dinsmore Trail
Fayetteville
Washington
AR**

Between

SMITH TWO-WAY RADIO, INC.

and

CITY OF FAYETTEVILLE

*City of Fayetteville ---- Tower Space and Ground Lease Agreement -
Smith Two-way Radio, Inc.*

Page 1 of 12

TOWER SPACE AND GROUND LEASE AGREEMENT

This TOWER SPACE AND GROUND LEASE AGREEMENT (the "Lease") is entered into on the 21 st. day of December, 2010, and is effective ____ day of _____ 2011, by and between City of Fayetteville, a municipality organized and existing under the laws of the State of Arkansas, (hereinafter referred to as "CITY OF FAYETTEVILLE"), and **SMITH COMMUNICATIONS, LLC**, a limited liability company organized and existing under the laws of the State of Arkansas (hereinafter referred to as "SMITH"), wherein the following mutual covenants and understandings are made and entered into upon the following terms and conditions:

WITNESSETH

SECTION ONE DESCRIPTION OF PROPERTY

SMITH hereby lets and leases unto City of Fayetteville, and City of Fayetteville accepts from SMITH, subject to the terms and conditions contained herein, a certain portion of the Fulbright Wireless Communications Facility located at 3450 N. Hemlock Avenue Fayetteville, Arkansas, (hereinafter referred to as the "Leased Premises") for the duration of this Agreement.

The Leased Premises also includes a right for ingress and egress, seven days per week, twenty-four hours per day, on foot or motor vehicle, including trucks, along a twenty-five foot wide right-of-way together with the right to install, replace and maintain utility wires, poles, cables, conduits and pipes. The Leased Premises is generally depicted in the attached Exhibit "A".

SECTION TWO TERM

This Lease shall be for an initial term of Three(3) years, beginning on the date of City of Fayetteville's Installation of equipment at the facility, executing the agreement, incorporated herein in full by reference (the "Initial Term"). This Lease shall automatically be extended for FIVE (5) subsequent THREE(3) year terms (the "Renewal Terms") unless City of Fayetteville terminates it pursuant to the provision set forth herein. The Initial Term and any Renewal Term or Renewal Terms shall be collectively referred to as the "Lease Term".

SECTION THREE RENT

City of Fayetteville shall pay to SMITH Ten and No/100 Dollars (\$10.00) upon the full execution of this Lease and the Agreement. City of Fayetteville shall pay to the SMITH One Thousand Five Hundred and No/100 Dollars (\$1,500.00) per month for a total of Eighteen Thousand and No/100 Dollars (\$18,000.00) per year (the "Rent"). Lease payments shall consist of equal monthly installments with the first payment due at the commencement of the Initial Term with subsequent payments due on the first (1st) day of each following month for the duration of the Lease. In addition, on each annual renewal date the amount of the Rent shall be increase by an amount equal to 2% and hence forward shall be the amount known as the Rent.

SECTION FOUR USE OF LEASED PREMISES

The City of Fayetteville shall use the Leased Premises and all easements, rights and privileges herein granted only for the purpose of constructing, installing, maintaining and operating the City of Fayetteville Radio Communication System and uses incidental thereto. Premise use per Exhibit "B" and attached survey when complete. It is understood and agreed that all improvements shall be undertaken at City of Fayetteville's sole expense. City of Fayetteville will maintain the Leased Premises in a reasonable, neat and safe condition. SMITH hereby does covenant that it shall not take any action that would adversely affect the status of the Leased Premises with respect to the proposed use by City of Fayetteville.

SECTION FIVE City of Fayetteville's RIGHT OF TERMINATION

City of Fayetteville shall have the unilateral right to terminate this Lease, at any time, by providing SMITH with One Hundred Eighty (180) days prior written notice in conformance with the Notice requirements outlined in the Lease.

Upon termination of this Lease by City of Fayetteville, shall become null and void and all of the parties shall have no further obligations, except that Leased Premises property shall be reasonably restored to its condition prior to the Lease execution. If restoration period extends beyond the termination notice period SMITH shall be entitled regular monthly rent until restoration is complete.

SECTION SIX APPROVALS

(a) SMITH agrees that City of Fayetteville's ability to use the Premises is contingent upon the suitability of the Premises for Tenant's Permitted Use and Tenant's ability to obtain and maintain all governmental licenses, permits, approvals or other relief required of or deemed necessary or appropriate by City of Fayetteville for its use of the Premises, including without limitation applications for zoning variances, zoning ordinances, amendments, special use permits, and construction permits (collectively, the "**Government Approvals**"). SMITH authorizes City of Fayetteville to prepare, execute and file all required applications to obtain Government Approvals for Tenant's Permitted Use under this Agreement and agrees to reasonably assist Tenant with such applications and with obtaining and maintaining the Government Approvals. In addition, Tenant shall have the right to initiate the ordering and/or scheduling of necessary utilities.

(b) Tenant may also perform and obtain, at City of Fayetteville's sole cost and expense, soil borings, percolation tests, engineering procedures, environmental investigation or other tests or reports on, over, and under the Property, necessary to determine if the City of Fayetteville's use of the Premises will be compatible with City of Fayetteville's engineering specifications, system, design, operations or Government Approvals.

SECTION SEVEN CONTINGENCY

SMITH and City of Fayetteville agree that City of Fayetteville's ability to use the Leased Premises is contingent upon City of Fayetteville obtaining, after the full execution of this Lease and the Agreement, all of the certificates, permits, licenses and other approvals deemed necessary by City of Fayetteville, within City of Fayetteville's absolute discretion, to utilize the Leased Premises for the purposes set forth in Section Six above (the "Approvals"). SMITH agrees to execute any and all documents necessary to petition the appropriate public bodies for the Approvals and to be named as applicant if requested by City of Fayetteville. In the event that: (1) City of Fayetteville does not obtain, for any reason whatsoever, all of the Approvals; (2) any of the Approvals are in a form unacceptable to City of Fayetteville, within City of Fayetteville's absolute discretion; (3) any Approval issued to City of Fayetteville is canceled, expires, lapses or is otherwise withdrawn or terminated by governmental authority; or, (4) any investigation, including but not limited to soil boring tests, are found to be unsatisfactory so that City of Fayetteville, in its absolute discretion, will be unable to use the Leased Premises for its intended purposes, then City of Fayetteville shall have the right, at its sole discretion, to terminate this Lease.

SECTION EIGHT ENVIRONMENTAL

City of Fayetteville shall not cause or permit to be caused the use, storage, generation, escape, disposal or release of any Hazardous Substances or Hazardous Wastes in any manner not sanctioned by law. In all events, City of Fayetteville shall indemnify and hold SMITH harmless from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, any and all sums paid for settlement of claims, attorneys' fees, and consultants' and experts' fees) from the presence or release of any Hazardous Substances or Hazardous Wastes on the Leased Premises if caused by City of Fayetteville. City of Fayetteville shall execute such affidavits, representations and the like from time to time as SMITH may reasonably request concerning City of Fayetteville's best knowledge and belief as to the presence of Hazardous Substances or Hazardous Wastes on the Leased Premises

For purposes of this Lease, the term "Hazardous Substances" shall be as defined in the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 *et seq.*, and any regulations promulgated pursuant thereto, and as used to define "Hazardous Wastes" in the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.*, and any regulations promulgated thereto.

SECTION NINE INSURANCE

At all times during the Lease Term, City of Fayetteville, at its sole expense, shall obtain and keep in force insurance which may be required by any federal, state or local statute or ordinance of any governmental body having jurisdiction in connection with the operation of City of Fayetteville's business upon the Leased Premises.

SECTION TEN SALE OF PROPERTY

If at any time during the Lease Term SMITH decides to sell all or part of SMITH's property, of which the Leased Premises is a part, to a purchaser other than City of Fayetteville, then such sale shall be under and subject to this Lease and City of Fayetteville's rights hereunder. Any sale by SMITH of the portion of the Leased Premises underlying the right-of-way herein granted shall be under and subject to the right of City of Fayetteville in and to said right-of-way.

SECTION ELEVEN COVENANT OF TITLE

SMITH covenants that SMITH is seized of good and sufficient title and interest to the Property of which the Leased Premises is a part and has full authority to enter into

and execute this Lease. SMITH further covenants that (1) there are no aspects of title that might interfere with or be adverse to City of Fayetteville's interests in and intended use of the Leased Premises and (2) title shall be such that City of Fayetteville will have the ability to obtain title insurance at regular rates.

SECTION TWELVE DEFAULT

In the event that there is a default by City of Fayetteville with respect to any of the provisions of this Lease or City of Fayetteville's obligations under the Lease, including the payment of Rent, SMITH shall give City of Fayetteville written notice of such default. After receipt of such written notice, City of Fayetteville shall have thirty (30) days in which to cure any monetary default and thirty (30) days in which to cure any non-monetary default. City of Fayetteville shall have such extended periods beyond the thirty days if the nature of the cure is such that it requires more than thirty (30) days and City of Fayetteville commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. SMITH may not maintain any action or effect any remedies for default against City of Fayetteville unless and until City of Fayetteville has failed to cure the same within the time periods provided in this Section.

SECTION THIRTEEN MISCELLANEOUS

- A. The consent of either party to any act or the waiver by either party of a breach of any provision of this Lease shall not operate or be construed as a consent or waiver of any subsequent act or breach by the other party.
- B. Time shall be of the essence with respect to every term and condition of this Lease.
- C. This Lease may be executed in multiple counterparts, each of which shall be deemed an original, and all of which taken together shall be deemed one instrument.

SECTION FOURTEEN GOVERNING LAW

Any and all claims or causes of action shall and must be filed only in the courts of the State of Arkansas for Washington County or the United States District Court for the Western District of Arkansas, which shall have exclusive jurisdiction over any and all disputes which arise between the parties under this Lease, whether in law or in equity. Each of the parties expressly agrees, consents, and stipulates that venue shall be exclusively within said courts. Each of the parties expressly agrees, consents and

stipulates to the exercise of personal jurisdiction over it and subject matter jurisdiction over any such controversy arising between the parties being only in the courts listed herein. The prevailing party shall be entitled to recover from the other party any reasonable costs and attorneys' fees incurred as a consequence of enforcing the provision of the lease, amount to be fixed by said court and shall be made part of the judgement or decree rendered.

SECTION FIFTEEN NOTICES

All notices hereunder shall be in writing and shall be given by (i) established express delivery service which maintains delivery records, (ii) hand delivery, or (iii) certified or registered mail, postage prepaid, return receipt requested. Notices may also be given by facsimile transmission, provided that the notice is concurrently given by one of the above methods. Notices are effective upon receipt, or upon attempted delivery if delivery is refused or if delivery is impossible because of failure to provide reasonable means for accomplishing delivery. The notices shall be sent to the parties at the following addresses:

To SMITH: SMITH TWO- WAY RADIO, INC
Michael Smith
520 N. College Ave.
Fayetteville, Arkansas 72701

To CITY OF FAYETTEVILLE
OFFICE OF THE MAYOR
113 MOUNTAIN ST.
FAYETTEVILLE, AR 72701

SECTION SIXTEEN

*City of Fayetteville ---- Tower Space and Ground Lease Agreement -
Smith Two-way Radio, Inc.*

Page 7 of 12

PARTIAL INVALIDITY

In the event any one or more of the provisions contained in the Lease or Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the remaining provisions of this Lease or the Agreement and this Lease or the Agreement shall be construed as if such invalid, illegal or unenforceable provision or provisions had never been contained herein.

SECTION SEVENTEEN

THIS SECTION OMITED

SECTION EIGHTEEN MERGER

This Lease along with the Agreement contains the entire agreement between the parties and supersedes any prior or contemporaneous oral or written agreements which supplement or contradict the terms and provisions set forth herein.

SECTION NINETEEN SITE MAINTENANCE

SMITH shall be responsible for the routine maintenance of the site common and support areas. to include but not limited to: landscaping, mowing, weed control, signage, road access maintenance, painting, fence repair and damage caused by normal weathering and storm damage, as to the Smith Facility. City of Fayetteville shall be responsible for storm damage to its facilities and property.

SIGNATURES APPEAR ON NEXT PAGE

REST OF PAGE LEFT INTENTIONALLY BLANK

IN WITNESS WHEREOF, SMITH and City of Fayetteville having read the foregoing and intending to be legally bound hereby, have executed this Lease as of the day and year first written above.

City of Fayetteville:

CITY OF FAYETTEVILLE

By:

Printed

Lionel Jordan

Title: MAYOR

SMITH:

SMITH TWO-WAY RADIO, INC.

By:

Printed

Michael B Smith

Title: PRESIDENT

ACKNOWLEDGMENT

STATE OF ARKANSAS)

) ss.

COUNTY OF WASHINGTON)

BE IT REMEMBERED that on this 14 day of December, 2010, came before me, the undersigned, a Notary Public, duly commissioned, qualified and acting, within and for the said County and State, Michael B Smith, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing instrument and acknowledged that he had executed the same for the purposes therein set forth.

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

My Commission Expires:

11-20-2013

Notary Public

Donna S. Sullivan

DONNA S. SULLIVAN
PUBLIC STATE OF ARKANSAS
WASHINGTON COUNTY
Commission Expires 11-20-2013

City of Fayetteville ---- Tower Space and Ground Lease Agreement -
Smith Two-way Radio, Inc.

Page 9 of 12

STATE OF ARKANSAS)
) ss.
COUNTY OF WASHINGTON)

BE IT REMEMBERED that on this 28th day of December, 2010, came before me, the undersigned, a Notary Public, duly commissioned, qualified and acting, within and for the said County and State, Lincoln Jordan, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing instrument and acknowledged that he had executed the same for the purposes therein set forth.

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

My Commission Expires:
2-1-2016

Lisa Dawn Branson
Notary Public



EXHIBIT "A" LEASED PREMISES

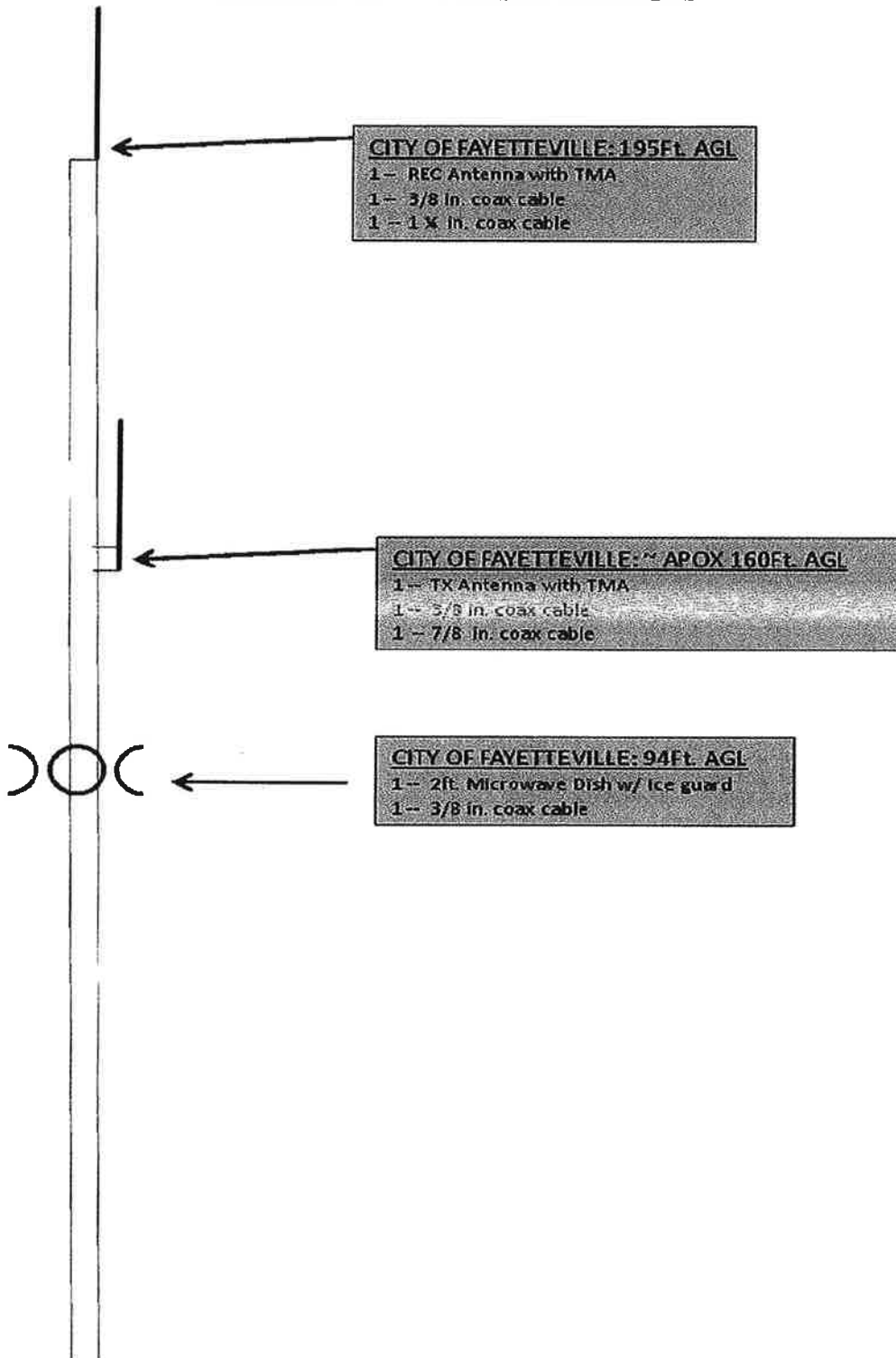
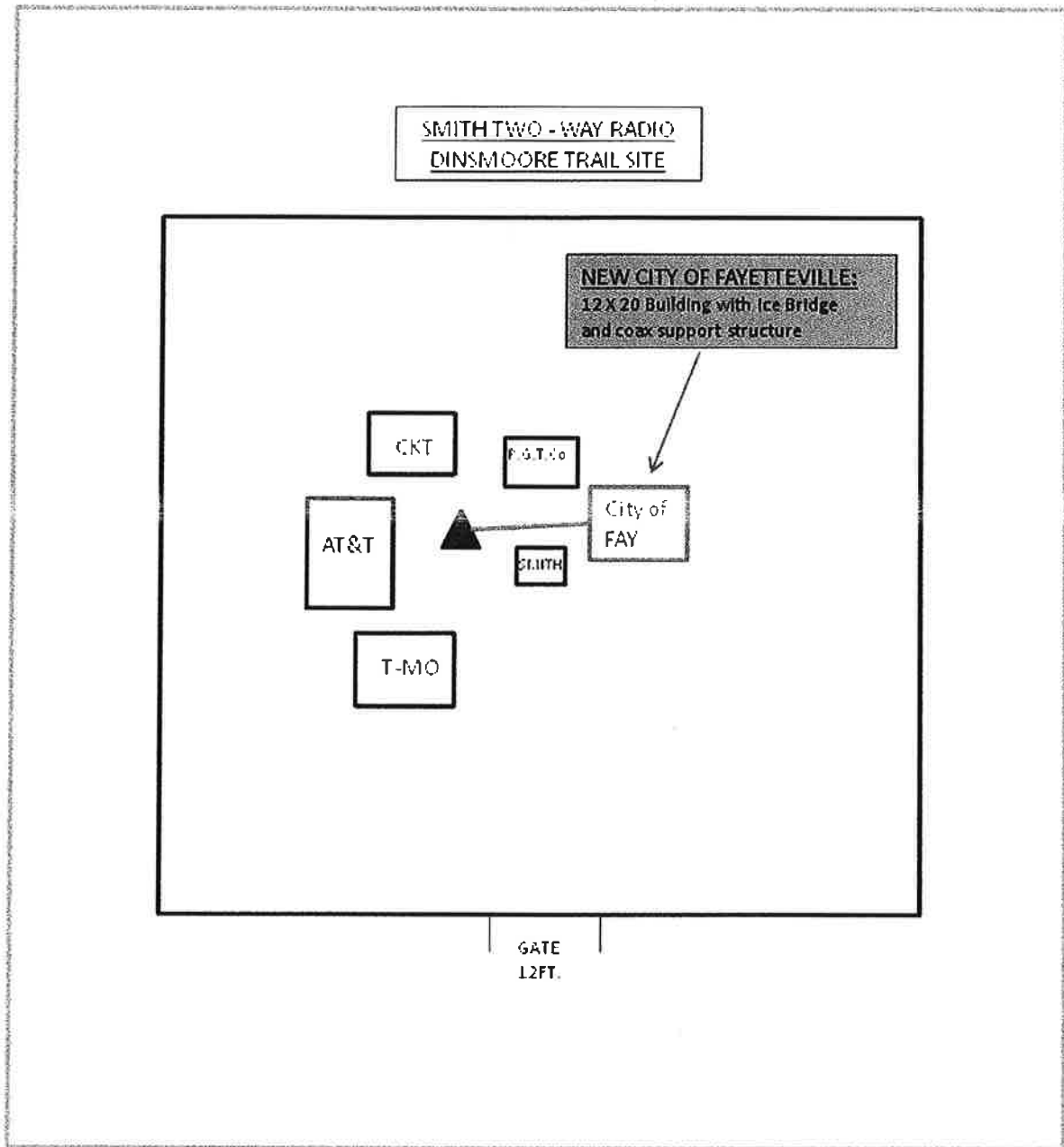


EXHIBIT "A"
LEASED PREMISES



RESOLUTION NO. _____

A RESOLUTION TO APPROVE A MEMORANDUM OF UNDERSTANDING WITH THE DEPARTMENT OF PUBLIC SAFETY AND ACCEPT A 2022 ARKANSAS DEPARTMENT OF PUBLIC SAFETY EQUIPMENT GRANT AWARD IN THE AMOUNT OF \$100,000.00 FOR THE POLICE DEPARTMENT, AND TO APPROVE A BUDGET ADJUSTMENT

WHEREAS, the Arkansas General Assembly passed Act 786 of 2021, which established the Public Safety Equipment Grant Program to facilitate implementing best police practices to improve trust between law enforcement officers and the communities in which they serve; and

WHEREAS, the grant will be used to assist with the purchase of body worn cameras, protective equipment and training equipment.

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 Memorandum of Understanding with the Department of Public Safety and accept a grant from the 2022 DPS Equipment Grant in the amount of \$100,000.00 for the purchase of body worn camera devices and/or virtual reality training equipment.

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

2022-1168

Legistar File ID

12/20/2022

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

Mike Reynolds

12/2/2022

POLICE (200)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Staff recommends approval of non-matching grant award and memorandum of understanding with the Department of Public Safety (DPS) for acceptance of the 2022 DPS Equipment Grant award for funding of Body Worn Camera Devices and/or Virtual Reality Training Equipment in the amount of \$100,000, and budget adjustment.

Budget Impact:

1010.200.2920-5210.00	General
_____ Account Number	_____ Fund
32209-2022	DPS Equipment Grant
_____ Project Number	_____ Project Title
Budgeted Item? <u>No</u>	Current Budget \$ -
	Funds Obligated \$ -
	Current Balance \$ -
Does item have a cost? <u>No</u>	Item Cost \$ -
Budget Adjustment Attached? <u>Yes</u>	Budget Adjustment \$ 100,000.00
	Remaining Budget \$ 100,000.00

V20210527

Purchase Order Number: _____

Previous Ordinance or Resolution # _____

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



MEETING OF DECEMBER 20, 2022

TO: Mayor and City Council

FROM: Mike Reynolds, Chief of Police

A handwritten signature in black ink, appearing to read "Mike Reynolds".

DATE: December 2, 2022

SUBJECT: Department of Public Safety Equipment Grant Award

RECOMMENDATION:

Staff recommends approval of non-matching grant award and memorandum of understanding with the Department of Public Safety (DPS) for acceptance of the 2022 DPS Equipment Grant award for funding of Body Worn Camera Devices and/or Virtual Reality Training Equipment in the amount of \$100,000, and a budget adjustment.

BACKGROUND:

The Arkansas General Assembly passed Act 786 of 2021 to facilitate implementing best police practices to improve trust between law enforcement officers and the communities in which they serve, ultimately improving public safety. This grant was limited to assist law enforcement agencies with the purchase of body worn cameras, protective equipment, and training equipment. The law enforcement equipment authorized by this grant has shown to increase officer accountability and transparency, improve officer-citizen interactions, reduce unwarranted complaints against law enforcement, aid in criminal prosecutions, facilitate officer training, build community trust in law enforcement, and increase public safety for both officers and the citizens they serve.

DISCUSSION:

The DPS Equipment Grant Committee has awarded the Fayetteville Police Department \$100,000 to help fund our body worn camera expansion and/or the purchase of virtual reality equipment.

BUDGET/STAFF IMPACT:

This grant award does not require local matching funds and has no impact on staffing levels. Approval of this budget adjustment will establish revenue and expense budgets equal to the grant award in the amount of \$100,000.

Attachments:

DPS Award Letter
Memorandum of Understanding



State of Arkansas
Governor Asa Hutchinson

DEPARTMENT OF PUBLIC SAFETY

A. J. GARY
SECRETARY

1 State Police Plaza Drive
Little Rock, Arkansas 72209
Office: (501) 682-2260

Public Safety Equipment Grant Program
Department of Public Safety
#1 State Police Plaza Drive
Little Rock, AR 72209

December 1st, 2022

Dear Fayetteville Police Chief Reynolds,

The Department of Public Safety (DPS) Equipment Grant Committee has reviewed your application requesting funding under the 2022 DPS Public Safety Equipment Grant Program. Based on their recommendations, I am pleased to award you funding for the 2022 DPS Public Safety Grant Program. We believe your funded project will make an impactful difference to increasing transparency and accountability within the communities your agency serves. As part of the Public Safety Equipment Grant Program, you will receive a *partial* funding amount of **\$100,000** to conduct your grant program over the 2022 & 2023 calendar year with DPS.

Items Funded	Description
Category 3 Body Camera Devices (Auto-Activation Capabilities) with Software Storage Bundle ;	Committee awarded partial funding cap of \$100,000 to be used toward submitted requests (i.e., Funding request for Project Component (1) of (\$135,717.03); and Funding request for Project Component (2) of (\$498,991.96)).
Category 10; Virtual Reality Training Equipment;	
Category 14 Other-IPADS	
Total Amount: \$100,000	

As part of the grant program requirements, the following must be conducted within the 2022 – 2023 calendar year:

- Sign and return the attached Memorandum of Understanding to the DPS Public Safety equipment Grant Committee fourteen (14) days from the date of the received grant award notification; no later than 4:30pm on Friday, December 30th, 2022.
- Utilize funding award for the appropriate items listed in your award notification letter; if all funds are not utilized in the calendar year, unused funds must be returned to DPS at the completion of the grant program.
- Participate and complete any surveys related to the implementation and success of the awarded program as requested by the DPS Research and Planning Division.
- Complete and submit a financial report each month via email, due by the 10th of the following month at 4:30pm to the DPS Research and Planning Division, Special Projects Coordinator, Jackie Baker at Jackie.baker@asp.arkansas.gov providing an accounting of the activities and expenditures for the previous month. A copy of all receipts must be attached. All expenditures are subject to DPS and Legislative Audit Review. All documents must be retained for a period of three (3) years from the receipt of award.

- Submit a final report at the end of the grant period (December 10th, 2023, by 4:30pm), or after all expenses have been incurred, providing a final accounting of the activities and expenditures for the project.

Congratulations on your 2022 DPS Public Safety Equipment Grant Program award. We look forward to working with your agency to continue to improve community trust within the State of Arkansas. Please feel free to contact the Committee Chair, Lt. Jeff Whitlock, by email at Jeff.whitlock@asp.arkansas.gov or phone at (501) 618-8424 if you have any questions.

Sincerely,

Allen "AJ" Gary
Secretary, Arkansas Department of Public Safety (DPS)
Director, Arkansas Division of Emergency Management (ADEM)
AJ.Gary@dps.arkansas.gov



Arkansas Department of Public Safety

Public Safety Equipment Grant Program Fund

1 State Police Plaza Drive
Little Rock, AR 72209

MEMORANDUM OF UNDERSTANDING

In accordance with Act 786 of 2021 the Arkansas Department of Public Safety is responsible for awarding funding from the Public Safety Equipment Grant Fund. Pursuant to the foregoing authority, the Arkansas Department of Public Safety has established the Public Safety Equipment Grant Fund Committee to award funding to applicants who, in the Committee's judgment, best facilitate improving trust between Arkansas law enforcement officers and the communities they serve.

The purpose of this memorandum of understanding is to outline the requirements for applicants that receive grant funding under the DPS Public Safety Equipment Grant Program.

Based on the above, the Arkansas Department of Public Safety ("DPS") and the (City of Fayetteville) (the "Agency") agree as follows:

1. The Agency will maintain records and receipts for items purchased with the grant funds and will furnish copies of all receipts to DPS by the 10th day of the month following the expenditure.
2. Any modification or changes exceeding 10% to the Agency's approved budget must be authorized by the DPS Committee before expenditures for the changes can be made. Any awarded funds not expended during the period set out in the preceding paragraph and in accordance with the budget or approved changes shall be refunded to DPS by 4:30 p.m. December 31, 2023.
3. The awarded funds are subject to audit by DPS and/or the Department of Legislative Audit. Misuse of these funds will result in the Agency being required to reimburse DPS for the funds awarded. Any false, fictitious, or fraudulent statements or claims may result in criminal, civil, or administrative penalties and may prohibit administrations from receiving future awards.(U.S. Code, Title 18, Section 1001)
4. Agencies will be required to complete any surveys related to the implementation and success of the program.

5. The following items will NOT be considered for funding and any funds awarded should not be used for these items:

- Salaries, over time, fringe benefits related to salaries
- Any Specialty Court
- Real Estate
- Vessel or Aircraft
- Vehicles
- Firearms
- Construction Projects
- Buy Money

6. DPS will terminate this agreement and require repayment of any grant funding in the event of fraud, misuse, or expenditures not related to the approved project.

This MOU is in effect from December 1, 2022 through December 31, 2023 and will remain in full force and effect for the duration of the agreement period, not to exceed one year, unless otherwise terminated by DPS.

SIGNATURES

A.J. Gary
Secretary
Arkansas Department of Public Safety

Date: _____

Lioneld Jordan, Mayor

Date: _____

Budget Year	Division	Adjustment Number
2022	POLICE (200)	
	/Org2	
	Requestor: W. Newman	

Establish revenue and expense accounts for the tracking of the 2022 Department of Public Safety Equipment Grant Award.

	COUNCIL DATE:	12/20/2022
	ITEM ID#:	2022-1168
	Kevin Springer	
	12/2/2022 10:03 AM	
	Budget Division	Date
	TYPE:	D - (City Council)
	JOURNAL #:	
	GLDATE:	
	CHKD/POSTED:	/
RESOLUTION/ORDINANCE		

[illegible]

RESOLUTION NO. _____

A RESOLUTION TO APPROVE POLICY AOP-101, GENERAL INFORMATION AND INTRODUCTION OF THE FAYETTEVILLE FIRE DEPARTMENT ADMINISTRATIVE OPERATING PROCEDURES

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 Policy AOP-101, General Information and Introduction of the Fayetteville Fire Department Administrative Operating Procedures.

City of Fayetteville Staff Review Form

2022-1119

Legistar File ID

12/20/2022

City Council Meeting Date - Agenda Item Only

N/A for Non-Agenda Item

Brad Hardin

11/28/2022

FIRE (300)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Staff is requesting Council Approval adopting Fayetteville Fire Department Administrative Operating Procedure Policy Changes.

Budget Impact:

Account Number

Fund

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

\$

-

Purchase Order Number:

Previous Ordinance or Resolution #

V20210527

Change Order Number:

Approval Date:

Original Contract Number:

Comments:



MEETING OF DECEMBER 20, 2022

TO: Mayor and City Council

FROM: Brad Hardin, Fire Chief

DATE: November 28, 2022

SUBJECT: Fire Department Administrative Operating Procedures Changes

RECOMMENDATION:

Staff is requesting Council Approval adopting Fayetteville Fire Department Administrative Operating Procedure Policy Changes.

BACKGROUND:

The Fayetteville Fire Department is currently in the process of reviewing policies and updating as necessary to make changes as recommended and to meet best practices while working through the CFAI accreditation process. Formatting changes are due to a prior change in policy management software.

DISCUSSION:

These changes are part of Fayetteville Fire Policy #AOP-101, General Information and Introduction. These changes include wording and formatting to aid in the process for maintaining and modifying policies and procedures.

BUDGET/STAFF IMPACT:

No Budget Impact with these Policy Changes

Attachments:

Fayetteville Fire Policy #AOP-101, General Information and Introduction

Original Policy



Fayetteville Fire Department	
Administrative Operating Procedures	
AOP-101 General Information and Introduction	
Version 7	Date Created 07/07/2021
AOG Reference:	
CFAI Reference: 7A.3,	



Purpose

The Fayetteville Fire Department (FFD) Administrative Operating Policies (AOP), the City of Fayetteville Policies and Procedures and Standard Operating Procedures, the Rules and Regulations of the Civil Service Commission of the City of Fayetteville, and the FFD Emergency Operations Guidelines (EOG) are the official controlling documents and requirements of the Fayetteville Fire Department and as such, are intended for the general guidance of the Firefighters and members of the Fayetteville Fire Department.

Scope

Much is left to the zeal and discretion of the individual, and efficiency ratings as well as disciplinary actions will depend upon the way the Firefighters and members conduct themselves in the performance of their duties. Compliance with the operating procedures and careful attention to the orders of department officers is necessary to retain the respect and good will of the public which this department enjoys.

Violations of any of the operating procedures, neglect or omission of any of the duties prescribed herein, are considered offenses, and any member found guilty will, at the discretion of the Fire Chief, be subject to reprimand, suspension, demotion, or dismissal from the department.

Administrative Operations Policies

Administrative Operations Policies (AOP) of the Fayetteville Fire Department will contain administrative information related to the overall operation of the department throughout all divisions, programs, and services provided. All AOP documents will be reviewed by, and formally approved by the Fayetteville City Council. Any new AOP or change to existing AOP will be approved through the LMT process, then submitted to and approved by the City Council before it can be published. Any new AOP or change to an AOP that has not been fully approved by LMT and City Council will not be considered valid except as outlined below in the section titled Administrative Directives.

Administrative Directives

Administrative directives will be issued only in emergency situations where changes are time sensitive and vital to the continuance of safe operations. Administrative Directives related to existing policies will reference the policy number, be maintained in the policy management software, and emailed out to all personnel. Administrative directives will expire in 60 days unless through LMT Consensus action is taken to extend or modify them. Efforts will be made to change the current policy or create a new one during that time. If the Administrative directive must be extended or modified, it will be resent to all personnel by email. Once a new policy draft has been created it must go through the process for approval by the LMT and City Council before being published. Once published, the approved AOP will be sent out as a reading assignment on Vector Solutions and the Administrative Directive will be archived.

Administrative Operations Guidelines

Administrative Operations Guidelines (AOG) of the Fayetteville Fire Department will contain detailed procedures for the administration of the related approved AOP. The AOG document must remain flexible to ensure the ability to swiftly enact procedural updates. Any Change to the AOG will be assigned to FFD Personnel through Vector Solutions for review. AOGs shall not be put in place without the existence of a related AOP which will define purpose and parameters of the AOG. All new AOG documents or changes to those in existence will be approved by the LMT.

Emergency Operations Guidelines

Emergency Operations Guidelines (EOG) of the Fayetteville Fire Department will contain more detailed information regarding fire ground and emergency scene organization, strategies, and tactics. The EOG document must remain flexible to ensure the ability to swiftly enact procedural updates and technological changes based on fire service industry standards. EOGs shall not be put in place without the existence of a related AOP which will define the purpose and parameters of the AOG.
All new EOG documents or changes to those in existence will be approved by the LMT.

Policy Maintenance

Maintenance of policies and procedures will be the responsibility of the Planning Battalion Chief. Additions, deletions, and modifications will be implemented as necessary to reconcile changing conditions, and to reflect revisions in policies and procedures. All policies whether in current, draft, or archived status will be stored and maintained utilizing a policy management software program. Current PDF versions of all policies will be available to all personnel in the Vector Solutions "File Center" section.

https://app.targetsolutions.com/tsapp/dashboard/pl_fb/index.cfm?fuseaction=c_pro.show
Home

Changes



Fayetteville Fire Department	
Administrative Policies	
Policy-101 General Information and Introduction	
Version 8	Date Created
	07/07/202111/14/2022
AOG Reference:	
CFAI Reference: 7A 3	



Purpose

The Fayetteville Fire Department (FFD) Administrative ~~Operating~~ Policies (~~AOP~~), the City of Fayetteville Policies and Procedures and Standard Operating Procedures, the Rules and Regulations of the Civil Service Commission of the City of Fayetteville, ~~the FFD Standard Operating Guidelines (SOG)~~, and the FFD Emergency Operations Guidelines (EOG) are the official controlling documents and requirements of the Fayetteville Fire Department and as such, are intended for the general guidance of the Firefighters and members of the Fayetteville Fire Department.

Scope

Much is left to the zeal and discretion of the individual, and efficiency ratings as well as disciplinary actions will depend upon the way the Firefighters and members conduct themselves in the performance of their duties. Compliance with the operating procedures and careful attention to the orders of department officers is necessary to retain the respect and goodwill of the public which this department enjoys.

Violations of any of the operating procedures, neglect, or omission of any of the duties prescribed herein, are considered offenses, and any member found guilty will, at the discretion of the Fire Chief, be subject to reprimand, suspension, demotion, or dismissal from the department.

Administrative Operations PoliciesPolicies

Administrative ~~Operations~~ Policies (AOP) of the Fayetteville Fire Department will contain administrative information related to the overall operation of the department throughout all divisions, programs, and services provided. All ~~AOP-Administrative documents-Policies~~ will be reviewed by, and formally approved by the Fayetteville City Council. Any new ~~AOP-Administrative Policy~~ or change to existing ~~AOP-Administrative Policy~~ will be approved through the ~~Labor Management Team (LMT)~~ process, then submitted to and approved by the City Council before it can be published. Any new ~~AOP-Administrative Policy~~ or change to an ~~AOP-Administrative Policy~~ that has not been fully approved by LMT and City Council will not be considered valid except as outlined below in the section titled Administrative Directives.

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Administrative Operations GuidelinesStandard Operating Guidelines.

~~Administrative Operations~~Standard Operating Guidelines (AOGSOG) of the Fayetteville Fire Department will contain detailed ~~procedures-guidelines and procedures~~ for the administration of the related approved ~~AOPAdministrative Policy~~. The AOG-SOG document must remain flexible to ensure the ability to swiftly enact procedural updates. Any Change to the AOG-SOG will be assigned to FFD Personnel through ~~Vector-Solutions~~ the policy management system for review. AOGs-SOGs shall not be put in place without the existence of a related ~~AOP-Administrative Policy~~ which will define purpose and parameters of the AOGSOG. All new AOG-SOG documents or changes to those in existence will be approved by the LMT.

Emergency Operating Guidelines

Emergency Operating Guidelines (EOG) of the Fayetteville Fire Department will contain more detailed information regarding fire ground and emergency scene organization, strategies, and tactics. The EOG document must remain flexible to ensure the ability to swiftly enact procedural updates and technological changes based on fire service industry standards. EOGs shall not be put in place without the existence of a related AOP-Administrative Policy which will define the purpose and parameters of the EOG.

All new EOG documents or changes to those in existence will be approved by the LMT.

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Policy Maintenance

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https://app.targetedsolutions.com/tsapp/dashboard/pl-fb/index.cfm?fuseaction=c_pre-show-Home

New Policy



Fayetteville Fire Department	
Administrative Policies	
Policy-101 General Information and Introduction	
Version 8	Date Created 11/14/2022
SOG Reference: All SOG & EOG	
CFAI Reference: 7A.3,	



Purpose

The Fayetteville Fire Department (FFD) Administrative Policies, the City of Fayetteville Policies and Procedures and Standard Operating Procedures, the Rules and Regulations of the Civil Service Commission of the City of Fayetteville, the FFD Standard Operating Guidelines (SOG), and the FFD Emergency Operating Guidelines (EOG) are the official controlling documents and requirements of the Fayetteville Fire Department and as such, are intended for the general guidance of the Firefighters and members of the Fayetteville Fire Department.

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Violations of any of the operating procedures, neglect, or omission of any of the duties prescribed herein, are considered offenses, and any member found guilty will, at the discretion of the Fire Chief, be subject to reprimand, suspension, demotion, or dismissal from the department.

Administrative Policies

Administrative Policies of the Fayetteville Fire Department will contain administrative information related to the overall operation of the department throughout all divisions, programs, and services provided. All Administrative Policies will be reviewed by, and formally approved by the Fayetteville City Council. Any new Administrative Policy or change to existing Administrative Policy will be approved through the Labor Management Team (LMT) process, then submitted to and approved by the City Council before it can be published. Any new Administrative Policy or change to an Administrative Policy that has not been fully approved by LMT and City Council will not be considered valid except as outlined below in the section titled Administrative Directives.

Administrative Directives

Administrative directives will be issued only in emergency situations where changes are time sensitive and vital to the continuance of safe operations. Administrative Directives related to existing policies will reference the policy number, be maintained in the policy management software, and be emailed out to all personnel. Administrative directives will expire in 60 days unless through LMT Consensus action is taken to extend or modify them. Efforts will be made to change the current policy or create a new one during that time. If the Administrative directive must be extended or modified, it will be resent to all personnel by email. Once a new policy draft has been created it must go through the process for approval by the LMT and City Council before being published. Once published, the approved version will be sent out as a reading assignment through the policy management system and the Administrative Directive will be archived.

Standard Operating Guidelines.

Standard Operating Guidelines (SOG) of the Fayetteville Fire Department will contain detailed guidelines and procedures for the administration of the related approved Administrative Policy. The SOG document must remain flexible to ensure the ability to swiftly enact procedural updates.

Any Change to the SOG will be assigned to FFD Personnel through the policy management system for review. SOGs shall not be put in place without the existence of a related Administrative Policy that will define the purpose and parameters of the SOG. All new SOG documents or changes to those in existence will be approved by the LMT.

Emergency Operating Guidelines

Emergency Operating Guidelines (EOG) of the Fayetteville Fire Department will contain more detailed information regarding fire ground and emergency scene organization, strategies, and tactics. The EOG document must remain flexible to ensure the ability to swiftly enact procedural updates and technological changes based on fire service industry standards. EOGs shall not be put in place without the existence of a related Administrative Policy that will define the purpose and parameters of the EOG. All new EOG documents or changes to those in existence will be approved by the LMT.

Policy Maintenance

Maintenance of policies and procedures will be the responsibility of a designated Chief Officer. Additions, deletions, and modifications will be implemented as necessary to reconcile changing conditions, and to reflect revisions in policies and procedures. All policies whether in published, draft or archived status will be stored and maintained utilizing a policy management software program. Current PDF versions of all policies will be available to all personnel in the designated policy software program.

RESOLUTION NO. _____

A RESOLUTION TO APPROVE THE THIRD AND FINAL (2) YEAR RENEWAL CONTRACT WITH STARTUP JUNKIE CONSULTING, LLC TO PROVIDE ECONOMIC DEVELOPMENT CONSULTING SERVICES IN THE AREAS OF ENTREPRENEURSHIP AND INNOVATION IN THE TOTAL AMOUNT OF \$300,000.00

WHEREAS, Startup Junkie Consulting, LLC was competitively selected by a City selection committee to provide economic development consulting services to the City of Fayetteville in the areas of entrepreneurship and innovation and an initial two year contract was approved by the City Council by Resolution 184-16 on October 4, 2016 in the amount of \$12,500.00 per month; and

WHEREAS, in the last two years of serving as the City's economic development consultant, Startup Junkie has hosted 183 events, workshops and programs drawing 12,579 attendees and has held 188 sessions assisting minority entrepreneurs, 326 sessions assisting women entrepreneurs, and 39 sessions assisting veteran entrepreneurs; and

WHEREAS, in the past two years alone Startup Junkie has dedicated 2,075 hours to events, programming, and workshops in the City of Fayetteville including 183 hours of mentoring, consulting, and one-on-one session assisting over 898 unique Fayetteville ventures; and

WHEREAS, Startup Junkie Consulting has demonstrated an immense amount of flexibility over the past six years of the contract and staff believes this flexibility will be valuable as the City continues to navigate the challenges of the pandemic and the uncertainty ahead.

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 the attached Third Renewal of Contract for Economic Development Consulting Services with Startup Junkie Consulting, LLC to provide economic development consulting services to the City of Fayetteville in the areas of entrepreneurship and innovation in the total amount of \$300,000.00.

City of Fayetteville Staff Review Form

2022-1117

Legistar File ID

12/20/2022

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

Devin Howland

11/23/2022

ECONOMIC DEVELOPMENT (050)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Staff is recommending approval of the third and final renewal for a two-year contract with Startup Junkie Consulting LLC to provide economic development services in the areas of entrepreneurship and innovation.

Budget Impact:

1010.050.0500-5315.00

General Fund

Account Number

Fund

N/A

N/A

Project Number

Project Title

Budgeted Item? Yes

Current Budget \$ 330,000.00

Funds Obligated \$ -

Current Balance **\$ 330,000.00**

Does item have a cost? Yes

Item Cost \$ 300,000.00

Budget Adjustment Attached? No

Budget Adjustment \$ -

Remaining Budget **\$ 30,000.00**

V20210527

Purchase Order Number: 2016-0561

Previous Ordinance or Resolution # 52-21

Change Order Number:

Approval Date:

Original Contract Number: 2016-0012

Comments:



MEETING OF DECEMBER 20, 2022

TO: Mayor and City Council

THRU: Susan Norton, Chief of Staff

FROM: Devin Howland, Director of Economic Vitality

DATE: November 22, 2022

SUBJECT: A RESOLUTION AUTHORIZING MAYOR JORDAN TO SIGN THE THIRD AND FINAL CONTRACT RENEWAL WITH STARTUP JUNKIE CONSULTING LLC FOR ECONOMIC DEVELOPMENT CONSULTING SERVICES- ENTREPRENEURSHIP AND INNOVATION

RECOMMENDATION:

Staff is recommending approval of the third and final renewal for a two-year contract with Startup Junkie Consulting LLC to provide economic development services in the realm of entrepreneurship and innovation.

BACKGROUND:

The City issued RFP-16-06 on July 6, 2016 and received proposals on July 29th. This RFP, as all Economic Development RFPs, are for specific services to the City. The selection committee (including Council Member Adella Gray) recommended entering negotiations with Startup Junkie Consulting to provide the requested services. On October 4, 2016 Resolution 184-16 was passed, authorizing a two-year contract with Startup Junkie Consulting.

In 2018, the Fayetteville City Council passed resolution 269-18, authorizing the first two-year renewal with Startup Junkie Consulting LLC. In 2021, the Fayetteville City Council passed Resolution 52-21 with a vote of 8-0, authorizing the second two-year renewal for these economic development services.

The contract allows for three additional two-year terms with approval of both parties, this item is for the third and final renewal of the entrepreneurship and innovation contract.

DISCUSSION:

As small businesses succeed and grow, these innovators and risk takers turn into job creators. Some of Fayetteville's most successful economic development projects/employers stemmed from residents pursuing their entrepreneurial dreams. Companies like B-Unlimited, Acre Trader, CatalyzeH2O (and hundreds more) can trace their success back to their entrepreneurial beginnings in Fayetteville. In the practice of Economic Development, this is a concept called economic gardening. The entrepreneurs of today turn into tomorrow's employers, service providers, and businesses that help give Fayetteville its outstanding quality of life.

Startup Junkie Consulting's delivery of the Entrepreneurship and Innovation contract continues to provide a robust range of services to businesses of all sizes, right in the heart of Downtown Fayetteville. The Entrepreneurship and Innovation contract calls for a wide range of services and focuses, however at its core the contract delivers four key components:

1. Dedicates 1 FTE to the Department of Economic Vitality: Startup Junkie has consistently exceeded this threshold of 2,075 hours, nearing 2,500+ annually. The Department of Economic Vitality has used this provision for a wide range of items, even efforts that are outside of the specific scope of the contract such as staffing events for the Economic Vitality Master Plan.
2. Retains Center Space in Downtown Fayetteville, and most of the regional programming: The Entrepreneurial scene is alive and well in Downtown Fayetteville, in large part thanks to the programming efforts of Startup Junkie Consulting, and the entrepreneurial energy that stems from Center Space. Center Space is a free co-working space funded by Startup Junkie that also serves as their headquarters (\$60,000 annual expense for lease and utilities). Center Space operating in Downtown Fayetteville has several other advantages, the most important of which is easy access to 1-on-1 consulting for Fayetteville residents. The second is the direct and indirect benefit of the programming taking place at Center Space. The City of Fayetteville receives far more programming than any other community in Northwest Arkansas.
3. Maintains the ever-growing event, the Startup Crawl: The Startup Crawl is Arkansas's largest entrepreneurial event. Born out of a previous contractual requirement of Startup Junkie's (management of the Innovation Council), this event continues to serve as a celebration of Fayetteville and Northwest Arkansas's Entrepreneurial Spirit. Boasting over 2,000 attendees and fifty participating businesses, this event has become a welcomed staple of Downtown programming, and a critical pillar to the City's Economic Vitality strategy.
4. Free 1-on-1 Consulting: When a service is easily accessible, it's utilized by more residents. When more residents have access to resources to pursue their entrepreneurial dreams, more small businesses open and succeed. Retaining this easy access to a wide range of expertise on the Fayetteville Square is the most important tenant of this contract.

Lastly, one of Startup Junkie's strongest attributes is the customer service they provide to the City of Fayetteville. The organization continues to go above and beyond each week and is hyper responsive to any and all requests.

Outputs	
Fayetteville Entrepreneurs Served	881
One-on-One Consulting sessions in Fayetteville	898
Women Owned Ventures Assisted	326
Minority Owned Ventures Assisted	188
Veteran Owned Ventures Assisted	39
Number of Events, Workshops, or Programming Engagements	183
Total Number of attendees at events	12,579
Outcomes	
Net New Jobs Created	889
Capital Raised	\$67,940,847
State and Federal Grants Secured	\$22,636,918
New products, services, or solutions brought to market	3912
Patents and Patent Applications submitted	148
SBIR/STTR Awards secured	15
Number of retail, restaurant, and accommodation ventures assisted	108

A high-level view of the successes and work completed during the last two years can be found in the 2021-2022 Two-Year Report attached to this memo or on our website at:
<https://www.Fayetteville-ar.gov/3358/Economic-Vitality-Progress-Report>

A more detailed view of the work completed on a month-by-month bases can be found by reviewing Startup Junkie's monthly reports on the same progress page.

BUDGET/STAFF IMPACT:

The contract in consideration is for a two-year period and has a cost of \$150,000 annually.

Attachments:

Contract and Exhibit A
Resolution 184-16
Resolution 189-18
Resolution 269-18
Resolution 52-21
Two-Year Startup Junkie Report
Letter from Startup Junkie Consulting

**THIRD RENEWAL OF CONTRACT FOR
ECONOMIC DEVELOPMENT CONSULTING SERVICES
BETWEEN
THE CITY OF FAYETTEVILLE, ARKANSAS
AND
STARTUP JUNKIE CONSULTING**

WHEREAS, the City of Fayetteville, Arkansas wishes to contract for Economic Development Consulting Services, and;

WHEREAS, Startup Junkie Consulting wishes to provide certain Economic Development Consulting Services to the City of Fayetteville, Arkansas, and;

WHEREAS, Startup Junkie Consulting has been selected to perform Economic Development Consulting Services for the City of Fayetteville utilizing the competitive Request for Proposal selection process (via RFP 16-06, Economic Development Consulting Services – Entrepreneurship and Innovation), and;

WHEREAS, the City Council of Fayetteville, Arkansas and Startup Junkie Consulting wish to extend the contract for Economic Development Consulting Services an additional two years as provided in RFP 16-06 and the original contract approved by Resolution No. 184-16.

NOW THEREFORE, in consideration of the mutual promises contained in this Agreement and other good and valuable consideration, the parties agree as follows:

1. This Agreement is made effective the first day of January, 2023 by and between the City of Fayetteville, Arkansas located at 113 W. Mountain, Fayetteville, Arkansas 72701 and Startup Junkie Consulting located at 1 # Center Street, Suite 270, Fayetteville, Arkansas 72701. The terms and conditions set forth in this Agreement supersede and replace the terms and conditions of any prior contract or amendment for economic development consulting services between the parties.
2. **Term**: This Agreement, governing the second of three potential two-year extensions, shall commence on January 1, 2023, and shall end December 31, 2024. This contract may be canceled by either party with thirty days written notice.
3. **Renewals/Extensions**: This agreement may not be renewed but the parties may extend this agreement up to an additional six months upon mutual written consent by both parties.
4. **Attachments**: The Contract documents, which comprise the contract between the City of Fayetteville and Startup Junkie Consulting, consist of this Contract and the following documents attached hereto, and made a part hereof:

a.) Exhibit A - Revised Schedule of Deliverables and Performance Measures

** The City of Fayetteville shall coordinate with Startup Junkie Consulting for modifications to this schedule. Any modifications to Exhibit A shall not reduce the quality or quantity of the services to be provided pursuant to this contract, as determined by the Mayor or his/her Chief of Staff or his/her Director of Economic Vitality. Any modifications shall be agreed upon by both the City and Startup Junkie Consulting; however, any changes affecting price shall have prior approval by both Startup Junkie Consulting and the Fayetteville City Council. In the event Exhibit A is revised and the price is not modified, such revised document shall be provided to the City Council at the next regularly scheduled update.*

5. **Services to be Provided:** During the terms of this Agreement, Startup Junkie Consulting shall:

- Serve as the first point of contact for economic development services as the City's contractor for Entrepreneurship and Innovation services;
- Maintain clear and open communication with the City on all economic development services and activities provided under the scope of this contract; and clearly articulate when communicating on behalf of Startup Junkie Consulting versus City-contracted initiatives to create clear accountability;
- Provide all deliverables and performance measures outlined in the attached Exhibit A.

6. **Fees and Expenses:** The City of Fayetteville agrees the consulting fee shall be paid upon invoice as follows:

Consultation Services shall be invoiced for quarter in the amount of \$37,500 per quarter. Total fees for consultation services shall not exceed \$300,000, from the date of contract. Startup Junkie Consulting shall track, log and report hours and expenses directly related to this Agreement along with invoice for payment for each month. Invoices shall be itemized.

Payment of the above-described fees shall be contingent upon annual budget approval by the Fayetteville City Council. If funds are not appropriated for any year this Agreement shall be terminated at the end of the then current term. If funds appropriated are less than the full amount contemplated by this Agreement then the parties shall agree upon an amended Revised Schedule of Deliverables and Performance Measures (Exhibit A). In the event the parties are unable to reach an agreement on an amended schedule, then the Agreement shall be terminated at the end of current month.

7. **Notices**: Any notice required to be given under this Agreement to either party to the other shall be sufficient if addressed and mailed, certified mail, postage paid, delivery, fax (receipt confirmed), or overnight courier.

8. **Applicable Law**: This Agreement shall be governed by and construed in accord with the laws of the State of Arkansas.

9. **Entire Agreement**: This Agreement sets forth the entire agreement and understanding between the parties on the subject matter of this Agreement. Neither party shall be bound by any conditions, definitions, representations or warranties with respect to the subject matter of this Agreement other than those as expressly provided herein.

10. **Amendments and Waivers**: Changes, modifications, or amendments in cost or fees to this contract shall not be allowed without a prior formal contract amendment approved by the Mayor and the City Council **in advance** of the change in cost or fees. No modification of this Agreement shall be binding unless made in writing and executed by both parties. No waiver by either party or any breach or obligation of the other party under this Agreement shall constitute a waiver of any other prior or subsequent breach or obligation.

11. **Performance Measures**: Startup Junkie Consulting shall provide the deliverables as outlined in the attached Exhibit A, which serves to implement the adopted Fayetteville First Economic Development Strategic Plan. Performance measures are included for the services and will be used to evaluate the work performed throughout the entire term of the contract.

12. **Contract Administration**: The Mayor or his/her Chief of Staff or his/her Director of Economic Vitality shall be the Contract Administrator for this contract. Startup Junkie Consulting Principal or his/her Designated Representative shall be the primary contact for all matters pertaining to this contract. While it is understood that many facts pertaining to projects must be held in the strictest confidence, Startup Junkie Consulting Principal will insure that the Mayor and the Director of Economic Vitality are kept abreast of details and progress made pertaining to Economic Development prospects considering development in Fayetteville to the greatest extent possible.

13. **Freedom of Information Act**: City contracts and documents prepared while performing work pursuant to this contract may be subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville or to Startup Junkie Consulting the parties shall do everything possible, in a prompt and timely manner, to determine whether the requested records must be disclosed as required by the Arkansas Freedom of Information Act (A.C.A. §25-19-101 et. seq.), or whether the records are exempt pursuant to A.C.A. § 25-19-105(b), A.C.A. § 14-176-105(b)(1) or other applicable state or federal law. Records required to be disclosed

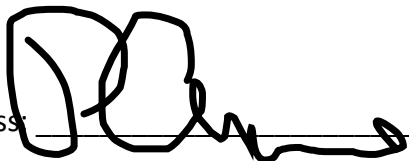
shall be made available for inspection and copying. Only legally authorized photocopying costs pursuant to the Freedom of Information Act may be assessed for this compliance.

IN WITNESS WHEREOF, the parties have executed this Agreement.

Startup Junkie Consulting

By: 
Jeff Amerine, Principal

Date: 11/22/22

Witness: 

Date: 11/22/22

The City of Fayetteville, Arkansas

By: _____
Lioneld Jordan, Mayor

Date: _____

Attest:

Kara Paxton, City Clerk/Treasurer

Date: _____

Exhibit “A”

Contract for Economic Development Services- Entrepreneurship & Innovation

2023-2024 Schedule of Deliverables and Performance Measures

As outlined herein, Startup Junkie Consulting shall provide the following services, more generally referred to as Entrepreneurship & Innovation economic development services:

- One.** Support and develop a collaborative entrepreneurial/innovative environment
- Two.** Performance Measures
- Three.** Increase high-tech job growth and University partnerships
- Four.** Create innovative spaces and programs to support entrepreneurs
- Five.** Expand and enhance Workforce Development, Attraction, and Retention through entrepreneurship education opportunities at all levels.
- Six.** Support, Foster, and Expand entrepreneurship through retail and restaurant development
- Seven.** Collaborate with the City for communication to the public
- Eight.** Report Outcomes

One: Support and develop a collaborative entrepreneurial/innovation environment

- 1.** *Serve as a direct point of contact for entrepreneurship/innovation and startup efforts for the City of Fayetteville.*
 - a.** Coordinate with all entities involved in entrepreneurial efforts in the City of Fayetteville and serve as the point person in addressing any city-related processes that impact entrepreneurs.
 - b.** Dedicate one full-time employee to work with the Department of Economic Vitality on realizing the objectives and measures outlined in the contract.
 - c.** Maintain a bright line of communication with the City’s Economic Development team to maintain accountability and address issues as they arise.
- 2.** *Assist the City with the completion and implementation of the next Economic Vitality Master Plan.* This plan is being developed as a result of the economic crisis from the coronavirus pandemic and the expiration of the Fayetteville First Plan:
 - a.** Assisting the Department of Economic Vitality in the development of a system to continually track the survival rate of various small businesses on an annual basis, as well as other tracking measures for goals related to small businesses;
 - b.** Continuing to assist in the writing, data aggregation and analysis, and publication of the next Economic Vitality Master Plan;
 - c.** Access and report on best practices for small business support from communities across the country, exploring how to adapt them to work within the parameters of the laws of the City of Fayetteville and State of Arkansas;

- d. Identifying and developing mid-term and long-term strategies for the redevelopment and activation of small businesses within the City of Fayetteville.
- 3. *Start-up/Entrepreneurial Business Retention and Expansion*. In order to promote a welcoming and sustainable environment for entrepreneurship, implement a business retention and expansion program for startups.
 - a. The city expects top 25 fastest growing Fayetteville startups to be visited annually. A questionnaire developed in partnership with the Department of Economic Vitality shall be used.
 - b. Business needs or challenges that are identified during the visit and or survey shall be reported to the Director of Economic Vitality immediately.

Two: Performance Measures

- 1. The performance measures outlined below serve to measure specific work which is completed as a result of the services outlined in the contract being completed.
 - a. Outputs:
 - i. Number of Fayetteville entrepreneurs served through 1 on 1 consulting, mentoring, and assistance engagements;
 - ii. Number of women, minority, and veterans served in Fayetteville;
 - iii. Number of events, programs, and workshops held in Fayetteville;
 - b. Outcomes:
 - i. Net new jobs created in Fayetteville;
 - ii. Capital raised for Fayetteville entrepreneurs;
 - iii. Grants and State and Federal funding raised and secured by Fayetteville ventures;
 - iv. New products, services, and solutions brought to market by Fayetteville entrepreneurs;
 - v. Number of patents and patent applications by Fayetteville entrepreneurs;
 - vi. Number of SBIR, NSF and STTR applications filed for Fayetteville entrepreneurs;
 - vii. Number of retail, restaurant, and accommodation startups assisted in Fayetteville;

Three: Increase high-tech job growth and University Partnerships

1. *Promote and facilitate utilization of the Small Business Innovation Research, National Science Foundation, and the Small Business Technology Transfer Programs.* Work closely with the University of Arkansas and relevant small businesses to apply and obtain SBIR and STTR funding.

Four: Create innovative spaces and programs to support entrepreneurs

1. *Create and provide collaboration space.* Clustering the physical spaces in which entrepreneurs can collaborate is one way to encourage idea generation, maturation and sharing of resources. Startup Junkie Consulting will provide collaboration space free to the public in the form of Centespace, in the Fayetteville Innovation District, currently located on the 2nd floor of the Pryor Center in Suite 270.
 - a. In addition to maintaining the existing Centespace free and open to the public, Startup Junkie Consulting will maintain an inventory of additional shared space opportunities for entrepreneurs, innovators, inventors and creatives throughout the City.
2. *Entrepreneurial Programing.* Continue to provide a wide range of entrepreneurial programing through a wide range of events that educate entrepreneurs and inspire residents to start their own ventures.
 - a. In addition to rotating regional and digital events, Startup Junkie shall host the Startup Crawl (or an adapted version such as Startup Week) in Fayetteville annually, working to enhance and evolve this premier event to ensure its continued growth and participation.
3. *Support the Center for Innovation and robotics training center.* Support the Fayetteville Public Library's Center for Innovation and the Chamber of Commerce's Robotics Training Center in downtown and engage in efforts to link interested users of the space and related programs.

Five: Expand and enhance Workforce Development, Attraction, and Retention through Entrepreneurship Education Opportunities at all levels

1. *Understand existing small business and targeted business sector needs.* Review and participate in workforce analysis studies done for the region and locally to gain an understanding of the workforce availability related to the occupations required of the

targeted business sectors, partnering with the Department of Economic Vitality on this initiative. Care should be taken to not duplicate efforts already underway.

2. *Identify pathways to prosperity through entrepreneurship.* Work with the Department of Economic Vitality, non-profits, and other relevant organizations to promote entrepreneurship as a pathway to prosperity for disadvantage populations and populations with barriers. Work with the Department of Economic Vitality to create programs and educational opportunities that equip disadvantaged residents with the knowledge and skills needed to achieve meaningful employment at a living wage through the creation of their own business or venture.
3. *Provide entrepreneurial education through programing and engagement.* Develop and lead programs that enrich talent development, starting at the youngest ages, as a key part of workforce development. Focus on diversity of population in all aspects of entrepreneurship. Continue to lead youth entrepreneurship programs such as E-Teen Ventures and AR Girls Code. Support efforts such as AR Code Festival, NWA Startup Weekend, Congressional App Challenge, Dream B.I.G. and Lemonade Day of Northwest Arkansas.

Six: Support, Foster, and Expand Entrepreneurship through Retail Trade and Growth Concept Oriented Development

1. *Drive adaptation to ecommerce platforms.* Work with small businesses to promote an omni-channel approach to commerce encouraging the utilization of e-commerce for all applicable sectors. Work with the Department of Economic Vitality to establish and maintain a simple “one sheet” on information and best practices for utilizing e-commerce.
2. *Support and curate small retail and restaurant-oriented businesses.* Fayetteville is known for its robust collection of small businesses located throughout the City. These businesses provide unique experiential retail experiences to residents and visitors alike. Work with the Department of Economic Vitality to expand the City of Fayetteville’s retail base through educational programs and targeted placement of small businesses throughout the City.
 - a. Explore experiential small business opportunities such as trail-oriented development and other unique ventures which activate spaces throughout the City in coordination with the City’s growth concept map.
 - b. Identify unique opportunities for small businesses that are currently not active in Fayetteville, that add to the outstanding quality of life Fayetteville is known for,

update the Department of Economic Vitality on those opportunities regularly and work to recruit and development them in the City of Fayetteville.

- c. Attract and pursue existing small businesses not located in Fayetteville who may be expanding and work to place those expansions to Fayetteville. This may include small businesses currently operating in the region, or other surrounding metro-areas.

Seven: Collaborate with the City for Communication with the Public

1. Communications pertaining to the implementation of the Fayetteville First Plan and the implementation, outputs, or outcomes of this contract will be communicated on the City's Economic Development website using the City's branding and marketing. Communication and engagement with the business community as it relates to measures outlined in the contract will be done through the City's website, which is managed by the Department of Economic Vitality. Promotion of the measures outlined in the contract will be conducted through the City's social media channels. All performance measures and reports will be updated on a monthly basis via the City's web site by the Department of Economic Vitality.
2. Collaborate with and assist the Department of Economic Vitality on the development of a place-based marketing campaign which highlights the entrepreneurial ecosystem of Fayetteville, celebrates successful startups, and brings awareness to other assets within Fayetteville important to the startup community.
3. Communications from Startup Junkie Consulting related to economic development initiatives within the scope of this contract, major decisions and/or development matters, and public-facing activities should be coordinated with the Mayor's office or his assigned staff. This includes statements at City Council meetings, Agenda Sessions, public presentations, press conferences, etc. Updates to the City Council will be given in June and December of each calendar year.

Eight: Reports and Presentations

1. Reporting results and milestones will be done as deliverables are met in the implementation of the Fayetteville First Economic Development Strategic Plan and will be formatted to fit within the City's Economic Development branding on the city web site. The City's internal Economic Development team will meet regularly with Startup Junkie Consulting (at a minimum on a monthly basis) to discuss the status of deliverables. The Mayor and/or City Council may request periodic updates and public engagement for citizens to be kept informed of the city's economic development goals. Startup Junkie Consulting will be expected to attend quarterly "collaboration meetings" with the City of Fayetteville and the Fayetteville Chamber of Commerce. Startup Junkie Consulting will attend weekly conference calls with the Director of Economic Vitality.

- 2.** Startup Junking Consulting shall provide written reports and prepare a brief presentation to the Mayor and City Council on at least a bi-annual basis. Reports and presentations should outline the tasks accomplished, outcomes achieved and include statistics for each performance measure outlined herein.
- 3.** A schedule for completion of outlined performance measures and a monthly status report shall be submitted for each month of the contract, delivered during regular monthly meetings with the City's internal team.



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

Resolution: 184-16

File Number: 2016-0404

STARTUP JUNKIE CONSULTING, LLC:

A RESOLUTION TO APPROVE A TWO (2) YEAR CONTRACT WITH STARTUP JUNKIE CONSULTING, LLC TO PROVIDE ECONOMIC DEVELOPMENT CONSULTING SERVICES IN THE AREAS OF ENTREPRENEURSHIP AND INNOVATION IN THE AMOUNT OF \$300,000.00, AND TO APPROVE A BUDGET ADJUSTMENT.

WHEREAS, Startup Junkie Consulting, LLC was competitively selected by a City selection committee to provide economic development consulting services to the City of Fayetteville in the areas of entrepreneurship and innovation in the amount of \$12,500.00 per month.

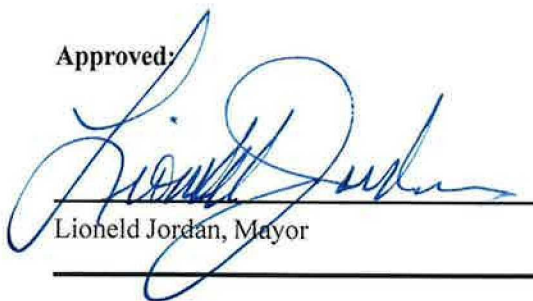
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves the attached two (2) year contract with Startup Junkie Consulting, LLC to provide economic development consulting services to the City of Fayetteville in the areas of entrepreneurship and innovation in the amount of \$300,000.00.

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.

PASSED and APPROVED on 10/4/2016

Approved:


Lioneld Jordan, Mayor

Attest:


Sondra E. Smith, City Clerk Treasurer





City of Fayetteville, Arkansas

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

Text File

File Number: 2016-0404

Agenda Date: 10/4/2016

Version: 1

Status: Passed

In Control: City Council Meeting

File Type: Resolution

Agenda Number: C. 7

STARTUP JUNKIE CONSULTING, LLC:

A RESOLUTION TO APPROVE A TWO (2) YEAR CONTRACT WITH STARTUP JUNKIE CONSULTING, LLC TO PROVIDE ECONOMIC DEVELOPMENT CONSULTING SERVICES IN THE AREAS OF ENTREPRENEURSHIP AND INNOVATION IN THE AMOUNT OF \$300,000.00, AND TO APPROVE A BUDGET ADJUSTMENT

WHEREAS, Startup Junkie Consulting, LLC was competitively selected by a City selection committee to provide economic development consulting services to the City of Fayetteville in the areas of entrepreneurship and innovation in the amount of \$12,500.00 per month.

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 attached two (2) year contract with Startup Junkie Consulting, LLC to provide economic development consulting services to the City of Fayetteville in the areas of entrepreneurship and innovation in the amount of \$300,000.00.

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.



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

Resolution: 189-18

File Number: 2018-0444

STARTUP JUNKIE CONSULTING, LLC AMENDMENT NO. 2:

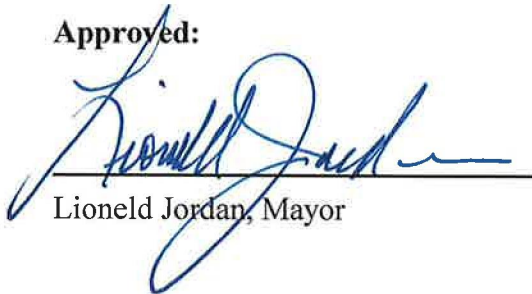
A RESOLUTION TO APPROVE AMENDMENT NO. 2 TO THE CONTRACT WITH STARTUP JUNKIE CONSULTING, LLC FOR AN ADDITIONAL THREE (3) MONTHS OF ECONOMIC DEVELOPMENT CONSULTING SERVICES IN AN AMOUNT NOT TO EXCEED \$37,500.00

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 and authorizes Mayor Jordan to sign Amendment No. 2 to the contract with Startup Junkie Consulting, LLC for an additional three (3) months of economic development consulting services in an amount not to exceed \$37,500.00.

PASSED and APPROVED on 9/4/2018

Approved:


Lioneld Jordan, Mayor

Attest:


Sondra E. Smith, City Clerk Treasurer





City of Fayetteville, Arkansas

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

Text File

File Number: 2018-0444

Agenda Date: 9/4/2018

Version: 1

Status: Passed

In Control: City Council Meeting

File Type: Resolution

Agenda Number: A. 4

STARTUP JUNKIE CONSULTING, LLC AMENDMENT NO. 2:

A RESOLUTION TO APPROVE AMENDMENT NO. 2 TO THE CONTRACT WITH STARTUP JUNKIE CONSULTING, LLC FOR AN ADDITIONAL THREE (3) MONTHS OF ECONOMIC DEVELOPMENT CONSULTING SERVICES IN AN AMOUNT NOT TO EXCEED \$37,500.00

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 and authorizes Mayor Jordan to sign Amendment No. 2 to the contract with Startup Junkie Consulting, LLC for an additional three (3) months of economic development consulting services in an amount not to exceed \$37,500.00.



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

Resolution: 269-18

File Number: 2018-0662

STARTUP JUNKIE CONSULTING, LLC:

A RESOLUTION TO APPROVE THE FIRST TWO (2) YEAR RENEWAL CONTRACT WITH STARTUP JUNKIE CONSULTING, LLC TO PROVIDE ECONOMIC DEVELOPMENT CONSULTING SERVICES IN THE AREAS OF ENTREPRENEURSHIP AND INNOVATION IN THE TOTAL AMOUNT OF \$300,000.00

WHEREAS, Startup Junkie Consulting, LLC was competitively selected by a City selection committee to provide economic development consulting services to the City of Fayetteville in the areas of entrepreneurship and innovation and an initial two year contract was approved by the City Council by Resolution 184-16 on October 4, 2016 in the amount of \$12,500.00 per month; and

WHEREAS, since becoming the City's economic development consultant, Startup Junkie has hosted 192 events, workshops and programs drawing 14,701 attendees and has held 292 sessions assisting minority entrepreneurs, 386 sessions assisting women entrepreneurs, and 163 sessions assisting veteran entrepreneurs; and

WHEREAS, in the past year alone Startup Junkie has dedicated 2,873 hours to events, programming, and workshops in the City of Fayetteville including 1,695 hours of mentoring, consulting, and one-on-one session assisting over 221 unique Fayetteville ventures; and

WHEREAS, Startup Junkie Consulting and the City desire to extend the contract for an additional two years with significant changes so that Startup Junkie Consulting will function more like an extension of staff for the Department of Economic Vitality including a full-time employee dedicated solely to assist the City in realizing the goals of the Fayetteville First Plan on a daily basis; and

WHEREAS, the renewal contract ensures that the Startup Crawl and Center Space will remain in Fayetteville, pivots Startup Junkie's efforts toward the recruitment and attraction of expanding startups

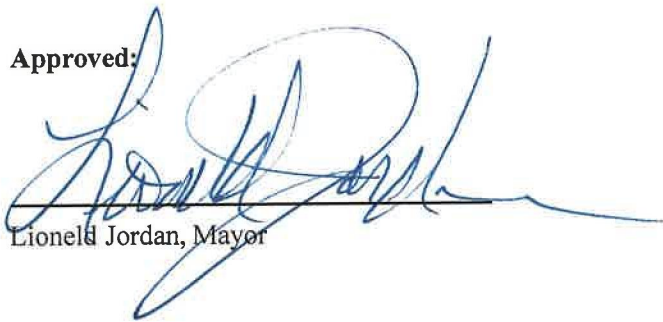
into Fayetteville, and adds new performance metrics.

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 the attached First Renewal of Contract for Economic Development Consulting Services with Startup Junkie Consulting, LLC to provide economic development consulting services to the City of Fayetteville in the areas of entrepreneurship and innovation in the total amount of \$300,000.00.

PASSED and APPROVED on 12/18/2018

Approved:



Lionel Jordan, Mayor

Attest:



Sondra E. Smith, City Clerk Treasurer





City of Fayetteville, Arkansas

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

Text File

File Number: 2018-0662

Agenda Date: 12/18/2018

Version: 1

Status: Passed

In Control: City Council Meeting

File Type: Resolution

Agenda Number: A. 20

STARTUP JUNKIE CONSULTING, LLC:

A RESOLUTION TO APPROVE THE FIRST TWO (2) YEAR RENEWAL CONTRACT WITH STARTUP JUNKIE CONSULTING, LLC TO PROVIDE ECONOMIC DEVELOPMENT CONSULTING SERVICES IN THE AREAS OF ENTREPRENEURSHIP AND INNOVATION IN THE TOTAL AMOUNT OF \$300,000.00

WHEREAS, Startup Junkie Consulting, LLC was competitively selected by a City selection committee to provide economic development consulting services to the City of Fayetteville in the areas of entrepreneurship and innovation and an initial two year contract was approved by the City Council by Resolution 184-16 on October 4, 2016 in the amount of \$12,500.00 per month; and

WHEREAS, since becoming the City's economic development consultant, Startup Junkie has hosted 192 events, workshops and programs drawing 14,701 attendees and has held 292 sessions assisting minority entrepreneurs, 386 sessions assisting women entrepreneurs, and 163 sessions assisting veteran entrepreneurs; and

WHEREAS, in the past year alone Startup Junkie has dedicated 2,873 hours to events, programming, and workshops in the City of Fayetteville including 1,695 hours of mentoring, consulting, and one-on-one session assisting over 221 unique Fayetteville ventures; and

WHEREAS, Startup Junkie Consulting and the City desire to extend the contract for an additional two years with significant changes so that Startup Junkie Consulting will function more like an extension of staff for the Department of Economic Vitality including a full-time employee dedicated solely to assist the City in realizing the goals of the Fayetteville First Plan on a daily basis; and

WHEREAS, the renewal contract ensures that the Startup Crawl and Center Space will remain in Fayetteville, pivots Startup Junkie's efforts toward the recruitment and attraction of expanding startups into Fayetteville, and adds new performance metrics.

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 the attached First Renewal of Contract for Economic Development Consulting Services with Startup Junkie Consulting, LLC to provide economic development consulting services to the City of Fayetteville in the areas of

entrepreneurship and innovation in the total amount of \$300,000.00.



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

Resolution: 52-21

ARCHIVED

File Number: 2021-0020

STARTUP JUNKIE CONSULTING, LLC:

A RESOLUTION TO APPROVE THE SECOND TWO (2) YEAR RENEWAL CONTRACT WITH STARTUP JUNKIE CONSULTING, LLC TO PROVIDE ECONOMIC DEVELOPMENT CONSULTING SERVICES IN THE AREAS OF ENTREPRENEURSHIP AND INNOVATION IN THE TOTAL AMOUNT OF \$300,000.00

WHEREAS, Startup Junkie Consulting, LLC was competitively selected by a City selection committee to provide economic development consulting services to the City of Fayetteville in the areas of entrepreneurship and innovation and an initial two year contract was approved by the City Council by Resolution 184-16 on October 4, 2016 in the amount of \$12,500.00 per month; and

WHEREAS, in the last two years of serving as the City's economic development consultant, Startup Junkie has hosted 256 events, workshops and programs drawing 19,560 attendees and has held 154 sessions assisting minority entrepreneurs, 289 sessions assisting women entrepreneurs, and 53 sessions assisting veteran entrepreneurs; and

WHEREAS, in the past two years alone Startup Junkie has dedicated 2,873 hours to events, programming, and workshops in the City of Fayetteville including 1,122 hours of mentoring, consulting, and one-on-one session assisting over 221 unique Fayetteville ventures; and

WHEREAS, Startup Junkie Consulting has provided an extremely high level of service to City staff, small businesses in Fayetteville, and the City of Fayetteville as whole, particularly through the challenges of the COVID-19 pandemic; and

WHEREAS, Startup Junkie Consulting has demonstrated an immense amount of flexibility over the past four years of the contract and staff believes this flexibility will be valuable as the City continues to

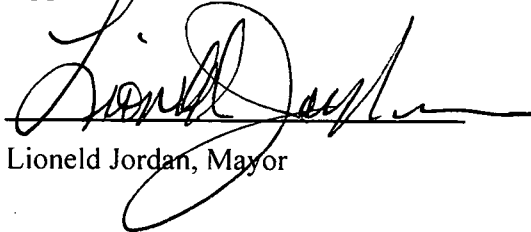
navigate the challenges of the pandemic and the uncertainty ahead.

**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 the attached Second Renewal of Contract for Economic Development Consulting Services with Startup Junkie Consulting, LLC to provide economic development consulting services to the City of Fayetteville in the areas of entrepreneurship and innovation in the total amount of \$300,000.00.

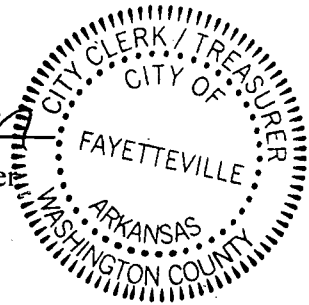
PASSED and APPROVED on 2/2/2021

Approved:


Lioneld Jordan, Mayor

Attest:


Kara Paxton, City Clerk Treasurer





City of Fayetteville, Arkansas

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

Text File

File Number: 2021-0020

Agenda Date: 2/2/2021

Version: 1

Status: Passed

In Control: City Council Meeting

File Type: Resolution

Agenda Number: C.5

STARTUP JUNKIE CONSULTING, LLC:

A RESOLUTION TO APPROVE THE SECOND TWO (2) YEAR RENEWAL CONTRACT WITH STARTUP JUNKIE CONSULTING, LLC TO PROVIDE ECONOMIC DEVELOPMENT CONSULTING SERVICES IN THE AREAS OF ENTREPRENEURSHIP AND INNOVATION IN THE TOTAL AMOUNT OF \$300,000.00

WHEREAS, Startup Junkie Consulting, LLC was competitively selected by a City selection committee to provide economic development consulting services to the City of Fayetteville in the areas of entrepreneurship and innovation and an initial two year contract was approved by the City Council by Resolution 184-16 on October 4, 2016 in the amount of \$12,500.00 per month; and

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WHEREAS, in the past two years alone Startup Junkie has dedicated 2,873 hours to events, programming, and workshops in the City of Fayetteville including 1,122 hours of mentoring, consulting, and one-on-one session assisting over 221 unique Fayetteville ventures; and

WHEREAS, Startup Junkie Consulting has provided an extremely high level of service to City staff, small businesses in Fayetteville, and the City of Fayetteville as whole, particularly through the challenges of the COVID-19 pandemic; and

WHEREAS, Startup Junkie Consulting has demonstrated an immense amount of flexibility over the past four years of the contract and staff believes this flexibility will be valuable as the City continues to navigate the challenges of the pandemic and the uncertainty ahead.

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 the attached Second Renewal of Contract for Economic Development Consulting Services with Startup Junkie Consulting, LLC to provide economic development consulting services to the City of Fayetteville in the

**Startup Junkie Update:
January 1, 2021-December 31, 2022**



Deliverable 1: Support a collaborative entrepreneurial & innovative environment.

- We continue serve as the reliable direct point of contact for entrepreneurship, innovation and startup efforts:
 - 100% engagement for the City's Economic Recovery and Vitality Steering Committee planning work.
 - Assistance developing the 2022 Economic Vitality Master Plan.
 - 100% engagement of the Regional Entrepreneurial Support Organization Task Force.
- Dedication of one FTE to the Department.
- Continue to execute our successful Startup BRE Program which entails regular health checks on Fayetteville ventures to ensure both growth and to address challenges. Connecting many ventures to the Director and the Mayor for them to personally visit.
- Facilitation with the UA OEI and Arkansas Research Alliance, the exploration of a National Science Foundation Regional Innovation Engine, of which significant collaborative entrepreneurial activity will occur in Fayetteville, with partners from across the state and beyond. In September we submitted to the NSF for the Type 1 award, and if awarded, will be of direct benefit to the City's economic vitality work.



**Startup Junkie Update:
January 1, 2021-December 31, 2022**



**Startup Junkie Update:
January 1, 2021-December 31, 2022**



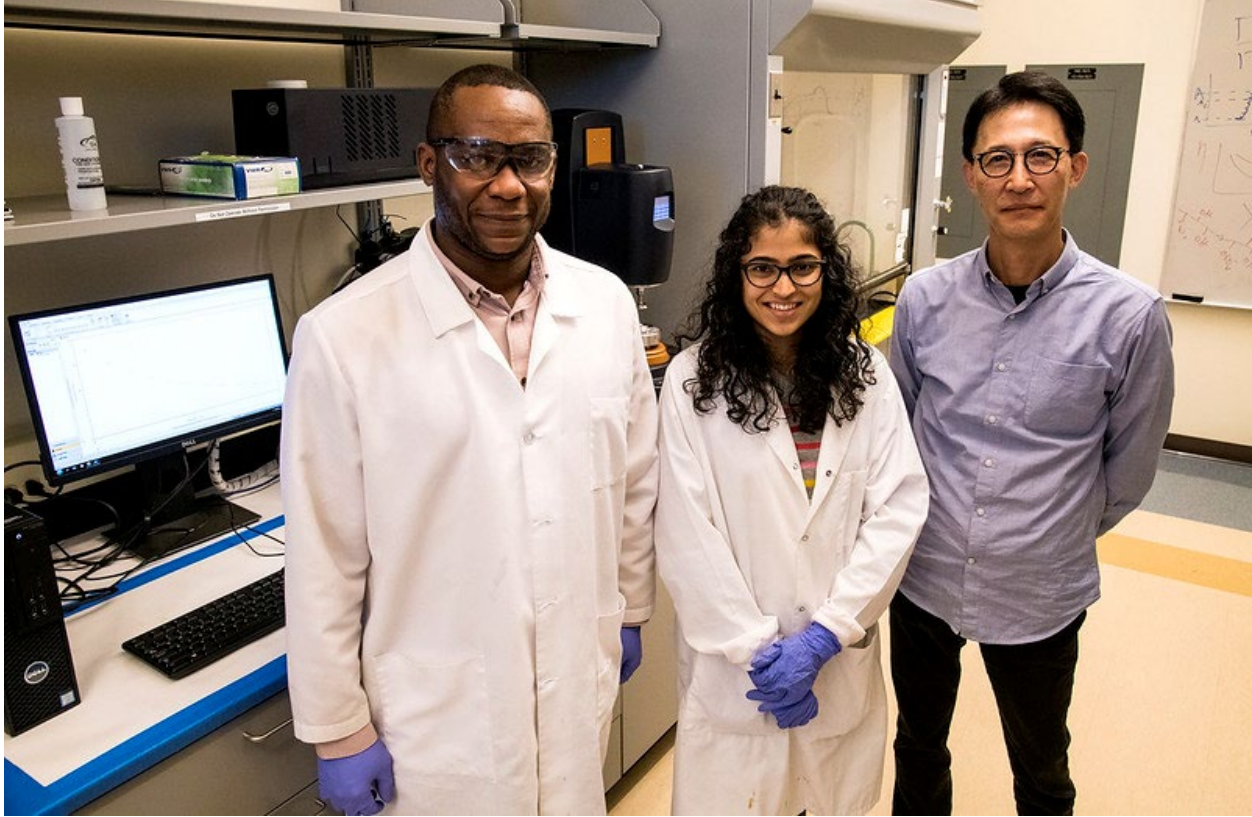
**Startup Junkie Update:
January 1, 2021-December 31, 2022**



Deliverable 2: Increase high-tech job growth and University Partnerships.

- **889** new jobs created.
 - Ex. AcreTrader still on track to grow to over 200 high wage jobs in Downtown Fayetteville
- **15** SBIR/STTR awards secured by Fayetteville ventures over the past two years.
- Continued to maintain a close working relationship with the UA, and companies that operate at the ARTP.
 - Examples: **BiologicsMD, Nanomatronix, CatalyzeH2O, Celludot, OzarkIC** and others that have secured millions in SBIR/STTR funding, and/or employ high tech workers in Fayetteville.
- Facilitate and continue to grow one of the only active angel investment group in Arkansas – Ark Angel Alliance. This provides increased capital access to Fayetteville entrepreneurs.

**Startup Junkie Update:
January 1, 2021-December 31, 2022**



Deliverable 3: Create innovative spaces and programs to support entrepreneurs.

- Continue to operate CenterSpace on the Fayetteville square. **CenterSpace costs over \$60,000 per year to keep open (this is the lease and utilities cost). CenterSpace provides:**
 - No cost day use co-working for entrepreneurs.
 - No cost reservation of the conference room for entrepreneurs needing to hold offsite meetings.
 - Primary location for leading virtual and in person no cost 1:1 consulting engagements with Fayetteville entrepreneurs.
 - In the past two years approximately **2,600** community members have utilized the CenterSpace conference room at no charge for their offsite meetings and other various meetings for their small businesses.
- High cadence of events throughout the past two years:
 - HER Entrepreneur Journey led by SJF's Martha Londagin
 - GameChangers
 - Startup Stories
 - In 2021 rather than Startup Crawl, we held a Vaccine Clinic at CenterSpace in partnership with Community Clinic.
- WILDLY successful 2022 Startup Crawl:
 - Approx. 2000 attendees

**Startup Junkie Update:
January 1, 2021-December 31, 2022**

- 13 breweries
- 4 bands
- 50 participating venture companies
- Packed Startup Weekend NWA held on the Fayetteville Square in the Pryor Center.
 - 100+ attendees
 - 11 ventures created
- Led and facilitated **183** virtual and in-person world class entrepreneurship and innovation focused event, workshop, and program engagements in Fayetteville over the past two years serving **12,579** attendees.



**Startup Junkie Update:
January 1, 2021-December 31, 2022**



Guía Actualizada 2021



Programa de Protección de Cheques de Pago



Deliverable 4: Expand and enhance Workforce Development, Attraction, and Retention through entrepreneurship education opportunities at all levels.

- Continued our targeted events that provide entrepreneurship education at all levels.
- Continued building a comprehensive digital library of small business, innovation, and entrepreneurial educational content on the Startup Junkies YouTube Channel available for Fayetteville entrepreneurs.
 - **254 educational publications produced, available free to Fayetteville entrepreneurs.**
 - **Approximately 127 hours of content, available at no cost to our community members.**
- Continued to deliver regular free webinars on a variety of marketing, finance, HR, and leadership topics with subject matter experts from across the country.
- Continue the widely recognized **Startup Junkies Podcast** that delivers lessons learned and education available to Fayetteville entrepreneurs at no cost. Many instances featuring Fayetteville entrepreneurs, providing them increased national and global visibility. **This program brings significant positive visibility globally to the City of Fayetteville. The podcast has Over 320 episodes downloaded in 100 countries and is ranked in the top 2.5% of all podcast globally out of nearly 3,000,000.**



**Startup Junkie Update:
January 1, 2021-December 31, 2022**



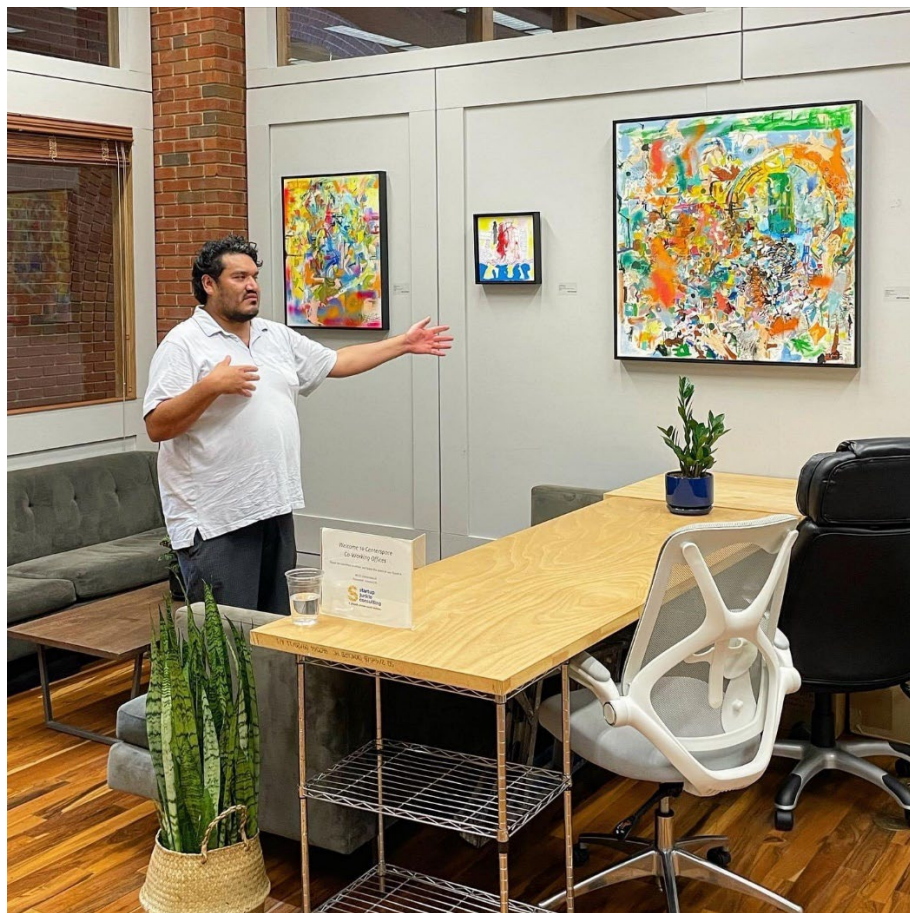
Deliverable 5: Support, Foster, and Expand entrepreneurship through retail and restaurant development.

- Continue to serve new Fayetteville retail and restaurant ventures through high quality no cost 1:1 consulting and mentoring. **108** of these ventures served through high quality no-cost in-depth 1:1 consulting, counseling, and mentoring.
- Actively lead virtual and in person events on digital marketing and ecommerce to help provide maximum information and education to Fayetteville entrepreneurs looking to expand their business online. Led and facilitated **24** of these engagements over the period serving community entrepreneurs.
- Provided high quality on-going assistance to NWA ventures looking to expand their presence in Fayetteville.
- Continued partnership with the UA Food Innovation Center to ensure Fayetteville food entrepreneurs have the support they need.
- In addition to new starts, continue to support existing and growing Fayetteville retail and restaurant ventures.

**Startup Junkie Update:
January 1, 2021-December 31, 2022**



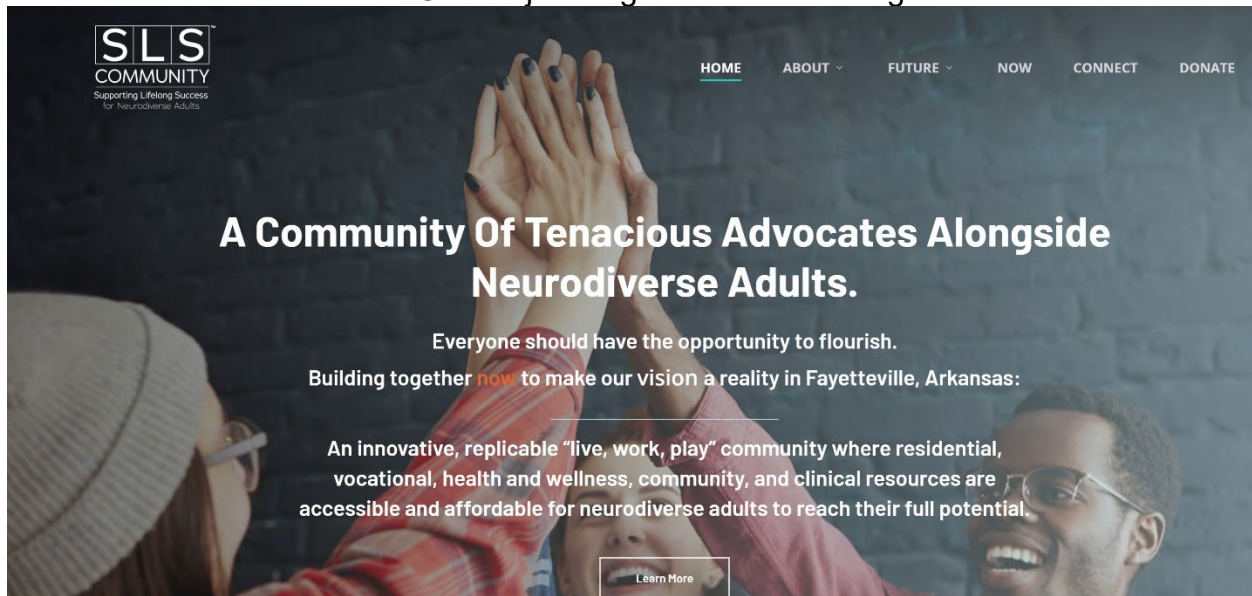
**Startup Junkie Update:
January 1, 2021-December 31, 2022**



**Startup Junkie Update:
January 1, 2021-December 31, 2022**

Additional notable project: Spectrum Living Solutions.

- Continued work on the SLS Community development project to advance the progress and services for developmentally disabled adults which included a substantial expansion of soft-surface trail connectivity from the City to Kessler Park and a master plan that includes major state and national players in the SLS Campus buildout. Sadly, the late Ashton McCombs passed away. We are honored to have his son, Naval Academy Graduate, former Marine Officer, and Duke MBA Ashton McCombs jr taking the lead of the organization.



ROI: Output and Outcome Metrics.

- We served **881** Fayetteville entrepreneurs through **898** one-on-one high quality free consulting, mentoring, counseling, training, support, and assistance engagements
 - 326** women owned ventures
 - 188** minority owned ventures
 - 39** veteran owned ventures
- Success stories like AcreTrader. Based on the Fayetteville square, on track to create over 200+ high wage jobs here. AcreTrader makes investing in farmland more accessible and inclusive.

AcreTrader was referenced in Steve



Startup Junkie Update:
January 1, 2021-December 31, 2022

Case's most recent book, *The Rise of the Rest* as being a shining example of the sort of amazing, scalable businesses that are being created in the Heartland. Steve Case was the founder and CEO of AOL.

- Success Stories like The Shops at Brick City that now provides affordable and accessible space to over 100 Fayetteville small businesses. Brick City serves as an amazing small footprint retail incubator.



- Success stories like Ozark IC. Ozark IC is a world-leading development and manufacturing venture for harsh environment electronics. Their solutions solve major operating environment problems in hypersonic engines, spacecraft, and deep well geothermal. **The company has been recognized as a MassChallenge winner and has major Aerospace, Defense, and Energy Sector customers.**



**Startup Junkie Update:
January 1, 2021-December 31, 2022**

- Success stories like CatalyzeH2O. CatalyzeH2O, <https://catalyzeh2o.com/>. CatalyzeH2O's proprietary water remediation solution addresses the root causes of so many inefficiencies in the water treatment industry by offering a truly destructive treatment technique instead of adsorbing the toxic compounds. What makes CatalyzeH2O stand out as a possible company that could expand our portfolio is that rather than choose between environmentally friendly tech and high-performance solutions, Catalyze has proposed an innovation that does both. We are excited about the company's submission to the National Science Foundation's Small Business Innovation Research (SBIR) Phase I Program, and we look forward to seeing the company's growth because of the project.



- **183** Event, Workshop, and Program engagements in Fayetteville serving **12,579** attendees
- Outcome Metrics
 - **889 new jobs created**
 - **\$67,940,847 in private capital raised**
 - **\$22,636,918 in grants (state and federal) secured**
 - **3912 new products, services, and solutions brought to market**
 - **148 patents and patent applications**
 - **15 SBIR and STTR awards**
 - **108 unique Fayetteville retail, restaurant, and accommodation ventures assisted through multiple on going and in depth engagements**
 - **Top 5 bullets based on survey data received from 105 Fayetteville venture companies**



December 6, 2022

City of Fayetteville
113 West Mountain Street
Fayetteville, AR 72701

Purpose: Contract With City Of Fayetteville

Startup Junkie remains a key economic development catalyst in the City of Fayetteville and has continued to be an important leader in the advancement of the diverse innovation and entrepreneurial ecosystem in the City, especially through the pandemic recovery, and now entering into what potentially may become a global recession. Startup Junkie has developed a track record of proven programs, place-making, events, and networking aimed at inclusive talent development, attraction, retention and capital formation at all company stages. The end result being job creation, economic growth, and social growth in the City. Over the course of the past two years under contract, along with many small business success stories, notable impacts accomplished include:

- 889 net new jobs created
- \$67,940,847 in private capital raised
- \$22,636,918 in public capital raised (state funding, SBIR/STTR, grants, etc)
- 3912 new product, service, and solution lines added
- 148 patent and patent applications
- 15 SBIR & STTR awards

In addition to notable output metrics achieved by our team that include:

- 881 Fayetteville entrepreneurs served through 898 one-on-one high quality free consulting, mentoring, counseling, training, support, and assistance engagements
 - 326 women owned ventures
 - 188 minority owned ventures
 - 57 veteran owned ventures
- 183 Event, Workshop, and Program engagements in Fayetteville serving 12,579 attendees

We've had the honor of working with many incredible Fayetteville ventures, success stories that are having a positive impact on the City of Fayetteville. Success stories like AcreTrader, www.AcreTrader.com. Based on the Fayetteville square, on track to create over 200+ high wage jobs here. AcreTrader makes investing in farmland more accessible and inclusive. Success stories like The Shops at Brick City that now provides affordable and accessible space to over 100 Fayetteville small businesses. Brick City serves as an amazing

small footprint retail incubator. Success stories like Ozark IC, <https://www.OzarkIc.com/>. Ozark IC is a world-leading development and manufacturing venture for harsh environment electronics. Their solutions solve major operating environment problems in hypersonic engines, spacecraft, and deep well geothermal. The company has been recognized as a MassChallenge winner and has major Aerospace, Defense, and Energy Sector customers.

Looking ahead, we will continue our high cadence of virtual and in-person events providing critical and timely education, information, and inspiration for Fayetteville entrepreneurs. We will continue virtual and in person one-on-one no cost consulting sessions with Fayetteville entrepreneurs. We will continue our events aimed to provide additional support for the underserved communities (minority, women, and veteran entrepreneur focused) in Fayetteville. We will further our outreach efforts, like our support of Spectrum Living Solutions, a critical initiative to provide much needed support to neurodiverse adults.

We're excited for the opportunity to extend our close working partnership with the Department of Economic Vitality, brainstorming and executing work to help the City that we all love thrive.

Regard,

Startup Junkie Team

RESOLUTION NO. _____

A RESOLUTION TO APPROVE CHANGE ORDER NO. 9 TO THE CONSTRUCTION MANAGER AT RISK CONTRACT WITH FLINTCO, LLC FOR THE POLICE HEADQUARTERS PROJECT IN THE AMOUNT OF \$380,381.00, AND TO APPROVE A BUDGET ADJUSTMENT – POLICE HEADQUARTERS BOND PROJECT

WHEREAS, on December 3, 2019, the City Council passed Resolution 282-19 to approve a Construction Manager at Risk agreement with Flintco, LLC for the Police Headquarters Project; and

WHEREAS, Change Order No. 9 is a reconciliation change order to close out 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 approves Change Order No. 9 to the Construction Manager at Risk Contract with Flintco, LLC in the amount of \$380,381.00 for the Police Headquarters 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

2022-1121

Legistar File ID

12/20/2022

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

Wade Abernathy

11/29/2022

FACILITIES MANAGEMENT (140)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Approval of Change Order #9 to the CMAR contract with Flintco, LLC in the amount of \$380,381 and approve a budget adjustment. This is a 2019-Police Headquarters Bond Project.

Budget Impact:

Various	Various
Account Number	Fund
Various	Various
Project Number	Project Title
Budgeted Item? Yes	Current Budget \$ 28,690,986.00
	Funds Obligated \$ 28,213,478.84
	Current Balance \$ 477,507.16
Does item have a cost? Yes	Item Cost \$ 380,381.00
Budget Adjustment Attached? Yes	Budget Adjustment \$ 50,939.00
	Remaining Budget \$ 148,065.16

V20210527

Purchase Order Number: 2019-839

Previous Ordinance or Resolution # 283-21

Change Order Number: 9

Approval Date: 7/18/2022

Original Contract Number: 2019-62

Comments:



MEETING OF DECEMBER 20, 2022

TO: Mayor and City Council

THRU: Paul Becker, Chief Financial Officer

FROM: Wade Abernathy, Director Bond and Building Construction Projects

DATE: November 29, 2022

SUBJECT: Change Order #9 to RFQ-19-15 Contract with Flintco, LLC. For the Police Headquarters 2019 Bond.

RECOMMENDATION:

Staff Recommend approval of Change Order #9 to the RFQ#19-05 contract with Flintco, LLC for the Police Headquarters Project in the amount of \$380,381.00 and approve a budget adjustment.

BACKGROUND:

- In April 2019, Fayetteville voters approved the public safety bond question 9 in the 2019 bond initiative, which included a new police headquarters, and identified \$38,801,126 for the new facilities.
- In September 2019, Resolution 202-19 authorized the approval of the Land Sale Agreement with the University of Arkansas System Division of Agriculture in the amount of \$2,590,000 for 11.50 acres with PD utilizing 10 acres and Fire utilizing 1.5 acres. The Close of the Land is ongoing.
- In September 2019, The City of Fayetteville Purchasing Division managed the RFQ process of selecting a construction manager at risk for the Police Headquarters Facilities. The request for statement of qualifications (RFQ) was advertised on 9-3-19 with a deadline of 9-26-19. Ten responses were received. Three construction management firms were short listed for interview. The selection committee chose Flintco to negotiate a CMAR contract for the Police Headquarters.
- In December 2019, Resolution 282-19 authorized the approval of a Construction Manager at Risk contract with Flintco Construction and included pre-construction services.
- In January of this year, resolution 37-21 was approved for the Earthwork package for the police headquarters and Fire Station 8.

Over the past 2 years, there have been resolutions approving several bid packages and the Deane and Porter Road Construction.

DISCUSSION:

With the construction nearing completion, this is a reconcile change order to close out the project. It includes several added back items that were omitted earlier during the value engineering process. Including Completing the AV system for Dispatch, Upgrading the ceiling panel in the range for better sound attenuation, painting that ceiling, concrete at courtyard, asphalt paving, and badges and mission statement at the staff area.

BUDGET/STAFF IMPACT:

Interest from the Bond proceeds and unencumbered project funds will be allocated for this change order.

1010 - General**39024.7900.8040 - Police Headquarters Building, Construction**

1010.200.2920-5804.00 - Building Costs	153,553.00
--	------------

4470 - Sales Tax Capital Improvement**02047.7900.8040 - Police Headquarters Building, Construction**

4470.200.8200-5804.00 - Building Costs	81,913.00
--	-----------

18013.7900 - Police HQ - Dispatch Furniture

4470.200.8200-5804.00 - Building Costs	44,813.00
--	-----------

4609 - Police Projects 2019 Bonds**46090.7900.8040 - Police Headquarters Building, Construction**

4609.860.7900-5804.00 - Building Costs	100,102.00
--	------------

<u>380,381.00</u>

Attachments:

Change Order #9



AIA[®] Document G701[™] – 2017

Change Order

PROJECT: *(Name and address)*
Fayetteville Police Headquarters
1800 N. Porter Rd
Fayetteville Arkansas 72703

CONTRACT INFORMATION:
Contract For: General Construction
Date: December 03, 2019

CHANGE ORDER INFORMATION:
Change Order Number: 9
Date: December 1st, 2022

OWNER: *(Name and address)*
City of Fayetteville
113 West Mountain Street
Fayetteville, AR 72701

ARCHITECT: *(Name and address)*
BRINKLEY SARGENT WIGINTON
ARCHITECT
5000 Quorum, Suite 600
Dallas, Texas 74254

CONTRACTOR: *(Name and address)*
Flintco, LLC
184 E. Fanitnel Dr.
Springdale, AR 72762

THE CONTRACT IS CHANGED AS FOLLOWS:

(Insert a detailed description of the change and, if applicable, attach or reference specific exhibits. Also include agreed upon adjustments attributable to executed Construction Change Directives.)

Includes additional scopes of work as shown in the attached Exhibit A - Change Order Itemization.

Date	Description
12/1/22	Exhibit A - Change Order Itemization

The original Guaranteed Maximum Price was	\$ 82,500.00
The net change by previously authorized Change Orders	\$ 39,334,518.00
The Guaranteed Maximum Price prior to this Change Order was	\$ 39,417,018.00
The Guaranteed Maximum Price will be increased by this Change Order in the amount of	\$ 380,381.00
The new Guaranteed Maximum Price including this Change Order will be	\$ 39,797,399.00

The Contract Time will be increased by Zero (0) days.

The new date of Substantial Completion will be NA

NOTE: This Change Order does not include adjustments to the Contract Sum or Guaranteed Maximum Price, or the Contract Time, that have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

Flintco, LLC
CONTRACTOR *(Firm name)*

City of Fayetteville
OWNER *(Firm name)*

(Signature)
SIGNATURE

SIGNATURE

Chad Crouch / Project Director

PRINTED NAME AND TITLE

PRINTED NAME AND TITLE

12/1/2022 | 12:24 PM CST

DATE

DATE

12/01/2022

Change Order Itemization

Exhibit A



FAYETTEVILLE POLICE HEADQUARTERS

GROUP	DESCRIPTION	BUILDING PACKAGE
080000	PCO 64 - Overhead Door Light Curtains ILO Photoeyes	1,625.00
090000	PCO 65 - PR #17; Ceiling Changes	518.00
230000	PCO 66 - Dryer Vent Sizing (RFI #253)	3,120.62
130000	PCO 70 - Range Baffle Ceiling Change to Troy Board, Paint by Owner	52,222.90
090000	PCO 72 - Raise Ceilings in Range (RFI #289)	1,477.00
090000	PCO 74 - PR #18, Option #2; Wall Extension to Deck in Range Building	6,825.00
260000	PCO 75 - Dispatch Clock	3,061.30
260000	PCO 79 - Sixteen (16) S-17 Light Pole Bases	16,015.00
090000	PCO 80 - Remove Furrou from Asset Buildings	(17,733.00)
220000	PCO 81 - Add Drain Pans, Drain Lines, & Water Supply to (2) CRAC Units	11,880.00
080000	PCO 82 - Tint for South Dispatch Windows	264.00
270000	PCO 83 - Additinoal Data Drops in 1011	2,291.95
090000	PCO 84 - Locker Room 1518 Wall Extension	1,079.00
090000	PCO 85 - Paint Ceiling Troy Board in Range	23,552.00
320000	PCO 88 - Asphalt South of Asset Building #1 (Gravel Fueling Station Area)	27,766.00
270000	PCO 89 - Temporary Cell Dialer	1,006.25
090000	PCO 90 - Remove VWC1 Wall Covering from Scope of Work	(1,980.00)
230000	PCO 91 - Removal of CRAC Unit Drain Pans	(4,600.00)
270000	PCO 92 - Access Cable Pull Through Door Frames	2,992.00
280000	PCO 93 - AV System for South Area of Dispatch	44,777.86
260000	PCO 94 - Removal of Electrical Power from Dispatch Wall Clocks	(1,973.40)
100000	PCO 95 - PR #19; Mission Statement Wall	12,322.82
030000	PCO 96 - Replacement of NW Parking Curb with Modified Ribbon Curb	1,481.00
040000	PCO 97 - Skim Coat CMU Walls at Staff Entry and NW Gate	14,040.00
230000	PCO 98 - PR #20, Option #1; 24"x24" Transfer Opening in 1902	1,750.00
090000	PCO 101 - Sheetrock Above Staff Entrance Lockers (RFI #317)	1,822.00
100000	PCO 102 - Monument Sign Fascia Change	10,830.13
		\$ 216,433.43

ALLOWANCES		
CM Contingency		(58,435.75)
Owner Contingency		195,248.00
GENERAL INSURANCE	0.6%	2,171.00
BUILDER'S RISK	0.18%	635.90
SDI	1.25%	4,415.60
Bonds	1.0%	3,532.50
CONSTRUCTION MANAGEMENT FEE		\$ 16,380.32

CO #09 \$ 380,381.00

City of Fayetteville, Arkansas - Budget Adjustment (Agenda)

Budget Year 2022	Division /Org2 FACILITIES MANAGEMENT (140) Requestor: Wade Abernathy	Adjustment Number
----------------------------	--	--------------------------

BUDGET ADJUSTMENT DESCRIPTION / JUSTIFICATION:

Approval of Change Order #9 to the CMAR contract with Flintco, LLC in the amount of \$380,381 and approve a budget adjustment. This is a 2019-Police Headquarters Bond Project.

RESOLUTION/ORDINANCE	COUNCIL DATE:	12/20/2022
	ITEM ID#:	2022-1121
	<i>Kevin Springer</i>	
	<i>12/1/2022 1:30 PM</i>	
	Budget Division	Date
	TYPE:	D - (City Council)
	JOURNAL #:	
	GLDATE:	
	CHKD/POSTED:	/

TOTAL	50,939	50,939					v.20221115
	Increase / (Decrease)		Project.Sub#				
Account Number	Expense	Revenue	Project	Sub.Detl	AT	Account Name	
4609.860.7900-5804.00	100,102	-	46090	7900.8040	EX	Building Costs	
4609.860.7999-5899.00	(44,654)	-	46090	7999	EX	Unallocated - Budget	
4609.860.7900-5911.99	(2,009)	-	46090	7900.8315	EX	Contingency - Capital Project	
4609.860.7900-5911.99	(20,000)	-	46090	7900.8630	EX	Contingency - Capital Project	
4609.860.7000-4707.46	-	33,439	46090	7000	RE	Interest - 2019 Project Funds	
4609.860.7999-5899.00	17,500	-	46090	7999	EX	Unallocated - Budget	
4609.860.7000-4707.46	-	17,500	46090	7000	RE	Interest - 2019 Project Funds	
	-	-					
	-	-					
	-	-					
	-	-					
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	-	-					
	-	-					
	-	-					

RESOLUTION NO. _____

A RESOLUTION TO APPROVE AMENDMENT NO. 9 TO THE CONTRACT WITH ENVIRONMENTAL CONSULTING OPERATIONS, INC. IN THE AMOUNT OF \$65,500.00 FOR WETLANDS MITIGATION SITE MONITORING AND MANAGEMENT IN 2023

WHEREAS, Ordinance 5687, which was adopted on May 6, 2014, waived the requirement of formal competitive bidding and authorized a contract with Environmental Consulting Operations, Inc. for wetlands mitigation site monitoring and management for 2014; and

WHEREAS, Section 3.3 of the contract provides that the contract may be renewed for additional one year terms upon mutual agreement of the City and Environmental Consulting Operations, Inc.

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 Amendment No. 9 to the contract with Environmental Consulting Operations, Inc. in the amount of \$65,500.00 for wetlands mitigation site monitoring and management in 2023.

City of Fayetteville Staff Review Form

2022-1122

Legistar File ID

12/20/2022

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

Tim Nyander

11/29/2022

WASTEWATER TREATMENT (730)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Staff recommends the approval of Amendment No. 9 to the contract with Environmental Consulting Operations, Inc. in the amount of \$65,500.00 for wetlands mitigation site monitoring and management for Woolsey Wet Prairie in 2023.

Budget Impact:

5400.730.5120-5315.00

Water and Sewer

Account Number

Fund

N/A

N/A

Project Number

Project Title

Budgeted Item? Yes

Current Budget \$ 79,100.00

Funds Obligated \$ -

Current Balance **\$ 79,100.00**

Does item have a cost? Yes

Item Cost \$ 65,500.00

Budget Adjustment Attached? No

Budget Adjustment \$ -

Remaining Budget **\$ 13,600.00**

V20210527

Purchase Order Number: _____

Previous Ordinance or Resolution # _____

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



MEETING OF DECEMBER 20, 2022

TO: Mayor and City Council

THRU: Susan Norton, Chief of Staff

FROM: Tim Nyander, Utilities Director

DATE: November 29, 2022

SUBJECT: Environmental Consulting Operations, Inc. Amendment No. 9

RECOMMENDATION:

Staff recommends the approval of Amendment No. 9 to the contract with Environmental Consulting Operations, Inc. in the amount of \$65,500.00 for wetlands mitigation site monitoring and management for Woolsey Wet Prairie in 2023.

BACKGROUND:

Ordinance 5687, which was adopted on May 6, 2014, waived the requirement of formal competitive bidding and authorized a contract with Environmental Consulting Operations, Inc. for wetlands mitigation site monitoring and management for 2014. Section 3.2 of the contract provides that the contract may be renewed for additional one year terms upon mutual agreement of the City and Environmental Consulting Operations, Inc.

ECO, Inc. developed the wetlands and storm water protection best management plans and conducted excellent construction inspection for the WSIP, and was tasked to ensure full compliance with the related regulations and permits. ECO, Inc. also designed the wetlands mitigation site that was required by the Corps of Engineers, which has a mandated seven-year monitoring and reporting period.

DISCUSSION:

The contract covers the following work tasks for 2023:

1. Project Administration and Management
2. Annual Ecological Restoration Monitoring
3. Annual Adaptive Management Strategy
4. Update Credit Tracking Ledger for Surplus Wetland Credits
5. Academic Research Project Guidance

The details of each of these work tasks are outlined within the proposed Amendment No. 9 between the City of Fayetteville and ECO, Inc.

BUDGET/STAFF IMPACT:

Funds are available in the Wastewater Treatment Operations Program.

Attachments:

2023 Executive Summary

Amendment No. 9

2023 Executive Summary:
Woolsey Wet Prairie Annual Ecological Monitoring and Adaptive Management:
ECO, Inc. Contract Amendment No. 9

Overview & Background

The Woolsey Wet Prairie Sanctuary was established by the City of Fayetteville as part of wetland compensatory mitigation requirements under Section 404 Permit 14207 issued by the U.S. Army Corps of Engineers Little Rock District (Corps). The 43.8-acre mitigation site was constructed to offset the permanent alteration of 7.92 acres of wetlands from construction of the City's Wastewater Systems Improvement Project (WSIP). The Section 404 Permit required 73.57 wetland credits to be generated at the mitigation site to offset wetland losses from the WSIP.

Environmental Consulting Operations, Inc. (ECO, Inc.) developed the WSIP stormwater permitting Best Management Practices (BMP) Plans, conducted WSIP construction compliance evaluations, and oversaw full compliance with related regulations and environmental permits. Under ECO, Inc.'s oversight, contractors working for the City completed over \$160 million in work without a single environmental permit violation.

ECO, Inc. designed the Corps-required ecological features of the wetland mitigation site and has met all mandated monitoring and reporting requirements, including the required wetland credit ledger to track the use of surplus wetland credits by the City of Fayetteville. Under ECO, Inc.'s management, a total of 94.47 mitigation credits have been generated, producing a surplus of 20.90 credits. After ECO, Inc.'s conferrals with the Corps, the City of Fayetteville received a special one-of-a-kind approval to use the 20.90 surplus wetland credits for City infrastructure projects that require wetland compensatory mitigation within the Illinois River Watershed. To date, surplus wetland credits have been used for the City's Van Asche Drive Extension Project and the Clabber Creek Recreational Trail Project, saving the City thousands of dollars.

Under ECO, Inc.'s adaptive management strategy, the mitigation site has a current plant species list totaling 500 species, a more than ten-fold increase beyond the 47 plant species observed in 2004. Eleven species at the site are tracked by the Arkansas Natural Heritage Commission (ANHC) as species of state conservation concern. Nonetheless, persistent invasive species are present at the site, requiring continued monitoring and adaptive management activities

ECO, Inc. Scope of Work

ECO, Inc.'s May 8, 2014 Agreement for Professional Environmental Consulting Services covered the following work tasks for 2014, and has been amended annually from 2015 through 2023:

ECO, Inc. Scope of Services
Part A - Project Administration & Management
Part B - Annual Ecological Restoration Monitoring
Part C - Annual Adaptive Management Strategy
Part D - Update Surplus Wetland Credit Tracking Ledger
Part E - Academic Research Project Guidance

The details for each of these work tasks are outlined within the proposed 2023 Contract Amendment No. 9 between the City of Fayetteville and ECO, Inc. for Parts A – E.

As shown in the 2022/2023 cost comparison table below, the 2023 "Not to Exceed" cost of **\$65,500.00** represents a no change to the contract amount that was approved by the City of Fayetteville for ECO, Inc.'s 2022 scope of work.

Contract Amendments No. 8 (2022) & No. 9 (2023) Cost Comparison

ECO Scope of Services	2022 Amend. No. 8	2023 Amend. No. 9
Part A - Project Administration & Management	\$4,350	\$4,350
Part B - Annual Ecological Restoration Monitoring	\$28,000	\$28,000
Part C - Annual Adaptive Management Strategy	\$31,650	\$31,650
Part D - Update Surplus Wetland Credit Tracking Ledger	\$0	\$0
Part E - Academia Research Project Guidance	\$1,500	\$1,500
Total	\$65,500	\$65,500

ECO, Inc. will continue to conduct annual monitoring activities to identify problem areas where specific management controls are warranted. ECO, Inc. will continue to coordinate adaptive management practices to:

- **Develop plant group-specific herbicide application guidance and recommendations for Jacobs,**
- **Review records of herbicide applications made by Jacobs,**
- **Coordinate with Jacobs to maintain an aggressive herbicide program for controlling woody vegetation in an effort to prevent excessive growth of trees that necessitates timber mulching,**
- **Develop prescribed burn specifications for informal bid process of selecting burn contractor,**
- **Review, approve, and oversee conduction of academic research projects in accordance with City's Corps Section 404 Permit requirements,**
- **Coordinate/scheduling/oversight of prescribed burn, and**
- **Process/coordinate/update surplus wetland credit ledger should City infrastructure improvement projects arise that require wetland mitigation credits.**

ECO, Inc. possesses the very specialized technical and regulatory expertise and site-specific knowledge to complete these tasks for the purpose of meeting Corps-mandated mitigation performance standards and to maintain the existing surplus wetland credits for use in future City infrastructure improvements that require compensatory wetland mitigation. Having won numerous awards and recognitions, Woolsey Wet Prairie Sanctuary has been a success story under the design and management of ECO, Inc. and is a unique ecological feature for the City of Fayetteville like no other in Arkansas.

**AMENDMENT NO. 9
TO
AGREEMENT FOR ENVIRONMENTAL CONSULTING SERVICES
BETWEEN CITY OF FAYETTEVILLE, ARKANSAS AND
ENVIRONMENTAL CONSULTING OPERATIONS, INCORPORATED
FOR
WOOLSEY WET PRAIRIE ECOLOGICAL MONITORING AND MANAGEMENT
ENVIRONMENTAL CONSULTING SERVICES**

THIS AMENDMENT NO. 9 to the Agreement For Professional Environmental Consulting Services, dated May 8, 2014 (the “Agreement”), by and between CITY OF FAYETTEVILLE, ARKANSAS (CITY) and ENVIRONMENTAL CONSULTING OPERATIONS, INC. (ECO) for environmental consulting services in connection with monitoring and ecological adaptive management of CITY’s wetland mitigation site (SITE) known as Woolsey Wet Prairie is made and entered into for purposes of continuity of Site wetland habitat status in order to maintain surplus wetland credits generated at Site and due to Corps of Engineers (Corps) regulatory requirements to manage and maintain wetland compensatory mitigation in perpetuity to assure Site continues to meet ecological performance standards.

WHEREAS, this **AMENDMENT NO. 9** is a renewal of the May 8, 2014 Agreement that included a provision for automatic renewal of ECO’s annual Scope of Services beyond 2014 for additional 1-year terms upon mutual agreement by both CITY and ECO. Unless specifically stated, all other terms and conditions of the Agreement shall remain in full force and effect. Neither this Amendment nor the Agreement may be modified except in writing signed by an authorized representative of the CITY and ECO.

NOW THEREFORE, the CITY and ECO agree to amend the Agreement for ECO’s Scope of Services as follows:

1. Part A - Project Administration & Management

- a) General administration and project management activities;
- b) Perform project initiation activities;
- c) Provide environmental regulatory and technical information to CITY, CITY Contractors, Citizens of CITY, and Academia;
- d) Meet with CITY, CITY Contractors, and Academia for information exchange, goal and timeline setting, reviewing management strategies, and action items;
- e) Perform internal project control including budgeting, scheduling, and quality control;
- f) Part A applies to January through December 2023. Renewal of ECO's annual Scope of Services will be reviewed by the City Council and amended upon approval for renewal of Part A services beyond 2023.

2. Part B - Annual Ecological Restoration Monitoring

- a) Conduct qualitative monitoring activities throughout the growing season to maintain cumulative plant species lists, evaluations of seasonal hydrology and associated plant communities, and identification of stands of invasive plant species to be controlled;
- b) Observe and document total plant species richness for each wetland cell and the total mitigation SITE in historical comprehensive plant species lists;
- c) Record locations of concentrated stands of non-native and native invasive plant species and locations of rare Arkansas Natural Heritage Commission (ANHC) tracking plant species on wetland cell maps;
- d) Develop 2023 Woolsey Wet Prairie Adaptive Management Strategy & Monitoring Report No. 17 that is consistent with historical monitoring and management activities at Site in a format to be used for SITE adaptive management purposes;
- e) Part B applies to January through December 2023. Renewal of ECO's annual Scope of Services will be reviewed by the City Council, and amended upon approval for renewal of Part B services beyond 2023.

3. Part C - Annual Adaptive Management Strategy

- a) Continued development and implementation of annual strategy for specific controls of invasive species via selection, coordination, and scheduling of time sensitive hydrology controls, herbicide applications, mowing, hand pulling, and prescribed burning;
- b) Make SITE visits throughout the growing season to make observations of hydrology, vegetation, and effectiveness of invasive vegetation control;
- c) Oversee selection, scheduling, and coordination of SITE adaptive management activities and provide guidance pertaining to Site Deed-Restrictive Covenant restrictions to CITY and CITY's Contractors associated with management of Site;
- d) Provide restoration ecology advisory technical guidance to CITY and CITY's Contractors associated with management of Site for the purpose of implementation of Site management activities that are compliant with Site permanent protection measures and restrictions specified in the CITY's Corps Section 404 permit;
- e) Document and maintain records of adaptive management activities implemented and the date of use;
- f) Make adjustments, as necessary, to timing and type of vegetation management to be implemented including, but not restricted to, hydrology management, mowing, herbicide applications, prescribed burning, and hand pulling of invasive plant species;

- g) Utilize wetland cell aerial photographs showing locations of concentrated stands of invasive and non-native plant species and locations of rare ANHC tracking plant species in order to target and prioritize areas for specific management activities;
- h) Develop herbicide application specifications that include specific types of herbicides to apply to specific invasive plant species by CITY contractors;
- i) Schedule and select type of herbicide, adjuvant, and application rate to be used for specific target non-native and invasive plant species at specific locations and document herbicide effectiveness;
- j) Coordinate, schedule, and observe areas where herbicide applications have been made to evaluate effectiveness for controlling invasive species by CITY contractors;
- k) Develop burn specifications that clearly identify prescribed Burn Contractor responsibilities as a part of CITY's informal bid process that identify: SITE preparation, notifications, and Burn Contractor responsibilities;
- l) Coordinate, schedule, and observe prescribed burn to evaluate Burn Contractor's conformance with state laws, notifications, and specifications;
- m) Coordinate co-existence of planned construction and operation activities at adjacent solar array and NWALT Westside Prairie Preserve with adaptive management activities at the SITE;
- n) Part C applies to January through December 2023. Renewal of ECO's annual Scope of Services will be reviewed by the City Council, and amended upon approval for renewal of Part C services beyond 2023.

4. Part D - Update Credit Tracking Ledger for Surplus Wetland Credits

- a) SITE has generated surplus of wetland credits above those required by CITY's Corps Section 404 permit for wetland compensatory mitigation. CITY has received Corps approval to use wetland credits to mitigate for wetland impacts caused by the CITY's infrastructure improvement projects within Illinois River watershed, HUC 11110103;
- b) Under the 2014 Scope of Services, ECO developed a wetland credit ledger to include surplus credits and credit debits from CITY's Van Asche Extension Project for submittal to Corps;
- c) Under the 2015 Scope of Services, ECO developed a wetland credit ledger to include surplus credits and credit debits from CITY's Clabber Creek Recreational Trail Project for submittal to Corps;
- d) Under the 2016 Scope of Services, CITY did not utilize any surplus wetland credits for City infrastructure improvement projects requiring wetland compensatory mitigation;

- e) Under the 2017 Scope of Services, CITY did not utilize any surplus wetland credits for City infrastructure improvement projects requiring wetland compensatory mitigation;
- f) Under the 2018 Scope of Services, CITY did not utilize any surplus wetland credits for City infrastructure improvement projects requiring wetland compensatory mitigation;
- g) Under the 2019 Scope of Services, CITY did not utilize any surplus wetland credits for City infrastructure improvement projects requiring wetland compensatory mitigation;
- h) Under the 2020 Scope of Services, ECO developed a wetland credit ledger to include surplus credits and credit debits from CITY's Clabber Creek Recreational Trail Project for submittal to Corps;
- i) Under the 2021 Scope of Services, CITY did not utilize any surplus wetland credits for City infrastructure improvement projects requiring wetland compensatory mitigation;
- j) Under the 2022 Scope of Services, ECO developed a wetland credit ledger to include surplus credits and credit debits from CITY's Clabber Creek Recreational Trail Project for submittal to Corps;
- k) It is unknown at the current time, whether or not Part D services will be necessary for January through December 2023, and will be a function of whether or not surplus credit transactions occur. Should 2023 wetland credit transactions occur, ECO shall update wetland credit ledger accordingly for submittal to Corps at the end of 2023;
- l) Renewal of ECO's annual Scope of Services will be reviewed by the City Council, and amended upon approval for renewal of Part D services beyond 2023.

5. Part E - Academic Research Project Review and Guidance

- a) During 2017, there was an increased interest in the SITE for academic research projects from various departments of the University of Arkansas ranging from herpetology to soil microbiology. While research projects at the site are exciting and encouraged, the need exists for guidance and oversight to ensure that all parties involved are made aware of the various requirements of the CITY's Section 404 permit and Deed Restricted Covenant for the SITE. Failure to manage research project activities at the SITE has the potential to result in the CITY not being in compliance with the terms and conditions of the CITY's Corps Section 404 permit and the Deed Restricted Covenant for the SITE.
- b) ECO, Inc. has developed a research request form and guidance document intended for use by proposed research projects that will provide project-specific relative information to ECO, Inc., Jacobs, and the CITY for review and approval, while also educating the applicant about the SITE Corps Section 404 permit requirements. ECO, Inc. will review academic research project proposals and provide project-specific guidance to parties conducting research at SITE.

- c) Part E applies to January through December 2023. Renewal of ECO's annual Scope of Services will be reviewed by the City Council, and amended upon approval for renewal of Part E services beyond 2023.

6. Compensation

For the amended Scope of Services described herein, CITY agrees to pay ECO the sum specified below on Cost Detail Table. The total payment shall be a lump sum "not to exceed" amount of **SIXTY-FIVE THOUSAND FIVE HUNDRED U.S. DOLLARS (\$65,500.00)**.

Amendment No. 9 - 2023 Cost Detail

Amended ECO Scope of Services	Fee Estimate
Part A - 2023 Project Administration & Management	\$4,350
Part B - 2023 Annual Ecological Restoration Monitoring	\$28,000
Part C - 2023 Annual Adaptive Management Strategy	\$31,650
Part D - 2023 Update Surplus Wetland Credit Tracking Ledger	\$0
Part E - 2023 Academic Research Project Guidance	\$1,500
Total	\$65,500

The CITY and ECO intending to be legally bound, indicate their approval of this **AMENDMENT NO. 9** by their signatures below:

**ENVIRONMENTAL CONSULTING
OPERATIONS, INC.**

By: 
Seth Pickens, Vice President

Date: November 10, 2022

CITY OF FAYETTEVILLE

By: _____
Lioneld Jordan, Mayor

Date: _____

ATTEST:

By: _____
Kara Paxton, City Clerk/Treasurer

Date: _____

End of November 10, 2022 Amendment No. 9 for Environmental Consulting Services

RESOLUTION NO. _____

A RESOLUTION TO AUTHORIZE A CONTRACT BETWEEN THE CITY OF FAYETTEVILLE, ARKANSAS AND FAYETTEVILLE YOUTH CENTER, INC. IN THE AMOUNT OF \$225,000.00 TO PROVIDE PUBLIC RECREATION SERVICES FOR THE YOUTH AND CITIZENS OF FAYETTEVILLE FOR 2023, WITH AUTOMATIC RENEWALS FOR UP TO FOUR ADDITIONAL ONE YEAR TERMS

WHEREAS, providing quality recreational opportunities to the youth and citizens of our community is of mutual interest to the City of Fayetteville and Fayetteville Youth Center, Inc., and;

WHEREAS, Fayetteville Youth Center, Inc. and the City of Fayetteville have had a close working relationship for many years and this relationship allows for a continuity of services vital to the efficient provision of recreational opportunities, and;

WHEREAS, were it not for the services offered by Fayetteville Youth Center, Inc., the City of Fayetteville would be required to assume the duty of providing staff, programming, promotion and development for youth recreational services; and

WHEREAS, Ark. Code Ann. § 14-58-104(18) provides for “renewal or extension of the term of an existing contract” without soliciting bids.

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 contract between the City of Fayetteville, Arkansas and Fayetteville Youth Center, Inc. in the amount of \$225,000.00 to provide public recreation services for the youth and citizens of Fayetteville for 2023, with automatic renewals for up to four additional one year terms.

City of Fayetteville Staff Review Form

2022-1123

Legistar File ID

12/20/2022

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

Lee Farmer

11/28/2022

PARKS & RECREATION (520)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Approval of a resolution to authorize a contract between the City of Fayetteville and the Fayetteville Youth Center, Inc. in the amount of \$225,000 to provide public recreation services for the residents of Fayetteville in 2023.

Budget Impact:

1010.090.6600.5718.00

General

Account Number

Fund

40901.4002

Fayetteville Boys & Girls Club

Project Number

Project Title

Budgeted Item? Yes

Current Budget \$ 225,000.00

Funds Obligated \$ -

Current Balance **\$ 225,000.00**

Does item have a cost? Yes

Item Cost \$ 225,000.00

Budget Adjustment Attached? No

Budget Adjustment \$ -

Remaining Budget **\$ -**

V20210527

Purchase Order Number: _____

Previous Ordinance or Resolution # **337-21**

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



MEETING OF DECEMBER 20, 2022

TO: Mayor and City Council

THRU: Susan Norton, Chief of Staff
Alison Jumper, Parks, Natural Resources and Cultural Affairs Director

FROM: Lee Farmer, Recreation Superintendent

DATE: November 28, 2022

SUBJECT: Approval of a resolution to authorize a contract between the City of Fayetteville and the Fayetteville Youth Center, Inc. in the amount of \$225,000 to provide public recreation services for the residents of Fayetteville for 2023.

RECOMMENDATION:

Approval of a resolution to authorize a contract between the City of Fayetteville and the Fayetteville Youth Center, Inc. in the amount of \$225,000 to provide public recreation services for the residents of Fayetteville for 2023.

BACKGROUND:

The 2023 budget approved an appropriation of \$225,000 for services to be paid to the Fayetteville Youth Center, Inc. pursuant to an approved contract. The contract outlines the services the Fayetteville Youth Center is providing to the City and the residents of Fayetteville. Please note the Fayetteville Youth Center refers to the operations of the Fayetteville Boys and Girls Club throughout this contractual agreement.

DISCUSSION:

The City of Fayetteville has provided financial support for the Fayetteville Youth Center since 1967. The Boys and Girls Club Executive Director and Fayetteville Parks Director meet annually to evaluate operations to determine if the needs of the residents of Fayetteville are being met in the most efficient possible manner. The attached "Working Agreement" helps avoid duplication or competition of programs between the two organizations. It is the intent of both agencies to work together for the common good of the residents by not providing public funding for multiple competing program offerings. If the Boys and Girls Club was not providing recreational services for our residents, the City of Fayetteville would need to assume the responsibility.

Both the City and the Boys and Girls Club allow summer program participants to utilize the indoor pool at the Club and outdoor pool at Wilson Park at no cost. The Fayetteville Boys and Girls Club building is designated as an emergency shelter for the City of Fayetteville due to the location and facility available to house residents. The City appreciates the exceptional service and partnership with the Fayetteville Boys and Girls Club throughout the years to better serve our residents.

BUDGET/STAFF IMPACT:

The 2023 budget includes a total of \$225,000 for this request.

Attachments:

Signed Contract

CONTRACT

*Between The City of Fayetteville
And
Fayetteville Youth Center, Inc.*

WHEREAS, the City of Fayetteville has long been associated with and worked with the Fayetteville Youth Center, Inc. to provide public recreation to the residents of Fayetteville; and

WHEREAS, the Fayetteville Youth Center, Inc. has long provided public recreation to the residents of Fayetteville; and

WHEREAS, it remains in the best interest of the City of Fayetteville and its residents to provide operating revenues to the Fayetteville Youth Center, Inc. in consideration for the substantial recreational programs provided by the Fayetteville Youth Center, Inc. to the residents of Fayetteville.

NOW, THEREFORE, IT IS AGREED:

1. The City of Fayetteville shall provide the sum of \$18,750 monthly (\$225,000 annually) to the Fayetteville Youth Center, Inc. throughout the year of 2023 in consideration of the following duties and obligations to be performed by the Fayetteville Youth Center, Inc.:
 - A. The Fayetteville Youth Center, Inc. shall be jointly responsible with the Fayetteville School System to provide staffing, programming, maintenance, promotion and development for the following facilities: Asbell Gymnasium, Holcomb Gymnasium, Vandergriff Gymnasium and the main facility of the Boys and Girls Club on Ruggle Road. The Fayetteville Youth Center, Inc. agrees to use funding from the City to pay for gymnasium supervisors and custodians at these sites.
 - B. The Fayetteville Youth Center, Inc. shall make a substantial portion of its programs or facilities available to Fayetteville residents (the public) at little or no cost for underserved youth. Although basic membership fees may be required for many Fayetteville residents, disadvantaged youth wishing to participate at the Fayetteville Youth Center, Inc. facility shall not be denied access solely because they do not have sufficient funds to pay for a regular membership. The Fayetteville Youth Center, Inc. shall report on a quarterly basis the approximate number of Fayetteville residents served by its programs and shall include the number of "scholarships" or free memberships provided to Fayetteville residents.
 - C. The Fayetteville Youth Center, Inc. shall provide their facility as an emergency shelter when deemed necessary by the City of Fayetteville.
 - D. The Fayetteville Youth Center, Inc. shall continue to follow the general Working Procedures and Responsibilities for the City of Fayetteville Parks

and Recreation Division and The Fayetteville Youth Center, Inc. which is attached as Exhibit A, and made a part hereof.

2. This Contract shall automatically renew for four (4) additional one (1) year terms, contingent on annual budget approval by the Fayetteville City Council. A renewal term may be cancelled by either party by giving written notice of non-renewal at least sixty (60) days prior to the end of the then current term.

CITY OF FAYETTEVILLE

BY: _____
LIONELD JORDAN, Mayor

FAYETTEVILLE YOUTH CENTER, INC.

BY: Eric J. Schuelelt
Executive Director
Title

ATTEST:

BY: _____
Kara Paxton, City Clerk/Treasurer

EXHIBIT A

RECREATION IN FAYETTEVILLE

WORKING PROCEDURES AND RESPONSIBILITIES FOR THE CITY OF FAYETTEVILLE PARKS AND RECREATION DIVISION AND THE FAYETTEVILLE YOUTH CENTER, INC.

This agreement is made and entered into between the City of Fayetteville Parks and Recreation Department (Parks and Recreation) and the Fayetteville Youth Center, Inc., d/b/a Donald W. Reynolds Boys & Girls Club (hereinafter FYC).

WHEREAS, the parties are two of the providers of recreational programs for the residents of Fayetteville and wish to define a working agreement which may be revised and modified each year upon mutual agreement between the Director of Parks and Recreation and the Executive Director of the FYC; and,

WHEREAS, it is the goal of both parties to work in cooperation to enhance the recreation facilities and programs offered by the parties and to act together in meeting the needs of the residents of Fayetteville; and,

WHEREAS, the FYC facility located on Ruppel Road has been designated as an emergency shelter for the City of Fayetteville due to the location and facility available to house residents; and

WHEREAS, increased communication and a new set of operating procedures will assist with the working relationship and will benefit both agencies and their operations; and,

WHEREAS, Parks and Recreation believes the goals of Parks and Recreation and FYC would best be accomplished by defining and streamlining responsibilities and procedures; and, is therefore recommending the merging of facility and program management for all recreation offerings, thereby providing administrative accountability for all services provided to the residents.

NOW, THEREFORE, to define and improve the current working relationship between Parks and Recreation and FYC, the following set of detailed operating procedures and responsibilities are hereby established.

1. FYC shall be responsible for working with the Fayetteville School System to provide staffing, programming, maintenance, promotion and development for the following facilities: Asbell Gymnasium (no lease expiration date), Holcomb and Vandergriff Gymnasium (lease expires August 20, 2029) and the Boys and

Girls Club. FYC will be responsible for the hiring, evaluating, and supervising of gymnasium supervisors at Holcomb, Asbell, and Vandergriff Gymnasiums during the basketball seasons, after school programs and summer day camp programs.

2. Parks and Recreation shall be responsible for providing or approving the staffing, programming, maintenance, promotion and development for the city parks, including the following facilities which are utilized for sport programming; Lake Fayetteville Softball Complex, Gary Hampton Softball Complex, Walker Baseball/Soccer Complex, White River Baseball Complex, Wilson Park Softball Field, Yvonne Richardson Community Center and Kessler Mountain Regional Park. Parks and Recreation shall be responsible for outdoor facilities owned or leased by the City of Fayetteville, excluding the property leased to FYC pursuant to written agreements.
3. FYC shall be responsible for providing or approving the management, staffing, promotion, and development of the following programs and activities. FYC shall coordinate with the Fayetteville School System for use of their facilities. FYC shall be responsible for the majority of sports and activities held at indoor recreation facilities, including but not limited to the following:

- | | |
|--|------------------------|
| - Basketball | - Swim Programs |
| - Camps | - Youth Volleyball |
| - Cheerleading | - Tackle Football |
| - Dance | - Track |
| - Fishing Rodeo | - Special Events |
| - Flag Football (Youth) | - Summer/School Break |
| - Youth Golf & Disc Golf | Programs |
| - Gymnastics | - Educational Programs |
| - Martial Arts | - Arts and Crafts |
| - Table Tennis | - Indoor Pickleball |
| - School Kids Connection | |
| - FYC shall not compete/duplicate with those services listed in paragraph 4, unless agreed upon by the FYC Executive Director and the Parks and Recreation Director. | |

4. Parks and Recreation shall be responsible for providing or approving the management, staffing, promotion, and development of the following programs and activities. Parks and Recreation shall be responsible for the majority of sports and activities held at outdoor recreation facilities, including but not limited to the following:

- | | |
|---------------------------|---------------------------|
| - Baseball | - Special Events |
| - Kickball | - Swim Programs |
| - Softball | - Tennis Youth Activity |
| - Flag Football (Adult) | Camps |
| - Special Interest Groups | - Ultimate Frisbee |
| - Sand Volleyball (Adult) | - In & Outdoor Pickleball |
| - Soccer | - Disc Golf |

- YRCC Activities such as arts & crafts, educational programs, summer/school programs, wrestling,

Adult Volleyball & other recreation programs.

5. FYC agrees not to establish a program that competes/duplicates with an established program provided by Parks and Recreation. Moreover, FYC agrees to provide Parks and Recreation with information relating to any of its programs including rosters of players and coaches, rules of the league, and similar relevant data upon request by Parks and Recreation. It is the intent of both parties to work together for the common good of the residents of Fayetteville by not providing public funding for duplicate program offerings. It is understood that FYC and Parks and Recreation both currently provide swim lessons, aquatic programs, and summer/school break programs, and that both parties agree to work together for the common good of both parties.
6. In the event the FYC wishes to offer programs which fall in the general description of paragraph 5 above, which it does not believe competes with current Parks and Recreation program, FYC shall provide advance notice of intent to start the program to Parks and Recreation with time to determine whether it is a competing program or not. In the event that FYC offers a program that the Parks and Recreation believes is a duplicate program within the meaning of this document, Parks and Recreation Staff shall give FYC written notices of its assessment. FYC shall either cease operating such program within 30 days of such notice or shall provide a written response to Parks and Recreation that disputes whether such program is in fact a competing program. If FYC fails to cease such program or respond to the assessment from Parks and Recreation, the City may discontinue funding for FYC on the 31st day after such notice. If FYC files a dispute, the issue shall be resolved by City Council and finding of City Council shall be final and not subject to appeal. If FYC fails to cease operation of such a program within 30 days of a decision requiring such cessation by City Council, then the City may stop annual funding to FYC.
7. The FYC Executive Director and Parks and Recreation Director will work jointly in opening the FYC as an emergency shelter as deemed necessary by the Washington County Emergency Operations Center. The Club will utilize funds appropriated by the City of Fayetteville for operational costs as necessary for the emergency shelter.
8. The FYC Executive Director and Parks and Recreation Director shall have periodic meetings to ensure communication between the two entities.
9. It is understood and agreed that the City's annual purchase of services shall be negotiated on a yearly basis.
10. The FYC Board of Directors is responsible for the management and operation of the annual funding allocation to FYC from the City of Fayetteville and shall have the responsibility for prioritizing the use of such funds.

11. As part of the annual funding, FYC agrees to make its facilities available to residents of the City of Fayetteville for a nominal daily fee without the need to purchase a membership to the club.
12. FYC shall schedule a meeting and submit an annual financial report to the City of Fayetteville on or before October 1 of each year.
13. FYC shall comply with schedules and procedures established by the Budget and Research Division of the City of Fayetteville for annual funding requests.
14. FYC shall provide transportation for the Yvonne Richardson Community Center according to the standards set annually by the Fayetteville Youth Center Executive Director and the Parks and Recreation Director based upon program schedules, transportation available, transportation driver availability, and funding for the following activities which may include, but not be limited to:
 - A. In the event that the YRCC is not chosen again as a mobile food service site by Fayetteville Public Schools, FYC will provide bus transportation each day throughout the Summer Fun4Kids Program to the Fayetteville Public School free lunch program's designated school site. This should include transportation for up to 70 children from the YRCC to the Public School and back to the YRCC after lunch.
 - B. Throughout the Summer Fun4Kids Program provide bus transportation on pre-scheduled afternoons from the YRCC to FYC. Participants in the Summer Fun4Kids program will also have free admittance to the FYC facilities on pre-scheduled afternoons and transportation back to the YRCC at the conclusion of the program day.
 - C. Throughout the academic school year provide transportation on designated dates previously agreed upon by both parties as part of the YRCC after school program.
 - D. FYC will also provide transportation for YRCC patrons as deemed necessary by FYC Staff and the YRCC Director, provided that these arrangements have been done in a timely matter and are agreed upon by both parties prior to the requested date and time.
 - E. The transportation schedule outlined above is subject to change upon agreement by the Fayetteville Parks and Recreation Director and the Executive Director of the FYC.
15. FYC will provide the Yvonne Richardson Community Center facility access (i.e. climbing wall, swimming pool, gymnasium, etc.) at no cost during mutually agreed upon dates and times to accommodating the YRCC afterschool, Homeschool P.E., and/or camp programs. In return, Parks and Recreation will continue to provide access to the city outdoor pool at no cost to FYC summer camps at mutually agreed upon dates and times.
16. FYC will provide bus transportation to be used for shuttling purposes for participants in running or cycling special events offered by the Parks and Recreation Department at least three times a year provided that these

arrangements have been done in a timely matter and agreed upon by both parties prior to the requested date and time.

17. Quarterly reports shall be submitted to the Parks and Recreation Director on the following dates: April 15, July 15, October 15, and January 15 (2023). These reports will detail the following performance measures:
- A. Provide a minimum of 30 open recreation hours per week at the FYC club facilities.
 - B. Provide a minimum of 10 youth instructional/educational programs.
 - C. Provide a minimum of three youth sports programs.
 - D. Provide a minimum of two free community-wide events at the FYC club facilities.
 - E. Provide marketing materials to Fayetteville school children for major sport programs.
 - F. Implement three customer service surveys for FYC programs.
 - G. Apply for 10 grants/major corporate sponsorships to provide additional funding to operate the FYC facilities and programs.
 - H. Include Parks and Recreation logo on organizational web site and acknowledge the City of Fayetteville on sponsor wall located in the FYC facilities on Ruppel Road.

The working procedures and responsibilities contained herein shall become effective January 1, 2023.

CITY OF FAYETTEVILLE

BY: _____
LIONELD JORDAN, Mayor

Attest:

BY: _____
Kara Paxton, City Clerk/Treasurer

FAYETTEVILLE YOUTH CENTER, INC.

BY: E. J. Schult
Executive Director
Title

Attest:

BY: Judy Abercrombie

RESOLUTION NO. _____

A RESOLUTION TO AUTHORIZE A CONTRACT BETWEEN THE CITY OF FAYETTEVILLE, ARKANSAS AND THE AREA AGENCY ON AGING OF NORTHWEST ARKANSAS IN THE AMOUNT OF \$145,804.00 TO PROVIDE PUBLIC RECREATION SERVICES FOR THE SENIOR CITIZENS OF FAYETTEVILLE FOR 2023, WITH AUTOMATIC RENEWALS FOR UP TO FOUR ADDITIONAL ONE YEAR TERMS

WHEREAS, ensuring the availability of quality recreational opportunities to the senior citizens of our community is of mutual interest to the City of Fayetteville and the Area Agency On Aging of Northwest Arkansas, which has provided these services to seniors in Fayetteville and Northwest Arkansas since 1972; and

WHEREAS, the Area Agency on Aging is very qualified and uniquely able to provide the continuity of services vital to the efficient provision of recreational opportunities to the senior citizens of Fayetteville.

WHEREAS, Ark. Code Ann. § 14-58-104(18) provides for “renewal or extension of the term of an existing contract” without soliciting bids.

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 contract between the City of Fayetteville, Arkansas and the Area Agency on Aging of Northwest Arkansas in the amount of \$145,804.00 to provide public recreation services for the senior citizens of Fayetteville for 2023, with automatic renewals for up to four additional one year terms.

City of Fayetteville Staff Review Form

2022-1124

Legistar File ID

12/20/2022

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

Lee Farmer

11/28/2022

PARKS & RECREATION (520)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Approval of a resolution to authorize a contract between the City of Fayetteville and the Area Agency on Aging of Northwest Arkansas in the amount of \$145,804 to provide public recreation services for senior residents of Fayetteville in 2023.

Budget Impact:

1010.090.6600.5718.01

General

Account Number

Fund

40901.4004

AAANWA (Senior Center)

Project Number

Project Title

Budgeted Item? Yes

Current Budget \$ 145,804.00

Funds Obligated \$ -

Current Balance \$ 145,804.00

Does item have a cost? Yes

Item Cost \$ 145,804.00

Budget Adjustment Attached? No

Budget Adjustment \$ -

Remaining Budget \$ -

V20210527

Purchase Order Number:

Previous Ordinance or Resolution # 338-21

Change Order Number:

Approval Date:

Original Contract Number:

Comments:



MEETING OF DECEMBER 20, 2022

TO: Mayor and City Council

THRU: Susan Norton, Chief of Staff
Alison Jumper, Parks, Natural Resources and Cultural Affairs

FROM: Lee Farmer, Recreation Superintendent

DATE: November 28, 2022

SUBJECT: Approval of a resolution to authorize a contract between the City of Fayetteville and the Area Agency on Aging of Northwest Arkansas in the amount of \$145,804 to provide public recreation services for senior residents of Fayetteville in 2023.

RECOMMENDATION:

Approval of a resolution to authorize a contract between the City of Fayetteville and the Area Agency on Aging of Northwest Arkansas in the amount of \$145,804 to provide public recreation services for senior residents of Fayetteville in 2023.

BACKGROUND:

Since 1972, the City of Fayetteville has provided financial support through the annual work budget to the Area Agency on Aging of Northwest Arkansas (AAA) to provide recreation services for senior residents. This has been a very successful agreement to provide recreational programs and activities for senior residents of Fayetteville.

AAA provides recreational programs meeting the needs of our senior residents at the Fayetteville Senior Activity and Wellness Center and transportation services for the residents of Hillcrest Towers. It is the intent of AAA and the Fayetteville Parks and Recreation Department to work in cooperation to enhance the recreation facilities and programs in our City, while not duplicating services to spend taxpayers' money as effectively as possible. If the AAA were not serving our senior resident population, the City would need to assume responsibility.

DISCUSSION:

The 2023 budget approved an appropriation of \$145,804 for services to be paid to AAA pursuant to an approved contract. The contract outlines the services the AAA is providing to the City and the senior residents of Fayetteville. The Fayetteville Senior Activity and Wellness Center's building is designated as an emergency shelter for the City of Fayetteville due to their location and facility available to assist in housing residents.

BUDGET/STAFF IMPACT:

The 2023 budget includes a total of \$145,804 for this request.

Attachments:

Signed Contract

CONTRACT
*Between the City of Fayetteville and the
Area Agency on Aging of Northwest Arkansas (AAA)*

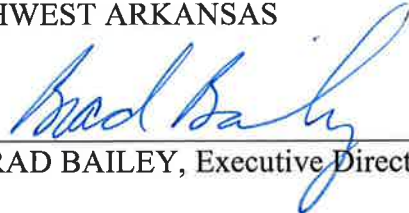
WHEREAS, the Area Agency on Aging of Northwest Arkansas (AAA) is uniquely qualified to provide the full range of public recreation opportunities to the senior citizens of Fayetteville; and,

WHEREAS, it is in the best interest of the City of Fayetteville and its residents to provide operating revenues to the AAA in consideration for the substantial recreational programs provided by the AAA to the senior residents of Fayetteville.

NOW, THEREFORE, IT IS AGREED:

1. The City of Fayetteville shall provide the sum of \$12,150.33 monthly (\$145,804 annually) to the AAA from January 1 until December 31, 2023 in consideration of the following duties and obligations to be performed by the AAA:
 - A. The AAA shall be responsible for providing staff, programming, promotion, and development for the Fayetteville Senior Activity and Wellness Center, and transportation services for the residents of Hillcrest Towers Community Center to participate in all Senior Activity and Wellness Center activities.
 - B. AAA shall make substantial portions of its programs or facilities available to Fayetteville residents (the public) at little or no cost for the needy senior residents. AAA shall report on a quarterly basis the approximate number of Fayetteville residents served by its programs.
 - C. AAA shall provide the Fayetteville Senior Activity and Wellness Center as an emergency shelter when deemed necessary by the City of Fayetteville.
 - D. The AAA shall follow the general Working Procedures and Responsibilities for the City of Fayetteville Parks and Recreation Division and the AAA which is attached as Exhibit A, and is made a part hereof, as if set forth word for word in its entirety.
2. This Contract shall automatically renew for four (4) additional one (1) year terms, contingent on annual budget approval by the Fayetteville City Council. A renewal term may be cancelled by either party by giving written notice of non-renewal at least sixty (60) days prior to the end of the then current term.

AREA AGENCY ON AGING OF
NORTHWEST ARKANSAS

BY: 
BRAD BAILEY, Executive Director

CITY OF FAYETTEVILLE

BY: _____
LIONELD JORDAN, Mayor

ATTEST:

BY: _____
KARA PAXTON, City Clerk Treasurer

EXHIBIT A

RECREATION IN FAYETTEVILLE

WORKING PROCEDURES AND RESPONSIBILITIES FOR THE CITY OF FAYETTEVILLE PARKS AND RECREATION DIVISION AND THE AREA AGENCY ON AGING OF NORTHWEST ARKANSAS

This agreement is made and entered into between the City of Fayetteville Parks and Recreation Department (Parks and Recreation) and the Area Agency on Aging of Northwest Arkansas (hereinafter referred to as AAA).

WHEREAS, the parties are two of the providers of recreational programs for the citizens of Fayetteville and wish to define a working agreement which may be revised and modified each year upon mutual agreement between the Parks and Recreation Director and the Executive Director of the AAA; and,

WHEREAS, it is the goal of both parties to work in cooperation to enhance the recreation facilities and programs offered by the parties and to act together in meeting the needs of the citizens of Fayetteville; and,

WHEREAS, the Fayetteville Senior Activity and Wellness Center has been designated as an emergency shelter for the City of Fayetteville due to the location and facility available to house citizens; and

WHEREAS, increased communications and a new set of operating procedures will assist with the working relationship and will benefit both agencies and their operations; and,

WHEREAS, Parks and Recreation believes the goals of Parks and Recreation and AAA would best be accomplished by defining and streamlining responsibilities and procedures; and, is therefore recommending the merging of facility and program management for all recreation offerings, thereby providing administrative accountability for all services provided to the citizens.

NOW, THEREFORE, in order to define and improve the current working relationship between Parks and Recreation and AAA, the following set of detailed operating procedures and responsibilities are hereby established.

1. AAA shall be responsible for providing staffing, programming and promotion, and development of recreational programs for senior citizens including but not limited to, health and fitness activities, recreational trips, arts and crafts, music and games.
2. Parks and Recreation shall be responsible for providing or approving the staffing, programming, maintenance, promotion and development of the parks system within the city and the recreational events occurring within the city for all ages.

3. The AAA Executive Director and Parks and Recreation Director shall have periodic meetings to ensure communication between the two entities.
4. It is understood and agreed that the City's annual purchase of services will be negotiated on a yearly basis.
5. The AAA is responsible for the management and operation of annual funding allocation to AAA from the City of Fayetteville and shall have the responsibility for prioritizing the use of such funds.
6. The Fayetteville Senior Activity and Wellness Center Director and Parks and Recreation Director will work jointly in opening the Fayetteville Senior Activity and Wellness Center as an emergency shelter as deemed necessary by the City of Fayetteville. AAA will utilize funds appropriated by the City of Fayetteville for operational costs as necessary for the emergency shelter.
7. AAA shall schedule a meeting and submit an annual financial report to the Parks and Recreation Director no more than one hundred thirty (130) days after the end of the AAA fiscal year, which ends on June 30, 2023. Such report shall detail AAA's use of the City of Fayetteville's funding allocation and accomplishment of performance measures as stated below.
8. AAA shall comply with the schedules and procedures established by the Budget and Research Division of the City of Fayetteville for annual funding requests.
9. Quarterly reports shall be submitted to the Parks and Recreation Director on, or before, the following dates: April 15, July 15, October 15, and January 15 (2023). These reports shall detail the following performance measures:
 - A. Operation of a full scope of senior services at the Fayetteville Senior Activity and Wellness Center and Hillcrest Towers. Both locations will provide a warm daily nutritious congregate lunch providing valuable socialization for seniors. An estimated 580 different seniors enjoy over 23,000 congregate meals each year. In addition, weekly social and recreational activities include pool tournaments, bingo, water colors class, Thursday Thoughts educational series, Wii Bowling, Bean Bag Baseball, dominoes and card games, instructor-led line dancing, and Fun Fridays (live music, movies, fairs, and trivia) During the course of the year, an estimated 800 different seniors will participate in 41,000 units of socialization at the two locations.
 - B. The Fayetteville Senior Activity and Wellness Center location will continue to provide a wide variety of daily health and wellness classes including, but not limited to: Use It or Lose It, Fun to be Fit, Silver Sneakers, Yoga, Pilates, Cardio & Toning, Tai Chi, Qigong, B.A.S.E., and Foundation Training. In addition, the center offers a complete fitness area with treadmills, ellipticals, recumbent bikes, and resistance-based weight machines.

- C. The Fayetteville Senior Activity and Wellness Center and Hillcrest Tower locations will seek partnerships with outside organizations or community groups to assist in a variety of recreation programs and wellness classes.
 - D. Transportation services will be provided at both the Fayetteville Senior Activity and Wellness Center and Hillcrest Towers. Transportation services will include round trip taxi service for seniors from their residence to the senior center, and round-trip taxi service from their residence to necessary appointments in the community. A taxi service for non-ambulatory clients, as well as a Grocery Taxi provided twice a week. In addition, three or more special interest day trips per month will be provided for the senior community. During the course of a year, almost 200 different seniors will participate in 7,000 units of transportation.
 - E. AAA shall acknowledge the City of Fayetteville's contribution on general marketing flyers, brochures and other general marketing materials.
10. The working procedures and responsibilities contained herein must continue without delays in service and shall become effective January 1, 2023.

CITY OF FAYETTEVILLE

BY: _____
LIONELD JORDAN, Mayor

Attest:

BY: _____
Kara Paxton, City Clerk / Treasurer

AREA AGENCY ON AGING OF NORTHWEST
ARKANSAS

BY: 
Brad Bailey, Executive Director

Attest:

BY: 

RESOLUTION NO. _____

A RESOLUTION TO APPROVE A BUDGET ADJUSTMENT IN THE TOTAL AMOUNT OF \$13,337.00 RECOGNIZING DONATION REVENUE FROM CITIZENS AND LOCAL BUSINESSES TO THE PARKS, NATURAL RESOURCES, AND CULTURAL AFFAIRS DEPARTMENT

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 a budget adjustment, a copy of which is attached to this Resolution, in the total amount of \$13,337.00 recognizing donation revenues from citizens and local businesses to the Parks, Natural Resources, and Cultural Affairs Department.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby expresses its sincere appreciation for the donations.

City of Fayetteville Staff Review Form

2022-1135

Legistar File ID

12/20/2022

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

Lee Farmer

11/30/2022

PARKS & RECREATION (520)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

A resolution to approve a budget adjustment in the total of \$13,337 recognizing donation revenue from residents, local businesses, to the Parks, Natural Resources, and Cultural Affairs Department.

Budget Impact:

See Attached		General Fund & Park Development Fund	
Account Number		Fund	
See Attached		Parks & Recreation Donations	
Project Number		Project Title	
Budgeted Item?	Yes	Current Budget	\$ 31,000.00
		Funds Obligated	\$ -
		Current Balance	\$ 31,000.00
Does item have a cost?	No	Item Cost	\$ -
Budget Adjustment Attached?	Yes	Budget Adjustment	\$ 13,337.00
		Remaining Budget	\$ 44,337.00

V20210527

Purchase Order Number: _____

Previous Ordinance or Resolution # _____

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



MEETING OF DECEMBER 20, 2022

TO: Mayor and City Council

THRU: Susan Norton, Chief of Staff
Alison Jumper, Parks, Natural Resources, and Cultural Affairs

FROM: Lee Farmer, Recreation Superintendent

DATE: November 28, 2022

SUBJECT: A resolution to approve a budget adjustment in the total of \$13,337 recognizing donation revenue from residents and local businesses to the Parks, Natural Resources, and Cultural Affairs Department.

RECOMMENDATION:

A resolution to approve a budget adjustment in the total of \$13,337 recognizing donation revenue from residents and local businesses to the Parks, Natural Resources, and Cultural Affairs Department.

BACKGROUND:

Residents, organizations, and businesses make donations to assist with various parks and recreation programs throughout the year. A total of \$13,337 was donated to Parks, Natural Resources, and Cultural Affairs for bench donations, Yvonne Richardson Community Center, Urban Forestry, Arts and Culture, special events, community gardens, and Parks Maintenance.

DISCUSSION:

This resolution will recognize these donated funds to be allocated in the appropriate expense accounts to fulfill the intended use as designated by the donating party. Parks, Natural Resources, and Cultural Affairs is very appreciative for each of these donations and attached is a list of the donations received.

Donors designated funds for the following:

Bench donations:	\$2,000
YRCC donations:	\$1,752
Urban Forestry donations:	\$600
Parks Maintenance: Wilson Park Garden	\$ 500
Support the Arts	\$200
Community Garden donation:	\$480
Gulley Park Concert donation	\$7,519
Fayetteville Race Series donation	\$286

BUDGET/STAFF IMPACT:

The budget will be increased in the amount of \$13,337 within the appropriate accounts as shown on the Budget Adjustment.

Attachments:

List of Donation and Donor

Parks & Recreation - Summary of Unrecognized Donations received through 11-27-2022

Date	Revenue G/L Account that donation was deposited in	Amount	Donation Received From	Donation Purpose	Donation Group	Receipt #	BA Transfr From Budget Contingency to recognize donation?	G/L Expense Account Funds are to be spent from
11/10/2022	1010.520.0710-4809.00 33051.9	\$100.00	Mascot Media	Arts & Culture donation	Parks	47089213	Council Agenda Item	JB 1010.520.0710-5342.00 33051.9
11/18/2022	1010.520.0710-4809.00 33051.9	\$100.00	Carol Van Soyoc	Arts & Culture donation	Parks	47262701	Council Agenda Item	JB 1010.520.0710-5342.00 33051.9
6/22/2022	1010.520.5220-4815.00 33051.1	\$500.00	Jeanie Johnson-Hill	Johnson-Hill Garden - at Wilson Park (Tha B.)	Parks	40876696	Council Agenda Item	BH 1010.520.5260.5400.00 33051.1
5/12/2022	1010.520.5260-4815.01 33051.4	\$2,000.00	Brooke Vickery	Bench donation	Parks	38530823	Council Agenda Item	BH 1010.520.5260-5210.00 33051.4
4/19/2022	1010.520.5220-4815.00 33051.6	\$1,000.00	Lauren Mears	Concert \$	Parks	37726061	Council Agenda Item	LF 1010.520.5220-5342.00 33051.6
4/27/2022	1010.520.5220-4815.00 33051.6	\$1,000.00	Luis Reynoso	Concert \$	Parks	37986550	Council Agenda Item	LF 1010.520.5220-5342.00 33051.6
5/18/2022	1010.520.5220-4815.00 33051.6	\$1,000.00	Luis Reynoso	Concert \$	Parks	38743944	Council Agenda Item	LF 1010.520.5220-5342.00 33051.6
3/30/2022 - 7/18/2022	1010.520.5220-4815.00 33051.6	\$4,519.00	Multiple small donations (3/30/2022 - 7/18/2022)	Concert \$	Parks	Multiple	Council Agenda Item	LF 1010.520.5220-5342.00 33051.6
3/25/2022	1010.520.5220-4815.00 33051.1101	\$900.00	Barbara Carson	Tree donation	Parks	36928871	Council Agenda Item	TJ 1010.520.5260.5220.00 33051.1101
8/23/2022	1010.520.5220-4815.00 33051.1101	\$500.00	Kylie Scarbrough	Tree donation	Parks	44804996	Council Agenda Item	TJ 1010.520.5260.5220.00 33051.1101
3/15/2022 - 8/1/2022	1010.520.5220-4815.00 33051.7	\$480.00	Multiple donations - Community Gardens	Community Gardens	Parks	Multiple	Council Agenda Item	BH 1010.520.5260.5400.00 33051.7
3/25/2022 - 6/13/2022	2250.520.9255-4809.00 33051.8	\$266.00	Multiple donations	Fay Race Series (Special Events)	Parks	Multiple	Council Agenda Item	LF 2250.520.9250-5200.05 33051.8
	Parks Subtotal	\$11,565.00						
3/15/2022 - 11/23/2022	1010.520.5280-4809.00 33051.1001	\$1,752.00	Multiple donations- various individuals	YRCC - Promotional Activities	YRCC	Multiple	Council Agenda Item	LF 1010.520.5280-5342.00 33051.1001
	YRCC Subtotal	\$1,752.00						
	Total Parks & Recr. YTD Donations	\$13,337.00						
	Prepared by - A. Beardon	11/29/22 4:40 PM						
								Total Donations Received This Year
								\$13,337.00

City of Fayetteville, Arkansas - Budget Adjustment (Agenda)

Budget Year 2022	Division /Org2 PARKS & RECREATION (520) Requestor: Alan Bearden	Adjustment Number
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BUDGET ADJUSTMENT DESCRIPTION / JUSTIFICATION:

Budget Adjustment to recognize and allocate donations received from citizens and businesses as follows: Arts & Culture donations - \$200, Wilson Park garden donation - \$500, Bench donation - 2,000, Urban Forestry tree donations - \$600, Concerts donations - \$7,519, Community Gardens donations - \$480, YRCC donations - \$1,752 and Special events (Fayetteville Race Series) donations - \$286

RESOLUTION/ORDINANCE	COUNCIL DATE:	12/20/2022
	ITEM ID#:	2022-1135
	<i>Kevin Springer</i>	
	<i>11/30/2022 6:08 PM</i>	
	Budget Division	Date
	TYPE:	D - (City Council)
	JOURNAL #:	
	GLDATE:	12/20/2022
	CHKD/POSTED:	/

TOTAL	13,337	13,337					v.20221115
	Increase / (Decrease)		Project.Sub#				
Account Number	Expense	Revenue	Project	Sub.Detl	AT	Account Name	
1010.520.0710-4809.00	-	200	33051	9	RE	Donations	
1010.520.5220-5342.00	200	-	33051	9	EX	Promotionals - Activities	
1010.520.5260-5400.00	500	-	33051	1	EX	Building & Grounds - Maintenance	
1010.520.5220-4815.00	-	500	33051	1	RE	Donations Park - Miscellaneous	
1010.520.5260-5210.00	2,000	-	33051	4	EX	Minor Equipment	
1010.520.5260-4815.01	-	2,000	33051	4	RE	Donations Park - Park Bench Memorial	
1010.520.5260-5220.00	600	-	33051	1101	EX	Landscape Materials	
1010.520.5220-4815.00	-	600	33051	1101	RE	Donations Park - Miscellaneous	
1010.520.5220-5342.00	7,519	-	33051	6	EX	Promotionals - Activities	
1010.520.5220-4815.00	-	7,519	33051	6	RE	Donations Park - Miscellaneous	
1010.520.5260-5400.00	480	-	33051	7	EX	Building & Grounds - Maintenance	
1010.520.5220-4815.00	-	480	33051	7	RE	Donations Park - Miscellaneous	
1010.520.5280-5342.00	1,752	-	33051	1001	EX	Promotionals - Activities	
1010.520.5280-4809.00	-	1,752	33051	1001	RE	Donations	
2250.520.9250-5200.05	286	-	33051	8	EX	Supplies - Tournament/Awards	
2250.520.9255-4809.00	-	286	33051	8	RE	Donations	
	-	-					

RESOLUTION NO. _____

A RESOLUTION TO APPROVE A PROPOSAL FROM COMFORT SYSTEMS USA, INC. IN THE AMOUNT OF \$180,944.00, PURSUANT TO BID #21-72, FOR PLUMBING REPAIR AT WILSON PARK POOL, TO APPROVE A PROJECT CONTINGENCY IN THE AMOUNT OF \$40,000.00, AND TO APPROVE A BUDGET ADJUSTMENT

WHEREAS, on November 2, 2021, the City Council authorized a contract with Comfort Systems USA (Arkansas), Inc. for on-call plumbing services pursuant to Bid #21-72.

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 approves a proposal from Comfort Systems USA, Inc., a copy of which is attached to this Resolution, in the amount of \$180,944.00 for plumbing repair at Wilson Park Pool, and further approves a project contingency in the amount of \$40,000.00.

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

2022-1130

Legistar File ID

12/20/2022

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

Alison Jumper

11/30/2022

PARKS & RECREATION (520)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

A resolution to approve a proposal from Comfort Systems USA, Inc in the amount of \$180,944.00, pursuant to Bid No. 21-72, for plumbing services associated with a plumbing repair at Wilson Park Pool, to approve a project contingency in the amount of \$40,000.00 for a total project cost of \$220,944.00, and to approve a budget adjustment.

Budget Impact:

2250.520.9255-5400.00

Park Development

Account Number

Fund

22009.2201

Wilson Pool Repairs

Project Number

Project Title

Budgeted Item? No

Current Budget

\$ -

Funds Obligated

\$ -

Current Balance

\$ -

Does item have a cost? Yes

Item Cost

\$ 180,944.00

Budget Adjustment Attached? Yes

Budget Adjustment

\$ 220,944.00

Remaining Budget

\$ 40,000.00

V20210527

Purchase Order Number: _____

Previous Ordinance or Resolution # _____

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



MEETING OF DECEMBER 20, 2022

TO: Mayor and City Council

THRU: Susan Norton, Chief of Staff
Chris Brown, Public Works Director
Terry Gulley, Assistant Public Works Director

FROM: Alison Jumper, Director of Parks, Natural Resources and Cultural Affairs

DATE: November 28, 2022

SUBJECT: A resolution to approve a proposal from Comfort Systems USA, Inc in the amount of \$180,944.00, pursuant to Bid No. 21-72, for plumbing services associated with a plumbing repair at Wilson Park Pool, to approve a project contingency in the amount of \$40,000.00 for a total project cost of \$220,944.00, and to approve a budget adjustment.

RECOMMENDATION:

A resolution to approve a proposal from Comfort Systems USA, Inc in the amount of \$180,944.00, pursuant to Bid No. 21-72, for plumbing services associated with a plumbing repair at Wilson Park Pool, to approve a project contingency in the amount of \$40,000.00 for a total project cost of \$220,944.00, and to approve a budget adjustment.

BACKGROUND:

The pool at Wilson Park has been there since the 1940's and is constructed over the creek that flows through the park. The pool has undergone several remodels over the years and at some point, that's undetermined, the plumbing for the pool was reworked and ran in a crawl space that surrounds the perimeter of the pool. This year, there were many leaks in the pool plumbing on both the pressure and suction side. After investigation with staff and a leak detection company, it was determined that most of the steel hangers the hold the plumbing suspended within the crawl space and rusted and broken causing the plumbing to pull apart in several places. It's likely that this damage was accelerated due to flood waters in the spring overflowing the creek and washing into the crawl space where the plumbing is located.

DISCUSSION:

In order to operate the pool safely and efficiently, the plumbing and support hangers need to be replaced. Comfort System USA, INC., the City's plumbing on-call vendor, provided a proposal to replace the plumbing and the support hangers, as well as the pool pump and valves located on the surge pit and vacuum lines.

BUDGET/STAFF IMPACT:

This project proposal is for \$180,944.00. Due to the inaccessible location of the plumbing and the age of the facility, it's difficult to anticipate what issues might arise during the repair. A

project contingency of \$40,000.00 is requested to cover any unexpected issues. The funds for this repair will come from HMR Reserve funds.

Attachments:

Comfort Systems USA, Inc Proposal
Bid No. 21-72

Quality People, Building Solutions

Comfort Systems USA (Arkansas), Inc.

Post Office Box 16620

Little Rock, Arkansas 72231

501-835-2859 Phone

501-835-2404 Fax

Date: 11/21/22

To: Wilson Park

Attn: Byron Humphry

Job Description: Comfort Systems USA (AR) Inc. Replace Piping around Swimming Pool

Included:

- Remove old piping around pool.
- Hang new support hangers for piping
- Run new piping on hangers
- Connect piping to existing supply and return jets around the pool.
- Replace pool pump in pump room.
- Replace float valve.
- Replace butterfly valve in pump room.

Note: Customer will need to provide dumpsters for material from site.

Pump has 16week lead time as of date of Quote, may change do to manufacture.

Pup only has 5 day quote price. Price may increase and will change job price.

Not Included:

- After hours' work (before 7:30am or after 4:30pm).
- Anything not mentioned in the above scope of work.
- Any Electrical work
- Piping through pool wall

Price **\$180,044.00**

Bond Fee **\$900.00**

Total **\$180,944.00**

Note: Any pre-existing conditions including but not limited to electrical wiring, no GFI convenience outlet, control wiring, gas branch lines, supply or return air distribution, and no safety rail, which may affect the performance of the equipment or may not be in compliance with the Arkansas Mechanical Code or other state and local codes are excluded from this quotation unless specifically included in the job description. Patching, painting, ceiling removal or replacement and roofing related issues are also excluded from this quotation unless specifically included in the job description. Any additional work required to meet state or local codes not in the job description will be at additional expense to the customer.

Terms: Due upon receipt

Quote Valid for: 30 days

Thank you for the opportunity to serve you. If you have any questions, please call.

Please authorize and fax to: (501) 835-2404

Accepted By: _____ Date: _____

PO #: _____

Best Regards,

Kelley Ramsey

Kelley Ramsey

NWA Service Manager

kramsey@comfortar.com

501-539-3994 Cell

479-770-8992 Office

501-835-2859 Dispatch



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

Resolution: 266-21

File Number: 2021-0773

BID # 21-72 COMFORT SYSTEMS USA (ARKANSAS):

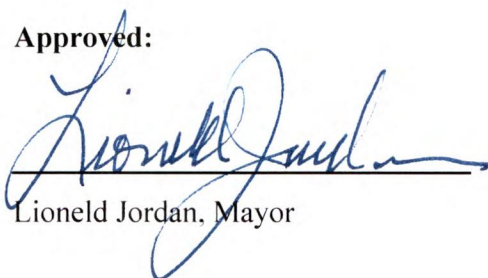
A RESOLUTION TO AWARD BID NO. 21-72 AND AUTHORIZE A CONTRACT WITH COMFORT SYSTEMS USA (ARKANSAS), INC. FOR PLUMBING SERVICES ON AN ON-CALL BASIS FOR A TERM OF ONE YEAR WITH AUTOMATIC RENEWALS FOR UP TO FOUR ADDITIONAL ONE YEAR TERMS

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 awards Bid No. 21-72 and authorizes a contract with Comfort Systems USA (Arkansas), Inc. for plumbing services on an on-call basis for a period of one year with automatic renewals for up to four additional one year terms.

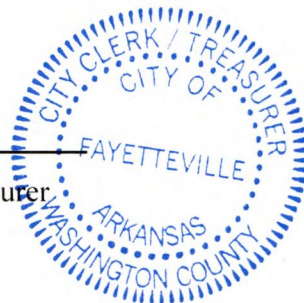
PASSED and APPROVED on 11/2/2021

Approved:


Lioneld Jordan, Mayor

Attest:


Kara Paxton, City Clerk Treasurer





City of Fayetteville, Arkansas

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

Text File

File Number: 2021-0773

Agenda Date: 11/2/2021

Version: 1

Status: Passed

In Control: City Council Meeting

File Type: Resolution

Agenda Number: A.9

BID # 21-72 COMFORT SYSTEMS USA (ARKANSAS):

A RESOLUTION TO AWARD BID NO. 21-72 AND AUTHORIZE A CONTRACT WITH COMFORT SYSTEMS USA (ARKANSAS), INC. FOR PLUMBING SERVICES ON AN ON-CALL BASIS FOR A TERM OF ONE YEAR WITH AUTOMATIC RENEWALS FOR UP TO FOUR ADDITIONAL ONE YEAR TERMS

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 awards Bid No. 21-72 and authorizes a contract with Comfort Systems USA (Arkansas), Inc. for plumbing services on an on-call basis for a period of one year with automatic renewals for up to four additional one year terms.

City of Fayetteville Staff Review Form

2021-0773

Legistar File ID

11/2/2021

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

Andrea Foren

10/12/2021

PURCHASING (160)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Staff recommends award of Bid 21-72 for On-Call Plumbing Services and approval of a contract with Comfort Systems USA (Arkansas), Inc. for various projects on an on-call basis for one-year with four one-year automatic renewals.

Budget Impact:

N/A	Various
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 # 163-16

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



MEETING OF NOVEMBER 02, 2021

TO: Mayor and City Council

THRU: Paul A. Becker, Chief Financial Officer

FROM: Andrea Foren, Purchasing Manager

DATE: Tuesday October 12, 2021

SUBJECT: **Contract for On-Call Plumbing Services – Bid 21- 72**

RECOMMENDATION:

Staff recommends award of Bid 21-72 for On-Call Plumbing Services and approval of a contract with Comfort Systems USA (Arkansas), Inc. for various projects on an on-call basis for one year with four one-year automatic renewals.

BACKGROUND:

Plumbing services were bid for a contract period of one year with an automatic option to renew, unless cancelled, for four additional one-year terms. This contract will be utilized by multiple City departments and divisions on an as needed, on-call basis.

DISCUSSION:

Bids were advertised twice statewide in September. In addition to newspaper advertising, the Purchasing Department directly contacted several local plumbing contractors, and provided notice of the bid to over subscribers registered on the City's electronic bidding portal. One bid was received. Comfort Systems USA (Arkansas), Inc. is the lowest responsible responsive bidder and is recommended for award.

Approval of this contract will enable the City to have a third party readily available for plumbing repairs as needed, which can be critical for maintaining operations.

BUDGET/STAFF IMPACT:

Expenses will be with approved annual budgeted funds and the contract is intended to be utilized multiple City departments and divisions.

Attachments:

Contract with Comfort Systems USA (Arkansas), Inc.



This contract executed this 2 day of November, 2021, between the City of Fayetteville, Arkansas (City) and **Comfort Systems USA (Arkansas), Inc.** (Comfort Systems USA, Vendor, Contractor). In consideration of the mutual covenants contained herein, the parties agree as follows:

1. **Comfort Systems USA** at its own cost and expense shall furnish all labor, materials, supplies, machinery, equipment, tools, supervision, bonds, insurance, tax permits, and all other accessories and services necessary to complete items bid per Bid 21-72, Construction – On-Call Plumbing Services Rebid as stated in **Comfort Systems USA** bid proposal, and in accordance with specifications attached hereto and made a part hereof under **Bid 21-72**, all included herein as if spelled out word for word.
2. The City of Fayetteville shall pay **Comfort Systems USA** based on their bid proposal in an amount not to exceed **amounts, hourly rates, and markup rates presented in bid submittal by Comfort Systems USA**. Payments will be made after approval and acceptance of work and submission of invoice. Payments will be made approximately 30 days after acceptance of itemized detailed invoice.
3. The Contract documents which comprise the contract between the City of Fayetteville and **Comfort Systems USA** consist of this Contract and the following documents attached hereto, and made a part hereof:
 - A. Bid form identified as Invitation to **Bid 21-72, Construction – On-Call Plumbing Services Rebid** with the specifications and conditions typed thereon.
 - B. **Comfort Systems USA** bid proposal.
 - C. Recommendation for Award, inclusive of the Bid Tabulation.
 - D. **Comfort Systems USA** Certificate of Insurance
4. These Contract documents constitute the entire agreement between the City of Fayetteville and **Comfort Systems USA** and may be modified only by a duly executed written instrument signed by the City of Fayetteville and **Comfort Systems USA**.
5. **Comfort Systems USA** shall not assign its duties under the terms of this agreement.
6. **Comfort Systems USA** agrees to hold the City of Fayetteville harmless and indemnify the City of Fayetteville, against any and all claims for property damage, personal injury or death, arising from **Comfort Systems USA** performance of this contract. This clause shall not in any form or manner be construed to waive that tort immunity set forth under Arkansas Law.

7. **Comfort Systems USA** shall furnish a certificate of insurance addressed to the City of Fayetteville, showing that he carries the following insurance which shall be maintained throughout the term of the Contract. Any work sublet; the contractor shall require the subcontractor similarly to provide worker's compensation insurance. In case any employee engaged in work on the project under this contract is not protected under Worker's Compensation Insurance, **Comfort Systems USA** shall provide and shall cause each Subcontractor to provide adequate employer's liability insurance for the protection of such of his employees as are not otherwise protected. The premiums for all insurance and the bond required herein shall be paid by Comfort Systems USA.

Workmen's Compensation

Statutory Amount

Comprehensive General &
Automobile Insurance

Bodily Injury Liability

\$500,000 for each person injured.

\$1,000,000 for each accident.

Property Damage Liability

\$1,000,000 aggregate.

8. **Comfort Systems USA** shall furnish proof of licensure as required by all local and state agencies.
9. This contract may be terminated by the City of Fayetteville or **Comfort Systems USA** with 30 calendar days written notice.
10. This contract shall be effective for one year from the date of signed contract. The City reserves the right to automatically renew the contract for four (4) additional one (1) year terms. Renewals shall be automatic unless either **Comfort Systems USA** or the City notifies the other of its intent to terminate the contract at the end of the contract period.
- a. Individual projects exceeding Council required threshold will require additional approval from the Fayetteville City Council.
11. Freedom of Information Act: City of Fayetteville contracts and documents prepared while performing city contractual work are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville, the contractor will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. 25-19-101 et. Seq.). Only legally authorized photo copying costs pursuant to the FOIA may be assessed for this compliance.
12. Changes in scope or price: Changes, modifications, or amendments in scope, price or fees to this contract shall not be allowed without a prior formal contract amendment approved by the Mayor and the Fayetteville City Council in **advance** of the change in scope, cost or fees.
13. Jurisdiction: Legal jurisdiction to resolve any disputes shall be **Washington County, Arkansas** with **Arkansas law** applying to the case.

14. Arbitration/Mediation: The City will not agree to be forced to mediate or arbitrate any dispute.
15. Interest charges for late payments by the City: The City of Fayetteville does NOT agree to any interest or penalty for "untimely" payments. The City will pay all invoices within 30 calendar days of accepted invoice.

WITNESS OUR HANDS THIS 2 DAY OF November, 2021.

COMFORT SYSTEMS USA (ARKANSAS), INC.

By: Barbara Eggleston
Signature

Barbara Eggleston, Service Vice President
Printed Contractor Name & Title

Dawn McElyea
ATTEST (Signature)

Dawn McElyea
Company Secretary (Printed Name)

Business Address

9924 Landers Road, No. Little Rock, AR 72117
City, State & Zip Code

Date Signed: October 7, 2021

CITY OF, FAYETTEVILLE, ARKANSAS

By: Lionel Jordan
LIONEL JORDAN, Mayor

Kara Paxton
ATTEST: (Signature)

Kara Paxton
Kara Paxton, City Clerk



Date Signed: November 2, 2021



INVITATION TO BID

Bid 21-72, Construction – On-Call Plumbing Services Rebid

DEADLINE: Tuesday, September 21, 2021 before 3:00 PM, Local Time

PRE-SUBMITTAL MEETING: Tuesday, September 14, 2021 at 2:00 PM, via Zoom

ACCEPTABLE DELIVERY METHODS:

- (1) City's electronic bidding platform OR
- (2) sealed and delivered directly to the City of Fayetteville as instructed in the advertisement

PURCHASING AGENT: Amanda Beilfuss, abeilfuss@fayetteville-ar.gov

DATE OF ISSUE & ADVERTISEMENT: Sunday, 09/05/2021 and 09/12/2021

No late bids will be accepted. Bids shall be submitted in one of the following methods: (1) through the City's third-party electronic bidding platform, Bonfire, or (2) delivering in person via sealed envelope to the City of Fayetteville Purchasing Division. Submitting through the City's electronic bidding platform is strongly encouraged. All bids shall be submitted in accordance with the attached City of Fayetteville specifications and bid documents attached hereto. Each bidder is required to fill in every blank and shall supply all information requested; failure to do so may be used as basis of rejection.

The undersigned hereby offers to furnish & deliver the articles or services as specified, at the prices & terms stated herein, and in strict accordance with the specifications and general conditions of bidding, all of which are made a part of this offer. This offer is not subject to withdrawal unless upon mutual written agreement by the Proposer/Bidder and City Purchasing Manager.

Name of Firm: _____

Contact Person: _____ Title: _____

E-Mail: _____ Phone: _____

Business Address: _____

City: _____ State: _____ Zip: _____

Signature: _____ Date: _____

City of Fayetteville
Bid 21-72, Construction – On-Call Plumbing Services Rebid
Advertisement

City of Fayetteville, Arkansas
INVITATION TO BID
Bid 21-72, Construction – On-Call Plumbing Services Rebid

The City of Fayetteville, AR is accepting sealed bids from properly licensed plumbing contractors for providing plumbing services on an as-needed basis for a one (1) year term with the option to automatically renew for four (4) additional one (1) year terms.

A non-mandatory pre-submittal meeting will be held **Tuesday, September 14, 2021 at 2:00 PM** virtually via Zoom. The pre-submittal meeting will be held to offer guidance to any interested party needing assistance with submitting a bid in the City's online bidding platform. Questions pertaining to bid submittal process will be answered as well as any other general inquiries. Information regarding the pre-submittal meeting is available on the project page on the City's electronic bidding platform. All interested parties are strongly encouraged to attend.

Bidding documents, plans, plan holders, and addenda shall be obtained at the City of Fayetteville Purchasing Division's electronic bidding platform at www.fayetteville-ar.gov/bids. All bids shall be received by **Tuesday, September 21, 2021 before 3:00 PM, local time** utilizing the electronic bidding software, or by submitting a sealed bid at the address below. All bids shall be received prior to the bid deadline. Submitting a bid electronically is strongly encouraged. A public bid opening will be conducted shortly after the deadline at City Hall and livestreamed at <https://www.youtube.com/user/cityoffayettevillear>. Late or misdirected bids shall not be accepted. The City of Fayetteville shall not be responsible for lost or misdirected bids, or failure of bidder's technical equipment.

City of Fayetteville
Purchasing Division – Room 306
113 West Mountain Street
Fayetteville, AR 72701

Each bid shall be accompanied by a cashier's check from a bank doing business in the State of Arkansas or a corporate bid bond in an amount not less than five (5) percent of the amount bid. This five (5) percent amount shall be based off the total base bid amount submitted. The total base bid amount is the estimated annual expected contract value. In the event a bidder opts to submit a cashier's check for a bid bond, the actual physical cashier's check shall be delivered to the City prior to the deadline. A one hundred percent (100%) performance and payment bond is required for individual projects exceeding \$50,000. A State of Arkansas Contractor's License is required for all bidders and license shall be valid at the time of bid deadline.

Pursuant to Arkansas Code Annotated §22-9-203 The City of Fayetteville encourages all *qualified* small, minority and women business enterprises to bid on and receive contracts for goods, services, and construction. Also, City of Fayetteville encourages all general contractors to subcontract portions of their contract to *qualified* small, minority and women business enterprises.

The City of Fayetteville reserves the right to waive irregularities, reject bids, and postpone the award of any Contract for a period which shall not exceed beyond ninety (90) days from the bid opening date.

City of Fayetteville
By: Amanda Beilfuss
City Purchasing Agent
P: 479.575.8258 Email: abeilfuss@fayetteville-ar.gov
TDD (Telecommunications Device for the Deaf): (479) 521-1316
Date of advertisement: 09.05.21 & 09.12.21

This publication was paid for by the Purchasing Division of the City of Fayetteville, Arkansas.

Amount paid: \$XXX.XX.

Refer to the City's electronic bidding platform to submit bid pricing electronically.

Contact the City Purchasing Division to submit a physical sealed bid.

Bidders shall bid and provide pricing on all line items of all sections in both bid tables. BOTH BID TABLES SHALL BE COMPLETED. Failure to bid on all line items in both bid tables shall result in rejection of bid. The City intends to award this bid to the lowest responsive responsible bidder. The City will use the total of both bid tables for each bidder to help determine the lowest responsive responsible bidder.

Bidders shall complete this bid form in its entirety AND accompany any descriptive literature on the products being bid. The City reserves the right to award this bid based on the City's best interest.

PRICING: Hourly labor rates and markup percentages bid shall include but is not limited to all labor cost, insurance, mobilization, overhead, profit, travel time, bonding, mileage, etc. Prices quoted shall be firm for the term of the contract. The City shall not be charged any additional fees including but not limited to insurance premiums, mobilization, fuel surcharges, etc.

BID BOND: Each bid shall be accompanied by a cashier's check from a bank doing business in the State of Arkansas or a corporate bid bond in an amount not less than five (5) percent of the amount bid. This five (5) percent amount shall be based off the total base bid amount submitted. The total base bid amount is the estimated annual expected contract value. In the event a bidder opts to submit a cashier's check for a bid bond, the actual physical cashier's check shall be delivered to the City prior to the deadline. IF BIDDER FAILS TO SUBMIT A VALID CASHIER'S CHECK OR A COMPLETED CORPORATE BID BOND, THE BIDDER'S SUBMITTAL SHALL BE REJECTED.

*Pertaining to the bid table involving markup percentages on materials: Markup percentage shall be input as a DECIMAL amount. For example, if a bidder desired to bid a markup of 10%, this percentage would need to be inserted in the bid table as ".10" to calculate a 10% increase over the cost of the material.

THIS BID FORM CONTINUES ON THE NEXT PAGE.

EXECUTION OF BID -

Actual specification of any deficient item shall be noted on the bid sheet or separate attachment. If specifications of item bid differ from provided literature, deviation shall be documented and certified by the manufacturer as a regular production option.

Upon signing this Bid, the bidder certifies that:

1. He/she has read and agrees to the requirements set forth in this proposal, including specifications, terms, standard conditions, and any pertinent information regarding the articles being bid on.
2. Unless otherwise noted and explained, the unit bid and listed meets or exceeds all of these requirements as specified by The City of Fayetteville.
3. Pursuant Arkansas Code Annotated §25-1-503, the Contractor agrees and certifies that they do not currently boycott Israel and will not boycott Israel during any time in which they are entering into, or while in contract, with any public entity as defined in §25-1-503. If at any time during contract the contractor decides to boycott Israel, the contractor must notify the contracted public entity in writing.
4. The Bidder can and will comply with all specifications and requirements for delivery, documentation and support as specified herein.
5. I, as an officer of this organization, or per the attached letter of authorization, am duly authorized to certify the information provided herein is accurate and true.
6. Bidder shall comply with all State and Federal Equal Opportunity and Non-Discrimination requirements and conditions of employment in addition to all federal, state, and local laws.
7. Bidder shall disclose any possible conflict of interest with the City of Fayetteville, including, but not limited to, any relationship with any City of Fayetteville employee. Response shall disclose if a known relationship exists between any principal or employee of your firm and any City of Fayetteville employee or elected City of Fayetteville official. If no relationship exists, this should also be stated in your response. Failure to disclose such a relationship may result in cancellation of a purchase and/or contract as a result of your response.

_____ 1.) NO KNOWN RELATIONSHIP EXISTS

_____ 2.) RELATIONSHIP EXISTS (Please explain): _____

8. Bidder will perform the Work in compliance with all applicable trench safety standards set forth in Occupational Safety and Health Administration (OSHA) Part 1926 – Subpart P – Excavations.
9. As A bidder on this project, you are required to provide debarment/suspension certification indicating that you are in compliance with the below Federal Executive Order. Certification can be done by completing and signing this form.
 - a. Federal Executive Order (E.O.) 12549 “Debarment and Suspension” requires that all contractors receiving individual awards, using federal funds, and all sub-recipients certify that the organization and its principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from doing business with the Federal Government.
 - b. Your signature below certifies that neither you nor your principal is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

Unsigned bids will be rejected. Items marked * are mandatory for consideration.

*NAME OF FIRM: _____

Purchase Order/Payments shall be issued to this name

*D/B/A or Corporation Name _____

*BUSINESS ADDRESS: _____

*CITY: _____ *STATE: _____ *ZIP: _____

*PHONE: _____ FAX: _____

*E-MAIL: _____

*BY: (PRINTED NAME) _____

*AUTHORIZED SIGNATURE: _____

*TITLE: _____

DUNS NUMBER: _____ CAGE NUMBER: _____

*TAX ID NUMBER: _____

Acknowledge Addendums:

Addendum No. _____ Dated: _____ Acknowledged by: _____

Addendum No. _____ Dated: _____ Acknowledged by: _____

Addendum No. _____ Dated: _____ Acknowledged by: _____

Addendum No. _____ Dated: _____ Acknowledged by: _____

**ALL BIDDERS SHALL READ THE "TECHNICAL SPECIFICATIONS" SECTION WITH BID. BY
SIGNING THIS BID FORM, BIDDER ACKNOWLEDGES THE "TECHNICAL SPECIFICATIONS"
SECTION IN ITS ENTIRETY**

City of Fayetteville
Bid 21-72, Construction – On-Call Plumbing Services Rebid
References

The following information is required from all Bidders so all bids may be reviewed and properly evaluated.

COMPANY NAME: _____

BUSINESS ADDRESS: _____

NUMBER OF YEARS IN BUSINESS: _____ HOW LONG IN PRESENT LOCATION: _____

TOTAL NUMBER OF CURRENT EMPLOYEES: _____ FULL TIME _____ PART TIME

NUMBER OF EMPLOYEES YOU PLAN TO USE TO SERVICE THIS CONTRACT: _____ FULL TIME _____ PART TIME

PLEASE LIST FOUR (4) LOCAL COMMERCIAL AND/OR GOVERNMENTAL REFERENCES THAT YOU HAVE PREVIOUSLY PERFORMED SIMILAR CONTRACT SERVICES FOR WITHIN THE PAST FIVE (5) YEARS (All fields must be completed). Contractors shall have valid experience.

1. _____
COMPANY NAME

CITY, STATE, ZIP

CONTACT PERSON

TELEPHONE

DATE COMPLETED

E-MAIL ADDRESS

3. _____
COMPANY NAME

CITY, STATE, ZIP

CONTACT PERSON

TELEPHONE

DATE COMPLETED

E-MAIL ADDRESS

2. _____
COMPANY NAME

CITY, STATE, ZIP

CONTACT PERSON

TELEPHONE

DATE COMPLETED

E-MAIL ADDRESS

4. _____
COMPANY NAME

CITY, STATE, ZIP

CONTACT PERSON

TELEPHONE

DATE COMPLETED

E-MAIL ADDRESS

1. SUBMISSION OF BID & BID EVALUATION:

- a. Bids shall be reviewed following the stated deadline, as shown on the cover sheet of this document.
- b. Bidders shall submit bids based on documentation published by the Fayetteville Purchasing Division.
- c. Bids shall be enclosed in sealed envelopes or packages addressed to the City of Fayetteville, Purchasing Division, Room 306, 113 W. Mountain, Fayetteville, AR 72701 or submitted electronically on the City's online bidding platform. The name, address of the firm and Bid, RFP, or RFQ number shall be on the outside of the packaging as well as on any packages enclosed in shipping containers or boxes for physical packaging submitted.
- d. Bidding documents and addenda shall be obtained at the City of Fayetteville Purchasing Division's electronic bidding platform at www.fayetteville-ar.gov/bids.
- e. The City will not be responsible for misdirected bids. Bidder should call the Purchasing Office at 479.575.8258 to ensure correct receipt of bidding documents prior to opening time and date listed on the bid form.
- f. Bidders shall have experience in providing products and/or services of the same or similar nature. Failure to provide materials bid will subject bidder to disqualification for the remainder of the calendar year. Failure to deliver poor or inadequate services, on a consistent basis or more than three (3) times within a six-month period will subject bidder to disqualification for the remainder of the contract term.
- g. Bidder is advised that exceptions to any of the terms contained in this bid must be identified in its response to the bid. Failure to do so may lead the City to declare any such term non-negotiable. Proposer's desire to take exception to a non-negotiable term will not disqualify it from consideration for award.
- h. Local time is defined as the time in Fayetteville, Arkansas on the due date of the deadline. Bids shall be received before the time as shown by the atomic clock located in the Purchasing Division Office.
- i. Bids will be evaluated and awarded based on the best interest of the City of Fayetteville. The City intends to award this bid in its entirety.
- j. Final signed agreement shall be effective from one year of the date of signed contract. The City reserves the right to extend the contract by mutual agreement for a period of four (4) additional, one (1) year periods automatically unless either the Contractor or the City notifies the other of its intent to terminate the contract at the end of the contract period.
- k. Bid pricing shall remain firm for five years.

2. WRITTEN REQUESTS FOR INTERPRETATIONS OR CLARIFICATION:

No oral interpretations will be made to any firms as to the meaning of specifications or any other contract documents. All questions pertaining to the terms and conditions or scope of work of this bid must be sent in writing via e-mail to the Purchasing Agent. Responses to questions may be handled as an addendum if the response would provide clarification to the requirements of the bid. All such addenda shall become part of

the contract documents. The City will not be responsible for any other explanation or interpretation of the proposed bid made or given prior to the award of the contract.

3. **DESCRIPTION OF SUPPLIES AND SERVICES:**

Any reference to a particular brand or manufacturer is done in an effort to establish an acceptable level of quality for this project. Brands or manufacturers that are included in bid that are of at least equal quality, size, design, and specification as to what has been specified, will be acceptable for consideration only if approved by the City of Fayetteville Purchasing Division. The City of Fayetteville reserves the right to accept or reject any requested equal.

4. **RIGHTS OF CITY OF FAYETTEVILLE BID PROCESS:**

In addition to all other rights of the City of Fayetteville, under state law, the City specifically reserves the following:

- a. The City of Fayetteville reserves the right to select the bid that it believes will serve the best interest of the City.
- b. The City of Fayetteville reserves the right to accept or reject any or all bids.
- c. The City of Fayetteville reserves the right to cancel the entire bid.
- d. The City of Fayetteville reserves the right to remedy or waive technical or immaterial errors in the invitation to bid or in bids submitted.
- e. The City of Fayetteville reserves the right to request any necessary clarifications, additional information, or data without changing the terms of the bid.

5. **COSTS INCURRED BY BIDDERS:**

All expenses involved with the preparation and submission of bids to the City, or any work performed in connection therewith, shall be borne solely by the bidder(s). No payment will be made for any responses received, or for any other effort required of, or made by, the bidder(s) prior to contract commencement.

6. **CONFLICT OF INTEREST:**

- a. The bidder represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance or services required hereunder, as provided in City of Fayetteville Code Section 34.26 titled "Authority of City Employee to Contract with the City".
- b. All bidders shall promptly notify Amanda Beilfuss, City Purchasing Agent, in writing, of all potential conflicts of interest for any prospective business association, interest, or other circumstance which may influence or appear to influence the bidder's judgment or quality of services being provided. Such written notification shall identify the prospective business association, interest or circumstance, the nature of which the bidder may undertake and request an opinion to the City as to whether the association, interest or circumstance would, in the opinion of the City, constitute a conflict of interest if entered into by the bidder. The City agrees to communicate with the bidder its opinion via e-mail or first-class mail within thirty days of receipt of notification.

7. **WITHDRAWAL OF PROPOSAL:**

A bid may be withdrawn prior to the time set for the bid submittal, based on a written request from an authorized representative of the firm; however, a bid shall not be withdrawn after the time set for the bid unless approved by the Purchasing Division.

8. LATE PROPOSAL OR MODIFICATIONS:

Bid modifications received after the time set for the bid submittal shall not be considered. Modifications in writing received prior to the deadline will be accepted. The City will not be responsible for misdirected bids. Bidders should call the Purchasing Division at (479) 575-8258 to ensure receipt of submittal documents prior to opening time and date listed.

9. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS:

- a. The laws of the State of Arkansas apply to any purchase made under this bid. Bidders shall comply with all local, state, and federal directives, orders and laws as applicable to this proposal and subsequent contract(s) including but not limited to Equal Employment Opportunity (EEO), Disadvantaged Business Enterprises (DBE), & OSHA as applicable to this contract.
- b. Pursuant to Arkansas Code Annotated §22-9-203 The City of Fayetteville encourages all *qualified* small, minority and women business enterprises to bid on and receive contracts for goods, services, and construction. Also, City of Fayetteville encourages all general contractors to subcontract portions of their contract to *qualified* small, minority and women business enterprises.

10. PROVISION FOR OTHER AGENCIES:

Unless otherwise stipulated by the bidder, the bidder agrees to make available to all Government agencies, departments, municipalities, and counties, the proposal prices submitted in accordance with said proposal terms and conditions therein, should any said governmental entity desire to buy under this proposal. Eligible Users shall mean all state of Arkansas agencies, the legislative and judicial branches, political subdivisions (counties, local district school boards, community colleges, municipalities, counties, or other public agencies or authorities), which may desire to purchase under the terms and conditions of the contract.

11. COLLUSION:

The bidder, by affixing his or her signature to this submittal, agrees to the following: "bidder certifies that his or her bid is made without previous understanding, agreement, or connection with any person, firm or corporation making a proposal for the same item(s) and/or services and is in all respects fair, without outside control, collusion, fraud, or otherwise illegal action."

12. RIGHT TO AUDIT, FOIA, AND JURISDICITON:

- a. The City of Fayetteville reserves the privilege of auditing a bidder's records as such records that relate to purchases between the City and said bidder.
- b. Freedom of Information Act: City contracts and documents prepared while performing City contractual work are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville, the (Contractor) will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. §25-19-101 et. seq.). Only legally authorized photocopying costs pursuant to the FOIA may be assessed for this compliance.
- c. Legal jurisdiction to resolve any disputes shall be in Washington County, Arkansas with Arkansas law applying to the case.

13. CITY INDEMNIFICATION:

The successful bidder(s) agrees to indemnify the City and hold it harmless from and against all claims, liability, loss, damage or expense, including but not limited to counsel fees, arising from or by reason of any actual or claimed trademark, patent or copyright infringement or litigation based thereon, with respect to the goods or any part thereof covered by this order, and such obligation shall survive acceptance of the goods and payment thereof by the City.

14. VARIANCE FROM STANDARD TERMS & CONDITIONS:

All standard terms and conditions stated in this request for bid apply to this contract except as specifically stated in the subsequent sections of this document, which take precedence, and should be fully understood by bidders prior to submitting a proposal on this requirement.

15. ADA REQUIREMENT FOR PUBLIC NOTICES & TRANSLATION:

Persons with disabilities requiring reasonable accommodation to participate in this proceeding/event, should call 479.521.1316 (telecommunications device for the deaf), not later than seven days prior to the deadline. Persons needing translation of this document shall contact the City of Fayetteville, Purchasing Division, immediately.

16. PROCUREMENT POLICY FOR RECYCLED MATERIALS:

The City of Fayetteville wishes to encourage its bidders to use recycled products in fulfilling contractual obligations to the City and that such practices will serve as a model for other public entities and private sector companies.

17. PAYMENTS AND INVOICING:

The bidder must specify in their bid the exact company name and address which must be the same as invoices submitted for payment as a result of award of this bid. Further, the successful bidder is responsible for immediately notifying the Purchasing Division of any company name change, which would cause invoicing to change from the name used at the time of the original bid. Payment will be made within thirty days of invoice accepted. The City of Fayetteville is very credit worthy and will not pay any interest, fees, or penalty for untimely payments. Payments can be processed through bidder's acceptance of Visa at no additional costs to the City for expedited payment processing. The City will not agree to any nonrefundable deposit or retainer that would remain property of the bidder even if the hourly work actually performed by the bidder would not justify such fee.

The City will pay the awarded bidder based on unit prices provided on invoicing. Progress payments will be made after approval and acceptance of work and submission of invoice. Payments will be made within 30 days of accepted invoice.

18. CANCELLATION:

- a. The City reserves the right to cancel this contract without cause by giving thirty (30) days prior notice to the Contractor in writing of the intention to cancel or with cause if at any time the Contractor fails to fulfill or abide by any of the terms or conditions specified.
- b. Failure of the contractor to comply with any of the provisions of the contract shall be considered a material breach of contract and shall be cause for immediate termination of the contract at the discretion of the City of Fayetteville.

- c. In addition to all other legal remedies available to the City of Fayetteville, the City reserves the right to cancel and obtain from another source, any items and/or services which have not been delivered within the period of time from the date of order as determined by the City of Fayetteville.
- d. In the event sufficient budgeted funds are not available for a new fiscal period, the City shall notify the vendor of such occurrence and contract shall terminate of the last day of the current fiscal period without penalty or expense to the City.

19. ASSIGNMENT, SUBCONTRACTING, CORPORATE ACQUISITIONS AND/OR MERGERS:

- a. The Contractor shall perform this contract. No assignment of subcontracting shall be allowed without prior written consent of the City. If a bidder intends to subcontract a portion of this work, the bidder shall disclose such intent in the bid submitted as a result of this bid.
- b. In the event of a corporate acquisition and/or merger, the Contractor shall provide written notice to the City within thirty (30) calendar days of Contractor's notice of such action or upon the occurrence of said action, whichever occurs first. The right to terminate this contract, which shall not be unreasonably exercised by the City, shall include, but not be limited to, instances in which a corporate acquisition and/or merger represent a conflict of interest or are contrary to any local, state, or federal laws. Action by the City awarding a proposal to a firm that has disclosed its intent to assign or subcontract in its response to the bid, without exception shall constitute approval for purpose of this Agreement.

20. NON-EXCLUSIVE CONTRACT:

Award of this bid shall impose no obligation on the City to utilize the bidder for all work of this type, which may develop during the contract period. This is not an exclusive contract. The City specifically reserves the right to concurrently contract with other companies for similar work if it deems such an action to be in the City's best interest. In the case of multiple-term contracts, this provision shall apply separately to each item.

21. LOBBYING:

Lobbying of selection committee members, City of Fayetteville employees, or elected officials regarding request for proposals, request for qualifications, bids or contracts, during the pendency of bid protest, by the bidder/proposer/protestor or any member of the bidder's/proposer's/protestor's staff, and agent of the bidder/proposer/protestor, or any person employed by any legal entity affiliated with or representing an organization that is responding to the request for proposal, request for qualification, bid or contract, or has a pending bid protest is strictly prohibited either upon advertisement or on a date established by the City of Fayetteville and shall be prohibited until either an award is final or the protest is finally resolved by the City of Fayetteville; provided, however, nothing herein shall prohibit a prospective/bidder/proposer from contacting the Purchasing Division to address situations such as clarification and/or questions related to the procurement process. For purposes of this provision lobbying activities shall include but not be limited to, influencing or attempting to influence action or non-action in connection with any request for proposal, request for qualification, bid or contract through direct or indirect oral or written communication or an attempt to obtain goodwill of persons and/or entities specified in this provision. Such actions may cause any request for proposal, request for qualification, bid or contract to be rejected.

22. ADDITIONAL REQUIREMENTS:

The City reserves the right to request additional services relating to this bid from the bidder. When approved by the City as an amendment to the contract and authorized in writing prior to work, the Contractor shall provide such additional requirements as may become necessary.

23. ADD OR DELETE LOCATIONS OR SERVICES:

The City reserves the right to unilaterally add or delete locations and/or services, either collectively or individually, at the City's sole option, at any time after award has been made as may be deemed necessary or in the best interests of the City. In such case, the Contractor(s) will be required to provide services to this contract in accordance with the terms, conditions, and specifications.

24. INTEGRITY OF BID DOCUMENTS:

Bidders shall use the original bid form(s) provided by the Purchasing Division and enter information only in the spaces where a response is requested. Bidders may use an attachment as an addendum to the bid form(s) if sufficient space is not available on the original form for the bidder to enter a complete response. **Any modifications or alterations to the original documents by the bidder, whether intentional or otherwise, will constitute grounds for rejection of such response.** Any such modifications or alterations a bidder wishes to propose shall be clearly stated in the bidder's response and presented in the form of an addendum to the original bid documents.

25. INSURANCE REQUIREMENTS:

The successful bidder shall provide a Certificate of Insurance in accordance with specifications listed in this request for proposal, prior to commencement of any work. Such certificate shall list the City of Fayetteville as an additional insured. Insurance shall remain valid during each contract term and shall be provided at each renewal period.

For single projects exceeding \$20,000 contractor shall submit certificates of insurance within 10 days of notice of notice to proceed, after City Council approval. Certificates of insurance are to be addressed to the City of Fayetteville, showing that the contractor carries the following insurance which shall be maintained throughout the term of the bid. Any work sublet; the contractor shall require the subcontractor similarly to provide the same insurance coverage. In case any employee engaged in work on the project is not protected under Workers' Compensation, the Contractor shall provide, and shall cause each subcontractor to provide, adequate employer's liability insurance for the protection of such of his employees as are not otherwise protected.

Workers' Compensation:	Statutory Amount
Comprehensive General & Automotive Liability:	\$1,00,000 for each accident
Bodily Injury Liability:	\$500,000 for each accident
Property Damage Liability:	\$500,000 aggregate.

26. OTHER GENERAL CONDITIONS:

- a. Bidder is presumed to be familiar with all federal, state, and city laws, ordinances, and regulations which in any manner affect those engaged or employed in the Work, or the materials or equipment used, or that in any way affect the Work and shall in all respects comply with said laws, ordinances, and regulations. No claim of misunderstanding or ignorance on the part of Bidder or Proposer will in any way serve to modify the provisions of the contract. No representations shall be binding unless embodied in the contract.

- b. Prices shall include all labor, materials, overhead, profit, insurance, shipping, freight, etc., to cover the products and services presented. *Sales tax shall not be included in the bid price.* Applicable Arkansas sales tax laws will apply when necessary but will not be considered in award of this project.
- c. Each bidder should state the anticipated number of days from the date of receipt of an order for delivery of services to the City of Fayetteville.
- d. Bidders must provide the City with their bids signed by an employee having legal authority to submit bids on behalf of the bidder. The entire cost of preparing and providing responses shall be borne by the bidder.
- e. The City reserves the right to request any additional information it deems necessary from any or all bidders after the submission deadline.
- f. The request for bid is not to be construed as an offer, a contract, or a commitment of any kind; nor does it commit the city to pay for any costs incurred by bidder in preparation. It shall be clearly understood that any costs incurred by the Proposer in responding to this request for proposal is at the bidder's own risk and expense as a cost of doing business. The City of Fayetteville shall not be liable for reimbursement to the Proposer for any expense so incurred, regardless of whether or not the proposal is accepted.
- g. If products, components, or services other than those described in this bid document are proposed, the bidder must include complete descriptive literature for each. All requests for additional information must be received within five working days following the request.
- h. NOTE: Any uncertainties shall be brought to the attention to Amanda Beilfuss immediately via telephone (479.575.8258) or e-mail (abeilfuss@fayetteville-ar.gov). It is the intent and goal of the City of Fayetteville Purchasing Division to provide documents providing a clear and accurate understanding of the scope of work to be completed and/or goods to be provided. We encourage all interested parties to ask questions to enable all bidders to be on equal bidding terms.
- i. Any inquiries or requests for explanation in regard to the City's requirements should be made promptly to Amanda Beilfuss, City of Fayetteville, Purchasing Agent via e-mail (abeilfuss@fayetteville-ar.gov) or telephone (479.575.8258). No oral interpretation or clarifications will be given as to the meaning of any part of this request for proposal. All questions, clarifications, and requests, together with answers, if any, will be provided to all firms via written addendum. Names of firms submitting any questions, clarifications, or requests will not be disclosed until after a contract is in place.
- j. Any information provided herein is intended to assist the bidder in the preparation of proposals necessary to properly respond to this bid. The bid is designed to provide qualified bidders with sufficient basic information to submit proposals meeting minimum specifications and/or test requirements but is not intended to limit a bid's content or to exclude any relevant or essential data.
- k. Bidders irrevocably consent that any legal action or proceeding against it under, arising out of or in any manner relating to this Contract shall be prevailed by Arkansas law. Proposer hereby expressly and irrevocably waives any claim or defense in any said action or proceeding based on any alleged lack of jurisdiction or improper venue or any similar basis.

- l. The successful bidder shall not assign the whole or any part of this Contract or any monies due or to become due hereunder without written consent of City of Fayetteville. In case the successful bidder assigns all or any part of any monies due or to become due under this Contract, the Instrument of assignment shall contain a clause substantially to the effect that is agreed that the right of the assignee in and to any monies due or to become due to the successful bidder shall be subject to prior liens of all persons, firms, and corporations for services rendered or materials supplied for the performance of the services called for in this contract.
- m. The successful bidder's attention is directed to the fact that all applicable Federal and State laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over the services shall apply to the contract throughout, and they will be deemed to be included in the contract as though written out in full herein. The successful bidder shall keep himself/herself fully informed of all laws, ordinances and regulations of the Federal, State, and municipal governments or authorities in any manner affecting those engaged or employed in providing these services or in any way affecting the conduct of the services and of all orders and decrees of bodies or tribunals having any jurisdiction or authority over same. If any discrepancy or inconsistency should be discovered in these Contract Documents or in the specifications herein referred to, in relation to any such law, ordinance, regulation, order or decree, s/he shall herewith report the same in writing to City of Fayetteville.
27. **INVOICING:** Quotes shall be prepared using bid pricing and are not required to be itemized to reflect bid pricing. However, all invoices shall be presented to the City, and shall be fully itemized showing bid pricing to arrive at the final total invoice amount:
- a. City Department that ordered the materials or services
 - b. Order Date
 - c. Delivery date or the date of services
 - d. Name of the City Employee that requested or picked up the goods, materials, or service
 - e. Bid Number
 - f. Itemized pricing, showing calculations to correspond with bid pricing including but not limited to hourly rates and markup percentages.
28. **PRICING:**
- a. Prices shall include all labor, supervision, materials, equipment, transportation, and services necessary to do a superior quality job.
 - b. Bidder shall state any discounts to apply. Discounts shall be shown for individual items unless all items have the same percentage of discounts.
 - c. Any projects in excess of procurement threshold for City Council will require additional approval from the Fayetteville City Council prior to authorization of work. Projects exceeding \$50,000 will require a 100% performance and payment bond after Council approval. Actual cost of performance and payment bond is allowed to be charged to the City at an additional fee.
 - i. The City shall reimburse the actual cost of the 100% performance and payment bond for projects over \$50,000 to the awarded contractor. Reimbursement cost shall be equal to actual cost of bonds paid by the contractor.
29. **ATTACHMENTS TO BID DOCUMENTS:** See technical specifications included with this bid packet.

City of Fayetteville
Bid 21-72, Construction – On-Call Plumbing Services Rebid
Technical Specifications

- 1.1 Bidders shall bid and provide pricing on all line items of all sections in the bid form. Failure to bid on all line items shall result in rejection of bid. The City intends to award this bid to the lowest responsive responsible bidder.
- 1.2 The City requires the services of a Plumbing Contractor to provide labor, material, materials, and equipment to perform repairs, installations, and any necessary service to various City buildings and projects.
- 1.3 The City reserves the right to bid or quote any project. This is not an exclusive contract.
- 1.4 The contractor may be required to do emergency repairs at times other than normal working hours. The contractor shall be available on a twenty-four (24) hour basis for such emergency work. Bidder shall include a response time as part of bid pricing.
- 1.5 On site emergency response time shall be no more than two (2) hours after notification. Regular response time shall be no more than 48 hours after contact. Bidder shall include mileage and travel time as part of this agreement. The City shall not be responsible for additional mileage, travel time costs, surcharges, fuel fees, or any other fees added onto invoicing.
- 1.6 The City estimates \$50,000 of services for various projects during each contract term. Quantities listed in the bid form are estimates only. Past spend reflects approximately \$266,768 from 2017 through mid-June 2021, breakdown is as follows:
- * 2017 = approximately \$42,400
 - * 2018 = approximately \$168,000
 - * 2019 = approximately \$146,200
 - * 2020 = approximately \$38,800
 - * 2021 (through mid-June): approximately \$39,200
- 1.7 The City shall not be obligated to purchase more or less than the estimated quantities listed. The City reserves the right to purchase via an on-call basis depending upon actual needs during the contract period.
- 1.8 Bidders shall furnish evidence that they have experience in the type of work as outlined in the bid specifications and shall include specific experience. A minimum of three (3) references for commercial work within the past three (3) years shall be submitted with each bid.
- 1.9 Bidder shall have been a licensed plumbing contractor with the State of Arkansas for a minimum of three (3) years. Current valid contractor's license is required and shall be valid at time of bid.
- 1.10 The Bidder shall possess the correct occupational licenses, all professional licenses, and any other authorizations necessary to carry out and perform the work required by the project **AT THE TIME OF BID SUBMISSION** pursuant to all applicable Federal, State, and Local Laws, Statutes, Ordinances, and rules and regulations of any kind.
- 1.11 The Contractor shall be responsible for obtaining all required permits; however, fees for City issued permits shall be waived and shall not be included in pricing.
- 1.12 All work shall be performed in a high quality, workmanship like manner and shall conform to codes enforced by the City Inspection Division.

- 1.13 In the event a project is deemed to exceed \$50,000, the City department requesting service and the Purchasing department shall be notified immediately. No project exceeding \$50,000 shall be performed or started without prior approval from the Fayetteville City Council and a 100% performance and payment bond.
- 1.14 Work shall not be started without an executed Purchase Order, signed by the Purchasing Manager/Director or by a project specific approved p-card request (for payment through Visa), showing full approval.
- 1.15 **PRICING:** Hourly labor rates and markup percentages bid shall include but is not limited to all labor cost, insurance, mobilization, overhead, profit, travel time, bonding, mileage, etc. Prices quoted shall be firm for the term of the contract. The City shall not be charged any additional fees including but not limited to insurance premiums, mobilization, fuel surcharges, etc.
- 1.16 **BID BOND:** Each bid shall be accompanied by a cashier's check from a bank doing business in the State of Arkansas or a corporate bid bond in an amount not less than five (5) percent of the amount bid. This five (5) percent amount shall be based off the total base bid amount submitted. The total base bid amount is the estimated annual expected contract value. In the event a bidder opts to submit a cashier's check for a bid bond, the actual physical cashier's check shall be delivered to the City prior to the deadline. IF BIDDER FAILS TO SUBMIT A VALID CASHIER'S CHECK OR A COMPLETED CORPORATE BID BOND, THE BIDDER'S SUBMITTAL SHALL BE REJECTED.
- 1.17 **Pertaining to the bid table involving markup percentages on materials. Mark up percentage shall be input as a DECIMAL amount. For example, if a bidder desired to bid a markup of 10%, this percentage would need to be inserted in the bid table as ".10" to calculate a 10% increase over the cost of the material.**
- 1.18 The Contractor shall employ a competent and thoroughly experienced superintendent capable of handling all phases of each project including any necessary assistants to complete each project. When any work under this contract is being performed, the City and necessary employees shall be present at the job site. The Superintendent shall represent the Contractor in his absence and all directions given to him shall be as binding as if given to the Contractor.
- 1.19 Major and important directions shall be confirmed in writing to the Contractor, other directions shall be so confirmed upon written request of the Contractor.
- 1.20 The Superintendent shall be in complete and responsible charge of the project for the Contractor and shall not be superseded by any other personnel of the Contractor. After contract award, awarded Contractor shall submit the name of the proposed Superintendent or primary contact for the Contractor and shall furnish a telephone number or numbers through which the Superintendent may be reached 24 hours each day of the contract duration.
- 1.21 The Contractor shall provide efficient supervision for the work, using industry standard, best skill and attention. Contractor shall carefully study and compare all Drawings, Specifications, and other instructions and shall report at once to the Project Manager any error, inconsistency, or omission which may be discovered; but, shall not be held responsible for the existence or discovery.
- 1.22 The City reserves the right to cancel this contract within thirty (30) days written notice at no penalty to the City.
- 1.23 Any work orders associated with All City Owned and Leased Buildings shall be under the direction and coordination with Facilities Management.
- 1.24 Any other work orders associated will be directed through the respective City department or division.

- 1.25 Billable hours shall include reasonable drive time to and from Point of Dispatch. Hourly rates shall be inclusive of all fees. No fuel, mileage, surcharge, or additional fees shall be added to any invoice.
- 1.26 Point of Dispatch shall be defined as the closest office to the City of Fayetteville, located at 113 W. Mountain St., Fayetteville, AR 72701. Point of Dispatch address shall be on the bid form page of submittal.

Bid 21-72
Appendix A
City Bid Documents

City of Fayetteville
Bid 21-72, Construction – On-Call Plumbing Services Rebid
DRAFT Contract – Between City and Contractor

This contract executed this ____ day of _____, 2021, between the City of Fayetteville, Arkansas, and _____. In consideration of the mutual covenants contained herein, the parties agree as follows:

1. _____ at its own cost and expense shall furnish all labor, materials, supplies, machinery, equipment, tools, supervision, bonds, insurance, tax permits, and all other accessories and services necessary to complete items bid per Bid 21-72 as stated in _____ bid proposal, and in accordance with specifications attached hereto and made a part hereof under Bid 21-72, all included herein as if spelled out word for word.
2. The City of Fayetteville shall pay _____ based on their bid proposal in an amount not to exceed **amounts, hourly rates, and markup rates presented in bid submittal** by _____. Payments will be made after approval and acceptance of work and submission of invoice. Payments will be made approximately 30 days after acceptance of itemized detailed invoice.
3. The Contract documents which comprise the contract between the City of Fayetteville and _____ consist of this Contract and the following documents attached hereto, and made a part hereof:
 - A. Bid form identified as Invitation to Bid 21-72 with the specifications and conditions typed thereon.
 - B. _____ bid proposal.
 - C. The Notice to Prospective Bidders and the Bid Tabulation.
4. These Contract documents constitute the entire agreement between the City of Fayetteville _____ and may be modified only by a duly executed written instrument signed by the City of Fayetteville and _____.
5. _____ shall not assign its duties under the terms of this agreement.
6. _____ agrees to hold the City of Fayetteville harmless and indemnify the City of Fayetteville, against any and all claims for property damage, personal injury or death, arising from _____ performance of this contract. This clause shall not in any form or manner be construed to waive that tort immunity set forth under Arkansas Law.
7. _____ shall furnish a certificate of insurance addressed to the City of Fayetteville, showing that he carries the following insurance which shall be maintained throughout the term of the Contract. Any work sublet; the contractor shall require the subcontractor similarly to provide worker's compensation insurance. In case any employee engaged in work on the project under this contract is

not protected under Worker's Compensation Insurance, _____ shall provide and shall cause each Subcontractor to provide adequate employer's liability insurance for the protection of such of his employees as are not otherwise protected. The premiums for all insurance and the bond required herein shall be paid by _____.

Workmen's Compensation

Statutory Amount

Comprehensive General &
Automobile Insurance

Bodily Injury Liability

\$500,000 for each person injured.

\$1,000,000 for each accident.

Property Damage Liability

\$1,000,000 aggregate.

8. _____ shall furnish proof of licensure as required by all local and state agencies.
9. This contract may be terminated by the City of Fayetteville or _____ with 30 calendar days written notice.
10. This contract shall be effective from one year of the date of signed contract. The City reserves the right to automatically renew the contract for four (4) additional one (1) year terms. Renewals shall be automatic unless either _____ or the City notifies the other of its intent to terminate the contract at the end of the contract period.
- a. Individual projects exceeding Council required threshold will require additional approval from the Fayetteville City Council.
11. Freedom of Information Act: City of Fayetteville contracts and documents prepared while performing city contractual work are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville, the contractor will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. 25-19-101 et. Seq.). Only legally authorized photo copying costs pursuant to the FOIA may be assessed for this compliance.
12. Changes in scope or price: Changes, modifications, or amendments in scope, price or fees to this contract shall not be allowed without a prior formal contract amendment approved by the Mayor and the Fayetteville City Council in advance of the change in scope, cost or fees.
13. Jurisdiction: Legal jurisdiction to resolve any disputes shall be **Washington County, Arkansas** with **Arkansas law** applying to the case.
14. Arbitration/Mediation: The City will not agree to be forced to mediate or arbitrate any dispute.
15. Interest charges for late payments by the City: The City of Fayetteville does NOT agree to any interest or penalty for "untimely" payments. The City will pay all invoices within 30 calendar days of accepted invoice.

WITNESS OUR HANDS THIS _____ DAY OF _____, 2021.

CONTRACTOR NAME

CITY OF FAYETTEVILLE, ARKANSAS

By: _____
Signature

By: _____
LIONELD JORDAN, Mayor

Printed Contractor Name & Title

ATTEST (*Signature*)

ATTEST: (*Signature*)

Company Secretary (*Printed Name*)

Kara Paxton, City Clerk

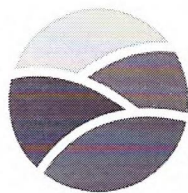
Business Address

City, State & Zip Code

Date Signed: _____

Date Signed: _____

Bid 21-72
Appendix A
City Bid Documents



CITY OF
FAYETTEVILLE
ARKANSAS

City of Fayetteville, Arkansas
Purchasing Division – Room 306
113 W. Mountain
Fayetteville, AR 72701
Phone: 479.575.8258

TDD (Telecommunication Device for the Deaf): 479.521.1316

INVITATION TO BID

Bid 21-72, Construction – On-Call Plumbing Services Rebid

DEADLINE: Tuesday, September 21, 2021 before 3:00 PM, Local Time

PRE-SUBMITTAL MEETING: Tuesday, September 14, 2021 at 2:00 PM, via Zoom

ACCEPTABLE DELIVERY METHODS:

- (1) City's electronic bidding platform OR
- (2) sealed and delivered directly to the City of Fayetteville as instructed in the advertisement

PURCHASING AGENT: Amanda Beilfuss, abeilfuss@fayetteville-ar.gov

DATE OF ISSUE & ADVERTISEMENT: Sunday, 09/05/2021 and 09/12/2021

No late bids will be accepted. Bids shall be submitted in one of the following methods: (1) through the City's third-party electronic bidding platform, Bonfire, or (2) delivering in person via sealed envelope to the City of Fayetteville Purchasing Division. Submitting through the City's electronic bidding platform is strongly encouraged. All bids shall be submitted in accordance with the attached City of Fayetteville specifications and bid documents attached hereto. Each bidder is required to fill in every blank and shall supply all information requested; failure to do so may be used as basis of rejection.

The undersigned hereby offers to furnish & deliver the articles or services as specified, at the prices & terms stated herein, and in strict accordance with the specifications and general conditions of bidding, all of which are made a part of this offer. This offer is not subject to withdrawal unless upon mutual written agreement by the Proposer/Bidder and City Purchasing Manager.

Name of Firm: Comfort Systems USA (Arkansas), Inc.

Contact Person: Barbara Eggleston Title: Service Vice President

E-Mail: barbara@comfortar.com Phone: 501-835-2859

Business Address: 116 Commerical Avenue

City: Lowell State: AR Zip: 72745

Signature: *Barbara Eggleston* Date: September 20, 2021

City of Fayetteville
Bid 21-72, Construction – On-Call Plumbing Services Rebid
Advertisement

City of Fayetteville, Arkansas
INVITATION TO BID
Bid 21-72, Construction – On-Call Plumbing Services Rebid

The City of Fayetteville, AR is accepting sealed bids from properly licensed plumbing contractors for providing plumbing services on an as-needed basis for a one (1) year term with the option to automatically renew for four (4) additional one (1) year terms.

A non-mandatory pre-submittal meeting will be held **Tuesday, September 14, 2021 at 2:00 PM** virtually via Zoom. The pre-submittal meeting will be held to offer guidance to any interested party needing assistance with submitting a bid in the City's online bidding platform. Questions pertaining to bid submittal process will be answered as well as any other general inquiries. Information regarding the pre-submittal meeting is available on the project page on the City's electronic bidding platform. All interested parties are strongly encouraged to attend.

Bidding documents, plans, plan holders, and addenda shall be obtained at the City of Fayetteville Purchasing Division's electronic bidding platform at www.fayetteville-ar.gov/bids. All bids shall be received by **Tuesday, September 21, 2021 before 3:00 PM, local time** utilizing the electronic bidding software, or by submitting a sealed bid at the address below. All bids shall be received prior to the bid deadline. Submitting a bid electronically is strongly encouraged. A public bid opening will be conducted shortly after the deadline at City Hall and livestreamed at <https://www.youtube.com/user/cityoffayettevillear>. Late or misdirected bids shall not be accepted. The City of Fayetteville shall not be responsible for lost or misdirected bids, or failure of bidder's technical equipment.

City of Fayetteville
Purchasing Division – Room 306
113 West Mountain Street
Fayetteville, AR 72701

Each bid shall be accompanied by a cashier's check from a bank doing business in the State of Arkansas or a corporate bid bond in an amount not less than five (5) percent of the amount bid. This five (5) percent amount shall be based off the total base bid amount submitted. The total base bid amount is the estimated annual expected contract value. In the event a bidder opts to submit a cashier's check for a bid bond, the actual physical cashier's check shall be delivered to the City prior to the deadline. A one hundred percent (100%) performance and payment bond is required for individual projects exceeding \$50,000. A State of Arkansas Contractor's License is required for all bidders and license shall be valid at the time of bid deadline.

Pursuant to Arkansas Code Annotated §22-9-203 The City of Fayetteville encourages all *qualified* small, minority and women business enterprises to bid on and receive contracts for goods, services, and construction. Also, City of Fayetteville encourages all general contractors to subcontract portions of their contract to *qualified* small, minority and women business enterprises.

The City of Fayetteville reserves the right to waive irregularities, reject bids, and postpone the award of any Contract for a period which shall not exceed beyond ninety (90) days from the bid opening date.

City of Fayetteville
By: Amanda Beilfuss
City Purchasing Agent
P: 479.575.8258 Email: abeilfuss@fayetteville-ar.gov
TDD (Telecommunications Device for the Deaf): (479) 521-1316
Date of advertisement: 09.05.21 & 09.12.21

This publication was paid for by the Purchasing Division of the City of Fayetteville, Arkansas.

Amount paid: \$XXX.XX.

City of Fayetteville, AR
Bid 21-72, Construction – On-Call Plumbing Services Rebid
Page 2 of 20

Refer to the City's electronic bidding platform to submit bid pricing electronically.

Contact the City Purchasing Division to submit a physical sealed bid.

Bidders shall bid and provide pricing on all line items of all sections in both bid tables. BOTH BID TABLES SHALL BE COMPLETED. Failure to bid on all line items in both bid tables shall result in rejection of bid. The City intends to award this bid to the lowest responsive responsible bidder. The City will use the total of both bid tables for each bidder to help determine the lowest responsive responsible bidder.

Bidders shall complete this bid form *in its entirety* AND *accompany any descriptive literature* on the products being bid. The City reserves the right to award this bid based on the City's best interest.

PRICING: Hourly labor rates and markup percentages bid shall include but is not limited to all labor cost, insurance, mobilization, overhead, profit, travel time, bonding, mileage, etc. Prices quoted shall be firm for the term of the contract. The City shall not be charged any additional fees including but not limited to insurance premiums, mobilization, fuel surcharges, etc.

BID BOND: Each bid shall be accompanied by a cashier's check from a bank doing business in the State of Arkansas or a corporate bid bond in an amount not less than five (5) percent of the amount bid. This five (5) percent amount shall be based off the total base bid amount submitted. The total base bid amount is the estimated annual expected contract value. In the event a bidder opts to submit a cashier's check for a bid bond, the actual physical cashier's check shall be delivered to the City prior to the deadline. IF BIDDER FAILS TO SUBMIT A VALID CASHIER'S CHECK OR A COMPLETED CORPORATE BID BOND, THE BIDDER'S SUBMITTAL SHALL BE REJECTED.

*Pertaining to the bid table involving markup percentages on materials: Markup percentage shall be input as a DECIMAL amount. For example, if a bidder desired to bid a markup of 10%, this percentage would need to be inserted in the bid table as ".10" to calculate a 10% increase over the cost of the material.

THIS BID FORM CONTINUES ON THE NEXT PAGE.

Actual specification of any deficient item shall be noted on the bid sheet or separate attachment. If specifications of item bid differ from provided literature, deviation shall be documented and certified by the manufacturer as a regular production option.

1. He/she has read and agrees to the requirements set forth in this proposal, including specifications, terms, standard conditions, and any pertinent information regarding the articles being bid on.
2. Unless otherwise noted and explained, the unit bid and listed meets or exceeds all of these requirements as specified by The City of Fayetteville.
3. Pursuant Arkansas Code Annotated §25-1-503, the Contractor agrees and certifies that they do not currently boycott Israel and will not boycott Israel during any time in which they are entering into, or while in contract, with any public entity as defined in §25-1-503. If at any time during contract the contractor decides to boycott Israel, the contractor must notify the contracted public entity in writing.
4. The Bidder can and will comply with all specifications and requirements for delivery, documentation and support as specified herein.
5. I, as an officer of this organization, or per the attached letter of authorization, am duly authorized to certify the information provided herein is accurate and true.
6. Bidder shall comply with all State and Federal Equal Opportunity and Non-Discrimination requirements and conditions of employment in addition to all federal, state, and local laws.
7. Bidder shall disclose any possible conflict of interest with the City of Fayetteville, including, but not limited to, any relationship with any City of Fayetteville employee. Response shall disclose if a known relationship exists between any principal or employee of your firm and any City of Fayetteville employee or elected City of Fayetteville official. If no relationship exists, this should also be stated in your response. Failure to disclose such a relationship may result in cancellation of a purchase and/or contract as a result of your response.

2.) RELATIONSHIP EXISTS (Please explain): _____

8. Bidder will perform the Work in compliance with all applicable trench safety standards set forth in Occupational Safety and Health Administration (OSHA) Part 1926 – Subpart P – Excavations.
9. As A bidder on this project, you are required to provide debarment/suspension certification indicating that you are in compliance with the below Federal Executive Order. Certification can be done by completing and signing this form.
 - a. Federal Executive Order (E.O.) 12549 “Debarment and Suspension” requires that all contractors receiving individual awards, using federal funds, and all sub-recipients certify that the organization and its principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from doing business with the Federal Government.
 - b. Your signature below certifies that neither you nor your principal is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

Unsigned bids will be rejected. Items marked * are mandatory for consideration.

*NAME OF FIRM: Comfort Systems USA (Arkansas), Inc.

Purchase Order/Payments shall be issued to this name

*D/B/A or Corporation Name Comfort Systems USA (Arkansas), Inc.

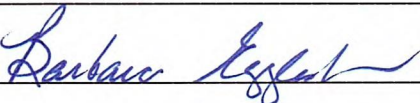
*BUSINESS ADDRESS: P.O. Box 16620

*CITY: Little Rock *STATE: AR *ZIP: _____

*PHONE: 501-835-2859 FAX: 501-835-2404

*E-MAIL: barbara@comfortar.com

*BY: (PRINTED NAME) Barbara Eggleston

*AUTHORIZED SIGNATURE: 

*TITLE: Service Vice President

DUNS NUMBER: 096677471 CAGE NUMBER: OGCA5

*TAX ID NUMBER: 74-2885035

Acknowledge Addendums:

Addendum No. _____ Dated: _____ Acknowledged by: _____

Addendum No. _____ Dated: _____ Acknowledged by: _____

Addendum No. _____ Dated: _____ Acknowledged by: _____

Addendum No. _____ Dated: _____ Acknowledged by: _____

ALL BIDDERS SHALL READ THE "TECHNICAL SPECIFICATIONS" SECTION WITH BID. BY SIGNING THIS BID FORM, BIDDER ACKNOWLEDGES THE "TECHNICAL SPECIFICATIONS" SECTION IN ITS ENTIRETY

City of Fayetteville

Bid 21-72, Construction – On-Call Plumbing Services Rebid

References

The following information is required from all Bidders so all bids may be reviewed and properly evaluated.

COMPANY NAME: Comfort Systems USA (Arkansas), Inc.

BUSINESS ADDRESS: 116 Commerical Avenue Lowell, AR 72745

NUMBER OF YEARS IN BUSINESS: 38 HOW LONG IN PRESENT LOCATION: 15

TOTAL NUMBER OF CURRENT EMPLOYEES: 174 FULL TIME 1 PART TIME

NUMBER OF EMPLOYEES YOU PLAN TO USE TO SERVICE THIS CONTRACT: 5 FULL TIME 0 PART TIME

PLEASE LIST FOUR (4) LOCAL COMMERCIAL AND/OR GOVERNMENTAL REFERENCES THAT YOU HAVE PREVIOUSLY PERFORMED SIMILAR CONTRACT SERVICES FOR WITHIN THE PAST FIVE (5) YEARS (All fields must be completed). Contractors shall have valid experience.

1. OurPharma, LLC

COMPANY NAME

Fayetteville, AR 72701

CITY, STATE, ZIP

Kevin Williams

CONTACT PERSON

479-422-2117

TELEPHONE

On going maintenance

DATE COMPLETED

kwilliams@ourpharma.net

E-MAIL ADDRESS

3. Arkansas Arts Academy

COMPANY NAME

Rogers, AR 72756

CITY, STATE, ZIP

Neal Harral

CONTACT PERSON

479-936-6481

TELEPHONE

on going maintenance and service

DATE COMPLETED

nharral@artsk12.org

E-MAIL ADDRESS

2. Zeta Tau Alpha

COMPANY NAME

Fayetteville, AR 72701

CITY, STATE, ZIP

Laurie Blair

CONTACT PERSON

834-670-0242

TELEPHONE

on going services

DATE COMPLETED

zetamomnwa@gmail.com

E-MAIL ADDRESS

4. AT&T

COMPANY NAME

Benton AR

CITY, STATE, ZIP

Brett Barry

CONTACT PERSON

501-538-5972

TELEPHONE

on going services

DATE COMPLETED

Cb4375@att.com

E-MAIL ADDRESS

1. SUBMISSION OF BID & BID EVALUATION:

- a. Bids shall be reviewed following the stated deadline, as shown on the cover sheet of this document.
- b. Bidders shall submit bids based on documentation published by the Fayetteville Purchasing Division.
- c. Bids shall be enclosed in sealed envelopes or packages addressed to the City of Fayetteville, Purchasing Division, Room 306, 113 W. Mountain, Fayetteville, AR 72701 or submitted electronically on the City's online bidding platform. The name, address of the firm and Bid, RFP, or RFQ number shall be on the outside of the packaging as well as on any packages enclosed in shipping containers or boxes for physical packaging submitted.
- d. Bidding documents and addenda shall be obtained at the City of Fayetteville Purchasing Division's electronic bidding platform at www.fayetteville-ar.gov/bids.
- e. The City will not be responsible for misdirected bids. Bidder should call the Purchasing Office at 479.575.8258 to ensure correct receipt of bidding documents prior to opening time and date listed on the bid form.
- f. Bidders shall have experience in providing products and/or services of the same or similar nature. Failure to provide materials bid will subject bidder to disqualification for the remainder of the calendar year. Failure to deliver poor or inadequate services, on a consistent basis or more than three (3) times within a six-month period will subject bidder to disqualification for the remainder of the contract term.
- g. Bidder is advised that exceptions to any of the terms contained in this bid must be identified in its response to the bid. Failure to do so may lead the City to declare any such term non-negotiable. Proposer's desire to take exception to a non-negotiable term will not disqualify it from consideration for award.
- h. Local time is defined as the time in Fayetteville, Arkansas on the due date of the deadline. Bids shall be received before the time as shown by the atomic clock located in the Purchasing Division Office.
- i. Bids will be evaluated and awarded based on the best interest of the City of Fayetteville. The City intends to award this bid in its entirety.
- j. Final signed agreement shall be effective from one year of the date of signed contract. The City reserves the right to extend the contract by mutual agreement for a period of four (4) additional, one (1) year periods automatically unless either the Contractor or the City notifies the other of its intent to terminate the contract at the end of the contract period.
- k. Bid pricing shall remain firm for five years.

2. WRITTEN REQUESTS FOR INTERPRETATIONS OR CLARIFICATION:

No oral interpretations will be made to any firms as to the meaning of specifications or any other contract documents. All questions pertaining to the terms and conditions or scope of work of this bid must be sent in writing via e-mail to the Purchasing Agent. Responses to questions may be handled as an addendum if the response would provide clarification to the requirements of the bid. All such addenda shall become part of

the contract documents. The City will not be responsible for any other explanation or interpretation of the proposed bid made or given prior to the award of the contract.

3. **DESCRIPTION OF SUPPLIES AND SERVICES:**

Any reference to a particular brand or manufacturer is done in an effort to establish an acceptable level of quality for this project. Brands or manufacturers that are included in bid that are of at least equal quality, size, design, and specification as to what has been specified, will be acceptable for consideration only if approved by the City of Fayetteville Purchasing Division. The City of Fayetteville reserves the right to accept or reject any requested equal.

4. **RIGHTS OF CITY OF FAYETTEVILLE BID PROCESS:**

In addition to all other rights of the City of Fayetteville, under state law, the City specifically reserves the following:

- a. The City of Fayetteville reserves the right to select the bid that it believes will serve the best interest of the City.
- b. The City of Fayetteville reserves the right to accept or reject any or all bids.
- c. The City of Fayetteville reserves the right to cancel the entire bid.
- d. The City of Fayetteville reserves the right to remedy or waive technical or immaterial errors in the invitation to bid or in bids submitted.
- e. The City of Fayetteville reserves the right to request any necessary clarifications, additional information, or data without changing the terms of the bid.

5. **COSTS INCURRED BY BIDDERS:**

All expenses involved with the preparation and submission of bids to the City, or any work performed in connection therewith, shall be borne solely by the bidder(s). No payment will be made for any responses received, or for any other effort required of, or made by, the bidder(s) prior to contract commencement.

6. **CONFLICT OF INTEREST:**

- a. The bidder represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance or services required hereunder, as provided in City of Fayetteville Code Section 34.26 titled "Authority of City Employee to Contract with the City".
- b. All bidders shall promptly notify Amanda Beilfuss, City Purchasing Agent, in writing, of all potential conflicts of interest for any prospective business association, interest, or other circumstance which may influence or appear to influence the bidder's judgment or quality of services being provided. Such written notification shall identify the prospective business association, interest or circumstance, the nature of which the bidder may undertake and request an opinion to the City as to whether the association, interest or circumstance would, in the opinion of the City, constitute a conflict of interest if entered into by the bidder. The City agrees to communicate with the bidder its opinion via e-mail or first-class mail within thirty days of receipt of notification.

7. **WITHDRAWAL OF PROPOSAL:**

A bid may be withdrawn prior to the time set for the bid submittal, based on a written request from an authorized representative of the firm; however, a bid shall not be withdrawn after the time set for the bid unless approved by the Purchasing Division.

8. LATE PROPOSAL OR MODIFICATIONS:

Bid modifications received after the time set for the bid submittal shall not be considered. Modifications in writing received prior to the deadline will be accepted. The City will not be responsible for misdirected bids. Bidders should call the Purchasing Division at (479) 575-8258 to ensure receipt of submittal documents prior to opening time and date listed.

9. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS:

- a. The laws of the State of Arkansas apply to any purchase made under this bid. Bidders shall comply with all local, state, and federal directives, orders and laws as applicable to this proposal and subsequent contract(s) including but not limited to Equal Employment Opportunity (EEO), Disadvantaged Business Enterprises (DBE), & OSHA as applicable to this contract.
- b. Pursuant to Arkansas Code Annotated §22-9-203 The City of Fayetteville encourages all *qualified* small, minority and women business enterprises to bid on and receive contracts for goods, services, and construction. Also, City of Fayetteville encourages all general contractors to subcontract portions of their contract to *qualified* small, minority and women business enterprises.

10. PROVISION FOR OTHER AGENCIES:

Unless otherwise stipulated by the bidder, the bidder agrees to make available to all Government agencies, departments, municipalities, and counties, the proposal prices submitted in accordance with said proposal terms and conditions therein, should any said governmental entity desire to buy under this proposal. Eligible Users shall mean all state of Arkansas agencies, the legislative and judicial branches, political subdivisions (counties, local district school boards, community colleges, municipalities, counties, or other public agencies or authorities), which may desire to purchase under the terms and conditions of the contract.

11. COLLUSION:

The bidder, by affixing his or her signature to this submittal, agrees to the following: "bidder certifies that his or her bid is made without previous understanding, agreement, or connection with any person, firm or corporation making a proposal for the same item(s) and/or services and is in all respects fair, without outside control, collusion, fraud, or otherwise illegal action."

12. RIGHT TO AUDIT, FOIA, AND JURISDICITON:

- a. The City of Fayetteville reserves the privilege of auditing a bidder's records as such records that relate to purchases between the City and said bidder.
- b. Freedom of Information Act: City contracts and documents prepared while performing City contractual work are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville, the (Contractor) will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. §25-19-101 et. seq.). Only legally authorized photocopying costs pursuant to the FOIA may be assessed for this compliance.
- c. Legal jurisdiction to resolve any disputes shall be in Washington County, Arkansas with Arkansas law applying to the case.

13. CITY INDEMNIFICATION:

The successful bidder(s) agrees to indemnify the City and hold it harmless from and against all claims, liability, loss, damage or expense, including but not limited to counsel fees, arising from or by reason of any actual or claimed trademark, patent or copyright infringement or litigation based thereon, with respect to the goods or any part thereof covered by this order, and such obligation shall survive acceptance of the goods and payment thereof by the City.

14. VARIANCE FROM STANDARD TERMS & CONDITIONS:

All standard terms and conditions stated in this request for bid apply to this contract except as specifically stated in the subsequent sections of this document, which take precedence, and should be fully understood by bidders prior to submitting a proposal on this requirement.

15. ADA REQUIREMENT FOR PUBLIC NOTICES & TRANSLATION:

Persons with disabilities requiring reasonable accommodation to participate in this proceeding/event, should call 479.521.1316 (telecommunications device for the deaf), not later than seven days prior to the deadline. Persons needing translation of this document shall contact the City of Fayetteville, Purchasing Division, immediately.

16. PROCUREMENT POLICY FOR RECYCLED MATERIALS:

The City of Fayetteville wishes to encourage its bidders to use recycled products in fulfilling contractual obligations to the City and that such practices will serve as a model for other public entities and private sector companies.

17. PAYMENTS AND INVOICING:

The bidder must specify in their bid the exact company name and address which must be the same as invoices submitted for payment as a result of award of this bid. Further, the successful bidder is responsible for immediately notifying the Purchasing Division of any company name change, which would cause invoicing to change from the name used at the time of the original bid. Payment will be made within thirty days of invoice accepted. The City of Fayetteville is very credit worthy and will not pay any interest, fees, or penalty for untimely payments. **Payments can be processed through bidder's acceptance of Visa at no additional costs to the City for expedited payment processing.** The City will not agree to any nonrefundable deposit or retainer that would remain property of the bidder even if the hourly work actually performed by the bidder would not justify such fee.

The City will pay the awarded bidder based on unit prices provided on invoicing. Progress payments will be made after approval and acceptance of work and submission of invoice. Payments will be made within 30 days of accepted invoice.

18. CANCELLATION:

- a. The City reserves the right to cancel this contract without cause by giving thirty (30) days prior notice to the Contractor in writing of the intention to cancel or with cause if at any time the Contractor fails to fulfill or abide by any of the terms or conditions specified.
- b. Failure of the contractor to comply with any of the provisions of the contract shall be considered a material breach of contract and shall be cause for immediate termination of the contract at the discretion of the City of Fayetteville.

- c. In addition to all other legal remedies available to the City of Fayetteville, the City reserves the right to cancel and obtain from another source, any items and/or services which have not been delivered within the period of time from the date of order as determined by the City of Fayetteville.
- d. In the event sufficient budgeted funds are not available for a new fiscal period, the City shall notify the vendor of such occurrence and contract shall terminate of the last day of the current fiscal period without penalty or expense to the City.

19. ASSIGNMENT, SUBCONTRACTING, CORPORATE ACQUISITIONS AND/OR MERGERS:

- a. The Contractor shall perform this contract. No assignment of subcontracting shall be allowed without prior written consent of the City. If a bidder intends to subcontract a portion of this work, the bidder shall disclose such intent in the bid submitted as a result of this bid.
- b. In the event of a corporate acquisition and/or merger, the Contractor shall provide written notice to the City within thirty (30) calendar days of Contractor's notice of such action or upon the occurrence of said action, whichever occurs first. The right to terminate this contract, which shall not be unreasonably exercised by the City, shall include, but not be limited to, instances in which a corporate acquisition and/or merger represent a conflict of interest or are contrary to any local, state, or federal laws. Action by the City awarding a proposal to a firm that has disclosed its intent to assign or subcontract in its response to the bid, without exception shall constitute approval for purpose of this Agreement.

20. NON-EXCLUSIVE CONTRACT:

Award of this bid shall impose no obligation on the City to utilize the bidder for all work of this type, which may develop during the contract period. This is not an exclusive contract. The City specifically reserves the right to concurrently contract with other companies for similar work if it deems such an action to be in the City's best interest. In the case of multiple-term contracts, this provision shall apply separately to each item.

21. LOBBYING:

Lobbying of selection committee members, City of Fayetteville employees, or elected officials regarding request for proposals, request for qualifications, bids or contracts, during the pendency of bid protest, by the bidder/proposer/protestor or any member of the bidder's/proposer's/protestor's staff, and agent of the bidder/proposer/protestor, or any person employed by any legal entity affiliated with or representing an organization that is responding to the request for proposal, request for qualification, bid or contract, or has a pending bid protest is strictly prohibited either upon advertisement or on a date established by the City of Fayetteville and shall be prohibited until either an award is final or the protest is finally resolved by the City of Fayetteville; provided, however, nothing herein shall prohibit a prospective/bidder/proposer from contacting the Purchasing Division to address situations such as clarification and/or questions related to the procurement process. For purposes of this provision lobbying activities shall include but not be limited to, influencing or attempting to influence action or non-action in connection with any request for proposal, request for qualification, bid or contract through direct or indirect oral or written communication or an attempt to obtain goodwill of persons and/or entities specified in this provision. Such actions may cause any request for proposal, request for qualification, bid or contract to be rejected.

22. ADDITIONAL REQUIREMENTS:

The City reserves the right to request additional services relating to this bid from the bidder. When approved by the City as an amendment to the contract and authorized in writing prior to work, the Contractor shall provide such additional requirements as may become necessary.

23. ADD OR DELETE LOCATIONS OR SERVICES:

The City reserves the right to unilaterally add or delete locations and/or services, either collectively or individually, at the City's sole option, at any time after award has been made as may be deemed necessary or in the best interests of the City. In such case, the Contractor(s) will be required to provide services to this contract in accordance with the terms, conditions, and specifications.

24. INTEGRITY OF BID DOCUMENTS:

Bidders shall use the original bid form(s) provided by the Purchasing Division and enter information only in the spaces where a response is requested. Bidders may use an attachment as an addendum to the bid form(s) if sufficient space is not available on the original form for the bidder to enter a complete response. **Any modifications or alterations to the original documents by the bidder, whether intentional or otherwise, will constitute grounds for rejection of such response.** Any such modifications or alterations a bidder wishes to propose shall be clearly stated in the bidder's response and presented in the form of an addendum to the original bid documents.

25. INSURANCE REQUIREMENTS:

The successful bidder shall provide a Certificate of Insurance in accordance with specifications listed in this request for proposal, prior to commencement of any work. Such certificate shall list the City of Fayetteville as an additional insured. Insurance shall remain valid during each contract term and shall be provided at each renewal period.

For single projects exceeding \$20,000 contractor shall submit certificates of insurance within 10 days of notice of notice to proceed, after City Council approval. Certificates of insurance are to be addressed to the City of Fayetteville, showing that the contractor carries the following insurance which shall be maintained throughout the term of the bid. Any work sublet; the contractor shall require the subcontractor similarly to provide the same insurance coverage. In case any employee engaged in work on the project is not protected under Workers' Compensation, the Contractor shall provide, and shall cause each subcontractor to provide, adequate employer's liability insurance for the protection of such of his employees as are not otherwise protected.

Workers' Compensation:	Statutory Amount
Comprehensive General & Automotive Liability:	\$1,00,000 for each accident
Bodily Injury Liability:	\$500,000 for each accident
Property Damage Liability:	\$500,000 aggregate.

26. OTHER GENERAL CONDITIONS:

- a. Bidder is presumed to be familiar with all federal, state, and city laws, ordinances, and regulations which in any manner affect those engaged or employed in the Work, or the materials or equipment used, or that in any way affect the Work and shall in all respects comply with said laws, ordinances, and regulations. No claim of misunderstanding or ignorance on the part of Bidder or Proposer will in any way serve to modify the provisions of the contract. No representations shall be binding unless embodied in the contract.

- b. Prices shall include all labor, materials, overhead, profit, insurance, shipping, freight, etc., to cover the products and services presented. *Sales tax shall not be included in the bid price.* Applicable Arkansas sales tax laws will apply when necessary but will not be considered in award of this project.
- c. Each bidder should state the anticipated number of days from the date of receipt of an order for delivery of services to the City of Fayetteville.
- d. Bidders must provide the City with their bids signed by an employee having legal authority to submit bids on behalf of the bidder. The entire cost of preparing and providing responses shall be borne by the bidder.
- e. The City reserves the right to request any additional information it deems necessary from any or all bidders after the submission deadline.
- f. The request for bid is not to be construed as an offer, a contract, or a commitment of any kind; nor does it commit the city to pay for any costs incurred by bidder in preparation. It shall be clearly understood that any costs incurred by the Proposer in responding to this request for proposal is at the bidder's own risk and expense as a cost of doing business. The City of Fayetteville shall not be liable for reimbursement to the Proposer for any expense so incurred, regardless of whether or not the proposal is accepted.
- g. If products, components, or services other than those described in this bid document are proposed, the bidder must include complete descriptive literature for each. All requests for additional information must be received within five working days following the request.
- h. NOTE: Any uncertainties shall be brought to the attention to Amanda Beilfuss immediately via telephone (479.575.8258) or e-mail (abeilfuss@fayetteville-ar.gov). It is the intent and goal of the City of Fayetteville Purchasing Division to provide documents providing a clear and accurate understanding of the scope of work to be completed and/or goods to be provided. We encourage all interested parties to ask questions to enable all bidders to be on equal bidding terms.
- i. Any inquiries or requests for explanation in regard to the City's requirements should be made promptly to Amanda Beilfuss, City of Fayetteville, Purchasing Agent via e-mail (abeilfuss@fayetteville-ar.gov) or telephone (479.575.8258). No oral interpretation or clarifications will be given as to the meaning of any part of this request for proposal. All questions, clarifications, and requests, together with answers, if any, will be provided to all firms via written addendum. Names of firms submitting any questions, clarifications, or requests will not be disclosed until after a contract is in place.
- j. Any information provided herein is intended to assist the bidder in the preparation of proposals necessary to properly respond to this bid. The bid is designed to provide qualified bidders with sufficient basic information to submit proposals meeting minimum specifications and/or test requirements but is not intended to limit a bid's content or to exclude any relevant or essential data.
- k. Bidders irrevocably consent that any legal action or proceeding against it under, arising out of or in any manner relating to this Contract shall be prevailed by Arkansas law. Proposer hereby expressly and irrevocably waives any claim or defense in any said action or proceeding based on any alleged lack of jurisdiction or improper venue or any similar basis.

- l. The successful bidder shall not assign the whole or any part of this Contract or any monies due or to become due hereunder without written consent of City of Fayetteville. In case the successful bidder assigns all or any part of any monies due or to become due under this Contract, the Instrument of assignment shall contain a clause substantially to the effect that is agreed that the right of the assignee in and to any monies due or to become due to the successful bidder shall be subject to prior liens of all persons, firms, and corporations for services rendered or materials supplied for the performance of the services called for in this contract.
 - m. The successful bidder's attention is directed to the fact that all applicable Federal and State laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over the services shall apply to the contract throughout, and they will be deemed to be included in the contract as though written out in full herein. The successful bidder shall keep himself/herself fully informed of all laws, ordinances and regulations of the Federal, State, and municipal governments or authorities in any manner affecting those engaged or employed in providing these services or in any way affecting the conduct of the services and of all orders and decrees of bodies or tribunals having any jurisdiction or authority over same. If any discrepancy or inconsistency should be discovered in these Contract Documents or in the specifications herein referred to, in relation to any such law, ordinance, regulation, order or decree, s/he shall herewith report the same in writing to City of Fayetteville.
27. **INVOICING:** Quotes shall be prepared using bid pricing and are not required to be itemized to reflect bid pricing. However, all invoices shall be presented to the City, and shall be fully itemized showing bid pricing to arrive at the final total invoice amount:
- a. City Department that ordered the materials or services
 - b. Order Date
 - c. Delivery date or the date of services
 - d. Name of the City Employee that requested or picked up the goods, materials, or service
 - e. Bid Number
 - f. Itemized pricing, showing calculations to correspond with bid pricing including but not limited to hourly rates and markup percentages.
28. **PRICING:**
- a. Prices shall include all labor, supervision, materials, equipment, transportation, and services necessary to do a superior quality job.
 - b. Bidder shall state any discounts to apply. Discounts shall be shown for individual items unless all items have the same percentage of discounts.
 - c. Any projects in excess of procurement threshold for City Council will require additional approval from the Fayetteville City Council prior to authorization of work. Projects exceeding \$50,000 will require a 100% performance and payment bond after Council approval. Actual cost of performance and payment bond is allowed to be charged to the City at an additional fee.
 - i. The City shall reimburse the actual cost of the 100% performance and payment bond for projects over \$50,000 to the awarded contractor. Reimbursement cost shall be equal to actual cost of bonds paid by the contractor.
29. **ATTACHMENTS TO BID DOCUMENTS:** See technical specifications included with this bid packet.

City of Fayetteville
Bid 21-72, Construction – On-Call Plumbing Services Rebid
Technical Specifications

- 1.1 Bidders shall bid and provide pricing on all line items of all sections in the bid form. Failure to bid on all line items shall result in rejection of bid. The City intends to award this bid to the lowest responsive responsible bidder.
- 1.2 The City requires the services of a Plumbing Contractor to provide labor, material, materials, and equipment to perform repairs, installations, and any necessary service to various City buildings and projects.
- 1.3 The City reserves the right to bid or quote any project. This is not an exclusive contract.
- 1.4 The contractor may be required to do emergency repairs at times other than normal working hours. The contractor shall be available on a twenty-four (24) hour basis for such emergency work. Bidder shall include a response time as part of bid pricing.
- 1.5 On site emergency response time shall be no more than two (2) hours after notification. Regular response time shall be no more than 48 hours after contact. Bidder shall include mileage and travel time as part of this agreement. The City shall not be responsible for additional mileage, travel time costs, surcharges, fuel fees, or any other fees added onto invoicing.
- 1.6 The City estimates \$50,000 of services for various projects during each contract term. Quantities listed in the bid form are estimates only. Past spend reflects approximately \$266,768 from 2017 through mid-June 2021, breakdown is as follows:
 - * 2017 = approximately \$42,400
 - * 2018 = approximately \$168,000
 - * 2019 = approximately \$146,200
 - * 2020 = approximately \$38,800
 - * 2021 (through mid-June): approximately \$39,200
- 1.7 The City shall not be obligated to purchase more or less than the estimated quantities listed. The City reserves the right to purchase via an on-call basis depending upon actual needs during the contract period.
- 1.8 Bidders shall furnish evidence that they have experience in the type of work as outlined in the bid specifications and shall include specific experience. A minimum of three (3) references for commercial work within the past three (3) years shall be submitted with each bid.
- 1.9 Bidder shall have been a licensed plumbing contractor with the State of Arkansas for a minimum of three (3) years. Current valid contractor's license is required and shall be valid at time of bid.
- 1.10 The Bidder shall possess the correct occupational licenses, all professional licenses, and any other authorizations necessary to carry out and perform the work required by the project AT THE TIME OF BID SUBMISSION pursuant to all applicable Federal, State, and Local Laws, Statutes, Ordinances, and rules and regulations of any kind.
- 1.11 The Contractor shall be responsible for obtaining all required permits; however, fees for City issued permits shall be waived and shall not be included in pricing.
- 1.12 All work shall be performed in a high quality, workmanship like manner and shall conform to codes enforced by the City Inspection Division.

- 1.13 In the event a project is deemed to exceed \$50,000, the City department requesting service and the Purchasing department shall be notified immediately. No project exceeding \$50,000 shall be performed or started without prior approval from the Fayetteville City Council and a 100% performance and payment bond.
- 1.14 Work shall not be started without an executed Purchase Order, signed by the Purchasing Manager/Director or by a project specific approved p-card request (for payment through Visa), showing full approval.
- 1.15 PRICING: Hourly labor rates and markup percentages bid shall include but is not limited to all labor cost, insurance, mobilization, overhead, profit, travel time, bonding, mileage, etc. Prices quoted shall be firm for the term of the contract. The City shall not be charged any additional fees including but not limited to insurance premiums, mobilization, fuel surcharges, etc.
- 1.16 BID BOND: Each bid shall be accompanied by a cashier's check from a bank doing business in the State of Arkansas or a corporate bid bond in an amount not less than five (5) percent of the amount bid. This five (5) percent amount shall be based off the total base bid amount submitted. The total base bid amount is the estimated annual expected contract value. In the event a bidder opts to submit a cashier's check for a bid bond, the actual physical cashier's check shall be delivered to the City prior to the deadline. IF BIDDER FAILS TO SUBMIT A VALID CASHIER'S CHECK OR A COMPLETED CORPORATE BID BOND, THE BIDDER'S SUBMITTAL SHALL BE REJECTED.
- 1.17 Pertaining to the bid table involving markup percentages on materials. Mark up percentage shall be input as a DECIMAL amount. For example, if a bidder desired to bid a markup of 10%, this percentage would need to be inserted in the bid table as ".10" to calculate a 10% increase over the cost of the material.
- 1.18 The Contractor shall employ a competent and thoroughly experienced superintendent capable of handling all phases of each project including any necessary assistants to complete each project. When any work under this contract is being performed, the City and necessary employees shall be present at the job site. The Superintendent shall represent the Contractor in his absence and all directions given to him shall be as binding as if given to the Contractor.
- 1.19 Major and important directions shall be confirmed in writing to the Contractor, other directions shall be so confirmed upon written request of the Contractor.
- 1.20 The Superintendent shall be in complete and responsible charge of the project for the Contractor and shall not be superseded by any other personnel of the Contractor. After contract award, awarded Contractor shall submit the name of the proposed Superintendent or primary contact for the Contractor and shall furnish a telephone number or numbers through which the Superintendent may be reached 24 hours each day of the contract duration.
- 1.21 The Contractor shall provide efficient supervision for the work, using industry standard, best skill and attention. Contractor shall carefully study and compare all Drawings, Specifications, and other instructions and shall report at once to the Project Manager any error, inconsistency, or omission which may be discovered; but, shall not be held responsible for the existence or discovery.
- 1.22 The City reserves the right to cancel this contract within thirty (30) days written notice at no penalty to the City.
- 1.23 Any work orders associated with All City Owned and Leased Buildings shall be under the direction and coordination with Facilities Management.
- 1.24 Any other work orders associated will be directed through the respective City department or division.

- 1.25 Billable hours shall include reasonable drive time to and from Point of Dispatch. Hourly rates shall be inclusive of all fees. No fuel, mileage, surcharge, or additional fees shall be added to any invoice.
- 1.26 Point of Dispatch shall be defined as the closest office to the City of Fayetteville, located at 113 W. Mountain St., Fayetteville, AR 72701. Point of Dispatch address shall be on the bid form page of submittal.

City of Fayetteville
Bid 21-72, Construction – On-Call Plumbing Services Rebid
DRAFT Contract – Between City and Contractor

This contract executed this ____ day of _____, 2021, between the City of Fayetteville, Arkansas, and _____ . In consideration of the mutual covenants contained herein, the parties agree as follows:

1. _____ at its own cost and expense shall furnish all labor, materials, supplies, machinery, equipment, tools, supervision, bonds, insurance, tax permits, and all other accessories and services necessary to complete items bid per Bid 21-72 as stated in _____ bid proposal, and in accordance with specifications attached hereto and made a part hereof under Bid 21-72, all included herein as if spelled out word for word.
2. The City of Fayetteville shall pay _____ based on their bid proposal in an amount not to exceed **amounts, hourly rates, and markup rates presented in bid submittal** by _____. Payments will be made after approval and acceptance of work and submission of invoice. Payments will be made approximately 30 days after acceptance of itemized detailed invoice.
3. The Contract documents which comprise the contract between the City of Fayetteville and _____ consist of this Contract and the following documents attached hereto, and made a part hereof:
 - A. Bid form identified as Invitation to Bid 21-72 with the specifications and conditions typed thereon.
 - B. _____ bid proposal.
 - C. The Notice to Prospective Bidders and the Bid Tabulation.
4. These Contract documents constitute the entire agreement between the City of Fayetteville _____ and may be modified only by a duly executed written instrument signed by the City of Fayetteville and _____.
5. _____ shall not assign its duties under the terms of this agreement.
6. _____ agrees to hold the City of Fayetteville harmless and indemnify the City of Fayetteville, against any and all claims for property damage, personal injury or death, arising from _____ performance of this contract. This clause shall not in any form or manner be construed to waive that tort immunity set forth under Arkansas Law.
7. _____ shall furnish a certificate of insurance addressed to the City of Fayetteville, showing that he carries the following insurance which shall be maintained throughout the term of the Contract. Any work sublet; the contractor shall require the subcontractor similarly to provide worker's compensation insurance. In case any employee engaged in work on the project under this contract is

not protected under Worker's Compensation Insurance, _____ shall provide and shall cause each Subcontractor to provide adequate employer's liability insurance for the protection of such of his employees as are not otherwise protected. The premiums for all insurance and the bond required herein shall be paid by _____.

Workmen's Compensation

Statutory Amount

Comprehensive General &
Automobile Insurance

Bodily Injury Liability

\$500,000 for each person injured.

\$1,000,000 for each accident.

Property Damage Liability

\$1,000,000 aggregate.

8. _____ shall furnish proof of licensure as required by all local and state agencies.
9. This contract may be terminated by the City of Fayetteville or _____ with 30 calendar days written notice.
10. This contract shall be effective from one year of the date of signed contract. The City reserves the right to automatically renew the contract for four (4) additional one (1) year terms. Renewals shall be automatic unless either _____ or the City notifies the other of its intent to terminate the contract at the end of the contract period.
- a. Individual projects exceeding Council required threshold will require additional approval from the Fayetteville City Council.
11. Freedom of Information Act: City of Fayetteville contracts and documents prepared while performing city contractual work are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville, the contractor will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. 25-19-101 et. Seq.). Only legally authorized photo copying costs pursuant to the FOIA may be assessed for this compliance.
12. Changes in scope or price: Changes, modifications, or amendments in scope, price or fees to this contract shall not be allowed without a prior formal contract amendment approved by the Mayor and the Fayetteville City Council **in advance** of the change in scope, cost or fees.
13. Jurisdiction: Legal jurisdiction to resolve any disputes shall be **Washington County, Arkansas** with **Arkansas law** applying to the case.
14. Arbitration/Mediation: The City will not agree to be forced to mediate or arbitrate any dispute.
15. Interest charges for late payments by the City: The City of Fayetteville does NOT agree to any interest or penalty for "untimely" payments. The City will pay all invoices within 30 calendar days of accepted invoice.

WITNESS OUR HANDS THIS _____ DAY OF _____, 2021.

CONTRACTOR NAME

CITY OF FAYETTEVILLE, ARKANSAS

By: _____
Signature

By: _____
LIONELD JORDAN, Mayor

Printed Contractor Name & Title

ATTEST (*Signature*)

ATTEST: (*Signature*)

Company Secretary (*Printed Name*)

Kara Paxton, City Clerk

Business Address

City, State & Zip Code

Date Signed: _____

Date Signed: _____

Document A310™ – 2010

Conforms with The American Institute of Architects AIA Document 310

Bid Bond

CONTRACTOR:

(Name, legal status and address)

Comfort Systems USA (Arkansas) Inc.
PO BOX 16620
Little Rock AR 72231

SURETY:

(Name, legal status and principal place of business)

Fidelity and Deposit Company of Maryland
1299 Zurich Way, 5th Floor
Schaumburg IL 60196-1056
Mailing Address for Notices

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

OWNER:

(Name, legal status and address)

City of Fayetteville
113 West Mountain Street
Fayetteville AR 72701

BOND AMOUNT: 5% Five Percent of Amount Bid

PROJECT:

(Name, location or address, and Project number, if any)

BID 21-36 CONSTRUCTION- ON-CALL HVAC SERVICES

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

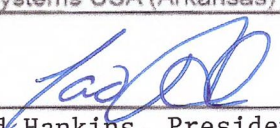
If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

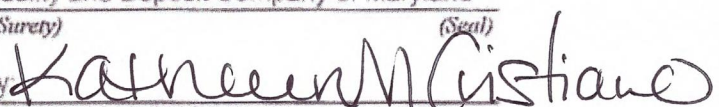
Signed and sealed this 7th day of July, 2021.


(Witness)

Comfort Systems USA (Arkansas) Inc.
(Principal) (Seal)

By: 
(Title) Tad Hankins, President

Fidelity and Deposit Company of Maryland
(Surety) (Seal)

By: 
(Title) Kathleen M. Cristiano Attorney-in-Fact

CORPORATE ACKNOWLEDGMENT

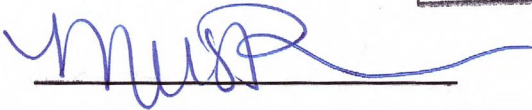
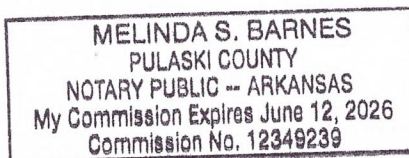
Form 152

State of Arkansas
County of Pulaski

On this 9th day of July, 2021 before me
personally came Tad Hankins, President, to me known,
who, being by me duly sworn, did depose and say that he/she resides in
Little Rock, AR
that he/she is the President of the
Comfort Systems USA (Arkansas), Inc.

the corporation described in and which executed the above instrument;
that he/she knows that seal of said corporation; that the seal affixed to
said instrument is such corporate seal; that it was so affixed by order of
the Board of Directors of said corporation, and that he/she signed
his/her name thereto by like order.

(SEAL)



CORPORATE ACKNOWLEDGMENT

State of New Jersey
County of Monmouth

On this 7th day of July, 2021 before me
personally came Kathleen M. Cristiano, to me known,
who, being by me duly sworn, did depose and say that he/she resides in
Westfield, NJ

that he/she is the Attorney-In-Fact of the
Fidelity and Deposit Company of Maryland

the corporation described in and which executed the above instrument;
that he/she knows that seal of said corporation; that the seal affixed to
said instrument is such corporate seal; that it was so affixed by order of
the Board of Directors of said corporation, and that he/she signed
his/her name thereto by like order.

(SEAL)

Adrienne Scalera



THE FIDELITY AND DEPOSIT COMPANYOF MARYLAND
1299 Zurich Way Schaumburg, IL 60196**Statement of Financial Condition**
As Of December 31, 2020**ASSETS**

Bonds.....	\$ 262,624,334
Stocks	19,715,392
Cash and Short-Term Investments	3,219,781
Reinsurance Recoverable	17,293,466
Federal Income Tax Recoverable.....	114,253
Other Accounts Receivable	29,083,530
TOTAL ADMITTED ASSETS.....	\$ 332,050,756

LIABILITIES, SURPLUS AND OTHER FUNDS

Reserve for Taxes and Expenses	\$ 539,588
Ceded Reinsurance Premiums Payable	43,847,005
Remittances and Items Unallocated	0
Payable to parents, subs and affiliates	0
Securities Lending Collateral Liability	0
TOTAL LIABILITIES	\$ 44,413,593
Capital Stock, Paid Up	\$ 5,000,000
Surplus.....	282,637,163
Surplus as regards Policyholders.....	287,637,163
TOTAL	\$ 332,050,756

Securities carried at \$165,065,329 in the above statement are deposited with various states as required by law.

Securities carried on the basis prescribed by the National Association of Insurance Commissioners. On the basis of market quotations for all bonds and stocks owned, the Company's total admitted assets at December 31, 2020 would be \$346,439,970 and surplus as regards policyholders \$302,026,377.

I, LAURA J. LAZARCZYK, Corporate Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing statement is a correct exhibit of the assets and liabilities of the said Company on the 31st day of December, 2020.

DocuSigned by:

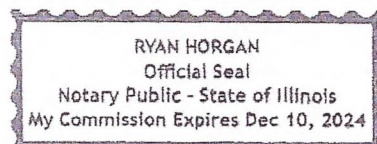
Laura J. Lazarczyk

42DF6B847437480

Corporate Secretary

State of Illinois }
City of Schaumburg } SS:

Subscribed and sworn to, before me, a Notary Public of the State of Illinois, in the City of Schaumburg, this 15th day of March, 2021.



[Signature]
Notary Public

**ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND
POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Illinois, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Illinois (herein collectively called the "Companies"), by **Robert D. Murray, Vice President**, in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint **Kathleen M. CRISTIANO, Joseph DOBKOWSKI, JR., Adrienne SCALERA and John Dougherty HUNTER, all of Westfield, New Jersey**, EACH, its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: any and all bonds and undertakings, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said **ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND**, this 13th day of January, A.D. 2020.



ATTEST:
**ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND**

By: *Robert D. Murray*
Vice President

By: *Dawn E. Brown*
Secretary

**State of Maryland
County of Baltimore**

On this 13th day of January, A.D. 2020, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **Robert D. Murray, Vice President and Dawn E. Brown, Secretary** of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, depose and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



Constance A. Dunn, Notary Public
My Commission Expires: July 9, 2023

EXTRACT FROM BY-LAWS OF THE COMPANIES

"Article V, Section 8, Attorneys-in-Fact. The Chief Executive Officer, the President, or any Executive Vice President or Vice President may, by written instrument under the attested corporate seal, appoint attorneys-in-fact with authority to execute bonds, policies, recognizances, stipulations, undertakings, or other like instruments on behalf of the Company, and may authorize any officer or any such attorney-in-fact to affix the corporate seal thereto; and may with or without cause modify or revoke any such appointment or authority at any time."

CERTIFICATE

I, the undersigned, Secretary of the ZURICH AMERICAN INSURANCE COMPANY, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that Article V, Section 8, of the By-Laws of the Companies is still in force.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY at a meeting duly called and held on the 15th day of December 1998.

RESOLVED: "That the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the Seal of the Company may be affixed by facsimile on any Power of Attorney...Any such Power or any certificate thereof bearing such facsimile signature and seal shall be valid and binding on the Company."

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994, and the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies, this 7th day of July, 2021.



Brian M. Hodges

By: Brian M. Hodges
Vice President

TO REPORT A CLAIM WITH REGARD TO A SURETY BOND, PLEASE SUBMIT A COMPLETE DESCRIPTION OF THE CLAIM INCLUDING THE PRINCIPAL ON THE BOND, THE BOND NUMBER, AND YOUR CONTACT INFORMATION TO:

Zurich Surety Claims
1299 Zurich Way
Schaumburg, IL 60196-1056
www.reportsfclaims@zurichna.com
800-626-4577

Responses

Success: All data is valid!

Status	#	Description	Estimated Hours Per Year	Numeric	Estimated Cost
				Price/Hour	

Hours (Estimated Annual)

Success: All values provided	#1-1	Journeyman Plumber - Straight/Regular Time	100	\$ 87.50	\$ 8,750.00
Success: All values provided	#1-2	Journeyman Plumber - Nights and Weekends	25	\$ 131.25	\$ 3,281.25
Success: All values provided	#1-3	Journeyman Plumber - Holiday	10	\$ 175.00	\$ 1,750.00
Success: All values provided	#1-4	Apprentice Plumber - Straight/Regular Time	100	\$ 64.00	\$ 6,400.00
Success: All values provided	#1-5	Apprentice Plumber - Nights and Weekends	25	\$ 96.00	\$ 2,400.00
Success: All values provided	#1-6	Apprentice Plumber - Holidays	10	\$ 128.00	\$ 1,280.00
Success: All values provided	#1-7	Plumber's Helper - Straight/Regular Time	100	\$ 50.00	\$ 5,000.00
Success: All values provided	#1-8	Plumber's Helper - Nights and Weekends	25	\$ 75.00	\$ 1,875.00
Success: All values provided	#1-9	Plumber's Helper - Holidays	10	\$ 100.00	\$ 1,000.00
Success: All values provided	#1-10	Foreman/Supervisor - Straight/Regular Time	100	\$ 87.50	\$ 8,750.00
Success: All values provided	#1-11	Foreman/Supervisor - Nights and Weekends	25	\$ 131.25	\$ 3,281.25
Success: All values provided	#1-12	Foreman/Supervisor - Holidays	10	\$ 175.00	\$ 1,750.00
Success: All values provided	#1-13	General Laborer - Straight/Regular Time	100	\$ 40.00	\$ 4,000.00
Success: All values provided	#1-14	General Laborer - Nights and Weekends	25	\$ 60.00	\$ 1,500.00
Success: All values provided	#1-15	General Laborer - Holiday	10	\$ 80.00	\$ 800.00

Responses

Success: All data is valid!

				Numeric	
Status	#	Description	Estimated Quantity	Percent Markup (INPUT AS DECIMAL)	Estimated Cost

Materials (Estimated Annual)

Success: All values provided	#1-1	Material (Markup %) - Mark up percentage shall be input as a DECIMAL amount (For example, a 10% markup would need to be input as ".10").	20000	0.25	\$ 25,000.00
------------------------------	------	--	-------	------	--------------

[Back to Project](#)

Bid 21-72, Construction – On-Call Plumbing Services Rebid - Proposal Data

[Show/Hide](#)

Supplier	AR Contractor's License	AR Secretary of State Filing #	Pursuant Arkansas Code Annotated §25-1-503, the Contractor agrees and certifies that they do not currently boycott Israel and will not boycott Israel during any time in which they are entering into, or while in contract, with any public entity as defined in §25-1-503. If at any time during contract the contractor decides to boycott Israel, the contractor must notify the contracted public entity in writing.
Comfort Systems USA (Arkansas), Inc. Scorecard Open...	0004460422	811120406	Yes



BID TABULATION

BID 21-72, CONSTRUCTION - ON-CALL PLUMBING SERVICES REBID

		Comfort Systems USA (Arkansas), Inc.	
		Total Cost	\$ 51,817.50
#	Items	Estimated Hours Per Year	Price/Hour Estimated Cost
Hours (Estimated Annual) (15)			
#1-1	Journeyman Plumber - Straight/Regular Time	100	\$ 87.50 \$ 8,750.00
#1-2	Journeyman Plumber - Nights and Weekends	25	\$ 131.25 \$ 3,281.25
#1-3	Journeyman Plumber - Holiday	10	\$ 175.00 \$ 1,750.00
#1-4	Apprentice Plumber - Straight/Regular Time	100	\$ 64.00 \$ 6,400.00
#1-5	Apprentice Plumber - Nights and Weekends	25	\$ 96.00 \$ 2,400.00
#1-6	Apprentice Plumber - Holidays	10	\$ 128.00 \$ 1,280.00
#1-7	Plumber's Helper - Straight/Regular Time	100	\$ 50.00 \$ 5,000.00
#1-8	Plumber's Helper - Nights and Weekends	25	\$ 75.00 \$ 1,875.00
#1-9	Plumber's Helper - Holidays	10	\$ 100.00 \$ 1,000.00
#1-10	Foreman/Supervisor - Straight/Regular Time	100	\$ 87.50 \$ 8,750.00
#1-11	Foreman/Supervisor - Nights and Weekends	25	\$ 131.25 \$ 3,281.25
#1-12	Foreman/Supervisor - Holidays	10	\$ 175.00 \$ 1,750.00
#1-13	General Laborer - Straight/Regular Time	100	\$ 40.00 \$ 4,000.00
#1-14	General Laborer - Nights and Weekends	25	\$ 60.00 \$ 1,500.00
#1-15	General Laborer - Holiday	10	\$ 80.00 \$ 800.00

		Comfort Systems USA (Arkansas), Inc.	
		Total Cost	\$ 25,000.00
#	Items	Estimated Quantity	Percent Markup (INPUT AS DECIMAL AMOUNT) Estimated Cost
Materials (Estimated Annual) (1)			
#1-1	Material (Markup %) - Mark up percentage shall be input as a DECIMAL amount (For example, a 10% markup would need to be input as ".10").	20000	0.25 \$ 25,000.00

Total Base Bid

Comfort Systems USA (Arkansas), Inc.	
\$	76,817.50

*NOTICE: Final Bid award is contingent upon vendor meeting minimum specifications and formal authorization by City officials.

Bid 21-72, Construction – On-Call Plumbing Services Rebid

Project Overview

Project Details	
Project Name	Bid 21-72, Construction – On-Call Plumbing Services Rebid
Project Owner	Amanda Beilfuss
Project Type	ITB
Department	Purchasing
Project Description	The City of Fayetteville is accepting bids from properly licensed plumbing contractors for providing plumbing services on an as-needed basis for a one (1) year term with the option to renew for four (4) additional one (1) year terms. Questions should be addressed to Amanda Beilfuss, Purchasing Agent at abeilfuss@fayetteville-ar.gov or by calling (479) 575-8258.
Open Date	Sep 05, 2021 12:00 AM CDT
Close Date	Sep 21, 2021 3:00 PM CDT

Highest Scoring Supplier	Score
Comfort Systems USA (Arkansas), Inc.	100 pts

Seal status

Requested Information	Unsealed on	Unsealed by
Required Bid Form	Sep 21, 2021 3:01 PM CDT	Jonathan Smith
Bid Bond	Sep 21, 2021 3:01 PM CDT	Jonathan Smith
AR Secretary of State Filing #	Sep 21, 2021 3:01 PM CDT	Jonathan Smith
AR Contractor's License	Sep 21, 2021 3:01 PM CDT	Jonathan Smith
Pursuant Arkansas Code Annotated §25-1-503, the Contractor agrees and certifies that they do not currently boycott Israel and will not boycott Israel during any time in which they are entering into, or while in contract, with any public entity as defined in §25-1-503. If at any time during contract the contractor decides to boycott Israel, the contractor must notify the contracted public entity in writing.	Sep 21, 2021 3:01 PM CDT	Jonathan Smith
Bid 21-72, Bid Table 1 of 2 - Hourly Rates (BT-59FK)	Sep 21, 2021 3:01 PM CDT	Jonathan Smith
Bid 21-72, Bid Table 2 of 2 - Markup on Materials (BT-34EZ)	Sep 21, 2021 3:01 PM CDT	Jonathan Smith

Conflict of Interest

Declaration of Conflict of Interest You have been chosen as a Committee member for this Evaluation. Please read the following information on conflict of interest to see if you have any problem or potential problem in serving on this committee. ## Code of Conduct All information related to submissions received from Suppliers or Service Providers must be kept confidential by Committee members. ## Conflict of Interest No member of a Committee shall participate in the evaluation if that Committee member or any member of his or her immediate family: * has direct or indirect financial interest in the award of the contract to any proponent; * is currently employed by, or is a consultant to or under contract to a proponent; * is negotiating or has an arrangement concerning future employment or contracting with any proponent; or, * has an ownership interest in, or is an officer or director of, any proponent. Please sign below acknowledging that you have received and read this information. If you have a conflict or potential conflict, please indicate your conflict on this acknowledgment form with information regarding the conflict. I have read and understood the provisions related to the conflict of interest when serving on the Evaluation Committee. If any such conflict of interest arises during the Committee's review of this project, I will immediately report it to the Purchasing Director.

Name	Date Signed	Has a Conflict of Interest?
Amanda Beilfuss	Sep 22, 2021 11:38 AM CDT	No
Jonathan Smith	Sep 21, 2021 3:01 PM CDT	No

Questions and Answers

No messages

Public Notices

Pre-Submittal Meeting: Tuesday, September 14, 2021 at 2:00 PM

Amanda Beilfuss, Sep 02, 2021 1:05 PM CDT

This pre-submittal meeting will be held to offer guidance to any interested party needing assistance with submitting a bid in the City's online bidding platform. Questions pertaining to bid submittal process will be answered as well as any other general inquiries. Topic: Pre-Submittal Meeting: Bid 21-72, Construction - On-Call Plumbing Services Rebid Time: Sep 14, 2021 02:00 PM Central Time (US and Canada) Join Zoom Meeting

<https://us06web.zoom.us/j/89585975928?pwd=NngrZDJtM3E1eTFLQ3RJYWsrTDVJQT09>

Meeting ID: 895 8597 5928 Passcode: 228771 One tap mobile 8778535257,,89585975928# US

Toll-free 8884754499,,89585975928# US Toll-free Dial by your location 877 853 5257 US

Toll-free 888 475 4499 US Toll-free Meeting ID: 895 8597 5928 Find your local number:

<https://us06web.zoom.us/j/89585975928?pwd=NngrZDJtM3E1eTFLQ3RJYWsrTDVJQT09>



Submissions

Supplier	Date Submitted	Name	Email	Confirmation Code
Comfort Systems USA (Arkansas), Inc.	Sep 20, 2021 3:40 PM CDT	Barbara Eggleston	barbara@comfortar.com	MTYzNTMy



Project Criteria

Criteria	Points	Description
A - TOTAL BASE BID	100 pts	
A-1 -	100 pts	
Total	100 pts	



Scoring Summary

Active Submissions

	Total	A - TOTAL BASE BID	A-1 -
Supplier	/ 0 pts	/ 0 pts	/ 0 pts
Comfort Systems USA (Arkansas), Inc.	100 pts	100 pts	100 pts (\$76,814.50)



Proposal Score Comments

Comfort Systems USA (Arkansas), Inc. - Scoring Comments

A-1 - - Reviewer Scores

Reviewer	Score	Reason	Comments
Amanda Beilfuss	100 pts (\$76,814.50)	-	N/A

Signatures

Name	Signatures
Amanda Beilfuss (Project Owner)	Amanda Beilfuss Digitally signed by Amanda Beilfuss Date: 2021.09.23 11:39:23 -05'00'
Amanda Beilfuss (Evaluator)	Amanda Beilfuss Digitally signed by Amanda Beilfuss Date: 2021.09.23 11:39:43 -05'00'
Andrea Foren (Evaluator)	Andrea Foren Digitally signed by Andrea Foren Date: 2021.09.30 14:46:19 -05'00'

Budget Year	Division	Adjustment Number
2022	PARKS & RECREATION (520) /Org2 Requestor: Alan Bearden	

Budget adjustment to request required funds from HMR Reserves (fund balance) for Wilson Pool repairs to remove all old pressure and suction piping that is underground in the crawl space around the outside of the pool wall and to install new piping and hangers. This is required to fix a major water leak at the pool. The repairs will also require a new pump and new valves for the surge pit and vacuum system. To be performed by City's on-call plumbing provider (Bid # 21-72) - Comfort Systems USA. Quoted price for known work is \$180,944. A contingency of \$40,000 is being added due to nature of this work and potential for additional unknown repairs.

[illegible]

RESOLUTION NO. _____

A RESOLUTION TO AUTHORIZE ACCEPTANCE OF A CURTIS H. SYKES MEMORIAL GRANT PROGRAM AWARD IN THE AMOUNT OF \$2,457.00 FROM THE ARKANSAS STATE ARCHIVES AND THE BLACK HISTORY COMMISSION OF ARKANSAS FOR THE PURCHASE OF THE NELSON HACKETT HISTORICAL MARKER, AND TO APPROVE A BUDGET ADJUSTMENT

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 Curtis H. Sykes Memorial Grant Program award from the Arkansas State Archives and the Black History Commission of Arkansas in the amount of \$2,457.00 for the purchase of the Nelson Hackett Historical Marker.

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

2022-1131

Legistar File ID

12/20/2022

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

Britin Bostick

12/2/2022

LONG RANGE PLANNING (634)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Approval of a budget adjustment in the amount of \$2,457. The request is for acceptance of a Curtis H. Sykes Memorial Grant Program award in the amount of \$2,457 from the Arkansas State Archives and the Black History Commission of Arkansas.

Budget Impact:

1010.090.6600-4309.01

Federal Grants - Operational

Account Number

Fund

32208-2022

Nelson Hackett Marker

Project Number

Project Title

Budgeted Item? No

Current Budget

\$

-

Funds Obligated

\$

-

Current Balance

\$

-

Does item have a cost? No

Item Cost

Budget Adjustment Attached? Yes

Budget Adjustment

\$

2,457.00

Remaining Budget

\$

2,457.00

V20210527

Purchase Order Number: _____

Previous Ordinance or Resolution # 208-22

Change Order Number: _____

Approval Date: 9/6/2022

Original Contract Number: _____

Comments:



MEETING OF DECEMBER 20, 2022

TO: Mayor and City Council

THRU: Susan Norton, Chief of Staff
Jonathan Curth, Development Services Director

FROM: Britin Bostick, Long Range Planning/Special Projects Manager

DATE: December 2, 2022

SUBJECT: **Approval of a budget adjustment in the amount of \$2,457:** Submitted by CITY OF FAYETTEVILLE STAFF. The request is for acceptance of a Curtis H. Sykes Memorial Grant Program award in the amount of \$2,457 from the Arkansas State Archives and the Black History Commission of Arkansas.

RECOMMENDATION:

City staff recommends approval of a budget adjustment and acceptance of a grant award in the amount of \$2,457 from the Arkansas State Archives and the Black History Commission of Arkansas.

BACKGROUND:

On September 6, 2022 the Fayetteville City Council approved a recommendation from the Black Heritage Preservation Commission to install a historical marker honoring Nelson Hackett, which is to be located in a flower bed on the northwest corner of the Downtown Square. The approved resolution included an application for grant funding from the Curtis H. Sykes Memorial Grant Program to cover the cost of the marker. The marker text was developed as a collaborative effort of the Black Heritage Preservation Commission, faculty at the University of Arkansas, local historians, and city staff. It includes a required acknowledgement of funding by the Black History Commission of Arkansas:

"Nelson Hackett was an enslaved man whose escape to Canada and subsequent extradition set off an international dispute that ensured Canada remained a safe refuge for those escaping bondage from the United States. He labored near this spot as a personal servant to Alfred Wallace. Hackett fled Fayetteville in July 1841, leaving with a horse, saddle, beaver coat, and gold watch with chain. He traveled 360 miles across Missouri and another 600 miles through the free states before crossing into Canada in late August. Wallace tracked Hackett to the town of Chatham, Ontario, Canada (near Detroit) and had him arrested for stealing the horse and other goods. The Canadian colonial governor's decision to extradite Hackett back to Arkansas made Hackett the first fugitive Canada returned to slavery. In early summer 1842, a shackled Hackett arrived back in Fayetteville. He was publicly whipped on several occasions, serving an example to other enslaved people, before being sold to Texas slavers. He then escaped again, and his fate remains unknown. Black and white abolitionists throughout the Atlantic world fought to

prevent Hackett's extradition from setting a precedent. They secured a commitment from the British government, which still had many territories under colonial rule, to make extradition of those fleeing slavery nearly impossible. - This project was funded in part by a grant from the Black History Commission of Arkansas."

Following approval of the resolution by City Council in September, the City's Long Range Planning staff submitted the grant application prior to the October 2 deadline and were subsequently notified that the application would be considered in a public meeting on November 17, 2022.

DISCUSSION:

In their meeting on November 17, 2022 the Black History Commission of Arkansas met to consider grant applications that were submitted for consideration in the fourth quarter of 2022. JL Jennings, Chair of the Fayetteville Black Heritage Preservation Commission and Britin Bostick, Long Range Planning and Special Projects Manager attended the meeting virtually. The Commissioners unanimously approved the grant requested by the City of Fayetteville and commended the recognition of Nelson Hackett, whose experience as an enslaved man had lasting impacts on international policy regarding the extradition of enslaved persons from Canada to the United States. The Commissioners asked how Fayetteville could "make this larger", expressed interest in attending the marker unveiling, and anticipated a celebration of both the marker installation and naming of Nelson Hackett Blvd. Long Range Planning staff were notified in writing of the award on November 22, 2022 and expect to receive the grant payments in two parts consistent with the grant's disbursement policy. The grant money will be spent to purchase the 18" wide and 22" tall metal marker, and the City of Fayetteville Parks Maintenance staff will install the marker in the approved location when ready.

BUDGET/STAFF IMPACT:

\$2,457 grant award

Attachments:

Nelson Hackett Historical Marker Text and Layout

Nelson Hackett

Nelson Hackett was an enslaved man whose escape to Canada and subsequent extradition set off an international dispute that ensured Canada remained a safe refuge for those escaping bondage from the United States. He labored near this spot as a personal servant to Alfred Wallace. Hackett fled Fayetteville in July 1841, leaving with a horse, saddle, beaver coat, and gold watch with chain. He traveled 360 miles across Missouri and another 600 miles through the free states before crossing into Canada in late August. Wallace tracked Hackett to the town of Chatham, Ontario, Canada (near Detroit) and had him arrested for stealing the horse and other goods. The Canadian colonial governor's decision to extradite Hackett back to Arkansas made Hackett the first fugitive Canada returned to slavery. In early summer 1842, a shackled Hackett arrived back in Fayetteville. He was publicly whipped on several occasions, serving an example to other enslaved people, before being sold to Texas slavers. He then escaped again, and his fate remains unknown. Black and white abolitionists throughout the Atlantic world fought to prevent Hackett's extradition from setting a precedent. They secured a commitment from the British government, which still had many territories under colonial rule, to make extradition of those fleeing slavery nearly impossible.

This project was funded in part by a grant from the Black History Commission of Arkansas.

Budget Year	Division	Adjustment Number
2022	LONG RANGE PLANNING (634)	
	/Org2	
	Requestor: Britin Bostick	

Approval of a budget adjustment in the amount of \$2,457. The request is for acceptance of a Curtis H. Sykes Memorial Grant Program award in the amount of \$2,457 from the Arkansas State Archives and the Black History Commission of Arkansas.

RESOLUTION/ORDINANCE	COUNCIL DATE:	12/20/2022
	ITEM ID#:	2022-1131
	Kevin Springer	
	12/1/2022 11:11 AM	
	Budget Division	Date
	TYPE:	D - (City Council)
	JOURNAL #:	
	GLDATE:	12/20/2022
	CHKD/POSTED:	/

[illegible]

RESOLUTION NO. _____

A RESOLUTION TO APPROVE A BUDGET ADJUSTMENT IN THE AMOUNT OF \$47,474.00 REPRESENTING DONATION REVENUE TO THE ANIMAL SERVICES DIVISION

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 a budget adjustment, a copy of which is attached to this Resolution, in the amount of \$47,474.00 representing donation revenue to the Animal Services Division from January 1, 2022 through November 30, 2022.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby expresses its sincere appreciation for the donations.

City of Fayetteville Staff Review Form

2022-1136

Legistar File ID

12/20/2022

City Council Meeting Date - Agenda Item Only

N/A for Non-Agenda Item

Justine Lentz

11/30/2022

ANIMAL SERVICES (671)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Approve a budget adjustment in the amount of representing donation revenue to Animal Services received from January 1 through November 30, 2022 in the amount of \$47,474.00

Budget Impact:

see attached detail

General Fund

Account Number

Fund

33048-1

Animal Services Donations

Project Number

Project Title

Budgeted Item? Yes

Current Budget \$ 116,825.00

Funds Obligated \$ 27,031.05

Current Balance \$ 89,793.95

Does item have a cost? No

Item Cost \$ -

Budget Adjustment Attached? Yes

Budget Adjustment \$ 47,474.00

Remaining Budget \$ 137,267.95

V20210527

Purchase Order Number:

Previous Ordinance or Resolution #

Change Order Number:

Approval Date:

Original Contract Number:

Comments: Staff recommends approval of a budget adjustment in the amount of \$47,474



MEETING OF DECEMBER 20, 2022

TO: Mayor and City Council

THRU: Yolanda Fields, Director of Community Resources

FROM: Justine Lentz, Animal Services Superintendent

DATE: November 30, 2022

SUBJECT: **Approval of resolution to approve a budget adjustment for Animal Services**

RECOMMENDATION:

Staff recommends approval of a budget adjustment to recognize and allocate the Animal Services donation revenue from January through November 30 in the amount of \$47,474.00.

BACKGROUND:

Animal Services would like to recognize donation revenue from citizens and businesses made from January through November 30, 2022. These funds are donated by our generous community to benefit the animals cared for by the Animal Services department of the city of Fayetteville. We appreciate their support.

DISCUSSION:

n/a

BUDGET/STAFF IMPACT:

Recognize and allocate animal services donations in the amount of \$47,474.00

Attachments:

Budget adjustment

City of Fayetteville, Arkansas - Budget Adjustment (Agenda)

Budget Year 2022	Division /Org2 ANIMAL SERVICES (671) Requestor: Justine Lentz	Adjustment Number
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BUDGET ADJUSTMENT DESCRIPTION / JUSTIFICATION:

Recognize and allocate donation revenue made to the animal services program by citizens and businesses from January 1, 2022 to November 30, 2022.

	COUNCIL DATE:	12/20/2022
	ITEM ID#:	2022-1136
	<i>Kevin Springer</i> <i>11/30/2022 6:23 PM</i>	
	Budget Division	Date
	TYPE:	D - (City Council)
	JOURNAL #:	
	GLDATE:	12/20/2022
	CHKD/POSTED:	/
RESOLUTION/ORDINANCE		

TOTAL	47,474	47,474					v.20221115
	Increase / (Decrease)		Project.Sub#				
Account Number	Expense	Revenue	Project	Sub.Detl	AT	Account Name	
1010.671.2740-4809.00	-	47,474			RE	Donations	
1010.671.2740-5205.00	5,000	-	33048	1	EX	Dog Food And Supplies	
1010.671.2740-5203.00	3,000	-	33048	1	EX	Cleaning Supplies	
1010.671.2740-5210.00	10,000	-	33048	1	EX	Minor Equipment	
1010.671.2740-5315.00	20,000	-	33048	1	EX	Contract Services	
1010.671.2740-5400.00	9,474	-	33048	1	EX	Building & Grounds - Maintenance	
	-	-					
	-	-					
	-	-					
	-	-					
	-	-					
	-	-					
	-	-					
	-	-					
	-	-					
	-	-					

RESOLUTION NO. _____

A RESOLUTION TO APPROVE CHANGE ORDER NO. 3 TO THE PROFESSIONAL ARCHITECTURAL SERVICES AGREEMENT WITH DEMX ARCHITECTURE IN THE AMOUNT OF \$32,250.00 FOR ADDITIONAL SERVICES RELATED TO THE WILSON PARK RESTROOM/HUB BUILDING

WHEREAS, on September 17, 2019, the City Council passed Resolution 214-19 to approve a professional architectural services agreement with DEMX Architecture for design and construction administration services associated with the renovation and replacement of existing restrooms in multiple city parks; and

WHEREAS, Change Order No. 3 will include additional construction administration services.

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 Change Order No. 3 to the Professional Architectural Services Agreement with DEMX Architecture in the amount of \$32,250.00 for additional services related to the Wilson Park Restroom/Hub Building.

City of Fayetteville Staff Review Form

2022-1140

Legistar File ID

12/20/2022

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

Ted Jack

11/30/2022

PARKS & RECREATION (520)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Staff recommends approval of Change Order 3 for an increase in contract amount of \$32,250.00 to a contract (Resolution 214-19) with DEMX Architecture for additional work related to the Wilson Park Restroom/Hub Building.

Budget Impact:

2250.520.9255-5806.00

Parks Development

Account Number

Fund

13001.1902

Park Restroom Improvements

Project Number

Project Title

Budgeted Item? Yes

Current Budget \$ 231,471.00

Funds Obligated \$ 19,961.00

Current Balance **\$ 211,510.00**

Does item have a cost? Yes

Item Cost \$ 32,250.00

Budget Adjustment Attached? No

Budget Adjustment \$ -

Remaining Budget **\$ 179,260.00**

V20210527

Purchase Order Number: 2019-00000671

Previous Ordinance or Resolution # 214-19

Change Order Number: Three

Approval Date:

Original Contract Number:

Comments: Current contract amount is \$59,550.00. With CO3 contract amount will be \$91,800.00.



MEETING OF DECEMBER 20, 2022

TO: Mayor and City Council

THRU: Susan Norton, Chief of Staff
Alison Jumper, Director Parks, Natural Resources & Cultural Affairs
Wade Abernathy, Director of Bond Projects & Facilities

FROM: Ted Jack, Park Planning Superintendent

DATE: November 30, 2022

SUBJECT: **Change Order 3 for DEMX Architecture for Wilson Park Hub Building**

RECOMMENDATION:

Staff recommends approval of Change Order 3 for an increase in contract amount of \$32,250.00 to a contract (Resolution 214-19) with DEMX Architecture for additional work related to the Wilson Park Restroom/Hub Building.

BACKGROUND:

DEMX Architecture was hired to provide design and construction administration services associated with multiple restroom renovations (Phase 1) and design of a new structure to serve as both restroom and park hub for Wilson Community Park (Phase 2). Fees were based on budgets relevant in 2019 and based on a smaller building at Wilson Park. Additional work was also needed for coordination on the long timeline of this two phased project. DEMX requested additional funds (Attached Proposal 1 & 2) and Parks and Bond Projects staff agree the requests are warranted.

DISCUSSION:

The original contract amount was \$52,000.00. Change Order 1 increased the amount by \$5,000.00 for adding Lewis Park restroom to the contract. Change Order 2 added \$2,550.00 for soil borings at Wilson Park for the foundation design of the new restroom/hub building. The current contract with approved change orders is \$59,550.00. Change Order 3 will increase the contract to \$91,800.00.

BUDGET/STAFF IMPACT:

Funds for CO3 are in the Parks Development Fund (Account # 2250.520.9255-5806.00 Project # 13001.1902). There is no staff impact for this request.

Attachments:

SRF
DEMX Proposal 1 and 2 for increased fees
Resolution 214-19 packet including original contract

PROPOSAL

Mr. Ted Jack
City of Fayetteville Parks and Recreation
Parks Planning Superintendent
1455 S Happy Hollow Rd
Fayetteville, AR 72701

RE: Lump Sum Fee Adjustment for Expanded Scope at Wilson Park

General Description

This proposal is for a lump sum fee adjustment in response to the increased project scope for the new restroom pavilion at Wilson Park. The initial budget of \$325,000 has changed to \$425,000. Initial overall square footage of 1,450 sq ft has increased to roughly 4,300 sq ft.

Documents and Services

See original proposal.

Fee Schedule

The fee adjustment shall be based on a lump sum of \$8,750.00. This fee includes all documents and services listed above.

Any additional services not outlined in this proposal can be provided based on standard hourly rates. See the attached DEMX architecture hourly rate schedule.

The architectural/ engineering fee does not include:

- Building permit or Arkansas State Health Department fees
- LEED documentation and certification
- Reimbursable expenses (large format printing and postage/courier services)
- Civil Engineering as required (fee estimate can be provided)
- Topographic survey and tree location
- Landscape Architecture

Invoices shall be made monthly and/or at milestones during the project and are due upon receipt.

Should this proposal be accepted, it will serve as a supplement to the contract and be used in conjunction with the City of Fayetteville, Arkansas Professional Services Contract for Architectural Services.

Thank you,



Tim Maddox, AIA, Principal
DEM^X architecture

PROPOSAL

Mr. Ted Jack
City of Fayetteville Parks and Recreation
Parks Planning Superintendent
1455 S Happy Hollow Rd
Fayetteville, AR 72701

RE: Lump Sum Fee Adjustment for Expanded Scope and Design Changes at Wilson Park

General Description

This proposal is for a lump sum fee adjustment in response to the increased project scope for the new restroom pavilion at Wilson Park. The initial budget has continued to change from the initial budget of \$325,000 to \$425,000, and now to \$1M+/- In addition to this increased scope, changes have been initiated after issuing the 99% bid set on December 13, 2021. These changes began in July 2022 and continue.

Documents and Services

See original proposal.

Fee Schedule

The fee adjustment shall be based on a lump sum of \$23,500.00. This fee includes all documents and services listed above.

Any additional services not outlined in this proposal can be provided based on standard hourly rates. See the attached DEMX architecture hourly rate schedule.

The architectural/ engineering fee does not include:

- Building permit or Arkansas State Health Department fees
- LEED documentation and certification
- Reimbursable expenses (large format printing and postage/courier services)
- Civil Engineering as required (fee estimate can be provided)
- Topographic survey and tree location
- Landscape Architecture

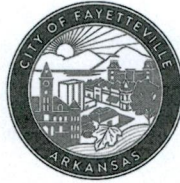
Invoices shall be made monthly and/or at milestones during the project and are due upon receipt.

Should this proposal be accepted, it will serve as a supplement to the contract and be used in conjunction with the City of Fayetteville, Arkansas Professional Services Contract for Architectural Services.

Thank you,



Tim Maddox, AIA, Principal
DEM^X architecture



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

Resolution: 214-19

File Number: 2019-0532

DEMX ARCHITECTURE:

A RESOLUTION TO APPROVE A PROFESSIONAL ARCHITECTURAL SERVICES AGREEMENT WITH DEMX ARCHITECTURE, PURSUANT TO RFQ #19-01, IN AN AMOUNT NOT TO EXCEED \$52,000.00 FOR DESIGN AND CONSTRUCTION ADMINISTRATION SERVICES ASSOCIATED WITH THE RENOVATION AND REPLACEMENT OF EXISTING RESTROOMS IN MULTIPLE CITY PARKS, AND TO APPROVE A PROJECT CONTINGENCY IN THE AMOUNT OF \$10,000.00

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 a professional architectural services agreement with DEMX Architecture, pursuant to RFQ #19-01, in the amount not to exceed \$52,000.00 for design and construction administration services associated with the renovation and replacement of existing restrooms in multiple city parks, and further approves a project contingency in the amount of \$10,000.00.

PASSED and APPROVED on 9/17/2019

Approved:

A blue ink signature of Lioneld Jordan, Mayor, is written over a horizontal line. The signature is stylized and cursive.

Lioneld Jordan, Mayor

Attest:

A blue ink signature of Lisa Branson, Deputy City Clerk, is written over a horizontal line. The signature is cursive.

Lisa Branson, Deputy City Clerk





City of Fayetteville, Arkansas

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

Text File

File Number: 2019-0532

Agenda Date: 9/17/2019

Version: 1

Status: Passed

In Control: City Council Meeting

File Type: Resolution

Agenda Number: A. 11

DEMX ARCHITECTURE:

A RESOLUTION TO APPROVE A PROFESSIONAL ARCHITECTURAL SERVICES AGREEMENT WITH DEMX ARCHITECTURE, PURSUANT TO RFQ #19-01, IN AN AMOUNT NOT TO EXCEED \$52,000.00 FOR DESIGN AND CONSTRUCTION ADMINISTRATION SERVICES ASSOCIATED WITH THE RENOVATION AND REPLACEMENT OF EXISTING RESTROOMS IN MULTIPLE CITY PARKS, AND TO APPROVE A PROJECT CONTINGENCY IN THE AMOUNT OF \$10,000.00

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 a professional architectural services agreement with DEMX Architecture, pursuant to RFQ #19-01, in the amount not to exceed \$52,000.00 for design and construction administration services associated with the renovation and replacement of existing restrooms in multiple city parks, and further approves a project contingency in the amount of \$10,000.00.

City of Fayetteville Staff Review Form

2019-0532

Legistar File ID

9/17/2019

City Council Meeting Date - Agenda Item Only

N/A for Non-Agenda Item

Ted Jack

8/22/2019

PARKS & RECREATION (520)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Resolution to approve a contract between the City of Fayetteville, AR and DEMX Architecture of Fayetteville, AR to provide design and construction administration services associated with renovations (5) and replacements (2) of existing restrooms in multiple parks including Finger Neighborhood Park, Wilson, Gulley, and Walker Community Parks, and Lake Fayetteville Regional Park, for a total cost not to exceed \$52,000, plus a \$10,000 expense contingency, per RFQ #19-01, Selection #21.

Budget Impact:

2250.520.9255-5806.00		Parks Development	
_____ Account Number		_____ Fund	
13001.1902		Park Restroom Improvements	
_____ Project Number		_____ Project Title	
Budgeted Item?	Yes	Current Budget	\$ 700,000.00
		Funds Obligated	\$ 3,200.00
		Current Balance	\$ 696,800.00
Does item have a cost?	Yes	Item Cost	\$ 62,000.00
Budget Adjustment Attached?	No	Budget Adjustment	
		Remaining Budget	\$ 634,800.00

V20180321

Purchase Order Number: _____

Previous Ordinance or Resolution # _____

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments: RFQ 19-01, Selection #21



MEETING OF SEPTEMBER 17, 2019

TO: Mayor and City Council

THRU: Don Marr, Chief of Staff
Connie Edmonston, Parks and Recreation Director

FROM: Ted Jack, Park Planning Superintendent

DATE: August 27, 2019

SUBJECT: Resolution to approve a contract between the City of Fayetteville, AR and DEMX Architecture of Fayetteville, AR to provide design and construction administration services associated with renovations (5) and replacements (2) of existing restrooms in multiple parks including Finger Neighborhood Park, Wilson, Gulley, and Walker Community Parks, and Lake Fayetteville Regional Park, for a total cost not to exceed \$52,000, plus a \$10,000 expense contingency, per RFQ #19-01, Selection #21.

RECOMMENDATION:

Staff recommends approval of a contract between the City of Fayetteville, AR and DEMX Architecture of Fayetteville, AR to provide design and construction administration services associated with renovation and/or replacement of existing restrooms in multiple parks including Finger Neighborhood Park, Wilson, Gulley, and Walker Community Parks, and Lake Fayetteville Regional Park for a total cost not to exceed \$52,000, plus a \$10,000 expense contingency, per RFQ #19-01, Selection #21.

BACKGROUND:

The city has several old restroom buildings of similar design built during the same general period (1960's - 1990's) that need renovation or replacement. Restrooms to be renovated include Gulley, Lake Fayetteville Softball, Veterans Park, Finger Park, and one restroom at Walker Park. Two restrooms are proposed for full demolition and reconstruction including Wilson and Walker Park adjacent to the basketball court.

DISCUSSION:

The City of Fayetteville from time to time requires professional engineering, design, and/or construction management services related to capital improvement projects. In this instance, DEMX Architecture was selected through an RFQ selection process (RFQ 19-01) to serve as the professional architectural consultant for plan preparation and construction administration for the renovation and/or replacement of seven restrooms located in five separate parks throughout the city.

BUDGET/STAFF IMPACT:

Funding for this project has been budgeted and is available in project #13001.1902 – Park Restroom Improvements.

Attachments:

SRF – Wilson Restroom DEMX Architecture
DEMX Architecture Draft Contract

AGREEMENT
For
PROFESSIONAL ARCHITECTURAL SERVICES
Between
CITY OF FAYETTEVILLE, ARKANSAS
And
DEMX ARCHITECTURE

THIS AGREEMENT is made as of September 17, 2019, by and between City of Fayetteville, Arkansas, acting by and through its Mayor (hereinafter called CITY OF FAYETTEVILLE) and DEMX ARCHITECTURE, INC (hereinafter called DEMX).

CITY OF FAYETTEVILLE from time to time requires professional engineering services in connection with the evaluation, design, and/or construction supervision of capital improvement projects. Therefore, CITY OF FAYETTEVILLE and DEMX in consideration of their mutual covenants agree as follows:

DEMX shall serve as CITY OF FAYETTEVILLE's professional architectural consultant in those assignments to which this Agreement applies, and shall give consultation and advice to CITY OF FAYETTEVILLE during the performance of DEMX's services. All services shall be performed under the direction of a professional architect/engineer/landscape architect registered in the State of Arkansas and qualified in the particular field.

SECTION 1 - AUTHORIZATION OF SERVICES

- 1.1 Services on any assignment shall be undertaken only upon written Authorization of CITY OF FAYETTEVILLE and agreement of DEMX.
- 1.2 Assignments may include services described hereafter as Basic Services or as Additional Services of DEMX.
- 1.3 Changes, modifications or amendments in scope, price or fees to this contract shall **not** be allowed without a formal contract amendment approved by the Mayor and the City Council **in advance** of the change in scope, costs, fees, or delivery schedule.

SECTION 2 - BASIC SERVICES OF DEMX

- 2.1 Perform professional services in connection with the Project, Restroom Renovations, which includes the renovation of five restrooms, and reconstruction of two restrooms, in multiple parks and as described in Attachment A, and as hereinafter stated.
 - 2.1.1 The Scope of Services to be furnished by DEMX during the Project is included in the August 22, 2019 Proposal from DEMX, attached hereto as Attachment A, and made part of this Agreement.
- 2.2 DEMX shall coordinate their activities and services with the CITY OF FAYETTEVILLE. DEMX and CITY OF FAYETTEVILLE agree that DEMX has full responsibility for the architectural services.

- 2.3 DEMX shall coordinate their activities and services with other Phase 1 improvements, primarily consisting of trail and cyclocross work.

SECTION 3 - RESPONSIBILITIES OF CITY OF FAYETTEVILLE

- 3.1 CITY OF FAYETTEVILLE shall, within a reasonable time, so as not to delay the services of DEMX.
- 3.1.1 Provide full information as to CITY OF FAYETTEVILLE's requirements for the Project.
- 3.1.2 Assist DEMX by placing at DEMX's disposal all available information pertinent to the assignment including previous reports and any other data relative thereto.
- 3.1.3 Assist DEMX in obtaining access to property reasonably necessary for DEMX to perform its services under this Agreement.
- 3.1.4 Examine all studies, reports, sketches, cost opinions, proposals, and other documents presented by DEMX and render in writing decisions pertaining thereto.
- 3.1.5 The Park Planning Superintendent is the CITY OF FAYETTEVILLE's project representative with respect to the services to be performed under this Agreement. The Park Planning Superintendent shall have complete authority to transmit instructions, receive information, interpret and define CITY OF FAYETTEVILLE's policies and decisions with respect to materials, equipment, elements and systems to be used in the Project, and other matters pertinent to the services covered by this Agreement.
- 3.1.6 CITY OF FAYETTEVILLE and/or its representative will review all documents and provide written comments to DEMX in a timely manner.

SECTION 4 - PERIOD OF SERVICE

- 4.1 Time is of the essence in this agreement and this Agreement will become effective upon the first written notice by CITY OF FAYETTEVILLE authorizing services hereunder.
- 4.2 The provisions of this Agreement have been agreed to in anticipation of the orderly progress of the Project through completion of the services stated in the Agreement. DEMX will proceed with providing the authorized services immediately upon receipt of written authorization from CITY OF FAYETTEVILLE. Said authorization shall include the scope of the services authorized and the time in which the services are to be completed. This project may bid in two phases. The schedule for this project is to have the work for both phases ready to bid by the city by the end of March 2020.

SECTION 5 - PAYMENTS TO DEMX

- 5.1 The maximum not-to-exceed amount authorized for this Agreement is **\$52,000.00** plus approved expenses not to exceed \$10,000.00. The CITY OF FAYETTEVILLE shall compensate DEMX based on the percent of work completed as described in Attachment A.
- 5.2 Statements
- 5.2.1 Monthly statements for each calendar month shall be submitted to CITY OF FAYETTEVILLE or such parties as CITY OF FAYETTEVILLE may designate for

professional services consistent with DEMX's normal billing schedule. Once established, the billing schedule shall be maintained throughout the duration of the Project. Applications for payment shall be made in accordance with a format to be developed by DEMX and approved by CITY OF FAYETTEVILLE. Applications for payment shall be accompanied each month by the updated project schedule as the basis for determining the value earned as the work is accomplished. Final payment for professional services shall be made upon CITY OF FAYETTEVILLE's approval and acceptance with the satisfactory completion of the study and report for the Project.

5.3 Payments

- 5.3.1 All statements are payable upon receipt and due within thirty (30) days. If a portion of DEMX's statement is disputed by CITY OF FAYETTEVILLE, the undisputed portion shall be paid by CITY OF FAYETTEVILLE by the due date. CITY OF FAYETTEVILLE shall advise DEMX in writing of the basis for any disputed portion of any statement. CITY OF FAYETTEVILLE will make reasonable effort to pay invoices within 30 days of date the invoice is approved, however, payment within 30 days is not guaranteed.

5.4 Final Payment

- 5.4.1 Upon satisfactory completion of the work performed under this Agreement, as a condition before final payment under this Agreement, or as a termination settlement under this Agreement, DEMX shall execute and deliver to CITY OF FAYETTEVILLE a release of all claims against CITY OF FAYETTEVILLE arising under or by virtue of this Agreement, except claims which are specifically exempted by DEMX to be set forth therein. Unless otherwise provided in this Agreement or by State law or otherwise expressly agreed to by the parties to this Agreement, final payment under this Agreement or settlement upon termination of this Agreement shall not constitute a waiver of CITY OF FAYETTEVILLE's claims against DEMX or his sureties under this Agreement or applicable performance and payment bonds, if any.

SECTION 6 - GENERAL CONSIDERATIONS

6.1 Insurance

- 6.1.1 During the course of performance of these services, DEMX will maintain (in United States Dollars) the following minimum insurance coverages:

<u>Type of Coverage</u>	<u>Limits of Liability</u>
Workers' Compensation Employers' Liability	Statutory \$500,000 Each Accident
Commercial General Liability Bodily Injury and Property Damage	\$1,000,000 Combined Single Limit
Automobile Liability: Bodily Injury and Property Damage	\$1,000,000 Combined Single Limit

Professional Liability Insurance \$1,000,000 Each Claim

DEMEX will provide to CITY OF FAYETTEVILLE certificates as evidence of the specified insurance within ten days of the date of this Agreement and upon each renewal of coverage.

6.1.2 CITY OF FAYETTEVILLE and DEMEX waive all rights against each other and their officers, directors, agents, or employees for damage covered by property insurance during and after the completion of DEMEX's services.

6.2 Professional Responsibility

6.2.1 DEMEX will exercise reasonable skill, care, and diligence in the performance of DEMEX's services and will carry out its responsibilities in accordance with customarily accepted professional architectural practices. CITY OF FAYETTEVILLE will promptly report to DEMEX any defects or suspected defects in DEMEX's services of which CITY OF FAYETTEVILLE becomes aware, so that DEMEX can take measures to minimize the consequences of such a defect. CITY OF FAYETTEVILLE retains all remedies to recover for its damages caused by any negligence of DEMEX.

6.3 Cost Opinions and Projections

6.3.1 Cost opinions and projections prepared by DEMEX relating to construction costs and schedules, operation and maintenance costs, equipment characteristics and performance, and operating results are based on DEMEX's staff experience, qualifications, and judgment as a design professional. Since DEMEX has no control over weather, cost and availability of labor, material and equipment, labor productivity, construction Contractors' procedures and methods, unavoidable delays, construction Contractors' methods of determining prices, economic conditions, competitive bidding or market conditions, and other factors affecting such cost opinions or projections, DEMEX does not guarantee that actual rates, costs, performance, schedules, and related items will not vary from cost opinions and projections prepared by DEMEX.

6.4 Changes

6.4.1 CITY OF FAYETTEVILLE shall have the right to make changes within the general scope of DEMEX's services, with an appropriate change in compensation and schedule only after Fayetteville City Council approval of such proposed changes and, upon execution of a mutually acceptable amendment or change order signed by the Mayor of the CITY OF FAYETTEVILLE and the duly authorized officer of DEMEX.

6.5 Termination

6.5.1 This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given:

6.5.1.1 Not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate,

6.5.1.2 An opportunity for consultation with the terminating party prior to termination.

DeMX Proposed Contract

- 6.5.2 This Agreement may be terminated in whole or in part in writing by CITY OF FAYETTEVILLE for its convenience, provided that DEMX is given:
- 6.5.2.1 Not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate,
- 6.5.2.2 An opportunity for consultation with the terminating party prior to termination.
- 6.5.3 If termination for default is effected by CITY OF FAYETTEVILLE, an equitable adjustment in the price provided for in this Agreement shall be made, but
- 6.5.3.1 No amount shall be allowed for anticipated profit on unperformed services or other work,
- 6.5.3.2 Any payment due to DEMX at the time of termination may be adjusted to cover any additional costs to CITY OF FAYETTEVILLE because of DEMX's default.
- 6.5.4 If termination for default is effected by DEMX, or if termination for convenience is effected by CITY OF FAYETTEVILLE, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to DEMX for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by DEMX relating to commitments which had become firm prior to the termination.
- 6.5.5 Upon receipt of a termination action under Paragraphs 6.5.1 or 6.5.2 above, DEMX shall:
- 6.5.5.1 Promptly discontinue all affected work (unless the notice directs otherwise),
- 6.5.5.2 Deliver or otherwise make available to CITY OF FAYETTEVILLE all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by DEMX in performing this Agreement, whether completed or in process.
- 6.5.6 Upon termination under Paragraphs 6.5.1 or 6.5.2 above CITY OF FAYETTEVILLE may take over the work and may award another party an agreement to complete the work under this Agreement.
- 6.5.7 If, after termination for failure of DEMX to fulfill contractual obligations, it is determined that DEMX had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of CITY OF FAYETTEVILLE. In such event, adjustments of the agreement price shall be made as provided in Paragraph 6.5.4 of this clause.
- 6.6 Delays
- 6.6.1 In the event the services of DEMX are suspended or delayed by CITY OF FAYETTEVILLE or by other events beyond DEMX's reasonable control, DEMX shall be entitled to additional compensation and time for reasonable costs incurred by DEMX in temporarily closing down or delaying the Project.

6.7 Rights and Benefits

- 6.7.1 DEMX's services will be performed solely for the benefit of CITY OF FAYETTEVILLE and not for the benefit of any other persons or entities.

6.8 Dispute Resolution

- 6.8.1 Scope of Paragraph: The procedures of this Paragraph shall apply to any and all disputes between CITY OF FAYETTEVILLE and DEMX which arise from, or in any way are related to, this Agreement, including, but not limited to the interpretation of this Agreement, the enforcement of its terms, any acts, errors, or omissions of CITY OF FAYETTEVILLE or DEMX in the performance of this Agreement, and disputes concerning payment.

- 6.8.2 Exhaustion of Remedies Required: No action may be filed unless the parties first negotiate. If timely Notice is given under Paragraph 6.8.3, but an action is initiated prior to exhaustion of these procedures, such action shall be stayed, upon application by either party to a court of proper jurisdiction, until the procedures in Paragraphs 6.8.3 and 6.8.4 have been complied with.

6.8.3 Notice of Dispute

- 6.8.3.1 For disputes arising prior to the making of final payment promptly after the occurrence of any incident, action, or failure to act upon which a claim is based, the party seeking relief shall serve the other party with a written Notice.

- 6.8.3.2 For disputes arising within one year after the making of final payment, CITY OF FAYETTEVILLE shall give DEMX written Notice at the address listed in Paragraph 6.14 within thirty (30) days after occurrence of any incident, accident, or first observance of defect or damage. In both instances, the Notice shall specify the nature and amount of relief sought, the reason relief should be granted, and the appropriate portions of this Agreement that authorize the relief requested.

- 6.8.4 Negotiation: Within seven days of receipt of the Notice, the Project Managers for CITY OF FAYETTEVILLE and DEMX shall confer in an effort to resolve the dispute. If the dispute cannot be resolved at that level, then, upon written request of either side, the matter shall be referred to the President of DEMX and the Mayor of CITY OF FAYETTEVILLE or his designee. These officers shall meet at the Project Site or such other location as is agreed upon within 30 days of the written request to resolve the dispute.

- 6.9 CITY OF FAYETTEVILLE represents that it has sufficient funds or the means of obtaining funds to remit payment to DEMX for services rendered by DEMX.

6.10 Publications

- 6.10.1 Recognizing the importance of professional development on the part of DEMX's employees and the importance of DEMX's public relations, DEMX may prepare publications, such as technical papers, articles for periodicals, and press releases, pertaining to DEMX's services for the Project. Such publications will be provided to CITY OF FAYETTEVILLE in draft form for CITY OF FAYETTEVILLE's advance review. CITY OF FAYETTEVILLE shall review such drafts promptly and provide CITY OF FAYETTEVILLE's comments to DEMX. CITY OF FAYETTEVILLE may require deletion of proprietary data or confidential

information from such publications, but otherwise CITY OF FAYETTEVILLE will not unreasonably withhold approval. The cost of DEMX's activities pertaining to any such publication shall be for DEMX's account.

6.11 Indemnification

- 6.11.1 CITY OF FAYETTEVILLE agrees that it will require all construction Contractors to indemnify, defend, and hold harmless CITY OF FAYETTEVILLE and DEMX from and against any and all loss where loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the Contractors, or their employees, agents, Subcontractors, and Suppliers.

6.12 Ownership of Documents

- 6.12.1 All documents provided by CITY OF FAYETTEVILLE including original drawings, CAD drawings, estimates, field notes, and project data are and remain the property of CITY OF FAYETTEVILLE. DEMX may retain reproduced copies of drawings and copies of other documents.
- 6.12.2 Engineering documents, computer models, drawings, specifications and other hard copy or electronic media prepared by DEMX as part of the Services shall become the property of CITY OF FAYETTEVILLE when DEMX has been compensated for all Services rendered, provided, however, that DEMX shall have the unrestricted right to their use. DEMX shall, however, retain its rights in its standard drawings details, specifications, databases, computer software, and other proprietary property. Rights to intellectual property developed, utilized, or modified in the performance of the Services shall remain the property of DEMX. DEMX shall provide cad files of survey and layout work. The city shall hold DEMX harmless from any use of those cad files by the city for work not associated with DEMX.
- 6.12.3 Any files delivered in electronic medium may not work on systems and software different than those with which they were originally produced. DEMX makes no warranty as to the compatibility of these files with any other system or software. Because of the potential degradation of electronic medium over time, in the event of a conflict between the sealed original drawings/hard copies and the electronic files, the sealed drawings/hard copies will govern.

6.13 Notices

- 6.13.1 Any Notice required under this Agreement will be in writing, addressed to the appropriate party at the following addresses:

CITY OF FAYETTEVILLE's address:
113 West Mountain Street
Fayetteville, Arkansas 72701

DEMX's address:
DEMX Architecture
104 N. East Ave.
Fayetteville, AR 72701

6.14 Successor and Assigns

DeMX Proposed Contract

- 6.14.1 CITY OF FAYETTEVILLE and DEMX each binds himself and his successors, executors, administrators, and assigns to the other party of this Agreement and to the successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither CITY OF FAYETTEVILLE nor DEMX shall assign, sublet, or transfer his interest in the Agreement without the written consent of the other.
- 6.15 Controlling Law
- 6.15.1 This Agreement shall be subject to, interpreted and enforced according to the laws of the State of Arkansas within Washington County without regard to any conflicts of law provisions.
- 6.16 Entire Agreement
- 6.16.1 This Agreement represents the entire Agreement between DEMX and CITY OF FAYETTEVILLE relative to the Scope of Services herein. Since terms contained in purchase orders do not generally apply to professional services, in the event CITY OF FAYETTEVILLE issues to DEMX a purchase order, no preprinted terms thereon shall become a part of this Agreement. Said purchase order document, whether or not signed by DEMX, shall be considered as a document for CITY OF FAYETTEVILLE's internal management of its operations.

SECTION 7 - SPECIAL CONDITIONS

- 7.1 Additional Responsibilities of DEMX
- 7.1.1 CITY OF FAYETTEVILLE's review, approval, or acceptance of design drawings, specifications, reports and other services furnished hereunder shall not in any way relieve DEMX of responsibility for the technical adequacy of the work. Neither CITY OF FAYETTEVILLE's review, approval or acceptance of, nor payment for any of the services shall be construed as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.
- 7.1.2 DEMX shall be and shall remain liable, in accordance with applicable law, for all damages to CITY OF FAYETTEVILLE caused by DEMX's negligent performance of any of the services furnished under this Agreement except for errors, omissions or other deficiencies to the extent attributable to CITY OF FAYETTEVILLE or CITY OF FAYETTEVILLE-furnished data.
- 7.1.3 DEMX's obligations under this clause are in addition to DEMX's other express or implied assurances under this Agreement or State law and in no way diminish any other rights that CITY OF FAYETTEVILLE may have against DEMX for faulty materials, equipment, or work.
- 7.2 Remedies
- 7.2.1 Except as may be otherwise provided in this Agreement, all claims, counter-claims, disputes and other matters in question between CITY OF FAYETTEVILLE and DEMX arising out of or relating to this Agreement or the breach thereof will be decided in a court of competent jurisdiction within Arkansas.

7.3 Audit: Access to Records

- 7.3.1 DEMX shall maintain books, records, documents and other evidence directly pertinent to performance on work under this Agreement in accordance with generally accepted accounting principles and practices consistently applied in effect on the date of execution of this Agreement. DEMX shall also maintain the financial information and data used by DEMX in the preparation of support of the cost submission required for any negotiated agreement or change order and send to CITY OF FAYETTEVILLE a copy of the cost summary submitted. CITY OF FAYETTEVILLE, the State or any of their authorized representatives shall have access to all such books, records, documents and other evidence for the purpose of inspection, audit and copying during normal business hours. DEMX will provide proper facilities for such access and inspection.
- 7.3.2 Records under Paragraph 7.3.1 above, shall be maintained and made available during performance on assisted work under this Agreement and until three years from the date of final payment for the project. In addition, those records which relate to any controversy arising out of such performance, or to costs or items to which an audit exception has been taken, shall be maintained and made available until three years after the date of resolution of such appeal, litigation, claim or exception.
- 7.3.3 This right of access clause (with respect to financial records) applies to:
- 7.3.3.1 Negotiated prime agreements:
- 7.3.3.2 Negotiated change orders or agreement amendments in excess of \$10,000 affecting the price of any formally advertised, competitively awarded, fixed price agreement:
- 7.3.3.3 Agreements or purchase orders under any agreement other than a formally advertised, competitively awarded, fixed price agreement. However, this right of access does not apply to a prime agreement, lower tier sub-agreement or purchase order awarded after effective price competition, except:
- 7.3.3.3.1 With respect to record pertaining directly to sub-agreement performance, excluding any financial records of DEMX;
- 7.3.3.3.2 If there is any indication that fraud, gross abuse or corrupt practices may be involved;
- 7.3.3.3.3 If the sub-agreement is terminated for default or for convenience.

7.4 Covenant Against Contingent Fees

- 7.4.1 DEMX warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement of understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by DEMX for the purpose of securing business. For breach or violation of this warranty, CITY OF FAYETTEVILLE shall have the right to annul this Agreement without liability or at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

7.5 Gratuities

7.5.1 If CITY OF FAYETTEVILLE finds after a notice and hearing that DEMX or any of DEMX's agents or representatives, offered or gave gratuities (in the form of entertainment, gifts or otherwise) to any official, employee or agent of CITY OF FAYETTEVILLE, in an attempt to secure an agreement or favorable treatment in awarding, amending or making any determinations related to the performance of this Agreement, CITY OF FAYETTEVILLE may, by written notice to DEMX terminate this Agreement. CITY OF FAYETTEVILLE may also pursue other rights and remedies that the law or this Agreement provides. However, the existence of the facts on which CITY OF FAYETTEVILLE bases such finding shall be in issue and may be reviewed in proceedings under the Remedies clause of this Agreement.

7.5.2 In the event this Agreement is terminated as provided in Paragraph 7.5.1, CITY OF FAYETTEVILLE may pursue the same remedies against DEMX as it could pursue in the event of a breach of the Agreement by DEMX. As a penalty, in addition to any other damages to which it may be entitled by law, CITY OF FAYETTEVILLE may pursue exemplary damages in an amount (as determined by CITY OF FAYETTEVILLE) which shall be not less than three nor more than ten times the costs DEMX incurs in providing any such gratuities to any such officer or employee.

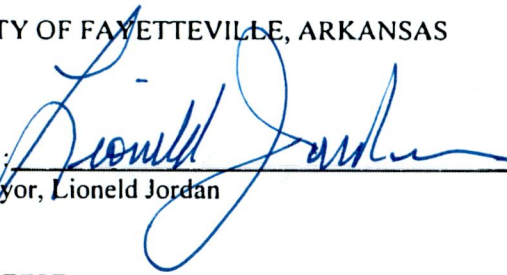
7.6 Arkansas Freedom of Information Act

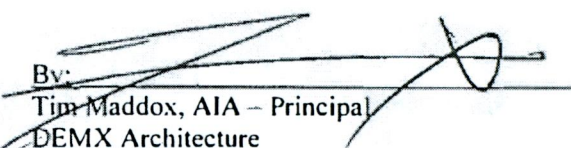
7.6.1 City contracts and documents, including internal documents and documents of subcontractors and sub-consultants, prepared while performing City contractual work are subject to the Arkansas Freedom of Information Act (FOIA). If a Freedom of Information Act request is presented to the CITY OF FAYETTEVILLE, DEMX will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. §25-19-101 et seq.). Only legally authorized photocopying costs pursuant to the FOIA may be assessed for this compliance.

IN WITNESS WHEREOF, CITY OF FAYETTEVILLE, ARKANSAS by and through its Mayor, and DEMEX, by its authorized officer have made and executed this Agreement as of the day and year first above written.

CITY OF FAYETTEVILLE, ARKANSAS

DEMEX

By: 
Mayor, Lioneld Jordan

By: 
Tim Maddox, AIA - Principal
DEMEX Architecture

ATTEST:

By: 
Sondra E. Smith, City Clerk

Title: _____

END OF AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

City of Fayetteville Staff Review Form

2020-0633

Legistar File ID

N/A

City Council Meeting Date - Agenda Item Only

N/A for Non-Agenda Item

Ted Jack

7/23/2020

PARKS & RECREATION (520)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Approval of a Change Order for \$5000 with DeMX Architecture (Legistar File 2019-0532) for additional services to add the Restroom Building at Lewis Park to the project renovating multiple restrooms in five other parks. The increase in contract costs from \$52,000 to \$57,000 is covered in the project contingency.

Budget Impact:

2250.520.9255-5806.00

Parks Development

Account Number

Fund

13001.1902

Park Restroom Improvements

Project Number

Project Title

Budgeted Item? Yes

Current Budget \$ 688,683.00

Funds Obligated \$ 43,000.00

Current Balance \$ 645,683.00

Does item have a cost? Yes

Item Cost \$ 5,000.00

Budget Adjustment Attached? No

Budget Adjustment

Remaining Budget \$ 640,683.00

Purchase Order Number: 2019-0671

Previous Ordinance or Resolution # 214-19

V20180321

Change Order Number:

Approval Date: 7/31/2020

Original Contract Number:

Comments: This is for additional services for RFQ 19-01, Selection #21 - Contract with DeMX approved at 9/17/2019 City Council Meeting.



TO: Lioneld Jordan, Mayor

THRU: Susan Norton, Chief of Staff
Connie Edmonston, Parks and Recreation Director

FROM: Ted Jack, Park Planning Superintendent

DATE: July 23, 2020

SUBJECT: Approval of a Change Order for \$5000 with DeMX Architecture (Legistar File 2019-0532) for additional services to add the Restroom Building at Lewis Park to the project renovating multiple restrooms in five other parks. The increase in contract costs from \$52,000 to \$57,000 is covered in the project contingency.

RECOMMENDATION:

Approval of a Change Order for \$5000 with DeMX Architecture (Legistar File 2019-0532) to add the Restroom Building at Lewis Park to the project renovating multiple restrooms in five other parks. The increase in contract costs from \$52,000 to \$57,000 is covered in the project contingency.

BACKGROUND:

A contract for design services with DeMX Architecture was approved by Council on September 17, 2019 to provide design and construction administration services associated with renovation and/or replacement of existing restrooms in multiple parks including Finger Neighborhood Park, Wilson, Gulley, and Walker Community Parks, and Lake Fayetteville Regional Park for a total cost not to exceed \$52,000, plus a \$10,000 expense contingency, per RFQ #19-01, Selection #21. Since this project began, Lewis Park was acquired by the city and the restroom structure is in need of refurbishment. Adding it to this existing contract is the most efficient way of making the needed refurbishments.

DISCUSSION:

N/A

BUDGET/STAFF IMPACT:

The additional services for Lewis increase contract costs by \$5000, which is covered by the \$10,000 expense contingency in the project.

Attachments:

Staff Review Form
Contract Amendment for Mayor's Signature
Legistar 2019-0532

PROPOSAL

Wade Abernathy
Director of Bond Projects and Facilities
City of Fayetteville
115 S. Church Ave.
Fayetteville, AR 72701

RE: Additional Services to Fayetteville Park Restroom Renovations - Phase 1A:
Lewis Park Restroom Renovation

General Program

This proposal is for the professional design services for the renovation of the existing restroom located at Lewis Park. This facility is an existing concrete block wall structure with a wood framed and asphalt shingle roof. Spaces include men's and women's restrooms, concession area, storage room and mechanical room. The renovations are to include but are not limited to new entry doors, new plumbing fixtures as required, new light fixtures as required, new interior doors as required, new concession window with security shutter and air curtain, new siding at gable ends, new interior and exterior paint, minor plumbing corrections, freeze proof plumbing lines in attic, new water heater and a new roof.

Documents and Services

Documents and Services are to be furnished as required by the scope of the project:

Schematic Design

- Survey and Document Existing Conditions
- Schematic Floor Plan
- Schematic Elevations
- Preliminary Cost Estimate

Construction Documents

- Floor Plan, Reflected Ceiling Plan, and Roof Plan
- Exterior Elevations
- Wall Sections, Building Sections, and Details as Required
- Interior Elevations and Details as Required
- Door & Window Schedules
- Project Specifications Book

Bidding & Negotiations

- Answer Bidder Questions and Issue Addenda if required
- Engage with General Contractor awarded the project

Construction Administration

- Construction Observation and Field Reports (typically bi-weekly)
- Submittal and Shop Drawing Review
- RFIs, Supplemental Drawings, and Sketches as required
- Process Change Orders
- Process Contractor Applications for Payment
- Punch List and Project Close Out

Fee Schedule

The architectural fee shall be based on a lump sum of \$5,000.00. This fee includes all documents and services listed above.

The architectural/ engineering fee will be distributed as follows:

Schematic Design	15%
Construction Documents	60%
Bidding & Negotiations	5%
Construction Administration	20%

Any additional services not outlined in this proposal can be provided based on standard hourly rates. See the attached DEMX architecture hourly rate schedule.

The architectural/ engineering fee does not include:

- Building permit or Arkansas State Health Department fees
- LEED documentation and certification
- Reimbursable expenses (large format printing and postage/courier services)
- Civil Engineering as required (fee estimate can be provided)
- Subsurface (geotechnical) investigation
- Topographic survey and tree location
- Landscape Architecture

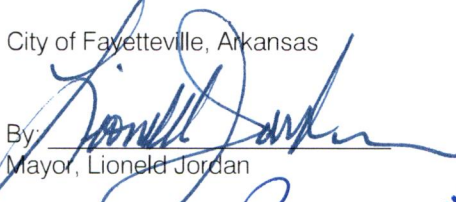
Invoices shall be made monthly and/or at milestones during the project and are due upon receipt.

Should this proposal be accepted, it will serve as a supplement to the contract for design and construction administration services for renovations and replacements to multiple restrooms in multiple parks and be used in conjunction with the City of Fayetteville, Arkansas Professional Services Contract for Architectural Services.

Date: 7-31-20

City of Fayetteville, Arkansas

DeMX

By: 
Mayor, Lioneld Jordan

By: 
Tim Maddox, AIA - Principal

ATTEST:
By: 
Kara Paxton, City Clerk Treasurer





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

Resolution: 214-19

File Number: 2019-0532

DEMX ARCHITECTURE:

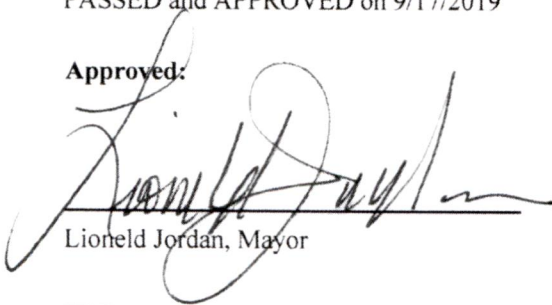
A RESOLUTION TO APPROVE A PROFESSIONAL ARCHITECTURAL SERVICES AGREEMENT WITH DEMX ARCHITECTURE, PURSUANT TO RFQ #19-01, IN AN AMOUNT NOT TO EXCEED \$52,000.00 FOR DESIGN AND CONSTRUCTION ADMINISTRATION SERVICES ASSOCIATED WITH THE RENOVATION AND REPLACEMENT OF EXISTING RESTROOMS IN MULTIPLE CITY PARKS, AND TO APPROVE A PROJECT CONTINGENCY IN THE AMOUNT OF \$10,000.00

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

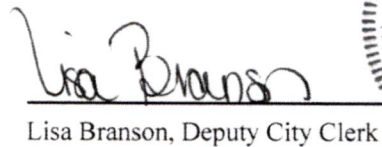
Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves a professional architectural services agreement with DEMX Architecture, pursuant to RFQ #19-01, in the amount not to exceed \$52,000.00 for design and construction administration services associated with the renovation and replacement of existing restrooms in multiple city parks, and further approves a project contingency in the amount of \$10,000.00.

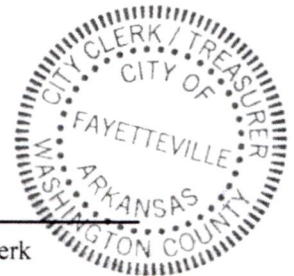
PASSED and APPROVED on 9/17/2019

Approved:


Lioneld Jordan, Mayor

Attest:


Lisa Branson, Deputy City Clerk





City of Fayetteville, Arkansas

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

Text File

File Number: 2019-0532

Agenda Date: 9/17/2019

Version: 1

Status: Passed

In Control: City Council Meeting

File Type: Resolution

Agenda Number: A. 11

DEMX ARCHITECTURE:

A RESOLUTION TO APPROVE A PROFESSIONAL ARCHITECTURAL SERVICES AGREEMENT WITH DEMX ARCHITECTURE, PURSUANT TO RFQ #19-01, IN AN AMOUNT NOT TO EXCEED \$52,000.00 FOR DESIGN AND CONSTRUCTION ADMINISTRATION SERVICES ASSOCIATED WITH THE RENOVATION AND REPLACEMENT OF EXISTING RESTROOMS IN MULTIPLE CITY PARKS, AND TO APPROVE A PROJECT CONTINGENCY IN THE AMOUNT OF \$10,000.00

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 a professional architectural services agreement with DEMX Architecture, pursuant to RFQ #19-01, in the amount not to exceed \$52,000.00 for design and construction administration services associated with the renovation and replacement of existing restrooms in multiple city parks, and further approves a project contingency in the amount of \$10,000.00.

City of Fayetteville Staff Review Form

2019-0532

Legistar File ID

9/17/2019

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

Ted Jack

8/22/2019

PARKS & RECREATION (520)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Resolution to approve a contract between the City of Fayetteville, AR and DEMX Architecture of Fayetteville, AR to provide design and construction administration services associated with renovations (5) and replacements (2) of existing restrooms in multiple parks including Finger Neighborhood Park, Wilson, Gulley, and Walker Community Parks, and Lake Fayetteville Regional Park, for a total cost not to exceed \$52,000, plus a \$10,000 expense contingency, per RFQ #19-01, Selection #21.

Budget Impact:

2250.520.9255-5806.00

Parks Development

Account Number

Fund

13001.1902

Park Restroom Improvements

Project Number

Project Title

Budgeted Item? Yes

Current Budget \$ 700,000.00

Funds Obligated \$ 3,200.00

Current Balance \$ 696,800.00

Does item have a cost? Yes

Item Cost \$ 62,000.00

Budget Adjustment Attached? No

Budget Adjustment

Remaining Budget \$ 634,800.00

Purchase Order Number: _____

Previous Ordinance or Resolution # _____

V20180321

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments: RFQ 19-01, Selection #21



MEETING OF SEPTEMBER 17, 2019

TO: Mayor and City Council

THRU: Don Marr, Chief of Staff
Connie Edmonston, Parks and Recreation Director

FROM: Ted Jack, Park Planning Superintendent

DATE: August 27, 2019

SUBJECT: Resolution to approve a contract between the City of Fayetteville, AR and DEMX Architecture of Fayetteville, AR to provide design and construction administration services associated with renovations (5) and replacements (2) of existing restrooms in multiple parks including Finger Neighborhood Park, Wilson, Gulley, and Walker Community Parks, and Lake Fayetteville Regional Park, for a total cost not to exceed \$52,000, plus a \$10,000 expense contingency, per RFQ #19-01, Selection #21.

RECOMMENDATION:

Staff recommends approval of a contract between the City of Fayetteville, AR and DEMX Architecture of Fayetteville, AR to provide design and construction administration services associated with renovation and/or replacement of existing restrooms in multiple parks including Finger Neighborhood Park, Wilson, Gulley, and Walker Community Parks, and Lake Fayetteville Regional Park for a total cost not to exceed \$52,000, plus a \$10,000 expense contingency, per RFQ #19-01, Selection #21.

BACKGROUND:

The city has several old restroom buildings of similar design built during the same general period (1960's - 1990's) that need renovation or replacement. Restrooms to be renovated include Gulley, Lake Fayetteville Softball, Veterans Park, Finger Park, and one restroom at Walker Park. Two restrooms are proposed for full demolition and reconstruction including Wilson and Walker Park adjacent to the basketball court.

DISCUSSION:

The City of Fayetteville from time to time requires professional engineering, design, and/or construction management services related to capital improvement projects. In this instance, DEMX Architecture was selected through an RFQ selection process (RFQ 19-01) to serve as the professional architectural consultant for plan preparation and construction administration for the renovation and/or replacement of seven restrooms located in five separate parks throughout the city.

BUDGET/STAFF IMPACT:

Funding for this project has been budgeted and is available in project #13001.1902 – Park Restroom Improvements.

Attachments:

SRF – Wilson Restroom DEMX Architecture
DEMX Architecture Draft Contract

AGREEMENT
For
PROFESSIONAL ARCHITECTURAL SERVICES
Between
CITY OF FAYETTEVILLE, ARKANSAS
And
DEMX ARCHITECTURE

THIS AGREEMENT is made as of September 17, 2019, by and between City of Fayetteville, Arkansas, acting by and through its Mayor (hereinafter called CITY OF FAYETTEVILLE) and DEMX ARCHITECTURE, INC (hereinafter called DEMX).

CITY OF FAYETTEVILLE from time to time requires professional engineering services in connection with the evaluation, design, and/or construction supervision of capital improvement projects. Therefore, CITY OF FAYETTEVILLE and DEMX in consideration of their mutual covenants agree as follows:

DEMX shall serve as CITY OF FAYETTEVILLE's professional architectural consultant in those assignments to which this Agreement applies, and shall give consultation and advice to CITY OF FAYETTEVILLE during the performance of DEMX's services. All services shall be performed under the direction of a professional architect/engineer/landscape architect registered in the State of Arkansas and qualified in the particular field.

SECTION 1 - AUTHORIZATION OF SERVICES

- 1.1 Services on any assignment shall be undertaken only upon written Authorization of CITY OF FAYETTEVILLE and agreement of DEMX.
- 1.2 Assignments may include services described hereafter as Basic Services or as Additional Services of DEMX.
- 1.3 Changes, modifications or amendments in scope, price or fees to this contract shall **not** be allowed without a formal contract amendment approved by the Mayor and the City Council **in advance** of the change in scope, costs, fees, or delivery schedule.

SECTION 2 - BASIC SERVICES OF DEMX

- 2.1 Perform professional services in connection with the Project, Restroom Renovations, which includes the renovation of five restrooms, and reconstruction of two restrooms, in multiple parks and as described in Attachment A, and as hereinafter stated.
 - 2.1.1 The Scope of Services to be furnished by DEMX during the Project is included in the August 22, 2019 Proposal from DEMX, attached hereto as Attachment A, and made part of this Agreement.
- 2.2 DEMX shall coordinate their activities and services with the CITY OF FAYETTEVILLE. DEMX and CITY OF FAYETTEVILLE agree that DEMX has full responsibility for the architectural services.

- 2.3 DEMX shall coordinate their activities and services with other Phase 1 improvements, primarily consisting of trail and cyclocross work.

SECTION 3 - RESPONSIBILITIES OF CITY OF FAYETTEVILLE

- 3.1 CITY OF FAYETTEVILLE shall, within a reasonable time, so as not to delay the services of DEMX.
- 3.1.1 Provide full information as to CITY OF FAYETTEVILLE's requirements for the Project.
- 3.1.2 Assist DEMX by placing at DEMX's disposal all available information pertinent to the assignment including previous reports and any other data relative thereto.
- 3.1.3 Assist DEMX in obtaining access to property reasonably necessary for DEMX to perform its services under this Agreement.
- 3.1.4 Examine all studies, reports, sketches, cost opinions, proposals, and other documents presented by DEMX and render in writing decisions pertaining thereto.
- 3.1.5 The Park Planning Superintendent is the CITY OF FAYETTEVILLE's project representative with respect to the services to be performed under this Agreement. The Park Planning Superintendent shall have complete authority to transmit instructions, receive information, interpret and define CITY OF FAYETTEVILLE's policies and decisions with respect to materials, equipment, elements and systems to be used in the Project, and other matters pertinent to the services covered by this Agreement.
- 3.1.6 CITY OF FAYETTEVILLE and/or its representative will review all documents and provide written comments to DEMX in a timely manner.

SECTION 4 - PERIOD OF SERVICE

- 4.1 Time is of the essence in this agreement and this Agreement will become effective upon the first written notice by CITY OF FAYETTEVILLE authorizing services hereunder.
- 4.2 The provisions of this Agreement have been agreed to in anticipation of the orderly progress of the Project through completion of the services stated in the Agreement. DEMX will proceed with providing the authorized services immediately upon receipt of written authorization from CITY OF FAYETTEVILLE. Said authorization shall include the scope of the services authorized and the time in which the services are to be completed. This project may bid in two phases. The schedule for this project is to have the work for both phases ready to bid by the city by the end of March 2020.

SECTION 5 - PAYMENTS TO DEMX

- 5.1 The maximum not-to-exceed amount authorized for this Agreement is **\$52,000.00** plus approved expenses not to exceed \$10,000.00. The CITY OF FAYETTEVILLE shall compensate DEMX based on the percent of work completed as described in Attachment A.
- 5.2 Statements
- 5.2.1 Monthly statements for each calendar month shall be submitted to CITY OF FAYETTEVILLE or such parties as CITY OF FAYETTEVILLE may designate for

DeMX Proposed Contract

professional services consistent with DEMX's normal billing schedule. Once established, the billing schedule shall be maintained throughout the duration of the Project. Applications for payment shall be made in accordance with a format to be developed by DEMX and approved by CITY OF FAYETTEVILLE. Applications for payment shall be accompanied each month by the updated project schedule as the basis for determining the value earned as the work is accomplished. Final payment for professional services shall be made upon CITY OF FAYETTEVILLE's approval and acceptance with the satisfactory completion of the study and report for the Project.

5.3 Payments

- 5.3.1 All statements are payable upon receipt and due within thirty (30) days. If a portion of DEMX's statement is disputed by CITY OF FAYETTEVILLE, the undisputed portion shall be paid by CITY OF FAYETTEVILLE by the due date. CITY OF FAYETTEVILLE shall advise DEMX in writing of the basis for any disputed portion of any statement. CITY OF FAYETTEVILLE will make reasonable effort to pay invoices within 30 days of date the invoice is approved, however, payment within 30 days is not guaranteed.

5.4 Final Payment

- 5.4.1 Upon satisfactory completion of the work performed under this Agreement, as a condition before final payment under this Agreement, or as a termination settlement under this Agreement, DEMX shall execute and deliver to CITY OF FAYETTEVILLE a release of all claims against CITY OF FAYETTEVILLE arising under or by virtue of this Agreement, except claims which are specifically exempted by DEMX to be set forth therein. Unless otherwise provided in this Agreement or by State law or otherwise expressly agreed to by the parties to this Agreement, final payment under this Agreement or settlement upon termination of this Agreement shall not constitute a waiver of CITY OF FAYETTEVILLE's claims against DEMX or his sureties under this Agreement or applicable performance and payment bonds, if any.

SECTION 6 - GENERAL CONSIDERATIONS

6.1 Insurance

- 6.1.1 During the course of performance of these services, DEMX will maintain (in United States Dollars) the following minimum insurance coverages:

<u>Type of Coverage</u>	<u>Limits of Liability</u>
Workers' Compensation Employers' Liability	Statutory \$500,000 Each Accident
Commercial General Liability Bodily Injury and Property Damage	\$1,000,000 Combined Single Limit
Automobile Liability: Bodily Injury and Property Damage	\$1,000,000 Combined Single Limit

Professional Liability Insurance \$1,000,000 Each Claim

DEMEX will provide to CITY OF FAYETTEVILLE certificates as evidence of the specified insurance within ten days of the date of this Agreement and upon each renewal of coverage.

- 6.1.2 CITY OF FAYETTEVILLE and DEMEX waive all rights against each other and their officers, directors, agents, or employees for damage covered by property insurance during and after the completion of DEMEX's services.

6.2 Professional Responsibility

- 6.2.1 DEMEX will exercise reasonable skill, care, and diligence in the performance of DEMEX's services and will carry out its responsibilities in accordance with customarily accepted professional architectural practices. CITY OF FAYETTEVILLE will promptly report to DEMEX any defects or suspected defects in DEMEX's services of which CITY OF FAYETTEVILLE becomes aware, so that DEMEX can take measures to minimize the consequences of such a defect. CITY OF FAYETTEVILLE retains all remedies to recover for its damages caused by any negligence of DEMEX.

6.3 Cost Opinions and Projections

- 6.3.1 Cost opinions and projections prepared by DEMEX relating to construction costs and schedules, operation and maintenance costs, equipment characteristics and performance, and operating results are based on DEMEX's staff experience, qualifications, and judgment as a design professional. Since DEMEX has no control over weather, cost and availability of labor, material and equipment, labor productivity, construction Contractors' procedures and methods, unavoidable delays, construction Contractors' methods of determining prices, economic conditions, competitive bidding or market conditions, and other factors affecting such cost opinions or projections, DEMEX does not guarantee that actual rates, costs, performance, schedules, and related items will not vary from cost opinions and projections prepared by DEMEX.

6.4 Changes

- 6.4.1 CITY OF FAYETTEVILLE shall have the right to make changes within the general scope of DEMEX's services, with an appropriate change in compensation and schedule only after Fayetteville City Council approval of such proposed changes and, upon execution of a mutually acceptable amendment or change order signed by the Mayor of the CITY OF FAYETTEVILLE and the duly authorized officer of DEMEX.

6.5 Termination

- 6.5.1 This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given:
 - 6.5.1.1 Not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate,
 - 6.5.1.2 An opportunity for consultation with the terminating party prior to termination.

DeMX Proposed Contract

- 6.5.2 This Agreement may be terminated in whole or in part in writing by CITY OF FAYETTEVILLE for its convenience, provided that DEMX is given:
- 6.5.2.1 Not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate.
- 6.5.2.2 An opportunity for consultation with the terminating party prior to termination.
- 6.5.3 If termination for default is effected by CITY OF FAYETTEVILLE, an equitable adjustment in the price provided for in this Agreement shall be made, but
- 6.5.3.1 No amount shall be allowed for anticipated profit on unperformed services or other work.
- 6.5.3.2 Any payment due to DEMX at the time of termination may be adjusted to cover any additional costs to CITY OF FAYETTEVILLE because of DEMX's default.
- 6.5.4 If termination for default is effected by DEMX, or if termination for convenience is effected by CITY OF FAYETTEVILLE, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to DEMX for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by DEMX relating to commitments which had become firm prior to the termination.
- 6.5.5 Upon receipt of a termination action under Paragraphs 6.5.1 or 6.5.2 above, DEMX shall:
- 6.5.5.1 Promptly discontinue all affected work (unless the notice directs otherwise),
- 6.5.5.2 Deliver or otherwise make available to CITY OF FAYETTEVILLE all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by DEMX in performing this Agreement, whether completed or in process.
- 6.5.6 Upon termination under Paragraphs 6.5.1 or 6.5.2 above CITY OF FAYETTEVILLE may take over the work and may award another party an agreement to complete the work under this Agreement.
- 6.5.7 If, after termination for failure of DEMX to fulfill contractual obligations, it is determined that DEMX had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of CITY OF FAYETTEVILLE. In such event, adjustments of the agreement price shall be made as provided in Paragraph 6.5.4 of this clause.
- 6.6 Delays
- 6.6.1 In the event the services of DEMX are suspended or delayed by CITY OF FAYETTEVILLE or by other events beyond DEMX's reasonable control, DEMX shall be entitled to additional compensation and time for reasonable costs incurred by DEMX in temporarily closing down or delaying the Project.

6.7 Rights and Benefits

- 6.7.1 DEMX's services will be performed solely for the benefit of CITY OF FAYETTEVILLE and not for the benefit of any other persons or entities.

6.8 Dispute Resolution

- 6.8.1 Scope of Paragraph: The procedures of this Paragraph shall apply to any and all disputes between CITY OF FAYETTEVILLE and DEMX which arise from, or in any way are related to, this Agreement, including, but not limited to the interpretation of this Agreement, the enforcement of its terms, any acts, errors, or omissions of CITY OF FAYETTEVILLE or DEMX in the performance of this Agreement, and disputes concerning payment.

- 6.8.2 Exhaustion of Remedies Required: No action may be filed unless the parties first negotiate. If timely Notice is given under Paragraph 6.8.3, but an action is initiated prior to exhaustion of these procedures, such action shall be stayed, upon application by either party to a court of proper jurisdiction, until the procedures in Paragraphs 6.8.3 and 6.8.4 have been complied with.

6.8.3 Notice of Dispute

- 6.8.3.1 For disputes arising prior to the making of final payment promptly after the occurrence of any incident, action, or failure to act upon which a claim is based, the party seeking relief shall serve the other party with a written Notice.

- 6.8.3.2 For disputes arising within one year after the making of final payment, CITY OF FAYETTEVILLE shall give DEMX written Notice at the address listed in Paragraph 6.14 within thirty (30) days after occurrence of any incident, accident, or first observance of defect or damage. In both instances, the Notice shall specify the nature and amount of relief sought, the reason relief should be granted, and the appropriate portions of this Agreement that authorize the relief requested.

- 6.8.4 Negotiation: Within seven days of receipt of the Notice, the Project Managers for CITY OF FAYETTEVILLE and DEMX shall confer in an effort to resolve the dispute. If the dispute cannot be resolved at that level, then, upon written request of either side, the matter shall be referred to the President of DEMX and the Mayor of CITY OF FAYETTEVILLE or his designee. These officers shall meet at the Project Site or such other location as is agreed upon within 30 days of the written request to resolve the dispute.

- 6.9 CITY OF FAYETTEVILLE represents that it has sufficient funds or the means of obtaining funds to remit payment to DEMX for services rendered by DEMX.

6.10 Publications

- 6.10.1 Recognizing the importance of professional development on the part of DEMX's employees and the importance of DEMX's public relations, DEMX may prepare publications, such as technical papers, articles for periodicals, and press releases, pertaining to DEMX's services for the Project. Such publications will be provided to CITY OF FAYETTEVILLE in draft form for CITY OF FAYETTEVILLE's advance review. CITY OF FAYETTEVILLE shall review such drafts promptly and provide CITY OF FAYETTEVILLE's comments to DEMX. CITY OF FAYETTEVILLE may require deletion of proprietary data or confidential

information from such publications, but otherwise CITY OF FAYETTEVILLE will not unreasonably withhold approval. The cost of DEMX's activities pertaining to any such publication shall be for DEMX's account.

6.11 Indemnification

- 6.11.1 CITY OF FAYETTEVILLE agrees that it will require all construction Contractors to indemnify, defend, and hold harmless CITY OF FAYETTEVILLE and DEMX from and against any and all loss where loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the Contractors, or their employees, agents, Subcontractors, and Suppliers.

6.12 Ownership of Documents

- 6.12.1 All documents provided by CITY OF FAYETTEVILLE including original drawings, CAD drawings, estimates, field notes, and project data are and remain the property of CITY OF FAYETTEVILLE. DEMX may retain reproduced copies of drawings and copies of other documents.
- 6.12.2 Engineering documents, computer models, drawings, specifications and other hard copy or electronic media prepared by DEMX as part of the Services shall become the property of CITY OF FAYETTEVILLE when DEMX has been compensated for all Services rendered, provided, however, that DEMX shall have the unrestricted right to their use. DEMX shall, however, retain its rights in its standard drawings details, specifications, databases, computer software, and other proprietary property. Rights to intellectual property developed, utilized, or modified in the performance of the Services shall remain the property of DEMX. DEMX shall provide cad files of survey and layout work. The city shall hold DEMX harmless from any use of those cad files by the city for work not associated with DEMX.
- 6.12.3 Any files delivered in electronic medium may not work on systems and software different than those with which they were originally produced. DEMX makes no warranty as to the compatibility of these files with any other system or software. Because of the potential degradation of electronic medium over time, in the event of a conflict between the sealed original drawings/hard copies and the electronic files, the sealed drawings/hard copies will govern.

6.13 Notices

- 6.13.1 Any Notice required under this Agreement will be in writing, addressed to the appropriate party at the following addresses:

CITY OF FAYETTEVILLE's address:
113 West Mountain Street
Fayetteville, Arkansas 72701

DEMX's address:
DEMX Architecture
104 N. East Ave.
Fayetteville, AR 72701

6.14 Successor and Assigns

DeMX Proposed Contract

- 6.14.1 CITY OF FAYETTEVILLE and DEMX each binds himself and his successors, executors, administrators, and assigns to the other party of this Agreement and to the successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither CITY OF FAYETTEVILLE nor DEMX shall assign, sublet, or transfer his interest in the Agreement without the written consent of the other.
- 6.15 Controlling Law
- 6.15.1 This Agreement shall be subject to, interpreted and enforced according to the laws of the State of Arkansas within Washington County without regard to any conflicts of law provisions.
- 6.16 Entire Agreement
- 6.16.1 This Agreement represents the entire Agreement between DEMX and CITY OF FAYETTEVILLE relative to the Scope of Services herein. Since terms contained in purchase orders do not generally apply to professional services, in the event CITY OF FAYETTEVILLE issues to DEMX a purchase order, no preprinted terms thereon shall become a part of this Agreement. Said purchase order document, whether or not signed by DEMX, shall be considered as a document for CITY OF FAYETTEVILLE's internal management of its operations.

SECTION 7 - SPECIAL CONDITIONS

- 7.1 Additional Responsibilities of DEMX
- 7.1.1 CITY OF FAYETTEVILLE's review, approval, or acceptance of design drawings, specifications, reports and other services furnished hereunder shall not in any way relieve DEMX of responsibility for the technical adequacy of the work. Neither CITY OF FAYETTEVILLE's review, approval or acceptance of, nor payment for any of the services shall be construed as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.
- 7.1.2 DEMX shall be and shall remain liable, in accordance with applicable law, for all damages to CITY OF FAYETTEVILLE caused by DEMX's negligent performance of any of the services furnished under this Agreement except for errors, omissions or other deficiencies to the extent attributable to CITY OF FAYETTEVILLE or CITY OF FAYETTEVILLE-furnished data.
- 7.1.3 DEMX's obligations under this clause are in addition to DEMX's other express or implied assurances under this Agreement or State law and in no way diminish any other rights that CITY OF FAYETTEVILLE may have against DEMX for faulty materials, equipment, or work.
- 7.2 Remedies
- 7.2.1 Except as may be otherwise provided in this Agreement, all claims, counter-claims, disputes and other matters in question between CITY OF FAYETTEVILLE and DEMX arising out of or relating to this Agreement or the breach thereof will be decided in a court of competent jurisdiction within Arkansas.

7.3 Audit: Access to Records

- 7.3.1 DEMX shall maintain books, records, documents and other evidence directly pertinent to performance on work under this Agreement in accordance with generally accepted accounting principles and practices consistently applied in effect on the date of execution of this Agreement. DEMX shall also maintain the financial information and data used by DEMX in the preparation of support of the cost submission required for any negotiated agreement or change order and send to CITY OF FAYETTEVILLE a copy of the cost summary submitted. CITY OF FAYETTEVILLE, the State or any of their authorized representatives shall have access to all such books, records, documents and other evidence for the purpose of inspection, audit and copying during normal business hours. DEMX will provide proper facilities for such access and inspection.
- 7.3.2 Records under Paragraph 7.3.1 above, shall be maintained and made available during performance on assisted work under this Agreement and until three years from the date of final payment for the project. In addition, those records which relate to any controversy arising out of such performance, or to costs or items to which an audit exception has been taken, shall be maintained and made available until three years after the date of resolution of such appeal, litigation, claim or exception.
- 7.3.3 This right of access clause (with respect to financial records) applies to:
 - 7.3.3.1 Negotiated prime agreements:
 - 7.3.3.2 Negotiated change orders or agreement amendments in excess of \$10,000 affecting the price of any formally advertised, competitively awarded, fixed price agreement:
 - 7.3.3.3 Agreements or purchase orders under any agreement other than a formally advertised, competitively awarded, fixed price agreement. However, this right of access does not apply to a prime agreement, lower tier sub-agreement or purchase order awarded after effective price competition, except:
 - 7.3.3.3.1 With respect to record pertaining directly to sub-agreement performance, excluding any financial records of DEMX;
 - 7.3.3.3.2 If there is any indication that fraud, gross abuse or corrupt practices may be involved;
 - 7.3.3.3.3 If the sub-agreement is terminated for default or for convenience.

7.4 Covenant Against Contingent Fees

- 7.4.1 DEMX warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement of understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by DEMX for the purpose of securing business. For breach or violation of this warranty, CITY OF FAYETTEVILLE shall have the right to annul this Agreement without liability or at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

7.5 Gratuities

7.5.1 If CITY OF FAYETTEVILLE finds after a notice and hearing that DEMX or any of DEMX's agents or representatives, offered or gave gratuities (in the form of entertainment, gifts or otherwise) to any official, employee or agent of CITY OF FAYETTEVILLE, in an attempt to secure an agreement or favorable treatment in awarding, amending or making any determinations related to the performance of this Agreement, CITY OF FAYETTEVILLE may, by written notice to DEMX terminate this Agreement. CITY OF FAYETTEVILLE may also pursue other rights and remedies that the law or this Agreement provides. However, the existence of the facts on which CITY OF FAYETTEVILLE bases such finding shall be in issue and may be reviewed in proceedings under the Remedies clause of this Agreement.

7.5.2

In the event this Agreement is terminated as provided in Paragraph 7.5.1, CITY OF FAYETTEVILLE may pursue the same remedies against DEMX as it could pursue in the event of a breach of the Agreement by DEMX. As a penalty, in addition to any other damages to which it may be entitled by law, CITY OF FAYETTEVILLE may pursue exemplary damages in an amount (as determined by CITY OF FAYETTEVILLE) which shall be not less than three nor more than ten times the costs DEMX incurs in providing any such gratuities to any such officer or employee.

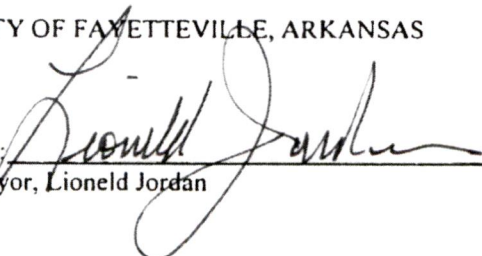
7.6 Arkansas Freedom of Information Act

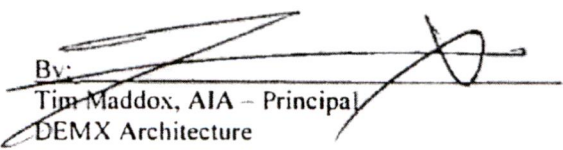
7.6.1 City contracts and documents, including internal documents and documents of subcontractors and sub-consultants, prepared while performing City contractual work are subject to the Arkansas Freedom of Information Act (FOIA). If a Freedom of Information Act request is presented to the CITY OF FAYETTEVILLE, DEMX will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. §25-19-101 et seq.). Only legally authorized photocopying costs pursuant to the FOIA may be assessed for this compliance.

IN WITNESS WHEREOF, CITY OF FAYETTEVILLE, ARKANSAS by and through its Mayor, and DEMEX, by its authorized officer have made and executed this Agreement as of the day and year first above written.

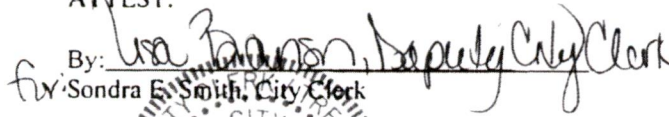
CITY OF FAYETTEVILLE, ARKANSAS

DEMEX

By: 
Mayor, Lioneld Jordan

By: 
Tim Maddox, AIA - Principal
DEMEX Architecture

ATTEST:

By: 
Sondra E. Smith, City Clerk

Title: _____

END OF AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

RFQ 19-01 Selection Room Renovations Project Draft

RESOLUTION NO. _____

A RESOLUTION TO APPROVE A BUDGET ADJUSTMENT IN THE TOTAL AMOUNT OF \$29,969.00 REPRESENTING COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM INCOME, DONATIONS FROM CITIZENS AND LOCAL BUSINESSES, AND TO ALLOCATE USE FUND BALANCE FUNDS

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 a budget adjustment, a copy of which is attached to this Resolution, in the total amount of \$29,969.00 recognizing Community Development Block Grant Program Income, donations made from citizens and local businesses, to allocate use fund balance funds and appropriating the funds to assist as follows:

Housing Contract Services	\$20,404.00
Community Outreach Services	\$9,565.00

City of Fayetteville Staff Review Form

2022-1142

Legistar File ID

12/20/2022

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

Yolanda Fields

11/30/2022

COMMUNITY RESOURCES (642)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Staff recommends approval of a budget adjustment. The budget adjustment is to recognize and budget CDBG Program Income totaling \$20,404, donations to Ranger's Pantry / AniMeals / Senior Giving Tree / Hearth Program / Help a Neighbor in the amount of \$2,579 and to allocate Use Fund Balance funds in the amount of \$6,986.

Budget Impact:

See Below		CDBG-2180	
Account Number		Fund	
See Below		NA	
Project Number		Project Title	
Budgeted Item?	No	Current Budget	\$ -
		Funds Obligated	\$ -
		Current Balance	\$ -
Does item have a cost?	No	Item Cost	\$ -
Budget Adjustment Attached?	Yes	Budget Adjustment	\$ 29,969.00
		Remaining Budget	\$ 29,969.00

V20210527

Purchase Order Number: _____

Previous Ordinance or Resolution # _____

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments: 2180.642.4940-5315.00 \$20,404
2180.642.4945-5390.01 32003.1 \$9,565



MEETING OF DECEMBER 20, 2022

TO: Mayor and City Council

THRU: Susan Norton, Chief of Staff

FROM: Yolanda Fields, Community Resources Director/ Equity Officer 

DATE: November 30, 2022

SUBJECT: Approval of a Budget Adjustment for the Community Resources Department

RECOMMENDATION:

Staff recommends approval of a budget adjustment. The budget adjustment is to recognize and budget CDBG Program Income totaling \$20,404, donations to Ranger's Pantry / AniMeals / Senior Giving Tree / Hearth Program / Help a Neighbor in the amount of \$2,579 and to allocate Use Fund Balance funds in the amount of \$6,986.

BACKGROUND:

Community Resources would like to recognize program income from two lien payoffs. Community Resources would also like to recognize donations from citizens and local businesses.

DISCUSSION:

The Program Income (PI) being recognized consists of housing rehabilitation lien payoffs for two properties; 1235 S West Ave and 1628 N Broadview Dr. The total PI being recognized is \$20,404.

The donations being recognized total \$2,579.

The Use Fund Balance fund adjustment will allocate \$6,986.

BUDGET/STAFF IMPACT:

Increase Housing Contract Services by \$20,404
Increase Community Outreach Projects by \$9,565

Attachments:

Budget Adjustment

City of Fayetteville, Arkansas - Budget Adjustment (Agenda)

Budget Year 2022	Division /Org2 COMMUNITY RESOURCES (642) Requestor: Yolanda Fields	Adjustment Number
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BUDGET ADJUSTMENT DESCRIPTION / JUSTIFICATION:

Staff recommends approval of a budget adjustment to recognize and budget CDBG Program Income totaling \$20,404 and donations to Ranger's Pantry / AniMeals / Senior Giving Tree / Hearth Program / Help a Neighbor in the amount of \$2,579. In addition, staff recommends approval of a budget adjustment to allocate Use Fund Balance Prior funds from prior year donations in the amount of \$6,986.

RESOLUTION/ORDINANCE	COUNCIL DATE:	12/20/2022
	ITEM ID#:	2022-1142
	Kevin Springer	
	12/1/2022 4:44 PM	
	Budget Division	Date
	TYPE:	D - (City Council)
	JOURNAL #:	
	GLDATE:	
	CHKD/POSTED:	/

TOTAL	29,969	29,969					v.20221115
	Increase / (Decrease)		Project.Sub#				
Account Number	Expense	Revenue	Project	Sub.Detl	AT	Account Name	
2180.642.4945-4910.00	-	20,404			RE	CDBG Program Income	
2180.642.4945-4809.00	-	2,579	32003	1	RE	Donations	
2180.642.4940-5315.00	20,404	-			EX	Contract Services	
2180.642.4945-5390.01	2,579	-	32003	1	EX	CDBG Projects - Community Outreach Pro	
2180.642.4930-4999.99	-	6,986			RE	Use Fund Balance - Current	
2180.642.4945-5390.01	6,986	-	32003	1	EX	CDBG Projects - Community Outreach Pro	
	-	-					
	-	-					
	-	-					
	-	-					
	-	-					
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RESOLUTION NO. _____

A RESOLUTION TO APPROVE A CONTRACT WITH COMMUNITY ACCESS TELEVISION, INC. D/B/A YOUR MEDIA IN THE AMOUNT OF \$207,307.00 FOR THE PROVISION OF PUBLIC ACCESS TELEVISION SERVICES AND THE OPERATION OF THE PUBLIC ACCESS TELEVISION CHANNEL THROUGH 2023

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 a contract with Community Access Television, Inc. d/b/a Your Media, a copy of which is attached to this Resolution, in the amount of \$207,307.00 for the provision of public access television services and the operation of the public access television channel through 2023.

City of Fayetteville Staff Review Form

2022-1145

Legistar File ID

12/20/2022

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

Doug Bankston

12/1/2022

MEDIA SERVICES (060)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Approve a contract in the amount of \$207,307.00 for the period of one (1) year between the City and Community Access Television, Inc. d/b/a Your Media to provide Public Access Television services for the year 2023.

Budget Impact:

10140.090.6600-5713.00

General

Account Number

Fund

40901.4003

Project Number

Project Title

Budgeted Item? Yes

Current Budget \$ 207,307.00

Funds Obligated \$ -

Current Balance **\$ 207,307.00**

Does item have a cost? Yes

Item Cost \$ 207,307.00

Budget Adjustment Attached? No

Budget Adjustment \$ -

Remaining Budget **\$ -**

V20210527

Purchase Order Number: _____

Previous Ordinance or Resolution # **306-20**

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



MEETING OF DECEMBER 20, 2022

TO: Mayor and City Council

THRU: Susan Norton, Chief of Staff
Lisa Thurber, Director of Communications

FROM: Doug Bankston, Director of Media Services

DATE: December 1, 2021

SUBJECT: Approve a Community Access Television, Inc. (d/b/a Your Media) Contract Renewal for Public Access Television Services for 2023.

RECOMMENDATION:

Staff recommends approval of the attached contract for Public Access Television Provider between the City of Fayetteville and Community Access Television, Inc. (d/b/a Your Media) in the amount of \$207,307.00 to provide Public Access Television services from January 1, 2023, through December 31, 2023.

BACKGROUND:

Community Access Television, Inc. (d/b/a Your Media), has been the City's Public Access provider for the previous five-year term from January 2016 through December 2020, which was approved through City Council Resolution 207-15 in November 2015, and was selected as the service provider for the current five-year term through City Council Resolution 306-20.

DISCUSSION:

The nonprofit Community Access Television, Inc.—d/b/a Your Media—has been the contract service provider for Fayetteville Public Access Television for the previous two five-year term periods. Community Access Television, Inc. (d/b/a Your Media) was the only organization to submit a proposal for the public access service provider RFP for the 2021-2025 term. The contract was developed by the City of Fayetteville in partnership with Your Media and was approved by the Your Media Board of Directors. This contract renewal cost has considerations for a 3% cost-of-living increase of staff salaries. This is a request for a contract renewal for fiscal year 2023 with up to two renewals for the five-year term of January 2021 through December 2025.

BUDGET/STAFF IMPACT:

The total cost of this contract is \$207,307.00. This amount was included in the 2023 Budget.

Attachments:

Staff Review Form, Contract

CONTRACT BETWEEN CITY OF FAYETTEVILLE, ARKANSAS
AND
COMMUNITY ACCESS TELEVISION
d/b/a Your Media
A 501-C-3 NONPROFIT ORGANIZATION

AGREEMENT

This Agreement is made this 1st day of January, 2023, by and between the City of Fayetteville, a municipal corporation (“City”), and Community Access Television, Inc., a nonprofit corporation, dba Your Media (“Your Media”) who agree as follows:

PURPOSE AND INTENT

1. The purpose of Public Access Television in Fayetteville is to provide an opportunity for users and others to produce and telecast television programming in a first-come, first-served, content-neutral, non-discriminatory manner, in accordance with the First Amendment, and to provide training in the techniques of video production for Public Access Television.
2. The City of Fayetteville is accorded a Public Access Television channel by television services providers with which it holds agreements, or pursuant to Arkansas law.
3. The City of Fayetteville desires to provide support for the operation of Public Access Television in Fayetteville.
4. This contract for Public Access Television services is contingent upon the City retaining a Public Access Television channel, either through agreements with television services providers or pursuant to Arkansas law.
5. The City has determined it will provide support for the operation and programming of its Public Access Television channel and it will provide physical space and equipment at the City of Fayetteville Television Center, located at 101 W. Rock Street, Fayetteville.
6. The City of Fayetteville provides financial support through General Fund Revenue allocations for operational contract services, building and facilities, approximately 3,000 square feet of space, utilities, repairs, maintenance, custodial services and capital expenditures for facilities, studios and equipment.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties agree as follows:

SECTION 1. DEFINITIONS

For the purposes of this contract, the following definitions will be established:

Class: An organized, regularly scheduled, interactive teaching session that is focused on a particular subject and lead by an employee qualified to teach the subject.

Curriculum: A documented plan of teaching in which subject matter and class sessions are described in a detailed syllabus, including specific topics, teaching methods, schedules and methods of student evaluation.

Inside Program: A program produced utilizing Television Center equipment.

Outside Program: A program produced not utilizing Television Center equipment.

Producer: An individual who creates, owns, controls or is responsible for the content of a television program.

Programming: Video and/or audio material that is organized in a particular fashion as determined by a producer and distributed through one or more means to an audience.

Program Requestor: A user who requests a program to be telecast on the Public Access Television channel.

Resident User: An individual who resides within the city limits of Fayetteville, a student at the University of Arkansas or a public school within the city limits of Fayetteville, or an employee of a public institution (or branch thereof) or non-profit organization that is based in Fayetteville. This status may be documented by producing a current City of Fayetteville utility bill, a rental contract, a driver's license, other government-issued photo ID that contains name and address (including a student identification card), or a check stub or other proof of employment by a public institution or non-profit organization located in Fayetteville.

Non-Resident User: An individual (henceforth referred to as non-resident) who resides within the Washington or Benton County limits, is a student of a public school within the county limits, or is an employee of a public institution (or branch thereof) or non-profit organization that is based within the county limits and who does not otherwise qualify as a Resident User. County Residency may be documented by producing a current utility bill, a rental contract, a driver's license, student identification card, or other government-issued photo ID that contains name and address, or a check stub or other proof of employment by a public institution or non-profit organization located in Washington or Benton County.

Trainee: A resident or non-resident of Fayetteville who is currently enrolled in a class offered by Fayetteville Public Access Television.

Television: Video programming that is distributed through any one or more wide-area distribution methods, such as Video On Demand, Web site embedding, cable, IPTV, Web streaming, over-the-air broadcast, etc.

Workshop: An organized, non-regular interactive teaching session which covers a particular topic of interest to the participants, usually lead by an expert in the subject matter.

SECTION 2: GENERAL PROVISIONS

All services described in this contract and provided to the public by Your Media will be provided free of charge to Resident-of-Fayetteville Public Access Users who were qualified users as of December 31, 2022. Non-resident-of-Fayetteville Public Access Users shall pay a \$50 per year fee for services described in this contract. Your Media will not require, solicit, or accept any compensation of any kind, beyond that agreed upon in this contract and provided by the City, in return for providing the services described herein, unless otherwise stipulated in this contract.

At no time shall the number of non-resident users exceed 49% of the total user base of FPTV services and resources.

Your Media shall not provide any services or engage in any activity not described in this contract, with or without compensation, that utilizes equipment, facilities, or resources owned or controlled by the City of Fayetteville, without the expressed written consent of the City, or as stipulated in this contract.

Your Media may charge a fee for the following items or activities utilizing equipment, facilities or resources owned or controlled by the City of Fayetteville:

1. Non-resident of Fayetteville annual service dues.
2. Training workshops and seminars that are conducted utilizing City of Fayetteville resources.
3. The sale of blank recording media.
4. Transfer and/or duplication services.
5. Other small items, such as t-shirts or other promotional items, as approved by the City of Fayetteville Communications Director or Director of Media Services.
6. Video production services. If production services are provided, the following conditions apply:
 - a. These services and activities will be referred to as “contract production”.
 - b. Contract production may include studio production activity at the Television Center and related activity, including pre- and post-production.
 - c. Your Media shall charge rates adequate to cover the basic costs of production. Service rates will be reviewed and approved by the Director of Media Services on an annual basis.
 - d. Your Media will utilize a standard contract document for each agreement to provide contract production services. This contract document will be approved by the Director of Media Services.
 - e. All fees charged for providing contract production services will be collected at the point Your Media delivers the final product for which it was contracted.
 - f. All monies collected for providing production services will be utilized to support Fayetteville Public Access services or capital improvements as approved by the City Council and following applicable City of Fayetteville policies and procedures.

7. In addition to charging a fee for services described above, Your Media may generate revenue utilizing equipment, facilities, or resources owned or controlled by the City of Fayetteville through:
 - a. Fundraising activities designed to raise funds to support the operations or capital improvements of the Public Access channel.
 - b. Acquisition of grants or awards dedicated to support the operations or capital improvements of the Public Access channel.

If Your Media generates or collects any revenue through activities as allowed in this contract, or otherwise approved by the City, utilizing equipment, facilities, or resources owned or controlled by the City of Fayetteville, Your Media will ensure:

1. All monies collected for such services will be deposited into and all checks shall be made payable to the "Trust Account of Community Access Television, Inc." which shall contain only those funds.
2. Your Media's manager shall ensure proper accounting of all such revenues collected and shall report such accounting monthly to the Director of Media Services.
3. All funds within the "Trust Account of Community Access Television, Inc." may only be expended through City Council Resolution authorizing the receipt of funds into the Television Center budget and approving any necessary Budget Adjustments. Normal bank fees related directly to the use of this trust account may be paid with trust account funds without prior authorization.
4. Proper accounting and records of services provided, fees charged and monies collected for services will be kept by Your Media, in a manner approved by the Director of Media Services.

The City of Fayetteville provides the services described herein as a public service to the users for non-commercial use. Your Media will not allow any equipment, facilities, or resources owned or controlled by the City to be used to generate revenue for any private company, group, organization, or individual with the following exceptions:

1. Your Media may produce, or allow to be produced, televised fund-raising programs or activities for 501(c)3, non-profit organizations that directly provide services to the users. These programs are limited to one (1) per organization per contract year.
2. Your Media may produce or conduct one (1) fund-raising program or activity for itself that is televised, or produces programming that is televised, on the Public Access Channel.
3. Your Media may be contracted to produce, or assist in the production of, productions that utilize facilities and equipment controlled by the City at the discretion of the Operations Manager and the Director of Media Services for a market-appropriate fee structure to be determined by the Operations Manager and the Director of Media Services.
4. Televised fund-raising programs or activities may not exceed twenty-four (24) hours of continuous programming or activity, or, if not continuous programming, exceed seven (7) contiguous days of duration.
5. Fund-raising activities may not disrupt the normal operations of the Television Center. Questions regarding disruption will be determined by the Director of Media Services.

6. Fund-raising messages may not be displayed over other programming without the expressed written consent of the program owner.
7. The on-air bulletin/message board and the “Open Mic” program may be used by 501(c)3 non-profit organizations to announce or publicize activities of their organizations that generate revenue for their organizations or programs.

Ownership title to all capital acquisition, supplies, material, or any other property purchased with funds received under this Contract is vested with the City, and possession of such property shall, upon termination of the Contract, revert to the City unless otherwise provided for by the City in writing. Any equipment secured through fund-raising efforts to benefit the Public Access Television channel shall remain the property of the City’s Television Center. Any funds or revenue secured through fund-raising efforts to benefit the Public Access Television channel shall be remitted to the City.

All policies, procedures, information, and execution of the services and responsibilities described in this contract shall be subject to approval by the Director of Media Services. Your Media will not make changes or revisions to any policy, procedure, or method of work directly related to the services described herein without the prior approval of the Director of Media Services.

In exchange for the funding provided by the City to Your Media, pursuant to this Agreement, Your Media shall provide the following services and report progress in each area to the City as defined in this contract:

SECTION 3: SCOPE OF SERVICES

PROVIDE EQUITABLE CHANNEL AVAILABILITY AND PROGRAMMING SERVICES TO USERS ON A FIRST-COME, FIRST-SERVED, CONTENT-NEUTRAL, AND NON-DISCRIMINATORY BASIS.

The City of Fayetteville provides airtime on the Public Access Television channel as a public service to users. Your Media will not require, solicit, or accept any compensation of any kind, beyond that agreed upon in this contract and provided by the City, in return for telecasting any programming on the Public Access Television channel. Each program that is produced utilizing City of Fayetteville Television Center equipment or facilities will be telecast on the Public Access channel at least one time. A program may be excused from the telecast requirement with approval from the Director of Media Services prior to the production of the program, or at any time at the discretion of the Director of Media Services.

Your Media will:

1. Maintain a process whereby users may request programming to be telecast on the Public Access Television channel. This process is subject to approval by the Director of Media Services.
2. Ensure individuals requesting programs to be telecast by Your Media on the Public Access Television channel are users, as defined in Section 1.
3. Require requestors to sign an affidavit warranting that the program they are requesting to be telecast does not contain:
 - a. any violation of any Federal, State or local statute or ordinance relating to obscenity; or
 - b. any material that is an unlawful invasion of privacy; or
 - c. any use of material which violates copyright law;

Such a statement does not relieve Your Media of its duty to prevent further telecast of programming that does not meet the stipulations contained herein, as such programming comes to its knowledge.

4. Ensure programming on the public access channel (FPTV) is not commercial in nature. Commercial programming is defined as: "Programming that contains direct appeals to purchase commercial goods or services; promotes the activities of for-profit groups, organizations, or individuals; contains any call to action or solicitation to purchase a product or patronize a business; any use of superlatives in describing a product, service, or business; any direct comparison to other products, or direct comparisons to unnamed products; any price or value information; or any inducements to buy."
5. Require program requestors to provide Your Media with expressed, written consent of the program's owner for the program to be telecast on Fayetteville's Public Access Television channel. Your Media will maintain a copy of all such permissions on file.
6. Maintain a decision-making process and criteria for the scheduling of programming that will ensure the protection of 1st Amendment rights of program requestors while ensuring programming does not violate Federal, State, or local laws or ordinances. The process and criteria are subject to approval by the Director of Media Services. At a minimum, the process and criteria will:

- a. Utilize program type definitions as included in Section 1 and define other program types as necessary (i.e. one-time, series, date-sensitive, etc.).
 - b. Define scheduling priority of program types.
 - c. Define a priority conflict-resolution process.
 - d. Establish criteria for defining “mature-audience”-type programming.
 - e. Ensure program requestors are informed of “mature-audience”-type programming criteria and sign an affidavit categorizing a requested program as “mature-audience”-type programming if appropriate.
 - f. Define day-parts of the programming schedule that are appropriate for “mature-audience”-type programming.
 - g. Define the program scheduling process.
7. Program the automated telecast system to ensure the telecast of programming on the Public Access Television channel 24 hours per day/7 days per week.
8. Manage the program scheduling process in such a manner that ensures no more than seven (7) days elapse between the submission of a new program and its first scheduled telecast.
9. Manage the programming schedule in such a manner that the on-air bulletin/message board constitutes no more than 15% of the total weekly air time.
10. Publish and distribute to the public a current program schedule weekly. The schedule will, at a minimum, be published in the following media:
 - a. The Public Access Television channel’s on-air bulletin/message board.
 - b. The Public Access Television channel’s web site.
 - c. A publicly accessible bulletin board at the Television Center.
 - d. Your Media’s email address list that is maintained as an opt-in list in the central records database.

The schedule will also be made available for publication by other media outlets that wish to do so.

Your Media will not:

1. Exercise any control of the content of programming, with the following exceptions:
 - a. Programs that are produced solely by Your Media staff for the purposes of communicating information about the Public Access Television channel or itself.
 - b. Portions of “open-studio” program content created by Your Media (i.e. opens, closes, bumpers, etc.).
 - c. The on-air bulletin/message board.
 - d. Programming that is produced as a result of classroom/training/studio laboratory production activity that is conducted by Your Media.
2. Schedule for further telecast any programming that has been found to violate any Federal, State, or local statute or ordinance. Your Media staff will bring any possible violations immediately to the attention of the Executive Director and the Director of Media Services as they become known to them, either through complaint or observation. The Director of Media Services will make an initial determination regarding the status of the programming. An email message is sufficient for notification. Questions regarding the legality of any programming should initially be directed to the Director of Media Services.

3. Schedule for further telecast any programming that has been found in violation of any policy of Your Media or the City, including, but not limited to, a violation of the affidavit of copyright; the affidavit of ownership; the affidavit of redistribution rights; or the affidavit of “mature audience” content; each of which is included in the telecast request process. Your Media staff will bring any possible violations immediately to the attention of the Executive Director and the Director of Media Services as these violations become known to them, either through complaint or observation. The Director of Media Services will make an initial determination regarding the status of the programming. An email message is sufficient for notification.

The City reserves the right to approve the content of any program telecast on the Public Access Television channel that in any way indicates or implies it has originated directly from the Public Access Television channel or its management. The Director of Media Services will determine if programming meets such criteria.

PROGRAM SPONSORSHIP

Program producers and owners may accept sponsors for programming they produce for telecast on the Public Access Television channel. Program sponsorship must adhere to the following:

1. The following may be identified as a program sponsor:
 - a. Corporations or Divisions or Subsidiaries of Corporations
 - b. Endowments and Foundations
 - c. Individuals
2. General Rules for Acceptability
 - a. The sponsor may not exercise editorial control over the content of any portion of programming telecast on the Public Access Television channel.
 - b. The public must not perceive that the sponsor has editorial control over the content of any portion of programming telecast on the Public Access Television channel.
 - c. The public must not conclude that any programming on the Public Access Television channel promotes sponsors’ products, services or other business interests.
 - d. Product placement in programming in exchange for sponsor support is prohibited.
3. Rules for Display of Sponsor Credits
 - a. All sponsor credits must identify the sponsor by name and/or logo.
 - b. Sponsor credits may not include:
 - i. Any call to action or solicitation to purchase a product, i.e. any use of “you” or “your”; or slogans such as “Get Met. It Pays.”
 - ii. Superlatives, i.e. “...the most intelligent car ever built.”
 - iii. Direct comparisons, i.e. “...when a Cadillac just isn’t good enough.”
 - iv. Price or value information
 - v. Inducements to buy, i.e. “six months free service when you buy”
 - c. Toll-free numbers or Web site addresses are acceptable if their purpose is only for the viewer to receive more information, and not to solicit sales.
 - d. Sponsor credits may not exploit or take unfair advantage of the child audience for children’s programming.

- e. Sponsor credits may not create the perception that there is a connection between the program content and the sponsor's products or services.
- f. Sponsor credits may only be displayed at the beginning and/or end of a program.
- g. Program content may not be interrupted to provide sponsor credit.
- h. No one sponsor credit may exceed fifteen 15 seconds in length. No single program may have a sequence of sponsor credits that exceeds sixty (60) seconds in length.
- i. Credits for in-kind goods and/or services are acceptable but they must appear in context with normal production credits and may incorporate brands or logos.

PROVIDE TELEVISION STUDIO PRODUCTION SERVICES FOR USERS ON A FIRST-COME, FIRST-SERVED, NON-DISCRIMINATORY BASIS

Your Media will:

1. Produce a weekly program ("Open Mic") of no less than 30 minutes and no more than one hour in length that provides an open-studio opportunity for users to express their views, present information, or perform; not to exceed five minutes per person.
 - a. The "Open Mic" program is owned and controlled by the City of Fayetteville.
 - b. Your Media will conduct two (2) separate studio sessions of one (1) hour each during which users may record their "Open Mic" segments. The schedule of studio sessions is subject to approval of the Director of Media Services.
 - c. All participants, residents and non-residents of Fayetteville appearing on the "Open Mic" program will be provided a document that informs them that what is presented on the "Open Mic" program must conform to all guidelines for other programming telecast on the Public Access Television channel.
 - d. Non-residents of Fayetteville wishing to participate in the "Open Mic" service alone shall not be required to pay the \$50 annual non-resident fee.
2. Produce programming for the users utilizing studio production laboratory sessions.
 - a. Content of programming produced in studio laboratory sessions will be the responsibility of the producer requesting the production services.
 - b. All technical aspects of production will be under the control and responsibility of Your Media.
 - c. Producers requesting production services utilizing the studio laboratory sessions will be notified that they will be working in a classroom/training environment. The experience of the participants in the class will be priority.
 - d. Your Media will not charge any production fees for programming produced in studio laboratory sessions.
 - e. Studio laboratory sessions may not be used to produce series programming.
 - f. Production slots in the studio laboratory sessions will be scheduled on a first-come, first-served basis. A producer may not schedule more than one session at a time.
3. Produce and telecast an electronic community bulletin/message board for residents to announce events or other information.

4. Produce and telecast a disclaimer at random times during the program schedule, no fewer than six (6) times per day, which contains the following message in both video and audio format: “Fayetteville Public Access Television is a public service provided by the City of Fayetteville to help residents exercise their First Amendment Rights. The views and opinions expressed on this channel are not necessarily those of the staff or management of Fayetteville Public Access Television or the City of Fayetteville.”

EDUCATE FAYETTEVILLE RESIDENTS AND NON-RESIDENTS IN THE PRODUCTION AND DISTRIBUTION OF NON-COMMERCIAL TELEVISION PROGRAMMING

Your Media will provide training and technical support for users so they may learn the techniques and details of video production and television programming distribution.

Your Media will:

1. Create and implement a training curriculum that emphasizes technical proficiency and production quality. The curriculum will contain at least 3 core classes in the subjects of:
 - a. Basic Field Production
 - b. Basic Video Editing
 - c. Basic Studio Production/Crew Positions

And at least 3 advanced classes in the subjects of:

- a. Advanced Field Production
- b. Advanced Video Editing
- c. Advanced Studio Production

The syllabus for each class will be available on the Fayetteville Public Access Television web site.

2. Offer a minimum of six (6) free classes a week taught by Your Media staff in various disciplines of video production and programming distribution.
 - a. At least three (3) classes each week must be in the core subjects.
 - b. At least two (2) classes each week must be in the advanced subjects.
 - c. The studio production laboratory does not count toward the total of required classes.
3. Conduct a studio production laboratory session at least once per week that provides a “hands-on” training environment for students in Studio Production classes.
4. Create student evaluation criteria and methods that allow students to demonstrate proficiency in training both in writing and through practical application.
5. Require a minimum level of proficiency, as approved by the Director of Media Services, to achieve a passing grade in classes.
6. Maintain records of student performance and evaluations.
7. Provide training and development resources, and technical support, in addition to regular classes, to users while they are engaged in training or production activities.
8. Provide technical and production consultation to users who are producing outside programs.
9. Offer training in the use of all available methods of television programming distribution.
10. Ensure that instructors maintain a minimum level of competence in the operation of equipment, as approved by the Director of Media Services. This can be demonstrated through industry certification or actual demonstration of skills to the Director of Media Services or their designee. If an instructor fails to meet a minimum level of competence,

they will be prohibited from teaching any classes or workshops until such time as they have demonstrated to the Director of Media Services, or his/her designee, they have achieved that level.

11. Create and publish a monthly schedule of classes and workshops, a minimum of 30 calendar days prior to conducting the classes. The schedule will, at a minimum, be published in the following media:
 - a. The Public Access Television channel's on-air bulletin board.
 - b. The Public Access Television channel's web site.
 - c. A publicly accessible bulletin board at the Television Center.
 - d. Your Media's email address list that is maintained as an opt-in list in the central records database.
 - e. Made available for publication in other media that wish to do so.
12. Ensure Your Media staff stays current with emerging technologies through professional development that includes technical training.
13. Provide reports on training and education activity as required by the City.

PROVIDE EQUAL ACCESS TO TELEVISION PRODUCTION EQUIPMENT AND FACILITIES TO ALL USERS ON A FIRST-COME, FIRST-SERVED, CONTENT-NEUTRAL, NON-DISCRIMINATORY BASIS.

The City of Fayetteville provides video production equipment and facilities as a public service to the users so they may learn and apply the skills and techniques of television production. Your Media will not require, solicit or accept any compensation of any kind, beyond that agreed upon in this contract and provided by the City, in return for the opportunity for residents to use any video production equipment or facilities provided by the City of Fayetteville.

The City of Fayetteville Director of Media Services is responsible for the use designation of equipment and facilities within the Television Center. Your Media is responsible for the management of equipment and facilities designated for use by the public and designated for use by Your Media staff in the execution of the services described herein.

Your Media will:

1. Maintain accurate and detailed inventory records of all equipment designated for use by the public and use by Your Media staff.
2. Assist City staff in maintaining accurate and detailed inventory records of all equipment in the Television Center.
3. Maintain accurate and detailed records of the identification and use of all equipment that is designated for use by the public.
4. Maintain accurate and detailed records and identification of users to check-out or utilize equipment designated for use by the public. Each record will contain, at a minimum, the user's name, address, telephone number, the area(s) in which they are qualified, and the expiration date of their qualification(s). A photocopy of the documentation of residency must be included.

5. Implement a plan to determine, either by elapsed time or demonstrated proficiency, the need for a qualified user to re-take any classes to maintain their qualification to use equipment or facilities of the Television Center.
6. Maintain a reservation system and procedure for qualified users to be able to reserve the use of equipment and facilities designated for public use.
7. Maintain check-in and check-out procedures for equipment and facilities designated for public use.
8. Design and utilize procedures and checklists that will ensure equipment is checked for full functionality upon return by a user. Records will be kept of the condition of equipment on check-out and return.
9. Perform minor repairs, maintenance and upkeep of equipment and facilities as directed by City staff.
10. Actively monitor the use of editing and studio facilities.
11. Ensure that a staff member who is fully qualified in the operation of all equipment or facilities available for public use is present and available at all times to any resident who is using, or wishes to use, any equipment or facilities designated for public use.

Your Media will not:

1. Allow, or continue to allow, the use of any equipment or facilities owned or controlled by the City of Fayetteville and provided for the use of the public or Your Media under this contract to be utilized in any way that may violate any Federal, State, or local law.

MAINTAIN A PROGRAM LIBRARY AND MANAGE ARCHIVE/PROGRAM RIGHTS

The City is committed to the preservation of Fayetteville's culture, history and legacy. This is demonstrated, in part, by support of the preservation of the programs and material telecast on the Public Access Television channel.

Producers will retain all rights to any program material or programming they create. All producers requesting their program to be telecast on the Public Access Television channel must sign a statement granting the City of Fayetteville non-exclusive rights for distribution and re-distribution of the program, either in whole or in part, as the City determines necessary. In the case of a resident who requests the telecast of a program, either in whole or in part, to which they do not hold the copyright, the resident will provide expressed, written consent from the program's owner granting the City of Fayetteville non-exclusive rights for distribution and re-distribution of the program, either in whole or in part, as the City determines necessary.

Your Media will create and maintain the necessary documentation, affidavits and statements, subject to the approval of the Director of Media Services, to be included in any forms used to document the request for the telecast of programming.

1. Your Media will maintain a program library containing copies of all inside and outside programs telecast on the Public Access Television channel.
2. Your Media will maintain a program library database of all programs telecast on the Public Access Television channel.

3. Your Media will ensure the library and program library database are maintained in an easily accessible manner.
4. Physical recording media containing programming for telecast on the Public Access Television channel shall become property of the City.
5. Your Media will ensure programs are archived as digital video files in the TV Center archive server system, unless otherwise determined by the Director of Media Services.
6. Under no circumstances will Your Media remove, or allow to be removed, any program materials or media from the Public Access Television channel program library or program library database, without the prior approval of the Director of Media Services.

CONDUCT OUTREACH AND COMMUNICATION ACTIVITIES WITH THE PUBLIC

1. Your Media will manage a procedure whereby residents can communicate their views or complaints regarding the programming or operations of the Public Access Television channel to Your Media and the City. All complaints or comments, from whatever source or however communicated, must be immediately communicated to the Director of Media Services. After a resident makes a complaint, either verbally or in writing, the public access outsourced provider manager, or designee, will follow this procedure:
 - a. Document the complaint, recording:
 - i. Date.
 - ii. Time.
 - iii. Nature of the complaint.
 - iv. As many details as possible to facilitate the investigation of the complaint.
 - v. Contact information of the complainant, if available.
 - b. Immediately communicate the complaint to the Director of Media Services.
 - c. Immediately communicate to the complainant their complaint is being investigated, and they will receive a determination, in writing, regarding their complaint within 3 business days.
 - d. Provide a written response to the complainant detailing the investigation of their complaint, any findings thereof, and any action taken by the management of Your Media in response to the complaint. The response will also contain a statement that the complainant may appeal, in writing, any determination or action to the City of Fayetteville Director of Communications, c/o City of Fayetteville Television Center, 101 W. Rock Street, Fayetteville.
 - e. Provide a copy of all correspondence and other pertinent materials to the Director of Media Services.
2. The management, staff, or members of the Board of Directors of Your Media will not identify the Public Access Television channel in any way, either expressed or implied, as belonging to, owned by, or controlled by Your Media.
3. The management, staff, or members of the Board of Directors of Your Media will not identify the City of Fayetteville Television Center, or the equipment contained therein, or any portion thereof, in any way, either expressed or implied, as belonging to, owned by, or controlled by Your Media.
4. The management, staff or members of the Board of Directors of Your Media will not identify themselves or their organization in any way, either expressed or implied, as “The City of Fayetteville” or as representing the City of Fayetteville.

5. In all communication from Your Media, the Public Access Television channel will be referred to and identified as “Fayetteville Public Access Television”.
6. In all communication from Your Media, the entire production facility will be referred to as “The City of Fayetteville Television Center” or “The Television Center”, as appropriate.
7. Your Media will maintain a process for effective communication with, and coordination among, all affected City programs and City staff.
8. Your Media will conduct a consistent community outreach effort designed to recruit new producers and trainees.
9. Your Media will provide information to the entire community about the nature and role of public access television; educate the community about the opportunities available for training, production and programming; and encourage groups and individuals to participate in training classes and production experiences.
10. Your Media will maintain a Fayetteville Public Access Television-branded web site for the promotion of Public Access Television services and the education of the public that includes, at a minimum, current information regarding program, production and class schedules; policies and procedures; class syllabi; and an internet forum for exchange of information between the City, Your Media, producers and trainees. Your Media may include a link to their organization’s web site.
11. The City will provide one (1) bulletin board in a publicly accessible area of the Television Center for the use of Your Media. Information posted on the bulletin board must meet at least one of the following criteria:
 - a. It is information from the City or public access operator regarding policies, procedures or regulations
 - b. It is a request by a producer to recruit help for video productions
 - c. It is a request to recruit producers for specific video production projects
 - d. It is information directly related to the programming of the public access channel
 - e. It is information directly related to opportunities for training and development in television production
 - f. It is information that promotes:
 - i. The City of Fayetteville
 - ii. A non-profit, 501(c)3 organization that serves the citizens of Fayetteville
 - iii. A government organization that serves the citizens of Fayetteville
 - g. It is information that informs the public of an event or program sponsored by:
 - i. The City of Fayetteville
 - ii. A non-profit, 501(c)3 organization that serves the citizens of Fayetteville
 - iii. A government organization that serves the citizens of Fayetteville

Information shall not be posted on bulletin boards unless it meets all the following criteria:

- a. It shall not contain any type of direct appeal to purchase commercial goods or services, or promote the for-profit activities of individuals, groups or organizations
- b. It shall not contain any depiction of libelous, obscene, indecent or violent material
- c. It shall not be information campaigning for or in support of any political candidate or ballot issue
- d. It shall be no larger than standard “letter” sized paper, 8 ½” x 11”

- e. It shall be legible
- f. It shall not be a personal message or communication

All other bulletin boards in the Television Center are reserved for use by employees of the City or Your Media.

GENERAL ADMINISTRATION AND COMMUNICATION

Your Media will administer the activities and responsibilities described herein in compliance with all applicable Federal, State, or local laws, ordinances, rules, and regulations and within any and all agreements, rules, or regulations of any television programming distribution service or provider utilized to perform the activities or responsibilities described herein.

All communication between the City and Your Media with regard to contractual matters or operations of the Television Center will be directed through the Director of Media Services, or any other such representative as may be appointed by the City, and Your Media's duly appointed representative.

1. Your Media will develop, maintain, and enforce operational policies that assure for staff and users decorum and a professional working environment at the City of Fayetteville Television Center consistent with other City offices.
2. Your Media will abide by and enforce all policies, rules, and regulations regarding the use of the Television Center. The Director of Media Services is responsible for developing and publishing policies, procedures, rules, and regulations regarding the use of the Television Center facility and equipment. The Director of Media Services will make available to all users of the facility a reference manual that will contain all policies, procedures, rules, and regulations regarding the operation of the Public Access Television channel and the City of Fayetteville Television Center. The City reserves the right to exclude users or staff of Your Media from the Television Center for violations of policies, procedures, rules, and regulations.
3. The City shall make three telephone lines available for Your Media's business use.
4. Your Media shall be responsible for reimbursing the City for its own long distance telephone calls.
5. The City is not required to provide hardware and/or software for the establishment or maintenance of systems for the purpose of public internet access.
6. Your Media shall be responsible for the maintenance and repair of the hardware or software of computers installed for the office use of Your Media.
7. The City shall provide access to the Internet for Your Media at the same level provided to the Television Center. Your Media will be responsible for any access requirements above the level provided to the Television Center.
8. The City shall be responsible for the payment of the Television Center utilities, routine building and grounds maintenance and maintenance of the structure.
9. Your Media may use the City's current copier/printer at the Television Center for a charge of \$.039 per page. If the City upgrades the copier/printer located in the Television Center, Your Media shall pay an adjusted charge per page, up to, but not to exceed the standard rate charged to City Departments and Divisions as determined annually.

10. Copier/printer maintenance costs will be paid by the City.
11. All business conducted and information maintained by Your Media or the Your Media Board of Directors in the execution of this contract is subject to the terms of the Arkansas Freedom of Information Act (FOIA).
12. Your Media will create an operations, training, and production schedule that maintains convenient business hours as well as a class schedule that allows producers to become certified through a combination of day, evening, and weekend classes. At a minimum Your Media will:
 - a. Provide service to the users, a minimum of forty-five (45) hours per week through a minimum of five (5) days of operation.
 - b. Create a schedule that provides service for a minimum of four (4) hours per scheduled operation day.
 - c. Provide a staff member in the lobby to greet the public whenever the Television Center is open to the public.
 - d. Observe all City Holiday closings and follow City of Fayetteville policies regarding closing for inclement weather.

Your Media and the Director of Media Services will agree upon the operations schedule and Your Media will not vary from the agreed upon schedule without prior approval of the Director of Media Services.

13. Your Media shall submit monthly, quarterly, and annual reports, as defined by the Director of Media Services, on the execution of the activities and responsibilities described herein. Monthly reports shall be due by the 10th of the following month, or, if the 10th is not a regular business day, the next business day following the 10th. No contract payments will be made to Your Media while any required report is incomplete or overdue.
14. Your Media agrees to provide the City with a monthly financial report, due by the 10th of the following month, detailing:
 - a. Expenditures of funds provided Your Media from the City
 - b. Sources and amounts of other revenue generated from Public Access service activity
 - c. Any other expenditures related to Public Access service activity

The report shall be prepared by an independent certified public accountant, based on a modified accrual or cash basis method, summarizing activity during the preceding month and year to date. Said report shall include income and balance sheet statements.

15. Quarterly reports shall contain, but not be limited to:
 - i) Financial reports, detailing:
 - (a) Expenditures of funds provided Your Media from the City
 - (b) Sources and amounts of other revenue generated from Public Access service activity
 - (c) Any other expenditures related to Public Access service activity
 - ii) Training reports, detailing:
 - (a) Training activity provided users
 - (b) Training activity for staff
 - (c) Class and workshop activity
 - iii) Certification activity
 - (a) Certification of residents
 1. Number of new users qualified to use equipment

- 2. Number of new outside producers
 - (b) Certification of staff
- iv) Production activity
 - (a) Production activity of users
 - (b) Production activity of staff
- v) Equipment Utilization
- vi) Feedback and Complaints
- vii) Programming reports
 - (a) Itemization of programs telecast by:
 - 1. Inside programs
 - 2. Outside programs
 - (b) Itemization of program requestors by:
 - 1. Inside programs
 - 2. Outside programs
 - (c) Quantity of new and repeat inside programs
 - (d) Quantity of new and repeat outside programs
 - (e) Quantity of new program requestors
- viii) Details of activity engaged in by Your Media to promote Fayetteville Public Access Television

16. In addition to the monthly, quarterly and annual reports, the following special reports and information shall be provided to the Director of Media Services:

- a. Reports of stolen, missing or damaged equipment within one (1) working day of learning of each occurrence; and
- b. Requests for changes in any policies or procedures that affect any services described herein; and
- c. All corporate documents, including but not limited to Your Media's by-laws, policies, articles of incorporation, certification of compliance with affirmative action plan and EEO standards, and a list of Board members; and
- d. At any reasonable time and as often as the City may deem necessary, Your Media shall make available to them, or any of their authorized representatives, within three (3) business days, all of Your Media's records related to all matters covered by this Agreement and shall permit the City to audit, examine, make excerpts and copies of such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to or deemed pertinent to matters covered by this Contract; and
- e. During the term of this Contract, Your Media shall make available to the City all notices of meetings of its Board of Directors, setting forth the time and place thereof. Such notice shall be delivered in a timely manner to give adequate notice and shall also include an agenda; and
- f. Minutes of all meetings, if taken, and materials distributed in meetings of Your Media's Board of Directors, or committees thereof, shall be submitted to the City; and

Your Media will, upon request of the City, make available all supporting documentation and data relating to any reports required by this Contract or requested by the City.

PERFORMANCE EVALUATION

1. A performance evaluation will be conducted quarterly by the Director of Media Services to assess Your Media's effectiveness in providing the services described herein.
2. The City and Your Media may agree upon periodic performance measures. These measures will be documented as Addendum A of this contract.
3. Your Media will provide a method for receiving feedback, comments, input and suggestions from the public. This communication will be made available to the Director of Media Services as part of the quarterly evaluation process.
4. The Director of Media Services will immediately communicate to Your Media any violations of this contract as may come to his/her attention so that Your Media may have an opportunity to correct such violations in a timely manner.
5. Quarterly evaluations will be communicated to the City and made publicly available, consistent with the process for oversight.

CONTRACT PERIOD

The contract period will be from January 1, 2023, until December 31, 2023. Either party may cancel this contract at any time with a thirty (30) day written notice. This contract may be renewed by the parties per year for up to four additional one-year terms.

FUNDING

The City hereby agrees to pay Your Media the monthly sum of \$17,275.58 for services performed under the terms of this contract for 11 months and a final 12th installment of \$17,275.62. Each monthly payment will be remitted on or before the 15th day of each month, beginning January 15, 2023, unless Your Media fails to comply with the expressed terms of this contract. The City reserves the right to withhold contract payments to Your Media unless Your Media is deemed in full compliance with the contract or until all contract violations are corrected. For any future renewal period up to two additional one-year terms, payments to Your Media shall be increased by the amount required to fund salary increases of three percent (3%).

FUTURE ADDITIONAL SERVICE OPTIONS

Upon any renewal, the City of Fayetteville reserves the right to add services, along with any additional costs, to this agreement, including, but not limited to, Education Channel operation, management or services and/or expansion of Public Access operations or services.

LEGAL AUTHORITY

Your Media assures and guarantees that it possesses the legal authority to enter into this Agreement. Further, that the person or persons signing and executing this Agreement on behalf of Your Media have been fully authorized by Your Media to execute this Agreement. That such authority is evidenced pursuant to a proper, appropriate and official motion and resolution, which was passed and approved specifically to enter into this Agreement and shall legally bind Your Media to all the terms, performances, and provisions here set forth. A copy of such resolution shall be provided upon execution of this Agreement. The City may exercise its right to either temporarily suspend or permanently terminate this Agreement if there is a dispute as to the legal authority of

Your Media or the person signing the Agreement. The City shall not be obligated to pay Your Media for any performance of the provisions of this Agreement after the City has suspended or terminated this Agreement as provided in this Section.

PERSONNEL

Your Media shall adequately staff the Public Access operation to meet the services and duties outlined in this agreement. Both City staff and Your Media staff will be expected to work together in a cooperative manner within the Television Center. Personnel policies shall be established by Your Media and shall be available for examination by the City.

Upon termination of any employee from either the City or Your Media, it is understood that any violation of policy or procedure serious enough to require termination is also grounds for exclusion from the Television Center.

EQUAL OPPORTUNITY

Your Media shall comply with all applicable equal opportunity, affirmative action, and ADA laws or regulations, including those of the City of Fayetteville.

INSURANCE

Your Media shall obtain and keep in force during the term of this agreement a policy of public liability and property damage insurance. Your Media shall provide continued proof of coverage in its quarterly reports. The coverage, at a minimum, shall be in the following amounts:

General Liability

- | | |
|-------------------------------------|-------------|
| 1. General Aggregate | \$1,000,000 |
| 2. Products/Completed Oper. Aggr. | \$1,000,000 |
| 3. Each Occurrence | \$100,000 |
| 4. Fire Damage (any one fire) | \$50,000 |
| 5. Medical Expense (any one person) | \$5,000 |

Worker's Compensation for all employees as required by Arkansas Statute.

Bonding: Your Media shall obtain a fidelity bond covering all persons handling funds received or disbursed and/or signing or co-signing checks to disburse funds under this agreement, within 10 days of the contract execution. The fidelity bond shall be in an amount equal to 10% of the city grant award or \$5,000, whichever is less. Your Media shall furnish the city proof of an adequate fidelity bond prior to the first payment of funds under this agreement.

POLITICAL/SECTARIAN ACTIVITY

Your Media shall not initiate or sponsor political or religious programming. Your Media shall not engage in any political activity. Your Media shall not directly produce any programs nor participate in any activities that establish or promote any religion or prohibit the free exercise thereof.

HOLD HARMLESS

It is expressed, understood and agreed by both parties that the City is contracting with Your Media as an independent contractor and that as such, Your Media shall save and hold the City, its officers, agents, and employees harmless from all liability of any nature of any kind, including costs and expenses for, or on account of, any claims, audit exceptions, demands, suits or damages of any character whatsoever resulting from injuries or damages sustained by persons or property, resulting in whole or in part from the performance or omission of any employee, agent or representative of Your Media. This Agreement shall not be construed in any manner or form as a waiver of that Tort Immunity as set out under Arkansas Law.

CONFLICT OF INTEREST

Your Media covenants that neither it nor any member of its Board of Directors currently has any interest or shall acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Your Media further covenants that in the performance of this Agreement no person having such interest shall be employed or appointed as a member of its Board of Directors.

Your Media further covenants that no member of its Board of Directors or its staff or employees shall possess any interest in or use their position for a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with which they have family, business, or other ties.

No officer, member, or employee of the City and no member of its governing body who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this Agreement shall participate in any decision relating to the Agreement which affects his or her personal interest or the interest of any corporation, partnership, or association in which he has a personal financial direct or indirect interest; or have any personal financial interest, direct or indirect, in this Agreement or the proceeds thereof.

CONTRACT ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties hereto, and any prior agreement, whether written or oral, shall have no force or effect. Any subsequent agreements will have no effect unless properly executed in writing and recorded as an addendum to this Agreement.

SEVERABILITY

If any section, subsection, sentence, clause, phrase, or word of this agreement is held to be invalid or unconstitutional by any court of competent jurisdiction, such section, subsection, sentence, clause, phrase, or word will be deemed as a separate, distinct and independent provision, and such holding will not affect the validity of the remaining provisions of this agreement.

COMMUNITY ACCESS TELEVISION
d/b/a YOUR MEDIA

By: 

Print: Daniel A. Robinson

Title: Executive Director

ATTEST:

By: 

Print: Joe Covey

Title: Board President

CITY OF FAYETTEVILLE, ARKANSAS

By: _____

Lioneld Jordan, Mayor

ATTEST:

By: _____

Kara Paxton, City Clerk

RESOLUTION NO. _____

A RESOLUTION TO ORDER THE RAZING AND REMOVAL OF A DILAPIDATED AND UNSAFE STRUCTURE ON PROPERTY OWNED BY KEVIN ROY CALHOUN LOCATED AT 3301 SOUTH COACH ROAD IN THE CITY OF FAYETTEVILLE, ARKANSAS, AND TO APPROVE A BUDGET ADJUSTMENT IN THE AMOUNT OF \$17,500.00

WHEREAS, Kevin Roy Calhoun is the record owner of real property, legally described in attached Exhibit A which is located at 3301 South Coach Road, City of Fayetteville, Washington County, Arkansas; and

WHEREAS, the City Council has determined that a structure located on said property with the address 3301 South Coach Road is dilapidated, unsightly, unsafe, and detrimental to the public welfare; and

WHEREAS, Kevin Roy Calhoun, having been properly served by sending a Notice of Violation by Certified Mail, Return Receipt Requested to the owner's address of record, and, given thirty (30) days to correct said violations, has failed to repair, or raze and remove said dilapidated, unsightly, and unsafe structure.

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

Section 1: That, by the authority granted pursuant to A.C.A. §14-56-203, and in accordance with the provisions of Section 173.08 of the Fayetteville Code of Ordinances, Kevin Roy Calhoun is hereby ordered to raze and remove forthwith the dilapidated, unsightly, and unsafe structure located at 3301 South Coach Road, Fayetteville, Arkansas. The manner of removing said structure shall be: dismantle by hand or bulldozer, and haul all debris to a landfill.

Section 2: That, if Kevin Roy Calhoun does not comply with this order, the Mayor is hereby authorized to cause the dilapidated, unsightly, and unsafe structure to be razed and removed; and a lien against the real property shall be granted and given the City, pursuant to A.C.A. §14-54-904, for the costs associated therewith.

Section 3: 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

2022-1079

Legistar File ID

12/6/2022

City Council Meeting Date - Agenda Item Only

N/A for Non-Agenda Item

Billy Bryant

11/17/2022

Building Safety (640)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Staff recommends approval of the Resolution ordering the Raze and Removal of a dilapidated and unsafe structure located at 3301 S. Coach Rd., and to approve a budget adjustment of \$17,500.00 for the project. The current balance of \$4,856.00 in 1010.640.6400-5315.04 has not been spent, but has already been included on another project (2022-0209).

Budget Impact:

1010.640.6400-5315.04

General

Account Number

Fund

50033.2203

Raze and Removal

Project Number

Project Title

Budgeted Item? Yes

Current Budget \$ 4,856.00

Funds Obligated \$ 4,856.00

Current Balance \$ -

Does item have a cost? Yes

Item Cost \$ 17,500.00

Budget Adjustment Attached? Yes

Budget Adjustment \$ 17,500.00

Remaining Budget \$ -

V20210527

Purchase Order Number: _____

Previous Ordinance or Resolution # _____

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



MEETING OF DECEMBER 6TH, 2022

TO: Mayor and City Council

THRU: Susan Norton, Chief of Staff
Jonathan Curth, Development Services Director
Dennis Sanders, Building Safety Director

FROM: Billy Bryant, Senior Code Compliance Officer

DATE: November 10, 2022

SUBJECT: Raze and Removal of Structure at 3301 S. Coach Rd.

RECOMMENDATION:

Staff recommends approval of a resolution ordering the Raze and Removal of a dilapidated and unsafe structure located at 3301 S. Coach Rd., and to approve a budget adjustment in the amount of \$17,500.00 for the project.

BACKGROUND:

The raze and removal case regarding 3301 S. Coach Rd. was opened on June 29, 2022, and a notice of violation was mailed out that day. Staff received the signed receipt showing the owner received the notice on July 11, 2022. This property has faced corrective action from Code Compliance on three separate occasions. Staff used city contractors to correct grass violations twice in 2018, and once in 2022. There is an inoperable vehicle that has resided on the property since 2006. These violations illustrate a history of non-compliance with city code for over a decade. Along with the grass and vehicle violations, the structure has also deteriorated past the point of repair.

DISCUSSION:

This address consists of a single family, one story, 2,737 square foot structure. Photos show separation in the foundation of the structure. The neglect of this structure has resulted in a rotting roof, rotting fascia and soffit that are falling off the structure. The porch surrounding the structure is rotted and falling through. The siding on the structure is covered in mildew and is buckling in some places. This amount of damage has left the structure uninhabitable for an unknown amount of time. These structural failures allow rain and moisture to get inside the structure, hindering it from being habitable even further. The property owner has not reached out to staff regarding this violation. Inspections indicate that the structure is not occupied.

BUDGET/STAFF IMPACT:

If the property owner does not comply with the Raze and Removal order, Raze and Removal costs will be expensed to the current budget. A lien will be placed on the property for the incurred costs. Following procedure, bids were received with \$17,500.00 representing the

lowest. The current budget balance of \$4,856.00 has not been spent but has already been included on another project (2141 N. Green Acres Rd).

Attachments:

- Budget Adjustment
- Process Summary
- Receipt of Bids
- Notifications
- Map
- Property Records
- Property Photos.



**FAYETTEVILLE
ARKANSAS**

**PROCESS SUMMARY
(RAZE & REMOVAL/LARGE SCALE CLEAN-UP)**

Property Address 3301 S Coach Rd

WC Parcel # 765-11183-000

Energov Case # CBLD-2022-000097

City Code: 173.08

- On 06/29/2022 Code Compliance received a Request for Service regarding the property located at 3301 S Coach Rd
- A Notice of Violation was sent to the Owner of Record on 06/29/2022
- The signed Return Receipt Card was received on 07/11/2022
- (or)
- The property was posted on ___/___/20___
- On 08/11/2022 the property was re-inspected and was found to still be in violation of City Code 173.08



CITY OF
FAYETTEVILLE
ARKANSAS

RECEIPT OF BIDS

OWNER(S): City of Fayetteville – Building Safety Division

ADDRESS: 3301 S Coach Rd. PROJECT No: Bid# 22-000097

PROJECT TITLE: Raze and Removal – Code Compliance Program

BID CLOSING DAY/DATE/TIME: October 17th, 2022 at 4:00 pm

CONTRACTOR: Sweetser Construction Inc. BID AMOUNT: \$ 39,950.00
590 West Poplar
Fayetteville, AR 72703

CONTRACTOR: M+M Excavating BID AMOUNT: \$ 17,500.00
377 Sulphur City Rd
Fayetteville, AR 72701

CONTRACTOR: Declined to bid BID AMOUNT: _____

CONTRACTOR: _____ BID AMOUNT: _____

CONTRACTOR: _____ BID AMOUNT: _____

Certified by: Bill Byr Date: 10-17-22

Witness: [Signature] Date: 10-17-22



CITY OF
FAYETTEVILLE
ARKANSAS

RAZE & REMOVAL PROJECT
BID# 22-000097

ADMINISTRATOR: Billy Bryant [email: bbryant@fayetteville-ar.gov]

PHONE # 479.575.8232 or 479.601.6361 **F A X #** 479.444.3445

PROJECT LOCATION: 3301 S. Coach Rd., Fayetteville, AR 72701

WC Parcel # 765-11183-000

CONTRACTOR'S SCOPE OF WORK

• **RAZE&REMOVAL**

1. Completely tear down the entire dwelling.
2. Haul all contents inside the structure(s), debris from the structure(s), and other debris from the parcel to a legal landfill. All concrete associated with the structure(s) shall be removed from the lot (footings and slabs).
3. Mow and clean up parcel.

• **CLEANUP & DISPOSAL**

1. Provide proof, such as receipts, that the debris was hauled to a legal landfill.
2. The city encourages the bidder to consider all waste diversion methods for materials collected. Any methods of disposal, excluding a legal landfill, must be deemed acceptable by the city prior to bid submittal.
3. The yard shall be semi-level and mow-able when the demo work is completed and before payment will be made.
4. Contractor shall be responsible for capping wells, utilities and/or any other requirements pertaining to the demolition permit.

• **MISCELLANEOUS**

1. A Demolition Permit from the City of Fayetteville must be obtained before work begins. Demolition Permits are obtained through the Building Safety Division, 479-575-8233.
2. Proof of no less than \$250,000 liability insurance shall be provided by the contractor before work begins.
3. State Contractor License is required. A City Business License is required if your business is located in the city limits of Fayetteville.
4. If the situation is resolved by the property owner during the 30 day notice & comment period bids may be considered null & void.



CITY OF
FAYETTEVILLE
ARKANSAS

BID PROPOSAL FORM
BID 22-000097

DATE ISSUED: October 2nd, 2022

ADMINISTRATOR'S NAME: Billy Bryant

PROJECT ADDRESS: 3301 S. Coach Rd., Fayetteville, AR 72701

DATE OF OPENING: Monday October 17th, 2022 at 4:00pm

My total bid price for the Raze & Removal Project is:

\$ 39,950.00

(Bid will be valid for 120 days from Date of Opening)

Upon signing this Bid, the bidder certifies that they have viewed the property, read and agree to the requirements set forth in this bid proposal, including specifications, terms and standard conditions, and pertinent information regarding the articles being bid on, and agree to furnish these articles at the prices stated.

Date: 10/17/22

Complete Business Address

Name of Firm: Sweetser Construction, Inc. **Phone #** 479-443-3026

Street address or P O Box

590 West Poplar

City / State/ Zip Code

Fayetteville, AR 72703

Printed Name: William G. Sweetser

Signature: [Signature] **Title:** President

Federal Tax ID # 71-0399789 **or SSN**

State Contractor # 0027470423 **City Business License #** 1385



CITY OF
FAYETTEVILLE
ARKANSAS

BID PROPOSAL FORM
BID 22-000097

DATE ISSUED: October 2nd, 2022

ADMINISTRATOR'S NAME: Billy Bryant

PROJECT ADDRESS: 3301 S. Coach Rd., Fayetteville, AR 72701

DATE OF OPENING: Monday October 17th, 2022 at 4:00pm

My total bid price for the Raze & Removal Project is:

\$ 17,500.00

(Bid will be valid for 120 days from Date of Opening)

Upon signing this Bid, the bidder certifies that they have viewed the property, read and agree to the requirements set forth in this bid proposal, including specifications, terms and standard conditions, and pertinent information regarding the articles being bid on, and agree to furnish these articles at the prices stated.

Date: 10.17.22

Complete Business Address

Name of Firm: M's M Excavating Phone # 479-841-9285

Street address or P O Box
377 Sulphur City Rd

City / State/ Zip Code Fay AR 72701

Printed Name: Marcus Baker

Signature: [Signature] Title: Owner

Federal Tax ID # 26-0011207 or SSN _____

State Contractor # DB1780523 City Business License # _____



CITY OF
FAYETTEVILLE
ARKANSAS

October 25, 2022

Kevin Roy Calhoun
C/O Bank of Fayetteville Trust
PO Box 1728
Fayetteville, AR 72702

RE: Enforcement of Fayetteville Code 173.08
Arkansas Code Ann. 14-56-203

NOTICE TO PROPERTY OWNERS

Pursuant to A.C.A 14-56-203 as 173.08 of the Fayetteville Code, you are placed upon Notice that the Fayetteville City Council will conduct a public hearing to determine if the dwelling located at **3301 S Coach Rd. (WC Parcel # 765-11183-000)** should be Razed and Removed.

You are free to appear at this hearing to present any evidence or statements. If you need additional information concerning this process or if you have information that we are not aware of, please call the Code Compliance Office at (479) 575-8237.

The hearing will be part of a regular City Council meeting on **December 6th, 2022** beginning at 5:30pm at the City Administration Building, 113 W. Mountain St., Fayetteville, AR 72701. The City Council Meetings are advertised in local newspapers and will contain an item concerning this hearing. You may also call the Fayetteville City Clerk's Office (479-575-8323) for information confirming the date of the public hearing.

Sincerely,

Billy Bryant
Senior Code Compliance Officer

7021 0350 0000 4714 3702

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS, FOLDED AT DOTTED LINE

CERTIFIED MAIL®



7021 0350 0000 4714 3702

7021 0350 0000 4714 3702

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$

Extra Services & Fees (check box, add fees appropriate)

- ☐ Return Receipt (hardcopy) \$
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$

Total Postage and Fees

\$

Sent To

Street and Apt. No., or PO Box No.

City, State, ZIP+4®

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

Notice
of
Hearing
Postmark
Here
10-27-22

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

Richard A. Russell☐ Agent☐ Addressee

B. Received by (Printed Name)

Richard A. Russell

C. Date of Delivery

11.1.22

Address different from item 1? ☐ Yes
 delivery address below: ☐ No

KEVIN ROY CALHOUN
 C/O BANK OF FAYETTEVILLE TRUST
 PO BOX 1728
 FAYETTEVILLE, AR 72702

RECEIVED

NOV 09 2022



9590 9402 7618 2122 7389 46

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

☐ Restricted Delivery

2. Article Number (Transfer from service label)

7021 0350 0000 4714 3702

PS Form 3811, July 2020 PSN 7530-02-000-9053

97 -

Not Hand

Domestic Return Receipt



CITY OF
FAYETTEVILLE
ARKANSAS

Code Compliance Program
Unsafe Building Determination
UDC 173.08 (A)

Address / Location: 3301 S. Coach Rd.

WC Parcel # 765-11183-000

UDC 173.09 (A)

☒ *I recommend the raze and removal of the structure.*

☐ *I recommend securing the structure.*

☐ *I have determined that the structure above is NOT in violation of Subsection 173.08 (A) of the City of Fayetteville's Unified Development Code*

☒ *I recommend presenting the structure to City Council as a Property Nuisance for Raze & Removal*

Bill Burt

Code Compliance Admin.

6-29-22 Date

[Signature]

City Building Official

6-29-22 Date

Observations: House is empty & falling in.

Case # CBLD-2022-000097

Building Safety Division Director

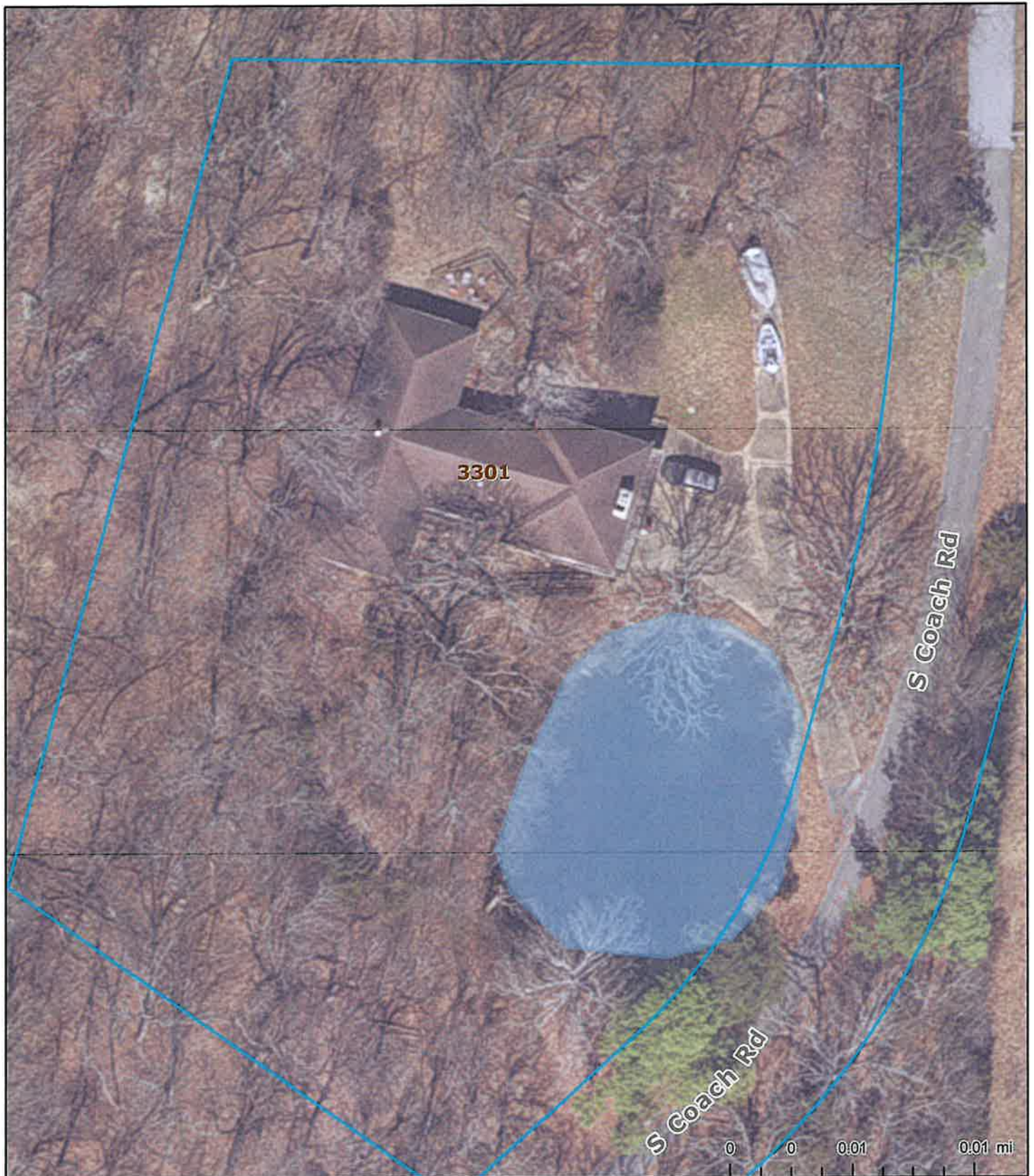


Exhibit

Fayetteville, AR

The data contained herein was compiled from various sources for the sole use and benefit of the City of Fayetteville Geographic Information System and the public agencies it serves. Any use of the data by anyone other than the City of Fayetteville is at the sole risk of the user; and by acceptance of this data, the user does hereby agree to indemnify the City of Fayetteville and hold the City of Fayetteville harmless from and without liability for any claims, actions, cost for damages of any nature, including the city's cost of defense, asserted by user or by another arising from the use of this data. The City of Fayetteville makes no express or implied warranties with reference to the data. No word, phrase, or clause found herein shall be construed to waive that tort immunity set forth under Arkansas law.

Created: 11/3/2022
Credits: City of Fayetteville, AR, 2022 Imagery | EagleView Technologies | Surdex Corporation
Map Author:



Exhibit

Fayetteville, AR

The data contained herein was compiled from various sources for the sole use and benefit of the City of Fayetteville Geographic Information System and the public agencies it serves. Any use of the data by anyone other than the City of Fayetteville is at the sole risk of the user; and by acceptance of this data, the user does hereby agree to indemnify the City of Fayetteville and hold the City of Fayetteville harmless from and without liability for any claims, actions, cost for damages of any nature, including the city's cost of defense, asserted by user or by another arising from the use of this data. The City of Fayetteville makes no express or implied warranties with reference to the data. No word, phrase, or clause found herein shall be construed to waive that tort immunity set forth under Arkansas law.

Created: 11/3/2022
Credits: City of Fayetteville, AR, 2022 Imagery | EagleView Technologies | Surdex Corporation
Map Author:

**CITY OF FAYETTEVILLE**

125 West Mountain Street
Fayetteville, AR 72701

Case Number: **CBLD-2022-000097****Violation
Notice**Case Type: **Building**Date Case Established: **06/29/2022****Owner:** Kevin Calhoun**Mailing Address**

Kevin Calhoun
PO Box 1728
Fayetteville, AR 72702

Notice of Violation for the following location:**Address****Parcel**

3301 S COACH RD
Fayetteville, AR 72701

765-11183-000**Dear Property Owner:**

It appears that your property contains a violation of the Fayetteville Unified Development Ordinance. It is our goal to notify and assist property owners to correct violations of city ordinances before taking actual enforcement actions. If you need clarification of this notice or advice on how to correct the problem, please contact us.

Violation That Needs Correction: 173.08 - Unsafe Buildings - (Raze & Removal) - Unsafe Buildings - (Raze & Removal)

No person, partnership, corporation, or association, hereinafter referred to as "owner", shall keep or maintain any house or building within the corporate limits of the City which has become dilapidated, unsafe, unsanitary, or detrimental to the public welfare.

Possible Penalties:

If this violation is not corrected within thirty (30) days from the service of this notice, a Public Hearing will be held for the approval of a raze & removal determination by the City Council. The costs shall be charged to the owner(s) of the property and the city shall have a lien against such property for the costs. If you disagree with our conclusion that your property contains a violation of our ordinances, you have the right to an appeal. Please see Chapter 155 of the Unified Development Code.

How This Violation Can Be Voluntarily Corrected: By making repairs as needed or razing the structure and remove all debris from the lot. A building permit may be required, based on review of the Building Safety Director.

Sincerely,

Derek Benjamin
Code Compliance Officer
479.601.6604
DBenjamin@Fayetteville-ar.gov

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

COMPLETE THIS SECTION ON DELIVERY

A. Signature X <i>[Signature]</i>		☐ Agent ☐ Addressee
B. Received by (Printed Name) <i>Renton A. Russell</i>		C. Date of Delivery <i>07-05-22</i>
Address different from item 1? ☐ Yes Delivery address below: ☐ No		



KEVIN ROY CALHOUN
C/O BANK OF FAYETTEVILLE TRUST
PO BOX 1728
FAYETTEVILLE, AR 72702

RECEIVED

JUL 11 2022



9590 9402 6893 1104 4818 58

3. Service type	5. Priority Mail Express®
☐ Adult Signature	☐ Registered Mail™
☐ Adult Signature Restricted Delivery	☐ Registered Mail Restricted Delivery
☒ Certified Mail®	☐ Signature Confirmation™
☐ Certified Mail Restricted Delivery	☐ Signature Confirmation Restricted Delivery
☐ Collect on Delivery	
☐ Collect on Delivery Restricted Delivery	
☐ Restricted Delivery	

2 7021 0350 0000 4714 8592

PS Form 3811, July 2020 PSN 7530-02-000-9053

DB 897

Domestic Return Receipt

Lot numbered Four (4) in Block "A," Sunrise Mountain, a Subdivision of the West Half of the Northeast Quarter of Section 32, Township 16 North, Range 30 West, as shown upon the recorded plat thereof, on file in the office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas.

Lot 5 Block "A" Sunrise Mountain Subdivision, as per plat on file with the Washington County Circuit Clerk and Ex-Officio Recorder.

Lot 5 and part of Lots 6 & 7, Block "A", Sunrise Mountain Addition, being described as follows, to-wit: Part of the Northwest Quarter of the Northeast Quarter of Section 32, Township 16 North, Range 30 West, and being more particularly described as follows: To-wit: Beginning at a point which is 556.39 feet North and 434.82 feet East of the Southwest corner of said Forty acre tract, said point being on the East right of way of an existing County Road, and running along said road right of way the following bearing and distances: South 18 degrees 0 minutes West 20.91 feet, South 42 degrees 30 minutes East 22.13 feet, South 11 degrees 17 minutes East 67.55 feet, South 06 degrees 37 minutes East 136.28 feet, South 12 degrees 01 minutes East 42.25 feet, South 22 degrees 53 minutes East 48.05 feet, South 31 degrees 58 minutes East 52.78 feet, thence North 59 degrees 11 minutes East 193.85 feet to the West Right of Way of an existing County Road, thence along said road Right of Way the following bearings and distances: North 13 degrees 24 minutes West 50.0 feet, North 02 degrees 32 minutes West 42.69 feet, North 12 degrees 19 minutes East 55.0 feet, North 36 degrees 56 minutes East 50.0 feet, North 45 degrees 42 minutes East 33.71 feet, thence North 67 degrees 59 minutes West 155.53 feet to an existing fence corner, thence North 89 degrees 18 minutes West along an existing fence 167.57 feet to the point of beginning, containing 1.68 acres, more or less. LESS AND EXCEPT, Lot 5, Block "A," Sunrise Mountain Addition.

Subject to easements, right of ways and restrictions of record, if any.

Parcel: 765-11183-000
 Previous Parcel: 144379-000-00
 As of: 10/24/2022 9:44:23 PM

Washington County Report

Property Owner

Name: CALHOUN, KEVIN ROY
Mailing Address: C/O BANK OF FAYETTEVILLE TRUST
 PO BOX 1728
 FAYETTEVILLE, AR 72702
Type: (RI) Res. Improv.
Tax District: (952) GREENLAND SCH, FAY
Millage Rate: 51.80

Property Information

Physical Address: 3301 S COACH RD
Subdivision: SUNRISE MOUNTAIN
Block/Lot: 00A / 004
S-T-R: 32-16-30
Size (Acres): 0.00
Legal: LOT 4 BLOCK A

Market and Assessed Values

	Estimated Market Value	Full Assessed (20% Market Value)	Taxable Value
Land	68,000	13,600	13,600
Building	114,150	22,830	22,830
Totals	182,150	36,430	36,430

Taxes

Estimated Taxes:	1,887
Homestead Credit:	0

Note: Tax amounts are estimates only.
 Contact the county/parish tax collector for exact amounts.

Land

Land Use	Size	Units
N/A	1.000	House Lot
N/A	0.480	Acres
Total	1.48	

Deed Transfers

Document Images brought to you by your County Circuit Clerk, Kyle Sylvester

View Image	Deed Date	Book	Page	Deed Type	Stamps	Est. Sale	Grantee	Code	Type
	6/13/2011	2011	16538	Redem Deed	N/A	N/A	CALHOUN, KEVIN ROY	N/A	N/A
	12/12/2000	2000	103390	DeathCer	N/A	N/A	CALHOUN, KEVIN ROY	N/A	N/A
	12/11/2000	2000	103390	Warr. Deed	0.00	\$0	CALHOUN, LLOYD A; CALHOUN, KEVIN ROY	N/A	Improved
	1/1/1985	1078	61	N/A	0.00	\$0	CALHOUN, LLOYD A & MAURITA FAYE	N/A	N/A

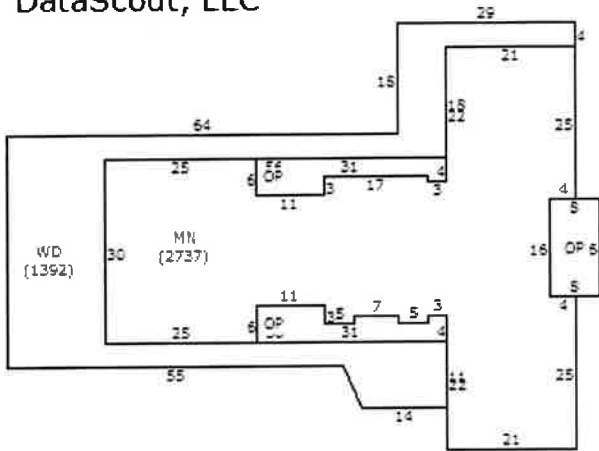
Details for Residential Card 1

Occupancy	Story	Construction	Total Liv	Grade	Age	Year Built	Condition	Beds
-----------	-------	--------------	-----------	-------	-----	------------	-----------	------

Occupancy	Story	Construction	Total Liv	Grade	Age	Year Built	Condition	Beds
Single Family	ONE	Frame Siding Std.	2737	3	39	1981	Average	N/A

Exterior Wall:	FS	Plumbing:	Full: 2 Half: N/A
Foundation:	Closed Piers	Fireplace:	Type: 2s Sgl. Qty: 1
Floor Struct:	Wood with subfloor	Heat/Cool:	Central
Floor Cover:	Carpet & Tile	Basement:	Unfin
Insulation:	Ceilings Floors Walls	Basement Area:	700
Roof Cover:	Fiberglass Shingle	Year Remodeled:	N/A
Roof type:	Hip	Style:	N/A

DataScout, LLC



Base Structure

Item	Label	Description	Area
A	MN	Main Living Area	2737
B	OP	Porch, open	128
C	WD	Wood deck	1392
D	OP	Porch, open	129
E	OP	Porch, open	136
F	FFB	Garage - frame finished, built	700

Outbuildings and Yard Improvements

Item	Type	Size / Dim	Unit Multi.	Quality	Age
Aggregate concrete	N/A	10 x 51	1	N/A	N/A
Aggregate concrete	N/A	41 x 42	1	N/A	N/A
Fence, split rail 2	N/A	340	1	N/A	N/A

Item	Type	Size / Dim	Unit Multi.	Quality	Age
Wood deck	N/A	18 x 22	1	N/A	N/A
Aggregate concrete	N/A	8 x 200	N/A	N/A	N/A

Other Adjustments

Code	Type	Qty
FLOORC	T	274

Reappraisal Value History

Tax Year	Total Value	Total Assessed
2021	182,150.00	36,430.00
2020	182,150.00	36,430.00
2019	171,750.00	34,350.00
2018	171,750.00	34,350.00
2017	171,750.00	34,350.00
2016	171,750.00	34,350.00
2015	171,750.00	34,350.00

Not a Legal Document

Subject to terms and conditions
www.actDataScout.com































































Budget Year	Division	Adjustment Number
2022	BUILDING SAFETY (640)	
	/Org2	
	Requestor: Billy Bryant	

Budget adjustment of \$17,500.00 requested for raze and removal of a dilapidated structure located at 3301 S. Coach Rd.

	COUNCIL DATE:	12/6/2022
	LEGISTAR FILE ID#:	2022-1079
	Holly Black	
	11/18/2022 7:26 AM	
	Budget Director	Date
	TYPE:	D - (City Council)
	JOURNAL #:	
	GLDATE:	
	CHKD/POSTED:	/
RESOLUTION/ORDINANCE		

[illegible]

EXHIBIT A

Lot numbered Four (4) in Block "A," Sunrise Mountain, a Subdivision of the West Half of the Northeast Quarter of Section 32, Township 16 North, Range 30 West, as shown upon the recorded plat thereof, on file in the office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas.

AND

Lot 5 Block "A" Sunrise Mountain Subdivision, as per plat on file with the Washington County Circuit Clerk and Ex-Officio Recorder.

AND

Lot 5 and part of Lots 6 & 7, Block "A", Sunrise Mountain Addition, being described as follows, to-wit: Part of the Northwest Quarter of the Northeast Quarter of Section 32, Township 16 North, Range 30 West, and being more particularly described as follows: To-wit: Beginning at a point which is 556.39 feet North and 434.82 feet East of the Southwest corner of said Forty acre tract, said point being on the East right of way of an existing County Road, and running along said road right of way the following bearing and distances: South 18 degrees 0 minutes West 20.91 feet, South 42 degrees 30 minutes East 22.13 feet, South 11 degrees 17 minutes East 67.55 feet, South 06 degrees 37 minutes East 136.28 feet, South 12 degrees 01 minutes East 42.25 feet, South 22 degrees 53 minutes East 48.05 feet, South 31 degrees 58 minutes East 52.78 feet, thence North 59 degrees 11 minutes East 193.85 feet to the West Right of Way of an existing County Road, thence along said road Right of Way the following bearings and distances: North 13 degrees 24 minutes West 50.0 feet, North 02 degrees 32 minutes West 42.69 feet, North 12 degrees 19 minutes East 55.0 feet, North 36 degrees 56 minutes East 50.0 feet, North 45 degrees 42 minutes East 33.71 feet, thence North 67 degrees 59 minutes West 155.53 feet to an existing fence corner, thence North 89 degrees 18 minutes West along an existing fence 167.57 feet to the point of beginning, containing 1.68 acres, more or less. LESS AND EXCEPT, Lot 5, Block "A," Sunrise Mountain Addition.

Subject to easements, right of ways and restrictions of record, if any.

ORDINANCE NO. _____

AN ORDINANCE TO REZONE THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 22-048 LOCATED AT 1657 NORTH VANDEVENTER AVENUE IN WARD 2 FOR APPROXIMATELY .67 ACRES FROM RSF-4, RESIDENTIAL SINGLE FAMILY, 4 UNITS PER ACRE TO RMF-24, RESIDENTIAL MULTI-FAMILY, 24 UNITS PER ACRE

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, 4 Units Per Acre to RMF-24, Residential Multi-Family, 24 Units Per Acre.

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

2022-1078

Legistar File ID

12/6/2022

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

Jonathan Curth

11/18/2022

DEVELOPMENT REVIEW (630)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

RZN-2022-0048: Rezone (1657 N. VANDEVENTER AVE./OSBORNE, 406): Submitted by HALL ESTILL LAW FIRM for property located at 1657 N. VANDEVENTER AVE. in WARD 2. The property is zoned RSF-4, RESIDENTIAL SINGLE-FAMILY, 4 UNITS PER ACRE and contains approximately 0.67 acres. The request is to rezone the property to RMF-24, RESIDENTIAL MULTI-FAMILY, 24 UNITS PER ACRE.

Budget Impact:

Account Number		Fund	
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 DECEMBER 6, 2022

TO: Mayor; Fayetteville City Council

THRU: Susan Norton, Chief of Staff
Jonathan Curth, Development Services Director
Jessie Masters, Development Review Manager

FROM: Gretchen Harrison, Planner

DATE: November 18, 2022

SUBJECT: RZN-2022-0048: Rezone (1657 N. VANDEVENTER AVE./OSBORNE, 406):
Submitted by HALL ESTILL LAW FIRM for property located at 1657 N. VANDEVENTER AVE. in WARD 2. The property is zoned RSF-4, RESIDENTIAL SINGLE-FAMILY, 4 UNITS PER ACRE and contains approximately 0.67 acres. The request is to rezone the property to RMF-24, RESIDENTIAL MULTI-FAMILY, 24 UNITS PER ACRE.

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 contains two parcels totaling 0.67 acres just southwest of the intersection of Sycamore Street and Vandeventer Avenue. The property is largely covered by tree canopy and currently developed with one single-family dwelling which was built in 1956. The northern portion of the property is fairly steep with a grade in excess of 30%, and most of the property is located within the Hillside/Hilltop Overlay District.

Request: The request is to rezone the property from RSF-4, Residential Single-Family, 4 Units per Acre to RMF-24, Residential Multi-Family, 24 Units per Acre.

Public Comment: Staff received several inquiries about this request and one phone call from a neighbor who expressed concerns about increased density. Prior to the November 14th Planning Commission meeting but after publication of the staff report, staff received an email from a neighbor who shared their opposition to the request due to the potential for increased traffic along Vandeventer Avenue.

Land Use Compatibility: Staff finds the proposed rezoning to be generally compatible with surrounding land uses. While there are only one- and two-family dwellings immediately adjacent to the subject property, the surrounding neighborhood includes a broad mix of residential dwelling types in a variety of densities. A rezoning from RSF-4 to RMF-24 would expand the variety of housing types permitted by right to include everything from single-family to multi-family dwellings, which is consistent with the current development and zoning pattern in the area. While an incremental rezoning to an intermediate zoning district may be more suitable given the topography

of the site and the unimproved condition of Vandeventer Avenue, staff finds the proposed rezoning to be justified given the property's proximity to multi-family dwellings, nonresidential uses, and prominent thoroughfares. Staff also finds that the bulk and area regulations are suitable and not out of context with the surrounding area. Several adjacent properties along Sycamore Street are developed with buildings that do not meet the conventional front setback of the RSF-4 zoning district, so rezoning to a district that allows a 0- to 25-foot build-to zone would allow for development that could contribute to a moderately uniform line of buildings along the street. A rezoning from RSF-4 to RMF-24 would also increase the building height maximum from three to five stories, though staff finds that this increase would not be out of scale with the subject property given its slope. Further, staff finds increasing the variety of building types and densities to be appropriate on a corner lot with frontage on a Neighborhood Link street, since it is less likely to disturb an established residential neighborhood.

Land Use Plan Analysis: Staff finds the proposed rezoning to be generally consistent with the City's future land use plans. The City Plan 2040 Future Land Use Map designates the subject property as both Residential Neighborhood and City Neighborhood area. Staff finds that the proposed RMF-24 zoning is consistent with those classifications since it would allow for a wider spectrum of residential housing types and densities than what is currently allowed, near prominent thoroughfares and nonresidential uses. Staff finds that a rezoning to RMF-24 is also consistent with Goals 4 and 6 City Plan 2040. Development under the RMF-24 zoning district could encourage a livable transportation network by offering occupants' access to the nearby Razorback Greenway and public transit stops and could provide more opportunities for housing beyond what would be permitted in the existing single-family zoning district.

CITY PLAN 2040 INFILL MATRIX: City Plan 2040's Infill Matrix indicates a score range between 8 and 9 for this site. The following elements of the matrix contribute to the score:

- 4 Minute Fire Response (Station 2, 708 N. Garland Ave.)
- Near Sewer Main (6" main, Sycamore Street and on site)
- Near Water Main (2.25" and 8" main, Vandeventer Avenue and Sycamore Street)
- Near Public School (Woodland Junior High)
- Near City Park (Gregory Park)
- Near Paved Trail (Sycamore Street, Razorback Greenway)
- Near ORT Bus Stop (Route 10)
- Near Razorback Bus Stop (Route 26)
- Appropriate Future Land Use (City Neighborhood Area)

DISCUSSION:

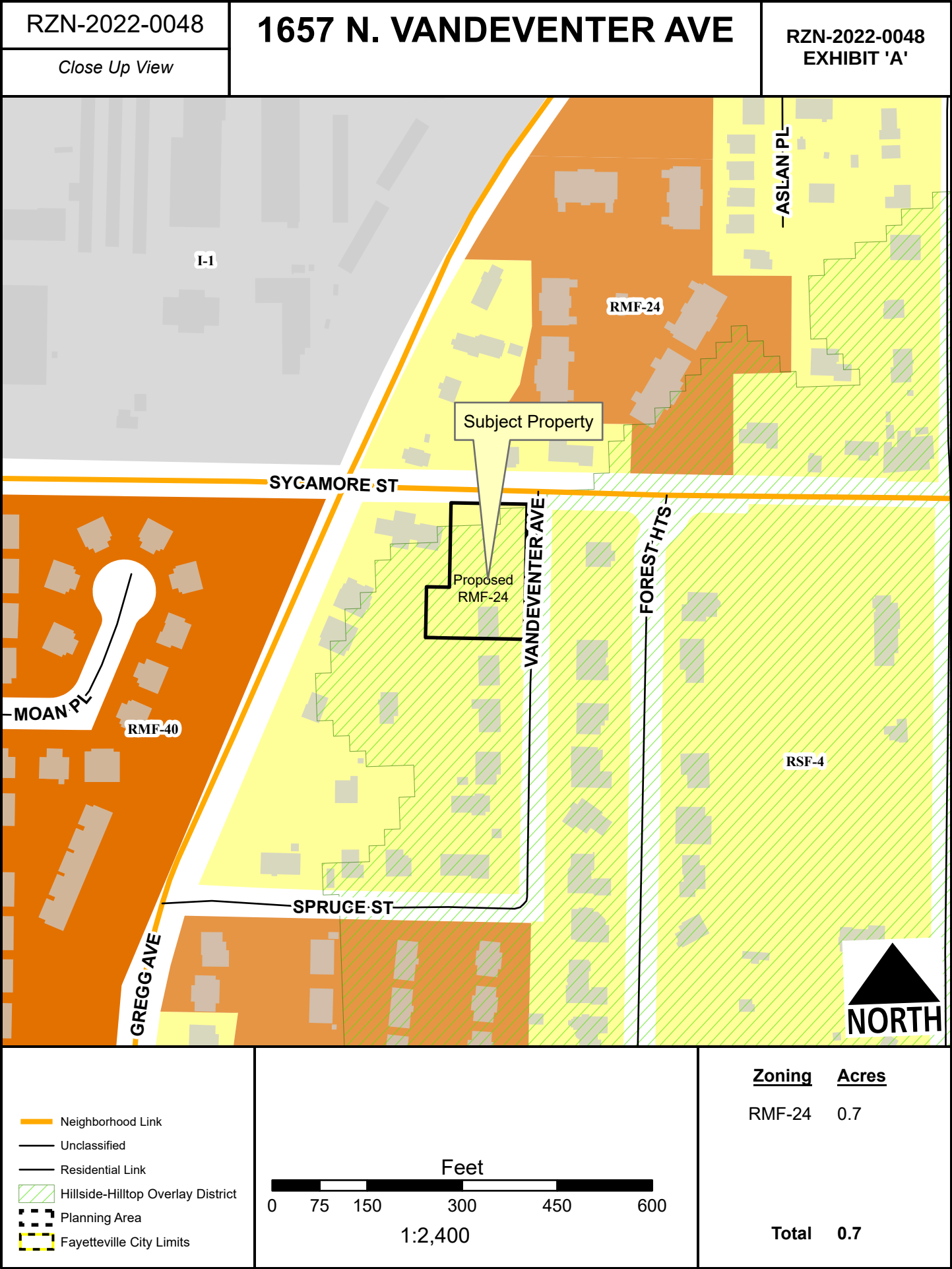
At the November 14, 2022 Planning Commission meeting, a vote of 7-0-0 forwarded the request to City Council with a recommendation of approval. Commissioner Garlock made the motion and Commissioner Johnson seconded. Commissioners offered little comment, finding the request to be consistent with the City's land use plans and policies. One member of the public attempted to speak at the meeting though technical issues prevented them from doing so. No public comment was offered otherwise.

BUDGET/STAFF IMPACT:

N/A

ATTACHMENTS:

- Exhibit A
- Exhibit B
- Planning Commission Staff Report



RZN-2022-0048
EXHIBIT 'B'

REZONE DESCRIPTION:

TRACT 1: THE NORTH EIGHTY (80) FEET OF LOT NUMBERED EIGHT (8), SEAMSTER PLACE ADDITION TO THE CITY OF FAYETTEVILLE, ARKANSAS, ALSO BEING DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF SAID LOT EIGHT (8), SAID POINT BEING A SET 1/2" IRON REBAR; THENCE S00°06'50"E 80.00 FEET ALONG THE EAST LINE OF SAID LOT EIGHT (8) TO A SET 1/2" IRON REBAR; THENCE S89°40'38"W 157.47 FEET (PLAT = 156 FEET) TO A SET 1/2" IRON REBAR; THENCE N01°07'47"E 25.09 FEET TO AN EXISTING IRON REBAR; THENCE N00°59'59"E 54.90 FEET TO AN EXISTING IRON REBAR; THENCE N89°22'22"E 35.86 FEET TO AN EXISTING IRON REBAR; THENCE N89°45'19"E 120.00 FEET TO THE POINT OF BEGINNING, CONTAINING 0.29 ACRES, MORE OR LESS.

TRACT 2: THE EAST ONE HUNDRED TWENTY (120) FEET OF LOT NUMBERED NINE (9), SEAMSTER PLACE ADDITION TO THE CITY OF FAYETTEVILLE, ARKANSAS, ALSO BEING DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF SAID LOT NINE (9), SAID POINT BEING A CHISLED 'X' IN A CONCRETE CURB; THENCE S00°06'50"E 139.24 FEET (PLAT = 140 FEET) TO A SET 1/2" IRON REBAR AT THE SOUTHEAST CORNER OF SAID LOT NINE (9); THENCE S89°45'19"W 120.00 FEET TO AN EXISTING IRON REBAR; THENCE N00°06'49"W 139.75 FEET (PLAT = 140 FEET) TO AN EXISTING IRON REBAR; THENCE EAST 120.00 FEET TO THE POINT OF BEGINNING, CONTAINING 0.38 ACRES, MORE OR LESS.



TO: Fayetteville Planning Commission

THRU: Jessie Masters, Development Review Manager

FROM: Gretchen Harrison, Planner

MEETING DATE: November 14, 2022 (Updated with results from PC hearing)

SUBJECT: **RZN-2022-0048: Rezone (1657 N. VANDEVENTER AVE./OSBORNE, 406):** Submitted by HALL ESTILL LAW FIRM for property located at 1657 N. VANDEVENTER AVE. The property is zoned RSF-4, RESIDENTIAL SINGLE-FAMILY, 4 UNITS PER ACRE and contains approximately 0.67 acres. The request is to rezone the property to RMF-24, RESIDENTIAL MULTI-FAMILY, 24 UNITS PER ACRE.

RECOMMENDATION:

Staff recommends forwarding **RZN-2022-0048** to City Council with a recommendation of approval, based on the findings herein.

RECOMMENDED MOTION:

*"I move to forward **RZN-2022-0048** to City Council with a recommendation of approval."*

BACKGROUND:

The subject property contains two parcels totaling 0.67 acres just southwest of the intersection of Sycamore Street and Vandeventer Avenue. The property is largely covered by tree canopy and currently developed with one single-family dwelling which was built in 1956. The northern portion of the property is fairly steep with a grade in excess of 30%, and most of the property is located within the Hillside/Hilltop Overlay District. Surrounding land use and zoning is shown 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	RSF-4, Residential Single-Family, 4 Units per Acre
East	Single-Family Residential	RSF-4, Residential Single-Family, 4 Units per Acre
West	Two-Family Residential	RSF-4, Residential Single-Family, 4 Units per Acre

Request: The request is to rezone the property from RSF-4, Residential Single-Family, 4 Units per Acre to RMF-24, Residential Multi-Family, 24 Units per Acre.

Public Comment: Staff received several inquiries about this request and one phone call from a neighbor who expressed their concerns about increased density on this site.

INFRASTRUCTURE:

Streets: The subject property has frontage along Sycamore Street and Vandeventer Avenue. Sycamore is a partially-improved Neighborhood Link street with asphalt paving, partial sidewalk, curb, and gutter; and Vandeventer 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 development proposal.

Water: Public water is available to the subject property. An existing 2.25-inch water main is present in the center of Vandeventer Avenue, and an eight-inch main is present in the center of Sycamore Street.

Sewer: Sanitary sewer is available to the subject property. Existing six-inch sewer mains are present on the west side of the property and in the center of Sycamore Street.

Drainage: No portion of the subject property lies within a streamside protection zone and no FEMA-designated floodplains or hydric soils are present, though a portion of the property is located 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. Any additional improvements or requirements for drainage would be determined at the time of development.

Fire: Station 2, located at 708 N. Garland Ave., protects this site. The property is located approximately 1.4 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 one 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 six minutes for an engine and eight 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 did not comment on this request.

Tree Preservation:

The requested zoning district, RMF-24, Residential Multi-Family, 24 Units per Acre, requires **20% minimum canopy preservation**. The current zoning district, RSF-4, Residential Single-Family, 4 Units per Acre, requires **25% minimum canopy preservation**. All residential zoning districts within the Hillside/Hilltop Overlay District have their percent minimum canopy requirements increased by **5%**.

CITY PLAN 2040 FUTURE LAND USE PLAN: The City Plan 2040 Future Land Use Plan designates the property within the proposed rezone as **City Neighborhood** and **Residential Neighborhood** area.

City Neighborhood areas are more densely developed than residential neighborhood areas and provide a mix of non-residential and residential uses. This designation supports the widest spectrum of uses and encourages density in all housing types from single-family to multi-family.

Nonresidential and commercial uses are primarily located at street intersections and along major corridors. Ideally, commercial uses would have a residential component and vary in size, variety and intensity. The street network should have a high number of intersections creating a system of small blocks with a high level of connectivity between neighborhoods. Building setbacks and landscaping are urban in form with street trees typically being located within the sidewalk zone.

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, multi-family, 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 nonresidential 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 range of **8-9** for this site with a weighted score of **11.5** at the highest level. The following elements of the matrix contribute to the score:

- 4 Minute Fire Response (Station 2, 708 N. Garland Ave.)
- Near Sewer Main (6" main, Sycamore Street and on site)
- Near Water Main (2.25" and 8" main, Vandeventer Avenue and Sycamore Street)
- Near Public School (Woodland Junior High)
- Near City Park (Gregory Park)
- Near Paved Trail (Sycamore Street, Razorback Greenway)
- Near ORT Bus Stop (Route 10)
- Near Razorback Bus Stop (Route 26)
- Appropriate Future Land Use (City Neighborhood Area)

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 proposed rezoning to be generally compatible with surrounding land uses. While there are only one- and two-family dwellings immediately adjacent to the subject property, the surrounding neighborhood includes a broad mix of residential dwelling types in a variety of densities. A rezoning from RSF-4 to RMF-24 would expand the variety of housing types permitted by right to include everything from single-family to multi-family dwellings, which is consistent with the current development and zoning pattern in the area. While an incremental rezoning to an intermediate zoning district may be more suitable given the topography of the site and the unimproved condition of Vandeventer Avenue, staff finds the proposed rezoning to be justified given the property's proximity to multi-family dwellings, nonresidential uses, and prominent thoroughfares. Staff also finds that the bulk and area regulations are suitable and not out of context with the surrounding area. Several adjacent properties*

along Sycamore Street are developed with buildings that do not meet the conventional front setback of the RSF-4 zoning district, so rezoning to a district that allows a 0- to 25-foot build-to zone would allow for development that could contribute to a moderately uniform line of buildings along the street. A rezoning from RSF-4 to RMF-24 would also increase the building height maximum from three to five stories, though staff finds that this increase would not be out of scale with the subject property given its slope. Further, staff finds increasing the variety of building types and densities to be appropriate on a corner lot with frontage on a Neighborhood Link street, since it is less likely to disturb an established residential neighborhood.

Land Use Plan Analysis: Staff finds the proposed rezoning to be generally consistent with the City's future land use plans. The City Plan 2040 Future Land Use Map designates the subject property as both Residential Neighborhood and City Neighborhood area. Staff finds that the proposed RMF-24 zoning is consistent with those classifications since it would allow for a wider spectrum of residential housing types and densities than what is currently allowed, near prominent thoroughfares and nonresidential uses. Staff finds that a rezoning to RMF-24 is also consistent with Goals 4 and 6 City Plan 2040. Development under the RMF-24 zoning district could encourage a livable transportation network by offering occupants' access to the nearby Razorback Greenway and public transit stops and could provide more opportunities for housing beyond what would be permitted in the existing single-family zoning district.

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: Staff finds that there is sufficient justification for rezoning the property to RMF-24 at this time. The request is generally aligned with several goals of City Plan 2040 and consistent with the development and zoning pattern in the surrounding area.

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: Rezoning the property from RSF-4 to RMF-24 has the potential to create or appreciably increase traffic danger and congestion. However, the subject property has access to public trails and transit stops and frontage along two public streets, one of which is classified as a Residential Link, which suggests that an increased number of vehicle trips could be accommodated without increasing danger or congestion in the neighborhood. Any significant traffic impacts would be fully evaluated and mitigated at the time of development review.

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 RMF-24 has the potential to alter the population density and increase the load on public services, though not to an

undesirable degree. The size of the property and the City's parking, tree preservation, and stormwater ordinances, will limit the scale of any future development to reduce impacts on natural resources and public 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 recommends forwarding RZN-2022-0048 to City Council with a recommendation of approval.

PLANNING COMMISSION ACTION:			
Required	<u>YES</u>		
Date: <u>November 14, 2022</u>	☐ Tabled	☒ Forwarded with a recommendation of approval	☐ Denied
Motion: Garlock			
Second: Johnson			
Vote: 7-0-0			

BUDGET/STAFF IMPACT:

None

ATTACHMENTS:

- Unified Development Code:
 - §161.07 – District RSF-4, Residential Single-Family – Four (4) Units Per Acre
 - §161.16 – District RMF-24, Residential Multi-Family – Twenty-Four (24) Units Per Acre
- Request Letter
- One Mile Map
- Close-Up Map
- Current Land Use Map
- Future Land Use Map
- Public Comment Received After PC Report Publication

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)

Editor's note— [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*
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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, 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)

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October 5, 2022

City of Fayetteville Planning Commission
and Planning Department
125 West Mountain Street
Fayetteville, Arkansas 72701

Re: Rezoning of Parcel No. 765-10607-000 & 765-10609-000
1675 Vandeventer, Fayetteville, Arkansas
From RSF-4 to RMF-24

Dear To Whom It May Concern:

This letter is in regard to rezoning parcels 765-10607-000 & 765-10609-000 from their current designation of RSF-4 to RMF-24. 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.

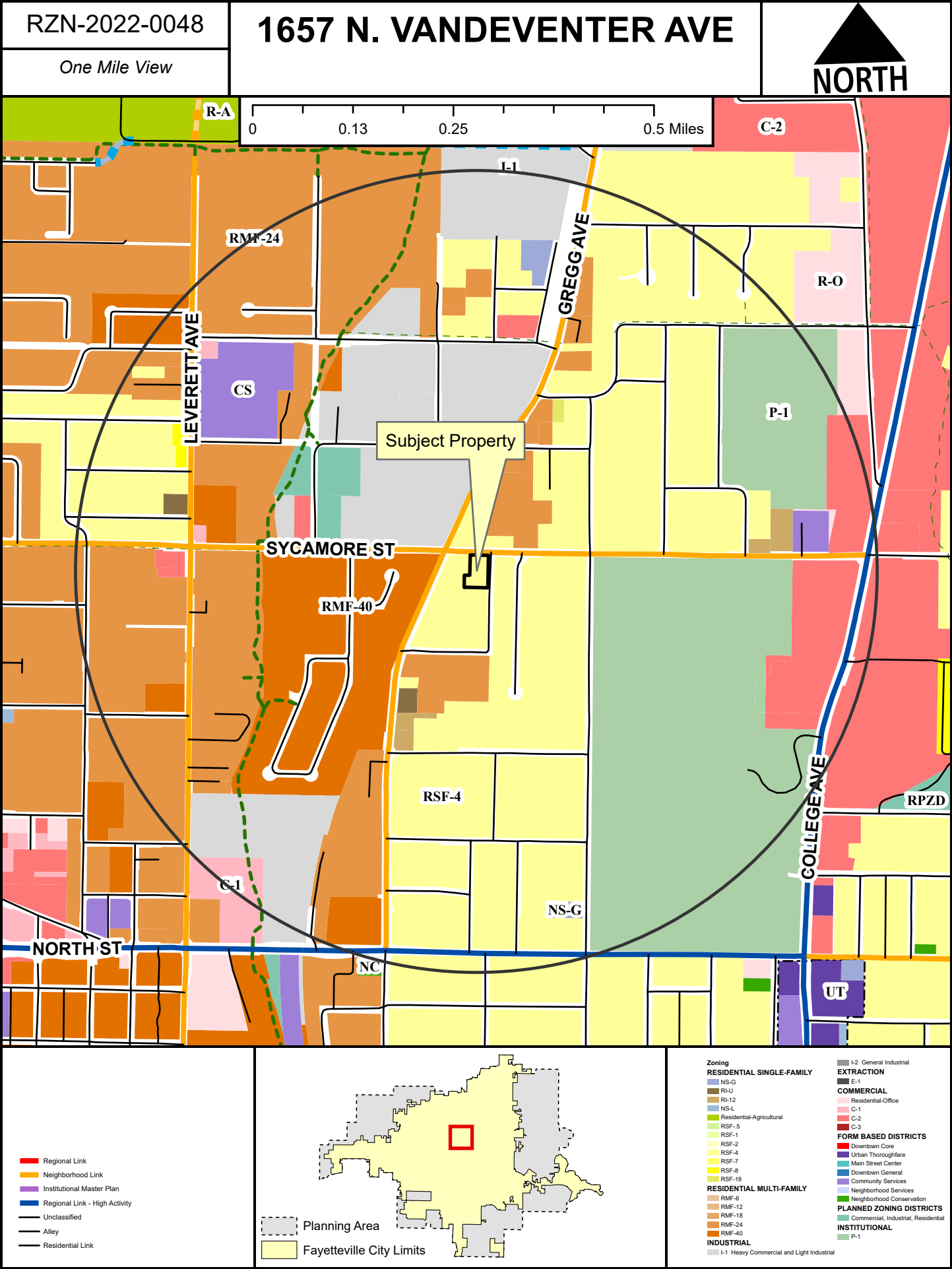
Further, RMF-24 is compatible and would fit into the future land use as there are neighboring properties already designated as Multi-Family Residential. Lastly, this rezoning will not unreasonably affect in any adverse way the surrounding land uses.

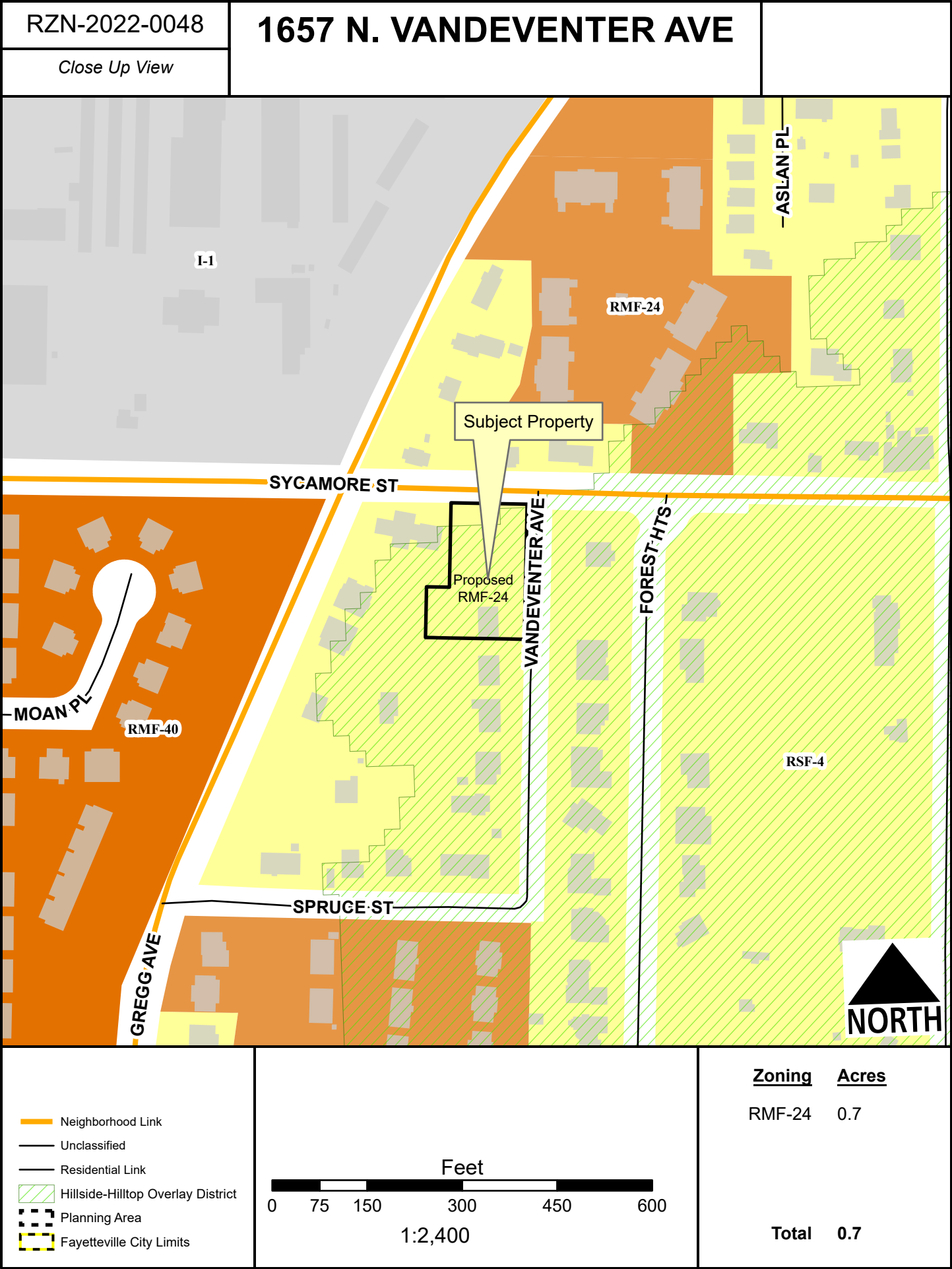
Very truly yours,

/s/ Robert K. Rhoads

Robert K. Rhoads

Cc: Client(s)





RZN-2022-0048

1657 N. VANDEVENTER AVE

Current Land Use

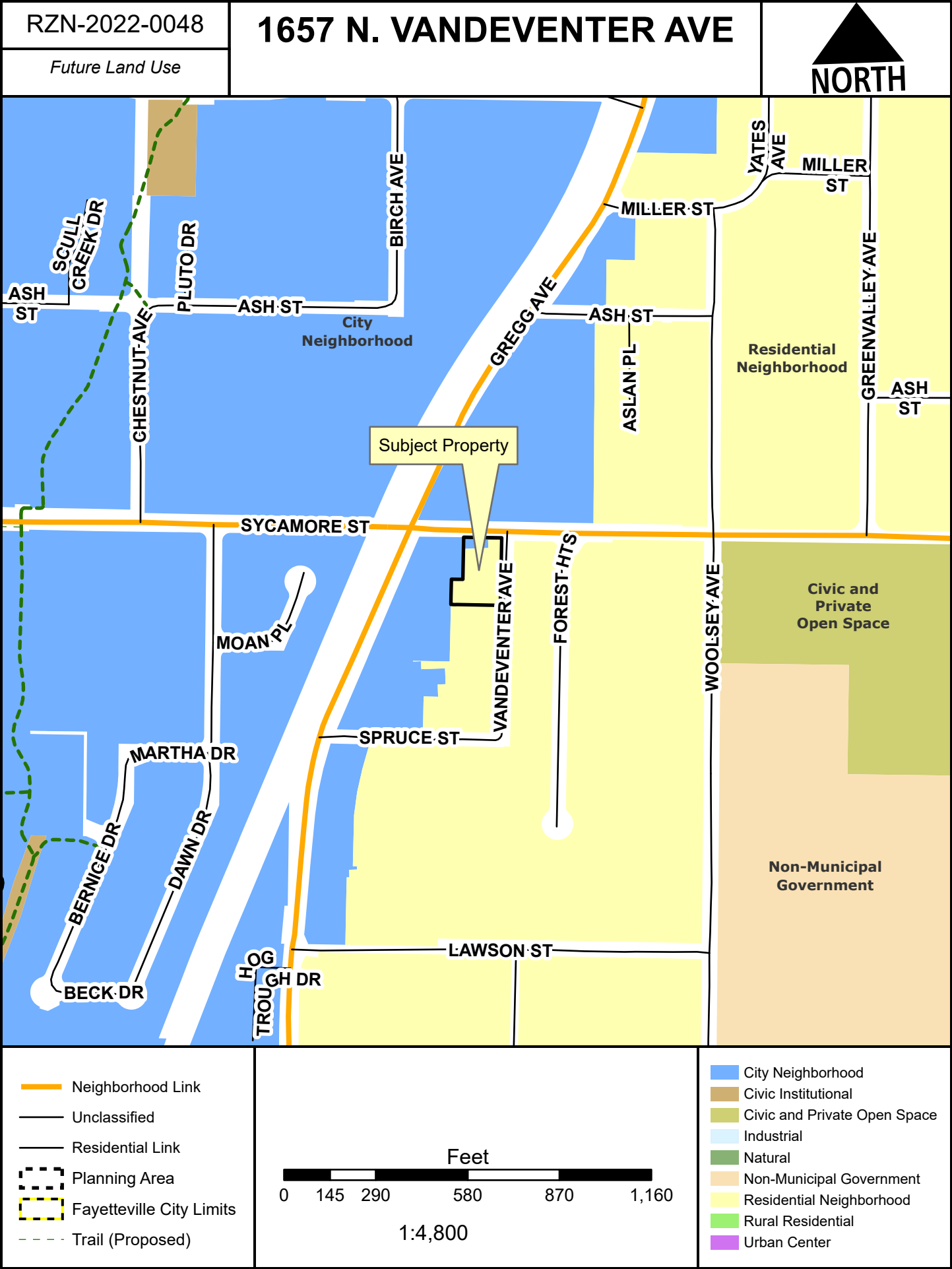


- Neighborhood Link
- Unclassified
- Residential Link
- Planning Area
- Fayetteville City Limits



FEMA Flood Hazard Data

- 100-Year Floodplain
- Floodway



FW: Rezone on Vanderventer

Planning Shared <planning@fayetteville-ar.gov>

Mon 11/14/2022 3:21 PM

To: Harrison, Gretchen <gharrison@fayetteville-ar.gov>

For you.

Thank you

Mirinda Hopkins
Development Coordinator
Planning Division
City of Fayetteville
479-575-8267

[Website](#) | [Facebook](#) | [Twitter](#) | [Instagram](#) | [YouTube](#)



From: Tammy Tyler [mailto:tammytyler777@gmail.com]

Sent: Monday, November 14, 2022 3:08 PM

To: Planning Shared <planning@fayetteville-ar.gov>

Subject: Rezone on Vanderventer

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,

We own the house at 1641 N Vanderventer Ave. I am very concerned for the rezoning of 1657 N Vanderventer. The traffic worries me because of my 2 young grandchildren living here. The street is not very wide. Children would never be able to ride bikes or play out in front of their house with all of the additional cars.

Thanks,
Tammy Tyler

ORDINANCE NO. _____

AN ORDINANCE TO REZONE THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 22-045 LOCATED WEST OF NORTH BOX AVENUE IN WARD 3 FOR APPROXIMATELY 1.81 ACRES FROM RSF-4, RESIDENTIAL SINGLE-FAMILY, 4 UNITS PER ACRE TO RI-12, RESIDENTIAL INTERMEDIATE, 12 UNITS PER ACRE

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, 4 Units Per Acre to RI-12, Residential Intermediate, 12 Units Per Acre.

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

2022-1077

Legistar File ID

12/6/2022

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

Jonathan Curth

11/18/2022

DEVELOPMENT REVIEW (630)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

RZN-2022-0045: Rezoning (WEST OF N. BOX AVE/BOX, 372): Submitted by WATKINS, BOYER, GRAY, AND CURRY for property located WEST OF N. BOX AVE in WARD 3. The property is zoned RSF-4, RESIDENTIAL SINGLE-FAMILY, 4 UNITS PER ACRE and contains approximately 1.81 acres. The request is to rezone the property to RI-12, RESIDENTIAL INTERMEDIATE, TWELVE UNITS PER ACRE.

Budget Impact:

Account Number		Fund	
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 DECEMBER 6, 2022

TO: Mayor; Fayetteville City Council

THRU: Susan Norton, Chief of Staff
Jonathan Curth, Development Services Director
Jessie Masters Development Review Manager

FROM: Ryan Umberger, Senior Planner

DATE: November 18, 2022

SUBJECT: **RZN-2022-0045: Rezoning (WEST OF N. BOX AVE/BOX, 372):** Submitted by WATKINS, BOYER, GRAY, AND CURRY for property located WEST OF N. BOX AVE in WARD 3. The property is zoned RSF-4, RESIDENTIAL SINGLE-FAMILY, 4 UNITS PER ACRE and contains approximately 1.81 acres. The request is to rezone the property to RI-12, RESIDENTIAL INTERMEDIATE, TWELVE UNITS PER ACRE.

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 properties are located in east Fayetteville, roughly 500 feet north of the intersection of N. Box Avenue and E. Mission Boulevard. The site is composed of portions of three lots on the west side of N. Box Avenue totaling approximately 1.81 acres. The site is currently developed with two single-family dwellings. The properties slope down to the west away from N. Box Avenue on its west at a roughly 12% grade. Just off-site to the west at the bottom of the slope lies the Flynn Creek. Small portions of its associated floodplain can be found along the west boundary.

Request: The request is to rezone the properties from RSF-4, Residential Single-Family, 4 Units per Acre to RI-12, Residential Intermediate, 12 Units per Acre.

Public Comment: Prior to the November 14th Planning Commission meeting but after publication of the staff report, staff received inquiries and public comment in opposition to the request. Issues involved higher vehicle volumes, traffic challenges resulting from large trucks and student pick-up on N. Box Avenue, lack of secondary street access, and the existing character of the neighborhood. Several members of the public spoke during the Planning Commission meeting as well. Neighbors identified issues with the inadequacy of the existing street infrastructure, dangerous traffic conditions near the intersections of N. Box Avenue and N. Crossover Road with E. Mission Boulevard, negative impacts to the environment, and school overcrowding.

Land Use Compatibility: Staff finds the request to be compatible with the surrounding mix of uses. Staff finds the permitted increase in density is incremental and justified given the property's proximity to businesses, schools, and other non-residential services. The site is also near two prominent thoroughfares with service levels that will not noticeably be impacted by additional density. In terms of access, though, N. Box Avenue is a dead-end street. There are no opportunities for cross-connectivity through adjacent developments due to the presence of the Flynn Creek to the west and north, and public schools to the east. Rezoning to RI-12 expands the variety of housing types, ranging from single- up to four-family dwellings by-right. Cluster housing developments are also permitted by-right in RI-12 zoning where they are a conditional use in RSF-4. Staff also finds that the bulk and area regulations are suitable and not out of context with the surrounding properties. Single family developments are permitted the smallest lot size with 50-foot minimum widths and 5,000 square foot minimum areas. Two-family dwellings have the same minimum lot width but require an additional 2,260 square feet in area, and three-family dwellings and above require 90-foot lot widths and 10,890 square foot lots. Structures are limited to three stories in RI-12 zoning, equal to what is allowed in its current district.

Land Use Plan Analysis: Staff finds the proposal to be consistent with the goals in City Plan 2040 and the future land use designation for this location. Rezoning from RSF-4 to RI-12 serves to contribute towards City Plan 2040 goals #1 – Appropriate Infill and 6 – Create Opportunities for Attainable Housing. The site scores moderately on the Infill Scoring Matrix. The proposed rezoning would locate additional residential density on a property with close access to basic development needs such as water and sewer. The property is also proximate to groceries and two paved trails. RI-12 aligns with Goal #4 in that it is situated between near prominent non-residential services including the public schools to the east and the Kantz Center and Crossroads Village shopping centers to the west and south, respectively. The proposed zoning district also allows a range of single- to four-family dwellings which may provide opportunities for affordable options beyond what a strictly single-family development would allow. The Future Land Use Map designates the site as a City Neighborhood Area on the west along N. Box Avenue and a Natural area towards the western boundary of the site. The request aligns with the City Neighborhood Area. The small portion of the site that falls within the floodplain and associated Natural Area are extremely limited and mostly encumbered by a 10 foot-wide water/sewer easement which would inhibit that area from being developed anyway.

CITY PLAN 2040 INFILL MATRIX: City Plan 2040's Infill Matrix indicates 5-7 attributes for this site that may contribute to appropriate infill. The following elements of the matrix contribute to the score:

- Adequate Fire Response (Station #5, 2979 N. Crossover Road)
- Near Sewer Main (8" sewer main, W. side of the site)
- Near Water Main (2.25" water main, N. Box Avenue)
- Near Grocery Store (Harps, 1780 N. Crossover Road)
- Near Public School (McNair Middle School, Vandergriff Elementary School)
- Near Paved Trail (Mission and Crossover side path trails)
- Appropriate Future Land Use (City Neighborhood Area)

DISCUSSION:

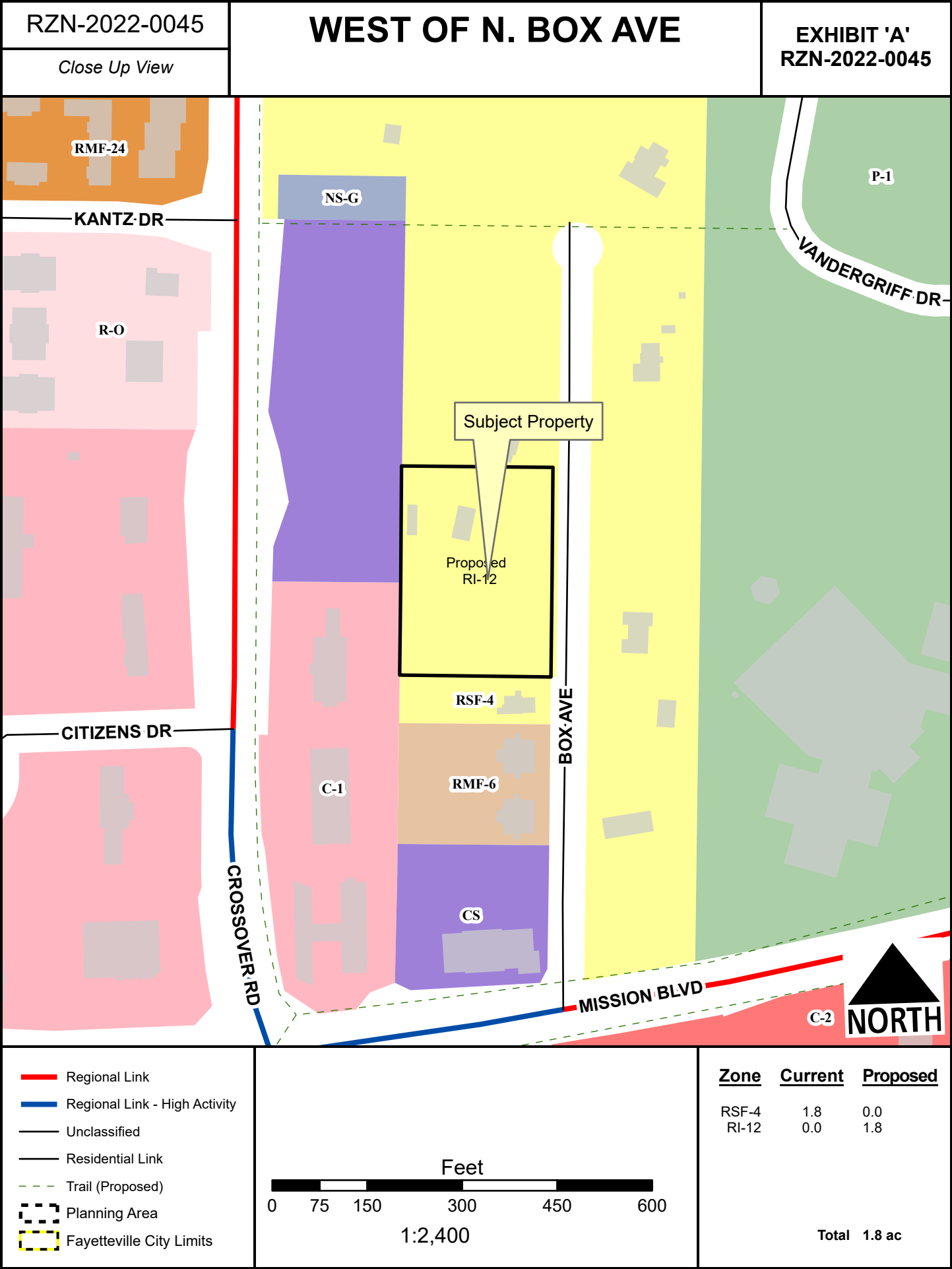
At the November 14, 2022, Planning Commission meeting, a vote of 5-2-0 forwarded the request to City Council with a recommendation of approval. Commissioner Brink made the motion and Commissioner Johnson seconded. Commissioner Garlock was opposed, and suggested rezoning was inappropriate due to traffic conditions and the proximity to the floodplain. Commissioner Madden echoed concerns with the lack of connectivity and less oversight of conditional uses. Commissioner Winston was initially uneasy about a blanket rezoning without further information on the development proposal but ultimately found in favor based on clarification offered by the applicant and dimensional constraints of the site. Commissioner Brink was favorable to the request due to the proximity of services, schools, and sidewalk infrastructure extending to the site. Commissioner Sparkman spoke to her appreciation of the context provided by the neighbors but supported the request finding it to be a marginal increase in density and appropriate given the non-residential uses in the vicinity. Several members of the public spoke during the Planning Commission meeting. Their comments are summarized in the Public Comment section of the report above.

BUDGET/STAFF IMPACT:

N/A

Attachments:

- Exhibit A
- Exhibit B
- Planning Commission Staff Report





**Bates &
Associates, Inc.**

Civil Engineering & Surveying

7230 S. Pleasant Ridge Dr / Fayetteville, AR 72704
PH: 479-442-9350 / www.batesnwa.com

**EXHIBIT 'B'
RZN-2022-0045**

October 17, 2022

RE: Legal description of Lot 2, 3 and the south 30' of Lot 4, Braden Addition to Fayetteville for a proposed rezoning from RSF-4 to RI-12.

LEGAL DESCRIPTION OF AREA TO BE REZONED TO RSF-8:

ALL OF LOTS 2 AND 3, AND THE SOUTH 30' OF LOT 4 OF BRADEN ADDITION TO THE CITY OF FAYETTEVILLE, ARKANSAS, AS PER THE RECORDED PLAT THEREOF FILED IN BOOK 4 AT PAGE 243 AND BOOK 532 AT PAGE 500 OF THE RECORDS OF THE CIRCUIT CLERK AND EX-OFFICIO RECORDER OF WASHINGTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT AN EXISTING REBAR MARKING THE SOUTHWEST CORNER OF SAID LOT 2 AND RUNNING THENCE N02°32'09"E 330.08', THENCE S87°31'08"E 239.16', THENCE S02°31'54"W 330.12', THENCE N87°30'27"W 239.18' TO THE POINT OF BEGINNING, CONTAINING 1.81 ACRES, MORE OR LESS. SUBJECT TO THAT PORTION IN NORTH BOX AVENUE MASTER STREET PLAN RIGHT-OF-WAY ON THE EAST SIDE OF HEREIN DESCRIBED TRACT AND ALSO SUBJECT TO ALL OTHER EASEMENTS AND RIGHTS-OF-WAY OF RECORD.



TO: Fayetteville Planning Commission

THRU: Jessie Masters, Development Review Manager

FROM: Ryan Umberger, Senior Planner

MEETING DATE: November 14, 2022 (Updated with Planning Commission Results)

SUBJECT: **RZN-2022-0045: Rezoning (WEST OF N. BOX AVE/BOX, 372):**
Submitted by WATKINS, BOYER, GRAY, AND CURRY for property located at WEST OF N. BOX AVE. The property is zoned RSF-4, RESIDENTIAL SINGLE-FAMILY, 4 UNITS PER ACRE and contains approximately 1.81 acres. The request is to rezone the property to RI-12, RESIDENTIAL INTERMEDIATE, TWELVE UNITS PER ACRE.

RECOMMENDATION:

Staff recommends forwarding **RZN-2022-0045** to City Council with a recommendation of approval.

RECOMMENDED MOTION:

"I move to forward **RZN-2022-0045** to City Council with a recommendation of approval."

BACKGROUND:

The subject property is located in east Fayetteville, roughly 500 feet north of the intersection of N. Box Avenue and E. Mission Boulevard. The site is composed of portions of three lots on the west side of N. Box Avenue totaling approximately 1.81 acres. The site is currently developed with two single-family dwellings. The properties slope down to the west away from N. Box Avenue on its west at a roughly 12% grade. Just off-site to the west at the bottom of the slope lies the Flynn Creek. Small portions of its associated floodplain can be found along the west boundary. 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	RSF-4, Residential Single-Family, 4 Units per Acre
East	Single-Family Residential/Undeveloped	RSF-4, Residential Single-Family, 4 Units per Acre
West	Commercial/Undeveloped	C-1, Neighborhood Commercial; CS, Community Services

Request: The request is to rezone the property from RSF-4, Residential Single-Family, 4 Units per Acre to RI-12, Residential Intermediate, 12 Units per Acre.

Public Comment: Staff has not received any public comment on this item.

INFRASTRUCTURE AND ENVIRONMENTAL REVIEW

- Streets:** The subject area has frontage along N. Box Avenue. N. Box 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 development proposal.
- Water:** Public water is available to the subject area. An existing 2.25-inch water main is present on the east side of N. Box Avenue.
- Sewer:** Sanitary Sewer is available to the subject area. An existing 8-inch sanitary sewer main is present on the west side of the site.
- Fire:** Station 5, located at 2979 N. Crossover Road protects this site. The property is located approximately one mile 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 the Hillside-Hilltop Overlay District. A portion of the subject area lies within a FEMA floodplain, has hydric soils, and a protected stream is present in the area.

The portion of the subject area within the FEMA floodplain will necessitate a floodplain development review at the time of permit or plan submittal. This will restrict the type of development and impact allowed 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. Floodplain is present through a slim depression that roughly follows the unnamed tributary of the Farmington Branch near the west property line.

Hydric soils are also present on the subject property. They are 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 is 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. Hydric soils are present throughout the entirety of the subject property.

A protected stream is present in the subject area. Streamside Protection Zones generally consist 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, the protected area will be 50 feet wide as measured from the top of bank but, depending on the shape and extent 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. The streamside protection area is present on the west side of the subject property. Any additional improvements or requirements for drainage will be determined at time of development.

Tree Preservation:

The proposed zoning district of RI-12, Residential Intermediate, 12 Units per Acre requires **20% minimum canopy preservation**. The current zoning district of RSF-4, Residential Single-Family, 4 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 a **City Neighborhood** and **Natural Area**.

City Neighborhood Areas are more densely developed than residential neighborhood areas and provide a varying mix of nonresidential and residential uses. This designation supports the widest spectrum of uses and encourages density in all housing types, from single family to multi-family. City Neighborhood Areas encourage complete, compact and connected neighborhoods and non-residential uses are intended to serve the residents of Fayetteville, rather than a regional population. While they encourage dense development patterns, they do recognize existing conventional strip commercial developments and their potential for future redevelopment in a more efficient urban layout.

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 5-7 for this site, with a weighted score of 8 at the highest. The following elements of the matrix contribute to the score:

- Adequate Fire Response (Station #5, 2979 N. Crossover Road)
- Near Sewer Main (8" sewer main, W. side of the site)
- Near Water Main (2.25" water main, N. Box Avenue)
- Near Grocery Store (Harps, 1780 N. Crossover Road)

- Near Public School (McNair Middle School, Vandergriff Elementary School)
- Near Paved Trail (Mission and Crossover side path trails)
- Appropriate Future Land Use (City Neighborhood Area)

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 mix of uses. Staff finds the permitted increase in density is incremental and justified given the property's proximity to businesses, schools, and other non-residential services. The site is also near two prominent thoroughfares with services levels that will not noticeably be impacted by additional density. In terms of access, though, N. Box Avenue is a dead-end street. There are no opportunities for cross-connectivity through adjacent developments due to the presence of the Flynn Creek to the west and north, and public schools to the east. Rezoning to RI-12 expands the variety of housing types, ranging from single- up to four-family dwellings by-right. Cluster housing developments are also permitted by-right in RI-12 zoning where they are a conditional use in RSF-4. Staff also finds that the bulk and area regulations are suitable and not out of context with the surrounding properties. Single family developments are permitted the smallest lot size with 50-foot minimum widths and 5,000 square foot minimum areas. Two-family dwellings have the same minimum lot width but require an additional 2,260 square feet in area, and three-family dwellings and above require 90-foot lot widths and 10,890 square foot lots. Structures are limited to three stories in RI-12 zoning, equal to what is allowed in its current district.

Land Use Plan Analysis: Staff finds the proposal to be consistent with the goals in City Plan 2040 and the future land use designation for this location. Rezoning from RSF-4 to RI-12 serves to contribute towards City Plan 2040 goals #1 – Appropriate Infill and 6 – Create Opportunities for Attainable Housing. The site scores moderately on the Infill Scoring Matrix. The proposed rezoning would locate additional residential density on a property with close access to basic development needs such as water and sewer. The property is also proximate to groceries and two paved trails. RI-12 aligns with Goal #4 in that it is situated between near prominent non-residential services including the public schools to the east and the Kantz Center and Crossroads Village shopping centers to the west and south, respectively. The proposed zoning district also allows a range of single- to four-family dwellings which may provide opportunities for affordable options beyond what a strictly single-family development would allow. The Future Land Use Map designates the site as a City Neighborhood Area on the west along N. Box Avenue and a Natural area towards the western boundary of the site. The request aligns with the City Neighborhood Area. The small portion of the site that falls within the floodplain and associated Natural Area are extremely limited and mostly encumbered by a 10 foot-wide water/sewer easement which would inhibit that area from being developed anyway.

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: Staff believes that there is sufficient justification for rezoning the property to RI-12; including diversifying the mix of residential uses, allowing varied lot sizes, and bringing incremental density to the site while aligning with the future land use map.

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: Rezoning the property to RI-12 has an associated potential to increase traffic at this location above the potential of the current zoning district, though the impact is not expected to be detrimental to danger and congestion. Staff finds the incremental nature of the request will limit the amount of additional traffic to a level that is safe and appropriate for a property that will likely have a single access point through N. Box Avenue onto E. Mission Boulevard. Thirteen non-injury vehicle accidents have been reported from 2017 to 2021 near the intersection.

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 RI-12 would increase the load on public services above the potential of the current zoning district, but the impact is not expected to be significant.

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-2022-0045.

PLANNING COMMISSION ACTION: Required YES

Date: November 14, 2022 ☐ Tabled ☒ Forwarded ☐ Denied

Motion: Brink

Second: Sparkman

Recommending approval.

Vote: 7-0-0

BUDGET/STAFF IMPACT:

None

Attachments:

- Unified Development Code:
 - §161.07 District RSF-4, Residential Single-Family - Four (4) Units Per Acre
 - §161.11 District RI-12, Residential Intermediate – 12 Units per Acre
- Applicant Request Letter
- One Mile Map
- Close-up Map
- Current Land Use Map
- Future Land Use Map
- Public Comment Received After PC Report Publication

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)

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."

161.11 District RI-12, Residential Intermediate, Twelve (12) Units Per Acre

(A) *Purpose.* The RI-12 Residential District is designed to permit and encourage the development of detached and attached dwellings in suitable environments, to provide a development potential between low density and medium density with less impact than medium density development, to encourage the development of areas with existing public facilities and to encourage the development of a greater variety of housing values.

(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 36	Wireless communications facilities

(C) *Density.*

Units per acre	12
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(D) *Bulk and Area Regulations.*

	Single-family	Two (2) family	Three (3) family
Lot width minimum	50 feet	50 feet	90 feet
Lot area minimum	5,000 square feet	7,260 square feet	10,890 square feet.

(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*
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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 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(IIA); Ord. No. 3128, 10-1-85; Code 1991, §160.032; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4178, 8-31-99; Ord. No. 5028, 6-19-07; 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. 5592, 06-18-13; 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, §§4, 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)

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**WATKINS, BOYER,
GRAY & CURRY, PLLC**

ATTORNEYS AT LAW

WILLIAM P. WATKINS, III, P.A.
RONALD L. BOYER (OF COUNSEL)
JENNIFER E. GRAY, P.A.*
ANDREW T. CURRY, P.A.
WILLIAM A. KELLSTROM
* ALSO LICENSED IN MISSOURI

WRITER'S DIRECT E-MAIL
wkellstrom@watkinslawoffice.com

DELYNN HALE, SECRETARY
AMY BENSON, PARALEGAL
WHITNEY DUCKER, OFFICE MANAGER

September 12, 2022

City of Fayetteville
Planning Department
125 W. Mountain Street
Fayetteville, AR 72701

RE: Rezoning Parcel Nos. 785-02997-000 & 765-02998-000 from RSF-4—Residential Single Family-Four (4) Units Per Acre to RI-12—Residential Intermediate, Twelve (12) Units Per Acre

Dear Planning Staff:

My name is Will Kellstrom and I represent the applicant, Terry Box, Trustee of the John E. And Ruth m. Box Family Trust u/t/d June 1, 1987 ("Applicant"), with respect to this rezoning request. The applicant is requesting that the property, Parcel Nos. 785-02997-000 & 765-02998-000 (hereinafter "the Property"), be rezoned from RSF-4—Residential Single Family-Four (4) Units Per Acre to RI-12--Residential Intermediate-Twelve (12) Units Per Acre.

The proposed rezoning will not unreasonably adversely conflict or affect the surrounding land uses. Currently, the property is bordered by CS, Community Services to the West, and RSF-4 to the North, South and East. CS is a mixed use zoning which allows for commercial and residential uses, and RSF-4 is a solely residential zoning. Granted that RI-12 is a solely residential zoning, it would not conflict with the remainder of the residential uses along Box Avenue. Moreover, there is precedent for increased density on Box Ave., as there are four lots zoned RSF-6 and one larger lot zoned CS just to the South of the Property.

More importantly, however, the Property lies in close proximity to McNair Middle School, the major arterial intersection of E. Mission Boulevard/AR Hwy 45 and N. Crossover Road/AR Hwy 265, which are major arterials both in Fayetteville and regionally. In addition, the Property is in close proximity to large commercial centers on the Southwest, Northwest, and Southeast, as well as some commercial uses on the Northwest corner of said intersection. In other words, the Property is close to a school and a major intersection, and is

Box Rezone
Page 2

within walking distance of a plethora of commercial uses, including grocery, restaurants and services. For those reasons, the Property is ripe for an increase in density.

Thank you for considering this request for rezoning. If you have any questions, please contact me at 479-636-2168 or at wkellstrom@watkinslawoffice.com.

Sincerely,

WATKINS, BOYER,
GRAY & CURRY, PLLC

/s/ Will A. Kellstrom

Will A. Kellstrom

WK:
pc:



**Bates &
Associates, Inc.**

Civil Engineering & Surveying

7230 S. Pleasant Ridge Dr / Fayetteville, AR 72704
PH: 479-442-9350 / www.batesnwa.com

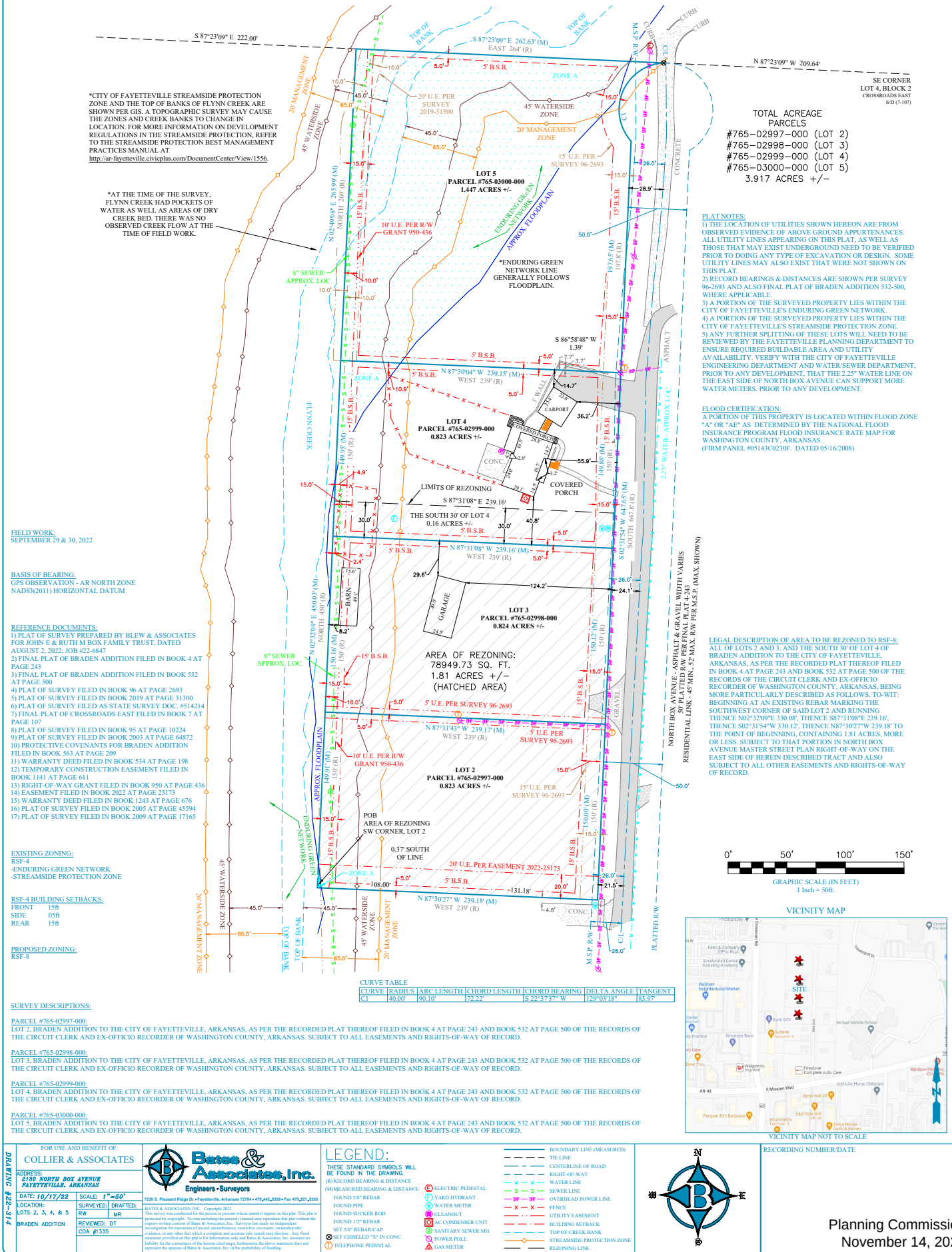
October 17, 2022

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REZONING EXHIBIT



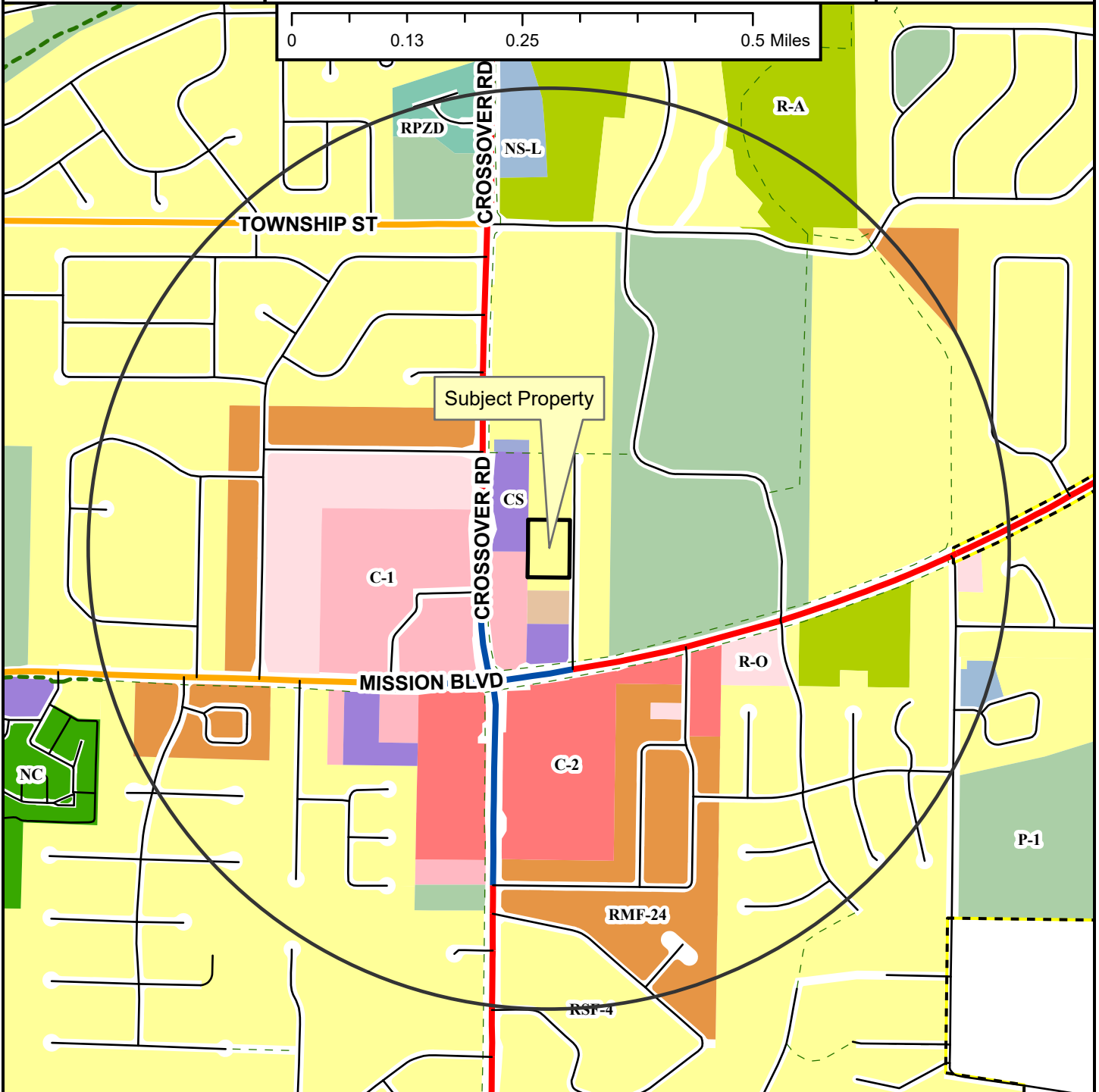
RZN-2022-0045

One Mile View

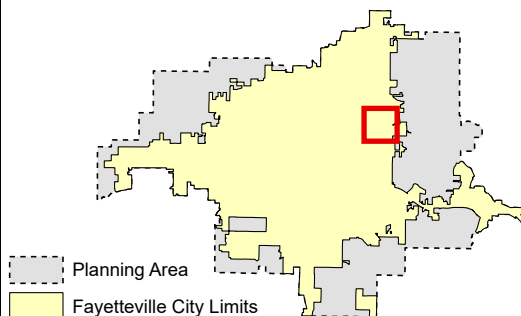
WEST OF N. BOX AVE



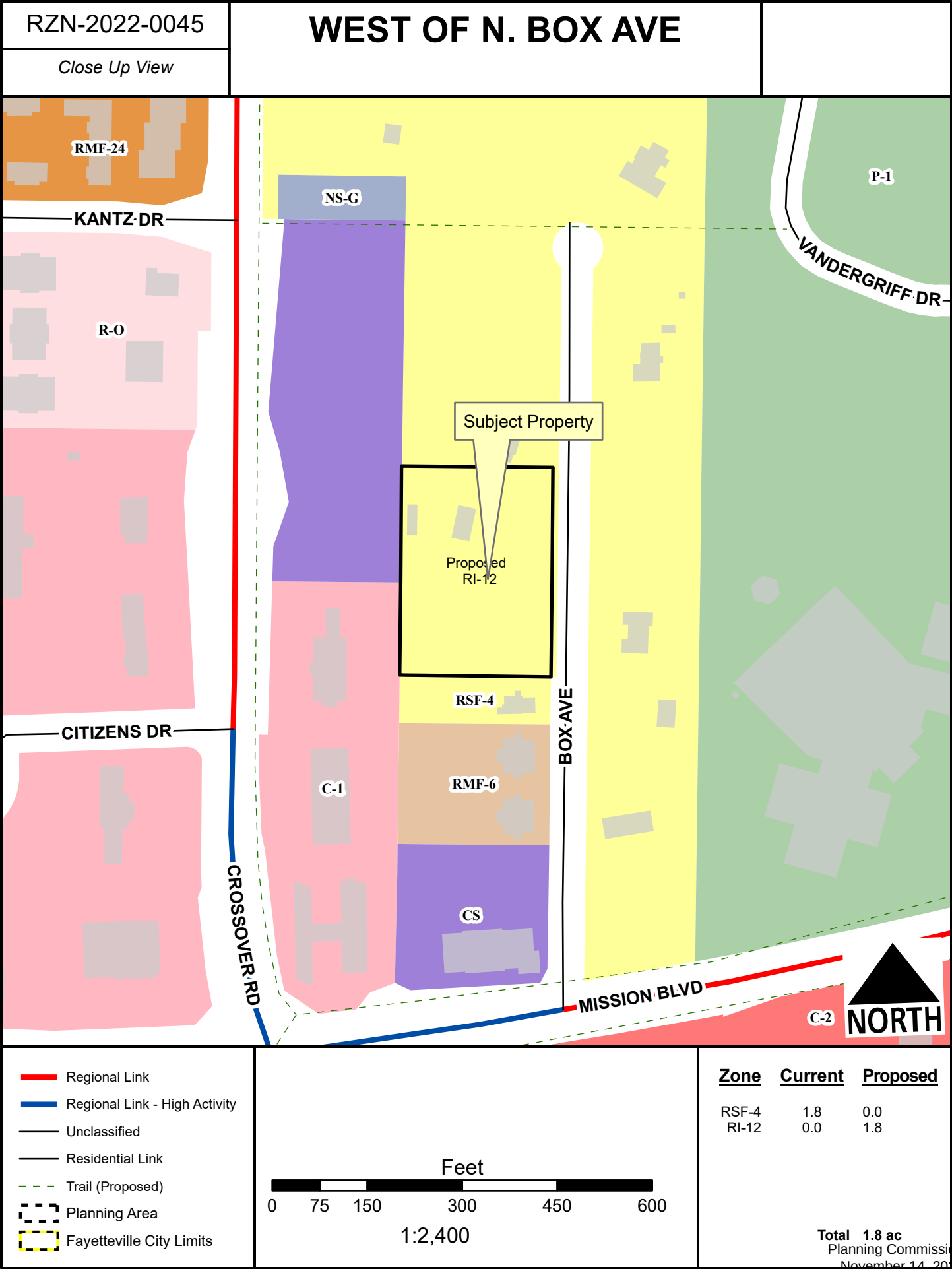
0 0.13 0.25 0.5 Miles



- Regional Link
- Neighborhood Link
- Regional Link - High Activity
- Unclassified
- Residential Link
- Shared-Use Paved Trail
- Trail (Proposed)
- Fayetteville City Limits
- Planning Area



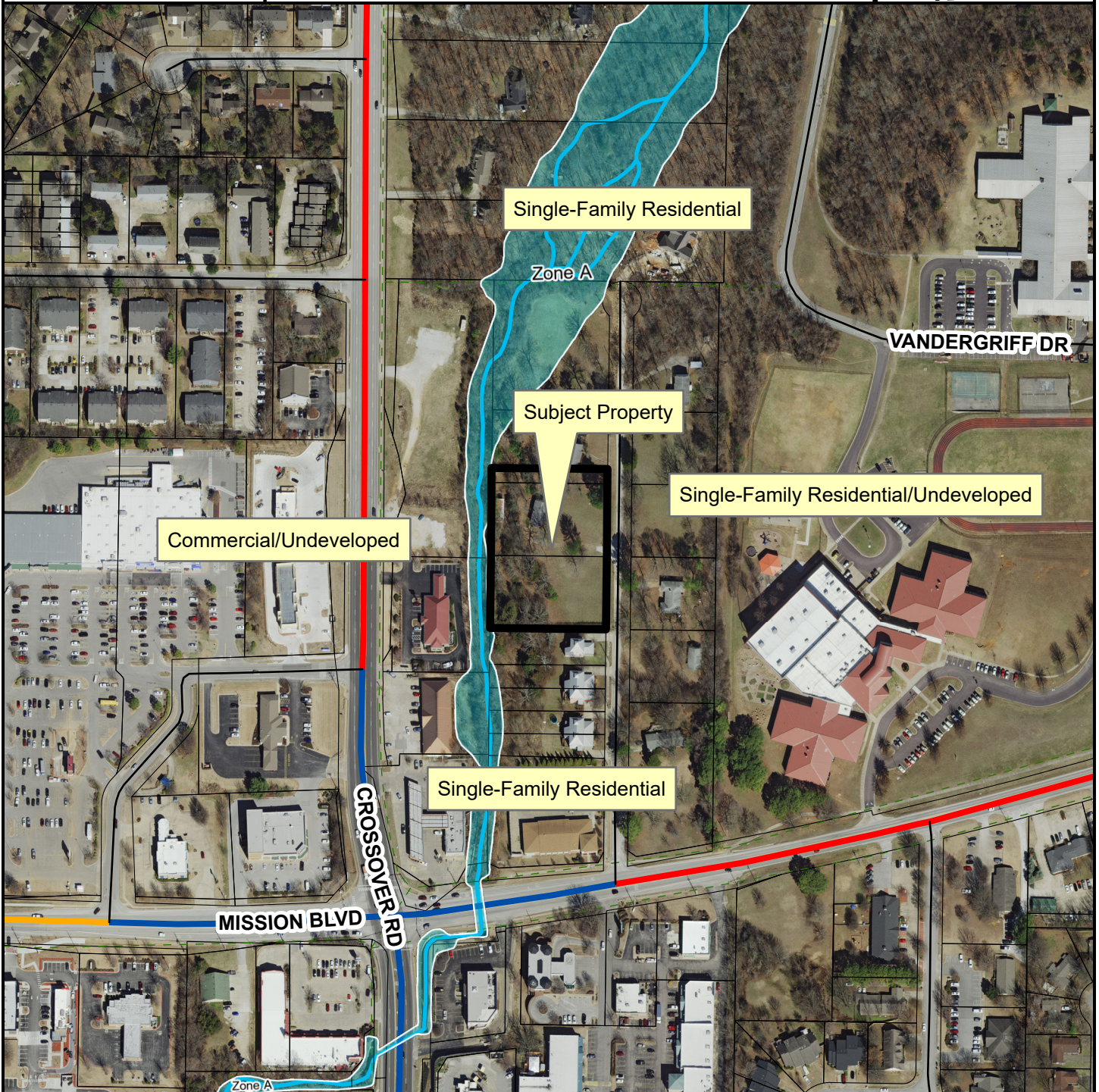
- Zoning**
- RESIDENTIAL SINGLE-FAMILY**
 - NS-G
 - RH-U
 - RH-12
 - NS-L
 - Residential-Agricultural
 - RSF-5
 - RSF-1
 - RSF-2
 - RSF-4
 - RSF-7
 - RSF-8
 - RSF-18
 - RESIDENTIAL MULTI-FAMILY**
 - RMF-6
 - RMF-12
 - RMF-13
 - RMF-24
 - RMF-40
 - INDUSTRIAL**
 - I-1 Heavy Commercial and Light Industrial
 - I-2 General Industrial
- EXTRACTION**
- 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-2022-0045

Current Land Use

WEST OF N. BOX AVE

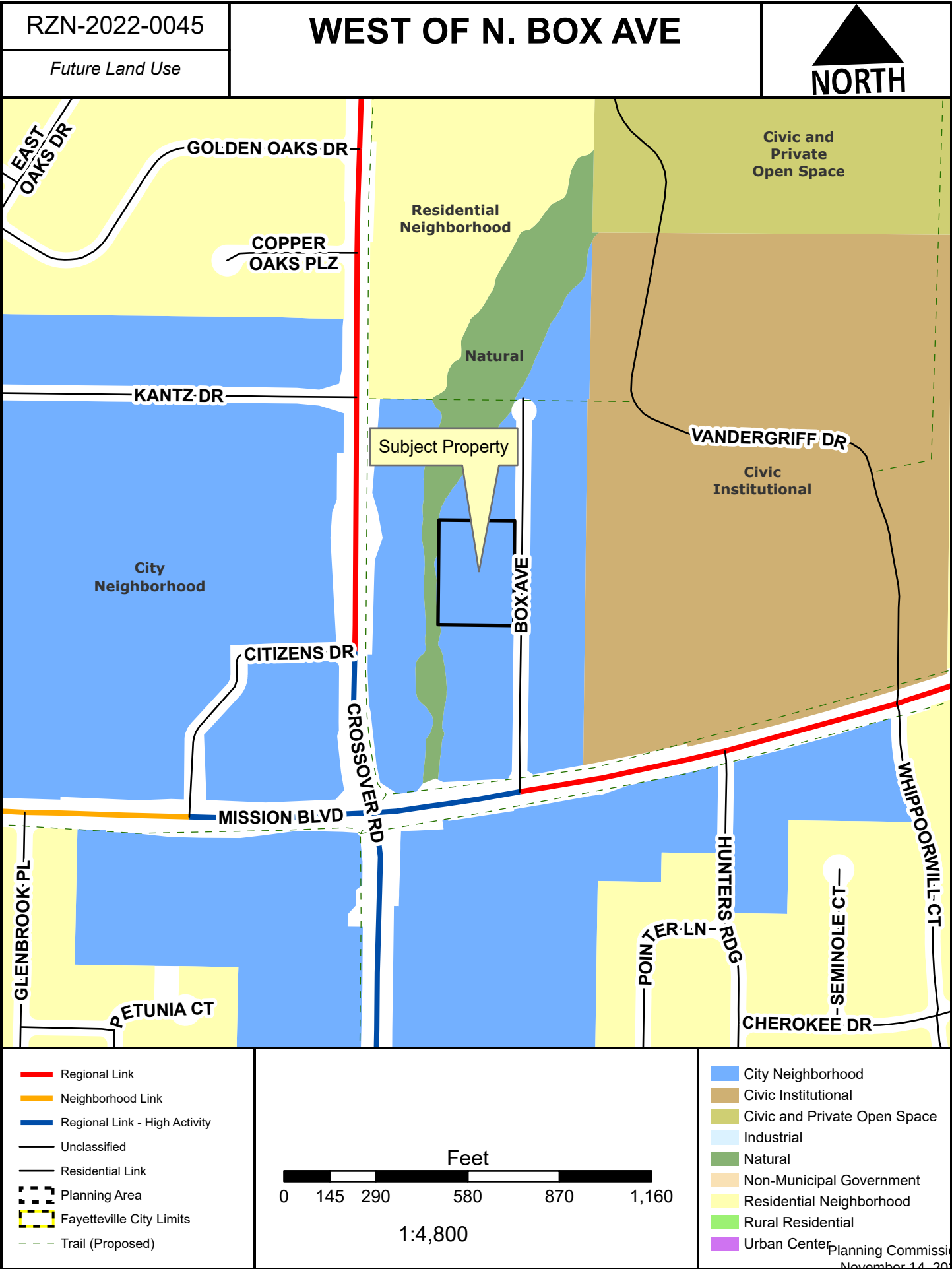


- Regional Link
- Neighborhood Link
- Regional Link - High Activity
- Unclassified
- Residential Link
- Trail (Proposed)
- Planning Area
- Fayetteville City Limits



FEMA Flood Hazard Data

- 100-Year Floodplain
- Floodway



Umberger, Ryan

From: Rusty Coon <rustycoon33@gmail.com>
Sent: Friday, November 11, 2022 3:40 PM
To: Umberger, Ryan
Subject: N Box Ave rezoning

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.

Hello Mr. Umberger,

I represent the majority of residents of N Box Ave and wanted to relay some information to you from our group as a knowledgeable body concerning our street. First of all, we welcome the opportunity to have some new neighbors on our street! However, we would be remiss if we did not relay some concerns in rezoning the lots in question from Rsf-4 to Ri-12. Please find below a summary of the major concerns we have.

1. Developer rights with rezoning concern
 1. Developer has stated in writing to us that they intend to create “upscale” single family type compact housing.
 2. This would appear to fit within the “style” and “tone” of the neighborhood.
 3. However, we understand fully that a rezoning does not preclude the developer from maximizing the development by including “4-plex” style housing or the re-selling of the re-zoned property to someone who would maximize the zoning and not be in keeping with the neighborhood type.
2. Future neighborhood development.
 1. There are currently at least 4 more lots along the street that could be developed into higher density housing.
3. A unique traffic concern for Crossover intersection. Link to photos/videos: <https://share.icloud.com/photos/065WS8CmD72Y79bqCCey2mIwQ>
 1. Ri-12 would allow up to 21.6 (21) dwellings on the 1.8 acres proposed.
 2. RI-12 could put 42 more vehicles on our street in addition to the 20 we have now. (If calculated at an average 2 cars/household)
 3. In addition to current residential traffic the street is used by Firestone customer’s ingress/egress and test drives.

4. Semi truck daily deliveries at Firestone.
5. Street is currently used by parents for school drop off/ pickup.
6. N Box ave does not have a full cul-de-sac and visitors already have trouble with this.
7. No good option exists to make N Box a through street because it would further negatively impact the Crossover intersection as well as Vandergriff school drop off traffic.
8. N Box Ave is mostly a one-lane street with no curb, and in the event of being zoned Ri-12 it would seem critical that the developer upgrade Box Ave from end to end with curb and gutter, sidewalk, speed restrictors, and full cul-de-sac.
 1. A cul-de-sac would be difficult and costly to build due to hillside terrain.
 2. Large trees on steep hillside in close proximity to stream bed providing most of canopy cover would need to be mitigated.
 3. Full widening of street and build of cul-de-sac will negatively impact parking access for existing residences.
9. Hwy 45 would possibly need work to accommodate the increased traffic on Box with state oversight and funding required.

Conclusion:

The majority of residents of N Box Ave are in agreement that higher density housing is necessary for Fayetteville, but that development must proceed smartly and sustainably. The traffic coming in and out of N Box Ave already may be more than the city realizes. Increased traffic at the intersection of N Box Ave and Hwy 45 will negatively impact the Crossover intersection - one of the busiest in the state. The potential for further development of open lots on the N Box Ave opens the door for severe impacts to traffic flow. The residents of N Box Ave carry the qualification of direct, long term observation and use of the street and such we recommend a traffic study be conducted prior to re-zoning to assess the impact of any zoning density higher than Rsf-4.

Thank your time and effort in this matter!

Sincerely,

Rusty Coonfield, Jennifer Akin, Tom Smith, Ken Abney, Kinder Patton, Jim and Lori Salmon, April Medenwald.



Umberger, Ryan

From: Matthew Milliren <mattmilliren@gmail.com>
Sent: Monday, November 14, 2022 1:33 PM
To: Umberger, Ryan
Subject: Re: N. Box Ave. Rezoning (RZN-2022-0045)

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 you, Ryan. I guess at this point it may be useless to contest a rezone request. But I have serious concerns about traffic flow on this dead end street. If this gets approved and a developer presents a plan to put 12-18 units on this 1.8 acres it will cause a traffic headache for the street. We already deal with street parking on a daily basis which effectively makes Box Ave a one way street for a couple hundred yards.

My wife (Ashley) and I own the parcel (ID: 765-02996-000) immediately south of the property in question which is currently RS-4. Currently my mother-in-law is renting the home. RI-12 would bring significantly more cars up and down this street. Would there be any requirement for a secondary road into this property (perhaps from Crossover Road) to help relieve what is sure to be a traffic issue on this street?

I will do my best to attend the meeting via Zoom tonight!

Thanks,

Matt

On Mon, Nov 14, 2022 at 10:16 AM Umberger, Ryan <rumberger@fayetteville-ar.gov> wrote:

Good morning,

Please find a copy of the agenda for tonight's meeting and the staff report for the N. Box Ave. rezoning request attached. Please let me know if you have any questions or concerns about the request and I will be sure to forward any comments to the members of the Planning Commission. You can attend either in person or virtually, via zoom. You can register for online attendance here: https://us06web.zoom.us/webinar/register/WN_ut4sgcejRJJaQPPqc4MDyqw.

Best,

Ryan Umberger, AICP

Senior Planner

City of Fayetteville, Arkansas

rumberger@fayetteville-ar.gov

(479) 575-8327

[Website](#) | [Facebook](#) | [Twitter](#) | [Instagram](#) | [YouTube](#)



BILL OF ASSURANCE FOR THE CITY OF FAYETTEVILLE, ARKANSAS

In order to attempt to obtain approval of a request for a zoning reclassification, the owner, developer, or buyer of this property, William S. Collier and Sarah B. Collier (hereinafter "Petitioner"), hereby voluntarily offers this Bill of Assurance and enters into this binding agreement and contract with the City of Fayetteville, Arkansas.

The Petitioner expressly grants to the City of Fayetteville the right to enforce any and all of the terms of this Bill of Assurance in the Circuit Court of Washington County and agrees that if Petitioner or Petitioner's heirs, assigns, or successors violate any term of this Bill of Assurance, **substantial irreparable damage justifying injunctive relief** has been done to the citizens and City of Fayetteville, Arkansas. The Petitioner acknowledges that the Fayetteville Planning Commission and the Fayetteville City Council will **reasonably rely** upon all of the terms and conditions within this Bill of Assurance in considering whether to approve Petitioner's rezoning request.

Petitioner hereby voluntarily offers assurances that Petitioner and Petitioner's property shall be restricted as follows IF Petitioner's rezoning is approved by the Fayetteville City Council.

1. The use of Petitioner's property shall be limited to the following:

Permitted Uses under Fayetteville Development Code §161.11(B)(1)

2. Other restrictions including number and type of structures upon the property are limited as follows:

Any development on the Property shall be limited to a maximum of 12 units.

3. Specific activities will not be allowed upon petitioner's property include: **N/A**

4. Any other terms or conditions: **N/A**

5. Petitioner specifically agrees that all such restrictions and terms shall **run with the land** and bind all future owners unless and until specifically released by Resolution of the Fayetteville City Council. This Bill of Assurance shall be filed for record in the Washington County Circuit Clerk's Office after Petitioner's rezoning is effective and shall be noted on any Final Plat or Large Scale Development which includes some or all of Petitioner's property.

IN WITNESS WHEREOF and in agreement with all the terms and conditions stated above, I, William S. Collier, as the owner, developer or buyer (Petitioner) voluntarily offer all such assurances and sign my name below.

12-20-23
Date

William S. Collier
Printed Name

2493 N Washington
Address
Fayetteville, AR 72703

[Signature]
Signature

NOTARY OATH

STATE OF ARKANSAS }
COUNTY OF WASHINGTON }

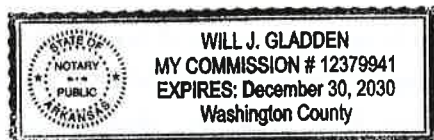
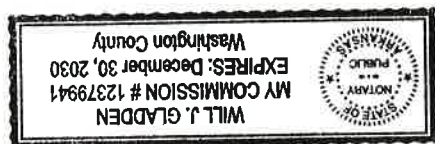
And now on this the 20th day of December, 2022, appeared before me, Will Gladden, a Notary Public, and after being placed upon his/her oath swore or affirmed that he/she agreed with the terms of the above Bill of Assurance and signed his/her name above.

[Signature]

NOTARY PUBLIC

My Commission Expires:

12/30/20



IN WITNESS WHEREOF and in agreement with all the terms and conditions stated above, I, Sarah B. Collier, as the owner, developer or buyer (Petitioner) **voluntarily offer** all such assurances and sign my name below.

12/20/22
Date

Sarah Boyle Collier
Printed Name

2493 N Worthington way
Address
Fayetteville, AR 72703

Sarah Boyle Collier
Signature

NOTARY OATH

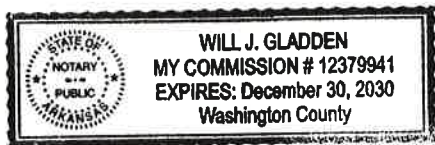
STATE OF ARKANSAS }
COUNTY OF WASHINGTON }

And now on this the 20th day of December, 2022 appeared before me, Will Gladden, a Notary Public, and after being placed upon his/her oath swore or affirmed that he/she agreed with the terms of the above Bill of Assurance and signed his/her name above.

Will Gladden
NOTARY PUBLIC

My Commission Expires:

12/30/20



ORDINANCE NO. _____

AN ORDINANCE TO AMEND §118.01 **APPLICABILITY** AND § 118.02 **ENTRY UPON BUSINESS REGISTRY AND ISSUANCE OF BUSINESS LICENSE** OF THE *FAYETTEVILLE CITY CODE*, AND § 151.01 **DEFINITIONS**, § 159.01 **FEES/SCHEDULE**, AND §163.18 **SHORT-TERM RENTALS** OF THE *UNIFIED DEVELOPMENT CODE*, AND TO ENACT § 164.26 **TYPE 2 SHORT-TERM RENTALS IN NON-RESIDENTIAL AND MIXED USE ZONING DISTRICTS** TO INCREASE FEES FOR CONDITIONAL USE PERMITS AND TYPE 2 SHORT-TERM RENTAL BUSINESS LICENSES, TO AMEND THE REGULATIONS FOR TYPE 2 SHORT TERM RENTALS BASED ON ZONING DISTRICT, AND TO REMOVE OUTDATED AND UNNECESSARY PROVISIONS RELATED TO THE 12 MONTH START-UP PERIOD

WHEREAS, since Ordinance No. 6427 was adopted on April 20, 2021, and as of November 29, 2022, the Development Services Department has issued 360 business licenses for Type 2 short-term rentals and there is currently a citywide cap of 894 business licenses for Type 2 short-term rentals; and

WHEREAS, the City Council Ordinance Review Committee has recommended changes to the City's short-term rental regulations including fee increases to recognize the actual staff time involved in administering these provisions, removing the conditional use permit requirement for Type 2 short-term rentals in non-residential and mixed-use zoning districts, and to incorporate factors to consider for Type 2 short-term rentals located in residential zoning districts.

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 subsection (E) of §118.01 **Applicability** of the *Fayetteville City Code* and enacts a new subsection 118.01(E) as shown in Exhibit A attached hereto.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby enacts subsection (C)(4) of §118.02 **Entry Upon Business Registry and Issuance of Business License** as follows:

“Short Term Rentals. Annual fees to submit the business's first Application for Business Registry and License shall be \$50.00, except that if a business registers electronically it shall receive a \$3.00 credit against its annual fee and only be assessed \$47.00. Applications submitted after the October 31 deadline shall incur a fee of \$58.00 if submitted by November 30; \$61.00 if submitted by December 31, and \$72.00 if submitted thereafter. After an initial registration and receipt of a business license, the next year's renewal shall be \$50.00 if timely paid (\$47.00 if renewed electronically). Otherwise, the late payment fees shall be assessed as above.”

Section 3: That the City Council of the City of Fayetteville, Arkansas hereby amends §151.01 **Definitions** by repealing the last sentence of the definition of “Short-term rental, Type 2”.

Section 4: That the City Council of the City of Fayetteville, Arkansas hereby amends §159.01(B)(5) by changing the fee for Conditional use to \$200.00.

Section 5: That the City Council of the City of Fayetteville, Arkansas hereby repeals §163.18 **Short-Term Rentals** of the *Unified Development Code* and enacts a new § 163.18 **Type 2 Short-Term Rentals in Residential Zoning Districts** as shown in Exhibit B attached hereto.

Section 6: That the City Council of the City of Fayetteville, Arkansas hereby enacts §164.26 **Type 2 Short-Term Rentals in Non-Residential and Mixed Use Zoning Districts** into the *Unified Development Code* as shown in Exhibit C attached hereto and made a part hereof.

AGENDA REQUEST FORM

FOR: Council Meeting of December 20, 2022

FROM: Ordinance Review Committee
Chair Holly Hertzberg

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

AN ORDINANCE TO AMEND §118.01 **APPLICABILITY** AND § 118.02 **ENTRY UPON BUSINESS REGISTRY AND ISSUANCE OF BUSINESS LICENSE** OF THE *FAYETTEVILLE CITY CODE*, AND § 151.01 **DEFINITIONS**, § 159.01 **FEES/SCHEDULE**, AND §163.18 **SHORT-TERM RENTALS** OF THE *UNIFIED DEVELOPMENT CODE*, AND TO ENACT § 164.26 **TYPE 2 SHORT-TERM RENTALS IN NON-RESIDENTIAL AND MIXED USE ZONING DISTRICTS** TO INCREASE FEES FOR CONDITIONAL USE PERMITS AND TYPE 2 SHORT-TERM RENTAL BUSINESS LICENSES, TO AMEND THE REGULATIONS FOR TYPE 2 SHORT TERM RENTALS BASED ON ZONING DISTRICT, AND TO REMOVE OUTDATED AND UNNECESSARY PROVISIONS RELATED TO THE 12 MONTH START-UP PERIOD

APPROVED FOR AGENDA:

Holly Hertzberg
City Council Member
Holly Hertzberg

12/03/2022
Date

Blake Pennington
Asst. City Attorney Blake Pennington
Approved as to form

12/5/2022
Date

ORDINANCE NO. _____

AN ORDINANCE TO AMEND §118.01 **APPLICABILITY** AND § 118.02 **ENTRY UPON BUSINESS REGISTRY AND ISSUANCE OF BUSINESS LICENSE** OF THE *FAYETTEVILLE CITY CODE*, AND § 151.01 **DEFINITIONS**, § 159.01 **FEES/SCHEDULE**, AND §163.18 **SHORT-TERM RENTALS** OF THE *UNIFIED DEVELOPMENT CODE*, AND TO ENACT § 164.26 **TYPE 2 SHORT-TERM RENTALS IN NON-RESIDENTIAL AND MIXED USE ZONING DISTRICTS** TO INCREASE FEES FOR CONDITIONAL USE PERMITS AND TYPE 2 SHORT-TERM RENTAL BUSINESS LICENSES, TO AMEND THE REGULATIONS FOR TYPE 2 SHORT TERM RENTALS BASED ON ZONING DISTRICT, AND TO REMOVE OUTDATED AND UNNECESSARY PROVISIONS RELATED TO THE 12 MONTH START-UP PERIOD

WHEREAS, since Ordinance No. 6427 was adopted on April 20, 2021, and as of November 29, 2022, the Development Services Department has issued 360 business licenses for Type 2 short-term rentals and there is currently a citywide cap of 894 business licenses for Type 2 short-term rentals; and

WHEREAS, the City Council Ordinance Review Committee has recommended changes to the City's short-term rental regulations including fee increases to recognize the actual staff time involved in administering these provisions, removing the conditional use permit requirement for Type 2 short-term rentals in non-residential and mixed-use zoning districts, and to incorporate factors to consider for Type 2 short-term rentals located in residential zoning districts.

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 subsection (E) of §118.01 **Applicability** of the *Fayetteville City Code* and enacts a new subsection 118.01(E) as shown in Exhibit A attached hereto.

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Section 6: That the City Council of the City of Fayetteville, Arkansas hereby enacts §164.26 **Type 2 Short-Term Rentals in Non-Residential and Mixed Use Zoning Districts** into the *Unified Development Code* as shown in Exhibit C attached hereto and made a part hereof.

PASSED and **APPROVED** this 20th day of December, 2022.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
KARA PAXTON, City Clerk/Treasurer

EXHIBIT A

118.01 Applicability

- (E) *Short-Term Rentals.* A residential dwelling unit, portion of a dwelling unit, or bedroom within a residential dwelling unit, leased and/or rented to a guest(s), for a period of less than thirty consecutive (30) days.
- (1) *Short-Term Rental, Type 1.* A short-term rental where the principal use of the property remains as a full-time residence. The occupants or owner rent their primary residence as a short-term rental. A copy of the Homestead Tax Credit or long-term lease agreement for the subject property is required to be classified as a Type 1 rental. The occupant or owner must occupy the residence for nine (9) months of the year. Accessory dwelling units (ADUs) as defined in Unified Development Code Chapter 151 shall be considered a Type 1 short-term rental.
 - (2) *Short-Term Rental, Type 2.* A short-term rental that is not occupied by a permanent resident. The owner lists this property full-time as a short-term rental and has no intention of having permanent residents living in the property. A conditional use permit is required for a Type 2 short-term rental in a residential zoning district prior to the city issuing a business license.
 - (3) *License Required.* No dwelling unit in the city shall be used as a short-term rental unless:
 - (a) The owner of the dwelling unit or operator of the short-term rental possess a valid and current business license for the dwelling unit, and fully complies with all legal requirements and duties imposed herein with respect to each and every short-term rental; and
 - (b) The owner has designated an agent, where said agent fully complies with all legal requirements and duties imposed herein with respect to every short-term rental. The owner may serve as their own agent.
 - (c) The owner of the dwelling unit or operator of the short-term rental provides proof of a valid and current homeowners insurance rider policy which fully covers each unit when operated as short-term rental unit.
 - (4) A separate business license shall be required for each dwelling unit used as a short-term rental.
 - (5) Any change in ownership requires a new or amended business license.
 - (6) If any required contact information changes for the associated business license, the person to whom the license was issued shall immediately notify the Development Services Department in writing.
 - (7) *License Application.* The application for a business license shall include at minimum, the following information from applicants:
 - (a) The property owner's information including legal name, mailing address, immediate contact phone number, and immediate contact E-mail address.
 - (b) Information for the dwelling unit subject to the application, inclusive of the physical street address assigned by the city.
 - (c) The type and total number of dwelling units located on the lot of record containing the dwelling unit subject to the application.
 - (d) If the owner is not their own agent, the owner designated agent's information including legal name, mailing address, immediate contact phone number and immediate contact E-mail address.
 - (e) Documentation of approval of a life safety and egress inspection by the City Building Safety Division for the dwelling unit subject to the application.
 - (f) Proof of application for remittance of hotel, motel and restaurant tax to the City of Fayetteville, and verification that all sales, use, and hotel, motel and restaurant taxes are current.

- (g) Any additional data as deemed necessary or desirable for permit approval by the Development Services Director.
- (8) *License Renewals.* Business licenses for short-term rentals shall be renewed in accordance with Chapter 118 of the Business Regulations (Business Registry and Licenses).
- (9) *Legal Duties of License Holders.* An owner possessing a short-term rental license shall comply at all times with the following requirements:
 - (a) *Occupancy.* Short-term rentals shall be subject to, and may not exceed, the occupancy limits approved with the business license.
 - (b) *Advertisements.* A short-term rental shall not be advertised if it violates occupancy, density, safety, and any of the other provisions of the Fayetteville Code. No short-term rental unit shall be advertised prior to having obtained a business license and the business license number shall be included in the advertisement listing.
 - (c) *Information and Posting.* Business licensees shall provide to guests and post conspicuously in the common area of the short-term rental unit the city phone number to report a safety complaint.
- (10) *Owner or Agent Accessibility.* The property owner shall ensure that they or a designated agent are available at all times during guest occupancy, including nights and weekends, in order to facilitate compliance with this section. For the purposes of these regulations, 'availability' means that the owner or agent is accessible by telephone, and, able to be physically present at the short-term rental within three (3) hours of being contacted.
- (11) *Guest Records.* The owner shall maintain summary guest registration records, which shall contain the actual dates of occupancy, total number of guests per party per stay, and the rate(s) charged, but shall not contain any personally identifiable information about guests. Such records shall be maintained for three (3) years and shall be provided to the City upon request.
- (12) *Health and Safety.* The owner shall ensure that each dwelling unit governed by this section complies with the applicable provisions of the Unified Development Code Chapter 173, Building Regulations.
- (13) *Criminal Activity.* The owner shall timely report any known or reasonably suspected criminal activity by a guest to the Fayetteville Police Department within twelve (12) hours maximum.
- (14) *Taxes and Fees.* Except for those instances in which a hosting platform bears the responsibility for collecting and remitting taxes and fees applicable to short-term rentals, the property owner shall timely remit in full Fayetteville Hotel, Motel and Restaurant tax and other applicable local, state, and federal taxes and city fees owed in connection with any short-term rental. The failure of a hosting platform to collect and remit taxes and fees shall not relieve an owner of the obligation to pay taxes and fees owed pursuant to this section.
- (15) *Authorization to Occupy, Use, and Operate.* Authorization to operate a short-term rental may be granted by the Development Services Director through the issuance of a City of Fayetteville Business Registry and License (Business License).
- (16) *Density For Type 2 Short-Term Rentals.* A city-wide density cap of 2% of all dwelling units in the Fayetteville city limits may be utilized as Type 2 rentals. Total dwelling units are determined from current United States Census Bureau and/or American Community Survey numbers, whichever number is higher. A conditional use permit may not permit:
 - (a) More Type 2 short-term rentals than what is allowed by the city-wide density cap. Type 2 short-term rentals in commercial and mixed-use zoning districts where hotel/motels are permitted by right shall not contribute to the city-wide density cap.
 - (b) More than 10% or a single unit whichever is greater; of total dwelling units as Type 2 rentals within a multi-family dwelling complex.

- (c) Individual 2-, 3- and 4-family buildings that are owned by the same person or entity and are not a part of a multi-family complex shall have no more than one (1) Type 2 short-term rental unit per building complex.
 - (d) Where attached residential units are held separately through condominium association, horizontal property regime, fee simple, or similar ownership structure, no cap shall be applied to buildings with attached residential dwellings. Structures of attached residential dwellings where applicants seek more than 10% of total units for licensing as Type 2 rentals shall be evaluated by the Building Safety Director and/or Fire Marshal for adequate fire protection as defined by the adopted Arkansas Fire Prevention Code. Where inadequate fire protection is identified, improvements may be required prior to issuance of a business license.
- (17) *Suspension and Revocation.* If the Development Services Director has reason to believe that any of the grounds specified in §118.03(A) of the Fayetteville Code exist, or that any rental unit was rented for less than one (1) full night, or to more than one (1) part of guests for the same period of time, or otherwise failed to comply with all terms and conditions of this section, the Development Services Director may suspend or revoke the short-term rental's business license pursuant to the procedures detailed in §118.03 and in §118.04 of the Fayetteville Code.
- (18) Short-term rentals must comply with the Unified Development Code including the regulations contained in §163.18 and § 164.26 and must successfully obtain a business license prior to operation.

EXHIBIT B

163.18 Type 2 Short-Term Rentals in Residential Zoning Districts

- (A) *Residential Zoning Districts.* Type 2 short-term rentals may be permitted as a conditional use in the following residential zoning districts:

- 1) R-A
- 2) RSF-.5
- 3) RSF-1
- 4) RSF-2
- 5) RSF-4
- 6) RSF-7
- 7) RSF-8
- 8) RSF-18
- 9) RI-12
- 10) RI-U
- 11) RMF-6
- 12) RMF-12
- 13) RMF-18
- 14) RMF-24
- 15) RMF-40
- 16) NC

Short term rentals may be permitted by right or by conditional use in planned zoning districts subject to the zoning regulations enacted by the City Council for each district.

Short-term rentals in non-residential zoning districts, mixed use zoning districts, or other zoning districts not listed above are not required to apply for a conditional use permit.

- (B) *Occupancy.* Maximum of two (2) people per bedroom, plus two (2), for the entire unit when operated as a short-term rental.
- (C) *Parking.* Parking is limited to the maximum number of vehicles as allowed by the underlying zoning district for the residential building on the property.
- (D) Special events are not permitted in a short-term rental. Example of special events include, but are not limited to, weddings, receptions, anniversaries, private parties, fundraisers and business seminars.
- (E) Short-term rental units are allowed in any structure established as a permanent residential dwelling including an accessory dwelling unit. No recreational vehicle, trailer, other vehicle or structure not classified as a permanent residential dwelling may be used as a short-term rental.
- (F) *Exceptions.* Exceptions to the short-term rental standards, except proposals that would exceed the city-wide density maximum, may be granted by the Planning Commission as a conditional use permit.
- (G) Short-term rentals must comply with all applicable codes under City Code §118.01 and successfully obtain a business license prior to operation.
- (H) Short-term rentals in residential zoning districts may be subject to denial or additional conditions based upon the Planning Commission's findings on the following factors:
- 1) Adequate parking infrastructure;
 - 2) Adequate adjoining or nearby streets for on-street parking;
 - 3) Frequency or concentration of nearby licensed Type 2 short-term rentals; and
 - 4) Prior zoning or code violations.

EXHIBIT C

164.26 Type 2 Short-Term Rentals in Non-Residential and Mixed Use Zoning Districts

- (A) *Commercial and Mixed Use Zoning Districts.* Type 2 short-term rentals may be permitted in all zoning districts where hotel/motel uses are permitted by right and shall not count towards the Type 2 short-term rental density cap in these districts except in multi-family buildings as specified in Chapter 118 of the Fayetteville City Code. Type 2 short-term rentals in all other non-residential and mixed-use zoning districts may be permitted but shall count towards the Type 2 short-term rental density cap.

Short term rentals may be permitted by right or by conditional use in planned zoning districts subject to the zoning regulations enacted by the City Council for each district.

- (B) *Occupancy.* Maximum of two (2) people per bedroom, plus two (2), for the entire unit when operated as a short-term rental.
- (C) *Parking.* Parking is limited to the maximum number of vehicles as allowed by the underlying zoning district for the residential building on the property.
- (D) Special events are not permitted in a short-term rental. Example of special events include, but are not limited to, weddings, receptions, anniversaries, private parties, fundraisers and business seminars.
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- (G) Short-term rentals must comply with all applicable codes under City Code §118.01 and successfully obtain a business license prior to operation.

RED-LINE VERSIONS

118.01 Applicability

- (E) *Short-Term Rentals.* A residential dwelling unit, portion of a dwelling unit, or bedroom within a residential dwelling unit, leased and/or rented to a guest(s), for a period of less than thirty consecutive (30) days.
- (1) *Short-Term Rental, Type 1.* A short-term rental where the principal use of the property remains as a full-time residence. The occupants or owner rent their primary residence as a short-term rental. A copy of the Homestead Tax Credit or long-term lease agreement for the subject property is required to be classified as a Type 1 rental. The occupant or owner must occupy the residence for nine (9) months of the year. Accessory dwelling units (ADUs) as defined in Unified Development Code Chapter 151 shall be considered a Type 1 short-term rental.
 - (2) *Short-Term Rental, Type 2.* A short-term rental that is not occupied by a permanent resident. The owner lists this property full-time as a short-term rental and has no intention of having permanent residents living in the property. A conditional use permit is required for a Type 2 short-term rental **in a residential zoning district** prior to the city issuing a business license, ~~except as defined in §118.01(E)(4).~~
 - (3) *License Required.* No dwelling unit in the city shall be used as a short-term rental unless:
 - (a) The owner of the dwelling unit or operator of the short-term rental possess a valid and current business license for the dwelling unit, and fully complies with all legal requirements and duties imposed herein with respect to each and every short-term rental; and
 - (b) The owner has designated an agent, where said agent fully complies with all legal requirements and duties imposed herein with respect to every short-term rental. The owner may serve as their own agent.
 - (c) The owner of the dwelling unit or operator of the short-term rental provides proof of a valid and current homeowners insurance rider policy which fully covers each unit when operated as short-term rental unit.
 - ~~(4) *Twelve (12) Month Start-up Period.* After the enactment of the short-term rental ordinance, short-term rental operators shall have twelve (12) months to submit an application for a business license for the operation of a short-term rental. After the twelve (12) month start-up period, all short-term rental units must have a business license to be considered in compliance.~~
 - ~~(a) *Persons seeking to operate a short-term rental within twelve (12) months of the enactment of this Code section shall be granted a conditional use permit for such short-term rental without having to pay a fee or have a hearing before the Planning Commission. The conditions for such permit shall be full compliance with all terms and requirements of Chapter 118, Business Registry and Licenses, this section, and all other requirements of the Fayetteville Code including timely and full payment of all hotel, motel, and restaurant taxes to the city. Revocation of the business license shall also revoke the conditional use permit granted by this subsection.*~~
 - ~~(b) *Persons seeking to operate a Type 2 short-term rental who have failed to apply for such conditional use permit and business license prior to the end of the twelve (12) month start-up period shall be required to follow normal procedures and apply to the Planning Commission to request a conditional use permit which will be issued or denied pursuant to the Planning Commission's decision pursuant to §163.18(2)(a).*~~
 - ~~(bc) *Type 1 and 2 short-term rentals seeking a business license or permit under the 12-month start-up period which are currently operating in 2-, 3- and 4-unit buildings in which more than one (1) unit is being used as a short-term rental may obtain a business license for all currently operating short-term rentals.*~~

~~(cd)~~ Applications submitted prior to the end of the 12-month start-up period shall expire sixty (60) days after the start-up period has ended if the business license has not been issued by the City by that time.

(54) A separate business license shall be required for each dwelling unit used as a short-term rental.

(65) Any change in ownership requires a new or amended business license.

(76) If any required contact information changes for the associated business license, the person to whom the license was issued shall immediately notify the Development Services Department in writing.

(87) *License Application.* The application for a business license shall include at minimum, the following information from applicants:

- (a) The property owner's information including legal name, mailing address, immediate contact phone number, and immediate contact E-mail address.
- (b) Information for the dwelling unit subject to the application, inclusive of the physical street address assigned by the city.
- (c) The type and total number of dwelling units located on the lot of record containing the dwelling unit subject to the application.
- (d) If the owner is not their own agent, the owner designated agent's information including legal name, mailing address, immediate contact phone number and immediate contact E-mail address.
- (e) Documentation of approval of a life safety and egress inspection by the City Building Safety Division for the dwelling unit subject to the application.
- (f) Proof of application for remittance of hotel, motel and restaurant tax to the City of Fayetteville, and verification that all sales, use, and hotel, motel and restaurant taxes are current.
- (g) Any additional data as deemed necessary or desirable for permit approval by the Development Services Director.

(108) *License Renewals.* Business licenses for short-term rentals shall be renewed in accordance with Chapter 118 of the Business Regulations (Business Registry and Licenses).

(119) *Legal Duties of License Holders.* An owner possessing a short-term rental license shall comply at all times with the following requirements:

- (a) *Occupancy.* Short-term rentals shall be subject to, and may not exceed, the occupancy limits approved with the business license.
- (b) *Advertisements.* A short-term rental shall not be advertised if it violates occupancy, density, safety, and any of the other provisions of the Fayetteville Code. No short-term rental unit shall be advertised prior to having obtained a business license and the business license number shall be included in the advertisement listing.
- (c) *Information and Posting.* Business licensees shall provide to guests and post conspicuously in the common area of the short-term rental unit the city phone number to report a safety complaint.

(1210) *Owner or Agent Accessibility.* The property owner shall ensure that they or a designated agent are available at all times during guest occupancy, including nights and weekends, in order to facilitate compliance with this section. For the purposes of these regulations, 'availability' means that the owner or agent is accessible by telephone, and, able to be physically present at the short-term rental within three (3) hours of being contacted.

(1311) *Guest Records.* The owner shall maintain summary guest registration records, which shall contain the actual dates of occupancy, total number of guests per party per stay, and the rate(s) charged, but

shall not contain any personally identifiable information about guests. Such records shall be maintained for three (3) years and shall be provided to the City upon request.

- (1412) *Health and Safety.* The owner shall ensure that each dwelling unit governed by this section complies with the applicable provisions of the Unified Development Code Chapter 173, Building Regulations.
- (1513) *Criminal Activity.* The owner shall timely report any known or reasonably suspected criminal activity by a guest to the Fayetteville Police Department within twelve (12) hours maximum.
- (1614) *Taxes and Fees.* Except for those instances in which a hosting platform bears the responsibility for collecting and remitting taxes and fees applicable to short-term rentals, the property owner shall timely remit in full Fayetteville Hotel, Motel and Restaurant tax and other applicable local, state, and federal taxes and city fees owed in connection with any short-term rental. The failure of a hosting platform to collect and remit taxes and fees shall not relieve an owner of the obligation to pay taxes and fees owed pursuant to this section.
- (1715) *Authorization to Occupy, Use, and Operate.* Authorization to operate a short-term rental may be granted by the Development Services Director through the issuance of a City of Fayetteville Business Registry and License (Business License).
- (1816) *Density For Type 2 Short-Term Rentals.* A city-wide density cap of 2% of all dwelling units in the Fayetteville city limits may be utilized as Type 2 rentals. Total dwelling units are determined from current United States Census Bureau and/or American Community Survey numbers, whichever number is higher. A conditional use permit may not permit:
- (a) More Type 2 short-term rentals than what is allowed by the city-wide density cap. Type 2 short-term rentals in commercial and mixed-use zoning districts where hotel/motels are permitted by right shall not contribute to the city-wide density cap.
 - (b) More than 10% or a single unit whichever is greater; of total dwelling units as Type 2 rentals within a multi-family dwelling complex.
 - (c) Individual 2-, 3- and 4-family buildings that are owned by the same person or entity and are not a part of a multi-family complex shall have no more than one (1) Type 2 short-term rental unit per building complex.
 - (d) Where attached residential units are held separately through condominium association, horizontal property regime, fee simple, or similar ownership structure, no cap shall be applied to buildings with attached residential dwellings. Structures of attached residential dwellings where applicants seek more than 10% of total units for licensing as Type 2 rentals shall be evaluated by the Building Safety Director and/or Fire Marshal for adequate fire protection as defined by the adopted Arkansas Fire Prevention Code. Where inadequate fire protection is identified, improvements may be required prior to issuance of a business license.
- (1917) *Suspension and Revocation.* If the Development Services Director has reason to believe that any of the grounds specified in §118.03(A) of the Fayetteville Code exist, or that any rental unit was rented for less than one (1) full night, or to more than one (1) part of guests for the same period of time, or otherwise failed to comply with all terms and conditions of this section, the Development Services Director may suspend or revoke the short-term rental's business license pursuant to the procedures detailed in §118.03 and in §118.04 of the Fayetteville Code.
- (2018) Short-term rentals must comply with ~~all applicable codes under the~~ Unified Development Code including the regulations contained in §163.18 and § 164.26 and must successfully obtain a business license prior to operation.

118.02 Entry Upon Business Registry And Issuance Of Business License

(C) Fees.

- (1) *Home Based Business.* A resident conducting a non-traffic generating occupation, profession or business within the resident's dwelling unit who is registering for the first time shall pay an annual fee to submit an Application For Business Registry and License of \$22.00 if submitted by October 31, except if the home based business owner registers electronically, the owner shall receive a \$2.00 credit against the annual fee and pay only \$20.00.

Applications submitted after the October 31 deadline shall incur a fee of \$24.00 if submitted by November 30; \$26.00 if submitted by December 31; and \$30.00 if submitted thereafter. After an initial registration and receipt of a business license, the next year's renewal fee shall be \$15.00 if timely paid. Otherwise, late payment fees shall be as assessed above.

- (2) *All Other (Non-Home Based) Businesses.* Annual fees to submit the business's first Application For Business Registry and License shall be \$35.00 if submitted by October 31, except that if a business registers electronically it shall receive a \$3.00 credit against its annual fee and only be assessed \$32.00. Applications submitted after the October 31 deadline shall incur a fee of \$38.00 if submitted by November 30; \$41.00 if submitted by December 31, and \$52.00 if submitted thereafter. After an initial registration and receipt of a business license, the next year's renewal shall be \$15.00 if timely paid. Otherwise, the late payment fees shall be assessed as above.

- (3) *Partial Year Registration Fee for New Business.* If a new business or entity registers and applies for a license after March 1, the fee for the business license through November 30 of the same year shall be \$17.00 except that if a business registers electronically it shall receive a \$2.00 credit against its partial year fee and only be assessed \$15.00.

- (4) *Short Term Rentals.* Annual fees to submit the business's first Application for Business Registry and License shall be \$50.00, except that if a business registers electronically it shall receive a \$3.00 credit against its annual fee and only be assessed \$47.00. Applications submitted after the October 31 deadline shall incur a fee of \$58.00 if submitted by November 30; \$61.00 if submitted by December 31, and \$72.00 if submitted thereafter. After an initial registration and receipt of a business license, the next year's renewal shall be \$50.00 if timely paid (\$47.00 if renewed electronically). Otherwise, the late payment fees shall be assessed as above.

151.01 Definitions

Short-term rental, Type 2. A short-term rental that is not occupied by a permanent resident. The owner lists this property full-time as a short-term rental and has no intention of having permanent residents living in the property.

~~A conditional use permit is required for a Type 2 short-term rental prior to the city issuing a business license.~~

159.01 Fees/Schedule

(B) *Fee schedule.*

(5) *Zoning.*

Rezoning	\$325.00
Conditional use	\$100.00 200.00
Manufactured home:	
Initial permit	\$25.00
Renewal	\$12.50
Home occupation:	
Initial permit	\$25.00
Renewal	\$12.50
Planning Commission or Board of Adjustment Variance:	
Before any violation has occurred	\$100.00
After any violation has occurred	\$200.00
Appeal of Zoning and Development Administrator interpretation	\$100.00
Zoning Verification Letter	\$50.00

163.18 Type 2 Short-Term Rentals in Residential Zoning Districts

~~(A) General Standards.~~

- (1A) *Residential Zoning Districts.* Type 2 ~~Short-term rentals may be permitted as a conditional use in all zoning districts where residential uses are allowed by right~~ the following residential zoning districts:

- 1) R-A
- 2) RSF-5
- 3) RSF-1
- 4) RSF-2
- 5) RSF-4
- 6) RSF-7
- 7) RSF-8
- 8) RSF-18
- 9) RI-12
- 10) RI-U
- 11) RMF-6
- 12) RMF-12
- 13) RMF-18
- 14) RMF-24
- 15) RMF-40
- 16) NC

Short term rentals may be permitted by right or by conditional use in planned zoning districts subject to the zoning regulations enacted by the City Council for each district.

Short-term rentals in non-residential zoning districts, mixed use zoning districts, or other zoning districts not listed above are not required to apply for a conditional use permit.

- ~~(2) Commercial and Mixed Use Zoning Districts.~~ ~~Short term rentals may be permitted in all zoning districts where hotel/motel uses are permitted by right and shall not count towards the Type 2 short term rental density cap in these districts except in multi-family buildings as specified in Chapter 118 of the Fayetteville City Code.~~

- (3B) *Occupancy.* Maximum of two (2) people per bedroom, plus two (2), for the entire unit when operated as a short-term rental.

- (4C) *Parking.* Parking is limited to the maximum number of vehicles as allowed by the underlying zoning district for the residential building on the property.

- (5D) *Special events* are not permitted in a short-term rental. Example of special events include, but are not limited to, weddings, receptions, anniversaries, private parties, fundraisers and business seminars.

- (6E) *Short-term rental units* are allowed in any structure established as a permanent residential dwelling including an accessory dwelling unit. No recreational vehicle, trailer, other vehicle or structure not classified as a permanent residential dwelling may be used as a short-term rental.

- ~~(7) Twelve Month Start up Period.~~ ~~After the enactment of the short term rental ordinance, short term rental operators shall have twelve (12) months to submit an application for a business license. After the twelve (12) month start up period, all short term rental units must have a business license to be considered in compliance.~~

- ~~(a) Persons seeking to operate a short term rental within twelve (12) months of the enactment of this Code section shall be granted a conditional use permit for such short term rental without~~

having to pay a fee or have a hearing before the Planning Commission. The conditions for such permit shall be full compliance with all terms and requirements of Chapter 118, Business Registry and Licenses, this section, and all other requirements of the Fayetteville Code including timely and full payment of all hotel, motel, and restaurant taxes to the city. Revocation of the business license shall also revoke the conditional use permit granted by this subsection.

~~(b) Persons seeking to operate a Type 2 Short-term rental who have failed to apply for such conditional use permit and business license prior to the end of the twelve (12) month start-up period shall be required to follow normal procedures and apply to the Planning Commission to request a conditional use permit which will be issued or denied pursuant to the Planning Commission's decision pursuant to §163.18(2)(a).~~

~~(c) Type 1 and 2 short-term rentals seeking a business license or permit under the twelve (12) month start-up period which are currently operating in 2-, 3- and 4-unit buildings in which more than one (1) unit is being used as a short-term rental may obtain a business license for all currently operating short-term rentals.~~

~~(d) Applications submitted prior to the end of the twelve (12) month start-up period shall expire sixty (60) days after the start-up period has ended if the business license has not been issued by the city by that time.~~

(8F) *Exceptions.* Exceptions to the short-term rental standards, except proposals that would exceed the city-wide density maximum, may be granted by the Planning Commission as a conditional use permit.

(9G) Short-term rentals must comply with all applicable codes under City Code §118.01 and successfully obtain a business license prior to operation.

(H) Short-term rentals in residential zoning districts may be subject to denial or additional conditions based upon the Planning Commission's findings on the following factors:

1) Adequate parking infrastructure;

2) Adequate adjoining or nearby streets for on-street parking;

3) Frequency or concentration of nearby licensed Type 2 short-term rentals; and

4) Prior zoning or code violations.

164.26 Type 2 Short-Term Rentals in Non-Residential and Mixed Use Zoning Districts

- (A) *Commercial and Mixed Use Zoning Districts.* Type 2 short-term rentals may be permitted in all zoning districts where hotel/motel uses are permitted by right and shall not count towards the Type 2 short-term rental density cap in these districts except in multi-family buildings as specified in Chapter 118 of the Fayetteville City Code. Type 2 short-term rentals in all other non-residential and mixed-use zoning districts may be permitted but shall count towards the Type 2 short-term rental density cap.

Short term rentals may be permitted by right or by conditional use in planned zoning districts subject to the zoning regulations enacted by the City Council for each district.
- (B) *Occupancy.* Maximum of two (2) people per bedroom, plus two (2), for the entire unit when operated as a short-term rental.
- (C) *Parking.* Parking is limited to the maximum number of vehicles as allowed by the underlying zoning district for the residential building on the property.
- (D) Special events are not permitted in a short-term rental. Example of special events include, but are not limited to, weddings, receptions, anniversaries, private parties, fundraisers and business seminars.
- (E) Short-term rental units are allowed in any structure established as a permanent residential dwelling including an accessory dwelling unit. No recreational vehicle, trailer, other vehicle or structure not classified as a permanent residential dwelling may be used as a short-term rental.
- (F) *Exceptions.* Exceptions to the short-term rental standards, except proposals that would exceed the city-wide density maximum, may be granted by the Planning Commission as a conditional use permit.
- (G) Short-term rentals must comply with all applicable codes under City Code §118.01 and successfully obtain a business license prior to operation.



OFFICE OF THE
CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



Kit Williams
City Attorney

Blake Pennington
Assistant City Attorney

Jodi Batker
Paralegal

TO: **Mayor Jordan
City Council**

FROM: **Blake Pennington, Assistant City Attorney**

DATE: **December 8, 2022**

RE: **Potential Amendments to Short Term Rental Regulations
from Council Member Wiederkehr**

Attached are two amendments to the short term rental regulations that are being sponsored by Council Member Wiederkehr for the full City Council's consideration.

The first amendment would change the city-wide density cap in Section 118.01 of the City Code for Type 2 short term rentals from 2% of dwelling units (approximately 894 as of today) to 550 dwelling units. It would also remove the exemption for Type 2 short term rentals in zoning districts that allow hotels and motels by right. The Ordinance Review Committee had some discussions about modifications to the density provisions but did not reach any consensus.

The second amendment is supplemental to the amendments proposed by the Ordinance Review Committee for Section 163.18 of the Unified Development Code. This amendment would reduce the occupancy limit for Type 2 short term rentals in residential zones to the limit of the underlying zone plus one. Currently the ordinance allows 2 people per bedroom plus 2. The proposed amendment would allow Type 2 short term rentals to have up to 4 unrelated people in a single family zoning district and up to 5 in a multi-family zoning district.

118.01 - Applicability

(E) *Short-Term Rentals.*

(18) Density For Type 2 Short-Term Rentals. A city-wide density cap of ~~2% of all dwelling units in the Fayetteville city limits may be utilized as~~ 550 dwelling units may be Type 2 rentals. Total dwelling units are determined from current United States Census Bureau and/or American Community Survey numbers, whichever number is higher. A conditional use permit may not permit:

(a) More Type 2 short-term rentals than what is allowed by the city-wide density cap. ~~Type 2 short term rentals in commercial and mixed use zoning districts where hotel/motels are permitted by right shall not contribute to the city wide density cap.~~

(b) More than 10% or a single unit whichever is greater; of total dwelling units as Type 2 rentals within a multi-family dwelling complex.

(c) Individual 2-, 3- and 4-family buildings that are owned by the same person or entity and are not a part of a multi-family complex shall have no more than one (1) Type 2 short-term rental unit per building complex.

(d) Where attached residential units are held separately through condominium association, horizontal property regime, fee simple, or similar ownership structure, no cap shall be applied to buildings with attached residential dwellings. Structures of attached residential dwellings where applicants seek more than 10% of total units for licensing as Type 2 rentals shall be evaluated by the Building Safety Director and/or Fire Marshal for adequate fire protection as defined by the adopted Arkansas Fire Prevention Code. Where inadequate fire protection is identified, improvements may be required prior to issuance of a business license.

163.18 Type 2 Short-Term Rentals in Residential Zoning Districts

- (B) *Occupancy.* Short-term rentals in the residential zones listed in section (A) above shall be subject to the occupancy limits of the underlying zoning district plus one (1).
~~Maximum of two (2) people per bedroom, plus two (2), for the entire unit when operated as a short-term rental.~~

RESOLUTION NO. _____

A RESOLUTION TO APPROVE FOUR AMERICAN RESCUE PLAN ACT NONPROFIT ASSISTANCE APPLICATIONS IN THE TOTAL AMOUNT OF \$252,745.29 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 April 5th, 2022 the City Council passed Resolution 83-22 authorizing an economic assistance program for nonprofit corporations operating and serving residents in Fayetteville to provide economic assistance to applicants with requests for over \$5,000.00 that experienced negative economic impact directly related to the COVID-19 pandemic; and

WHEREAS, Tri Cycle Farms, Inc., Rockin' Baker Academy, Good Shepherd Lutheran Church and FHS Development, Inc. qualify for assistance pursuant to the Final Rule and the City's program requirements.

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 \$252,745.29 utilizing American Rescue Plan Act funds to the following nonprofit corporations:

Tri Cycle Farms, Inc.	\$66,391.61
Rockin' Baker Academy	\$40,988.86
Good Shepherd Lutheran Church	\$40,428.20
FHA Development, Inc.	\$104,936.62

City of Fayetteville Staff Review Form

2022-1143

Legistar File ID

12/20/2022

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

Steve Dotson

12/1/2022

INTERNAL AUDIT (036)

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 \$252,745.29 to provide funding from the American Rescue Plan Act for economic assistance to nonprofit organizations.

Budget Impact:

2246.800.9715-5315.00

2246-American Rescue Plan Act

Account Number

Fund

20023.2021

ARPA Over \$5000 Assistance Requests

Project Number

Project Title

Budgeted Item? Yes

Current Budget \$ 900,000.00

Funds Obligated \$ 324,890.75

Current Balance **\$ 575,109.25**

Does item have a cost? Yes

Item Cost \$ 252,745.29

Budget Adjustment Attached? No

Budget Adjustment \$ -

Remaining Budget **\$ 322,363.96**

V20210527

Purchase Order Number: _____

Previous Ordinance or Resolution # _____

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



MEETING OF DECEMBER 20, 2022

TO: Mayor and City Council
THRU: Susan Norton, Chief of Staff
FROM: Steve Dotson, Internal Auditor
DATE: December 1, 2022

SUBJECT: Staff recommends that Council consider approval of the American Rescue Plan Act Over \$5,000 Nonprofit Assistance applications for funding.

RECOMMENDATION:

To consider for approval the attached American Rescue Plan Act Over \$5,000 Nonprofit Assistance applications for funding, using American Rescue Plan Act funds.

BACKGROUND:

City Council voted unanimously on April 5th, 2022 through Resolution 83-22 to approve an economic assistance program to non-profit corporations operating and serving residents in Fayetteville, and to provide economic assistance to applicants with requests over \$5,000. This program was intended to assist qualifying nonprofits that experienced negative economic impact directly related to the COVID-19 pandemic.

DISCUSSION:

The over \$5,000 economic assistance 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 measures to respond in many ways. 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 \$252,745.29.

Attachments:

ARPA summary spreadsheet, Over \$5K Nonprofit Assistance Request Application Cover Sheets and American Rescue Plan Act Non Profit Assistance Applications (over

\$5,000/Organization), US Department of the Treasury Coronavirus State & Local Fiscal Recovery Funds: Overview of the Final Rule, US Department of the Treasury 31 CFR Part 35 RIN 1505-AC77 Coronavirus State and Local Fiscal Recovery Funds Final Rule, US Department of the Treasury Compliance and Reporting Guidance.

Applicant	Amount	
Tri Cycle Farms Inc	\$	66,391.61
Rockin' Baker Academy	\$	40,988.86
Good Shepherd Lutheran Church	\$	40,428.20
FHA Development, Inc.	\$	104,936.62
Total:	\$	252,745.29



OVER \$5K NONPROFIT ASSISTANCE REQUEST APPLICATION COVER SHEET

Per City Council RES 83-22 on April 5, 2022, 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: Tri Cycle Farms Inc.
Requested Amt: \$84,764.18

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 Tri Cycle Farms Inc. application, it appears that the applicant sustained a strain to the capacity to weather financial hardship during 2021 and 2022, as a result of the pandemic.

Supported amount per applicant documentation: \$66,391.61



CITY OF
FAYETTEVILLE
ARKANSAS

AMERICAN RESCUE PLAN ACT NON-PROFIT ASSISTANCE APPLICATION (Over \$5,000/Organization)

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 meet the following requirements:

- Applications must be submitted by 4/30/22
- 501(c)(3) or 501(c)(19) organization
- 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, 2020
- Nonprofit organizations may apply to one of the following programs: the under \$5,000 assistance program, or the over \$5,000 assistance program

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.

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, 2021 and ending March 3, 2022.
- 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.

ARPA Non-Profit Direct Assistance Application

Assistance Period

In general, applicants may apply for funds to cover COVID-19 related economic loss from costs incurred during the period beginning March 3, 2021 and ending March 3, 2022. Nonprofit entities are permitted to submit one application covering the entire assistance period.

Application Date 4/30/2022

Year of Nonprofit Incorporation 2015

Organization Name Tri Cycle Farms Inc.

Mailing Address 1705 N. Garland Ave Fayetteville, AR 72703

Physical Address (if different) _____

Organization Phone Number 479-966-0572

Website www.tricyclefarms.org

EIN 46-5142044

SAM Unique Entity ID Number NS7STZYFCJE5
(see <https://sam.gov/content/entity-registration> for more information)

CEO/Executive Director Name Donald C. Bennett

Phone 479-966-0572

Email fayettevilletricyclefarms@gmail.com

Primary Contact Name Donald C. Bennett

Title Executive Director

Phone 479-966-0572

Email fayettevilletricyclefarms@gmail.com

Please provide the philosophy, purpose, and/or mission statement of the nonprofit entity:

The mission of Tri Cycle Farms is to grow Community Through Soil as we steward food awareness, education, and empowerment. The vision of Tri Cycle Farms is food security, sustainability, and sovereignty for all.

ARPA Non-Profit Direct Assistance Application

Describe the services the organization provides to Fayetteville residents:

Tri Cycle Farms Inc (TCF) is a 501c (3) registered non-profit, volunteer-based urban community farm located in the center of Fayetteville, Arkansas. The mission of Tri Cycle Farms is to grow Community Through Soil as it stewards food awareness, education, and empowerment. Through community engagement as well as interactive team and leadership building activities based on regenerative agricultural practices, equitable redistribution of foods to community members experiencing food insecurity, TCF continues to fulfill its mission of community building since the first garden was established in 2011. To help address food insecurity issues within the community TCF partnered with Whole Foods Market Fayetteville in November 2016 to implement the Food Recovery and Distribution Program to deliver recovered food to community members and partnering nonprofits with food pantries and meal programs. Due to increased community food insecurity resulting from the Covid-19 pandemic, this program expanded to include Natural Grocers Fayetteville in 2020. Since November 2016 this program has provided a total of 628,563 pounds of food for an estimated total of 523,752 meals with a declared recovered food value (approximately 30% of retail value) of more than \$1,300,000.

2020- 136,000 lbs of recovered food delivered, 90,000 meals, \$350,000 value

2021- 157,000 lbs recovered food delivered. 131,000 meals. \$414,000 value

Describe the organization's target beneficiaries (e.g., seniors, youth, families, veterans, etc.):

Tri Cycle Farms Food Recovery and Distribution Program serves six Fayetteville non-profit organizations and two HUD Housing apartment complex resident run food pantries. These organizations receive weekly food donations from Tri Cycle Farms distribution program to distribute to the low-income Fayetteville residents participating in their programs. These eight partnering organizations verify and document the participants in their individual programs. Tri Cycle Farms does not collect information on individuals or households participating in our partnering organizations programs. Each of these partnering organizations has been vetted by Tri Cycle Farms and serves low-income Fayetteville residents.

The following organizations receive weekly food assistance from the Tri Cycle Farms Food Recovery and

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, 2021 and March 3, 2022, 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.:

Vaccine availability allowed us to utilize a limited number of volunteers in the food recovery and distribution program. Volunteers were limited to maintain safety and reduce exposure to other volunteers, staff, partnering organizations, and community members

In May 2021 we had to replace our Programs Director reducing our staff to two due to safety concerns and reduced revenues

Limited program operations due to reduction in volunteers and staff. Farm production was halted due to inability to have volunteers and no revenue to support program staff. Focus was placed on the Food Recovery Program to provide for the immediate food needs of partnering organizations serving low-income Fayetteville residents impacted by Covid-19

Reduced funding for program staff salaries therefore reduced organizational capacity to run and expand programs Increased need continued from partnering organizations, some expressing as much as a 650% increase in food needs. In May 2021 EOA Head Start of Washington County contacted Tri Cycle Farms expressing concern that the low-income children and families they serve didn't have access to enough healthy foods and asked if they could be part of our distribution program. Also in May 2021 Chestnut Meadows HUD Housing apartment complex management contacted Tri Cycle Farms expressing need for food assistance to their residents and Tri Cycle helped them establish a resident run pantry.

Completion of the Hydroponics Greenhouse was set for 2020 with the first year of production of cash crops anticipated in 2021. The expected minimum annual income generation from this greenhouse is \$75,000 (business plan and Master's Thesis completed by two University of Arkansas students prior to the pandemic). This revenue would have supported program and operational expenses making Tri Cycle more independent from grant and

ARPA Non-Profit Direct Assistance Application

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.):

Tri Cycle Farms inability to host on-site fundraising events planned for 2021 due to the Covid-19 pandemic resulted in revenue loss that would have supported programming and operations.

Event Opportunity Losses: \$62,000.00

9th Annual Pesto Fest and Pesto Contest (September 2021) = \$25,000

5th Annual Roots Fest Farm Jamboree (June 2021) = \$15,000.00

Outdoor Theater Dinner & a Movie (x3 Summer/Fall 2021) = \$12,000.00

Halloween Trick or Treat (October 2021) = \$10,000

Estimated Individual and Corporate Donations/Sponsorships Lost: \$10,000

Due to economic hardships incurred for both individual community members and businesses during the pandemic

Tri Cycle Farms received less donations than anticipated during the period of March 2021-March 2022

\$10,000 loss in expected individual and corporate/business donations and sponsorships

Sustainable Income Generation Lost: \$75,000

Completion of the Hydroponics Greenhouse was set for 2020 but was not able to be completed due to the Covid-19 pandemic because of reduced volunteer capacity, reduced program staff, reduced organizational revenue. The first year of crop production anticipated in 2021 would have yielded and expected \$75,000.00 in annual revenue.

Hydroponics Greenhouse 1 year production: estimated sales \$75,000

Indicate how this funding, if provided, would address the negative economic impact sustained by the organization as described above.

This funding would allow Tri Cycle Farms to recover from the negative impacts of Covid-19 beginning in 2020 and sustained through March 2021- March 2022 in the following ways:

Support the Farm Production Program by empowering a Farm Production Manager to grow food specifically for the Healthy Snack and Family Backpack Program for EOA Head Start of Washington County, one of our Food Recovery and Distribution Program partners, and other partners in the Food Recovery and Distribution Program. Support the expansion of the Food Recovery and Distribution Program to better serve our partnering organizations through increased distribution of recovered and farm grown food.

Complete Hydroponics Green House construction and install hydroponic and monitoring systems allowing Tri Cycle to grown food year-round in a climate-controlled setting for distribution to partnering organizations

The funds would be used to leverage an increase in annual support from the Walmart Foundation to continue program support.

Provide matching funds to the ARPA 2022 Subrecipient Grant City of Fayetteville if awarded.

Assist in providing living-wage salaries to current and additional program staff to provide Tri Cycle Farms with the capacity to operate and expand our programs that serve low-income Fayetteville residents affected by the Covid-19 pandemic.

Allow Tri Cycle Farms the capacity to resume volunteer activities, classes/workshops, and community and fundraising events.

ARPA Non-Profit Direct Assistance Application

How is the nonprofit organization addressing the financial impacts it has experienced due to COVID-19?

Tri Cycle Farms has been forced to limit program operations due to reduction in volunteers and staff. Farm production halted due to inability to have volunteers and no revenue to support program staff and focus was placed on the Food Recovery Program to provide for the immediate food needs of partnering organizations serving low-income Fayetteville residents impacted by Covid-19. There is currently no funding for program staff salaries and the two remaining directors are unpaid, which is not sustainable for the organization. Tri Cycle Farms is addressing financial impacts experienced due to Covid-19 by applying for financial assistance through the City of Fayetteville's ARPA funding opportunities.

Describe 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.):

Tri Cycle Farms was forced to suspend our Farm Production Program which decreased the amount of fresh, locally grown foods distributed to our partnering organizations and eliminated educational opportunities, classes, and workshops for community members. Tri Cycle was forced to eliminate paid program staff, which has left the two remaining directors without pay. Covid-19 has also drastically reduced the number of community volunteers and led to the cancellation of all fundraising and community events.

Completion of the Hydroponics Greenhouse was set for 2020 with the first year of production of crops anticipated in 2021. The expected minimum annual income generation from this greenhouse is \$75,000 (business plan and Masters Thesis completed by two University of Arkansas students prior to the pandemic). This revenue would have supported program, personnel, and operational expenses, and provided additional food donations to the Food Recovery and Distribution Program partnering organizations.

The inability to have volunteers at Tri Cycle Farms since the onset of the Covid-19 pandemic in March of 2020 has deeply impacted our organization and the community that has benefited from Tri Cycle Farms since our first gardens were planted in 2012. Volunteers have been at the heart of the success of Tri Cycle Farms, providing not only people power to run our gardens and programs but also a strong sense of community has been built and relationships have been created that can not be quantified in financial losses.

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 describe:

Received PPP Loan \$9008.00 in April 2021 (see highlighted bank statement) to assist with payroll for May and June 2021. This amount of \$9008.00 has been deducted from payroll reimbursement request in this application.

ARPA Non-Profit Direct Assistance 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:

PPP Loan \$9,000 used for payroll April 2021-May 2021

Does your organization operate within a designated Qualified Census Tract as illustrated at this website: [City of Fayetteville Qualified Census Tracts](#) ? ☒ YES ☐ NO

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, 2021 through March 3, 2022?

Fayetteville residents: _____ Total residents: _____

Required Information

- Operating budget for current fiscal year and past two fiscal years, showing projected revenue and expenditure by category
- Provide copies of IRS form 990 for last two years
- 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
- Provide copies of Financial Audit for last two years
- Other supporting documentation if applicable

ARPA Non-Profit Direct Assistance Application

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.

The value of the losses Tri Cycle Farms incurred during the period of March 2021-March 2022 are greater than what is being asked for in reimbursement assistance.

The following event revenues support the operations and programs of Tri Cycle Farms including the Food Recovery and Distribution Program and the Farm Production Program. These two programs distribute food each weekday to eight partnering non-profits with meal and pantry services to low-income Fayetteville residents impacted by the Covid-19 pandemic. All Program expenses were incurred directly serving Fayetteville resident through the Food Recovery and Distribution Program.

The volunteer hours lost during March 2021-March 2022 would have provided educational and community building opportunities to Fayetteville residents affected by the Covid-19 pandemic. Additionally, these volunteers would have provided support to Tri Cycle programs including the Food Recovery and Distribution Program, the Farm Production Program, and community event support.

Due to economic hardships incurred for both individual community members and businesses during the pandemic Tri Cycle Farms received less donations than anticipated during the period of March 2021-March 2022.

Year-round production in the Hydroponics Greenhouse would have provided additional fresh, locally grown produce to low-income Fayetteville residents affected by the Covid-19 pandemic through the Food Recovery and Distribution Program.

Event Opportunity Losses: \$62,000.00

9th Annual Pesto Fest and Pesto Contest (September 2021) = \$25,000

5th Annual Roots Fest Farm Jamboree (June 2021) = \$15,000.00

Expenses to be Reimbursed

Were all expenses incurred between March 3, 2021 and March 3, 2022? ☒ YES ☐ NO

Please complete the table below for the requested nonprofit reimbursements. Please attach 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): \$84,764.18

Please document the Nonprofit expenses being claimed for reimbursement below. If more room is needed, please attach a separate sheet to your completed application.

Date	Vendor	Expense Description	Amount
3/3/21-3/3/22	R&B's Cycle/Lauren Hawkins	Mortgage payment for Tri Cycle Farms 'Rock House'	\$9,000.00
3/3/21-3/3/22	Don Bennett	Land Lease for Tri Cycle Farms	\$7,200.00
3/3/21-3/3/22	Ozarks Electric	Electric, Internet (see bank statements & QB reports)	\$4212.56
10/12/2021	Bittle Armstrong	Home/Liability Insurance(see bank statements & QB reports)	\$2864.16
3/3/21-1/5/22	Bennett, Chanté Jones, Kelly Bassemier, Karen Kelley (employe	Payroll (see bank statements & QB reports)	\$38,684.37
3/3/21-12/15/22	IRS USATAX	Payroll taxes (see bank statements & QB reports)	\$11,599.82
3/3/21-3/3/22	City of Fayetteville	Water bills (see bank statements & QB reports)	\$942.36
3/3/21-3/3/22	Black Hills Energy	Gas bills (see bank statements & QB reports)	\$904.91
3/3/21-3/3/22	Verison	Phone bill (see bank statements & QB reports)	\$1410.59
3/3/21-3/3/22	Geico	Vehicle insurance(see bank statements & QB reports)	\$1402.66
3/3/21-3/3/22	Sam's Club	Vehicle fuel (see bank statements & QB reports)	\$2207.75
3/3/21-3/3/22	Network For Good	Donor/Event Database(see attached bank statements)	\$2700.00
3/3/21-3/3/22	Intuit Quickbooks	Accounting (see attached bank statements)	\$1635.00

Total \$84,764.18

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 agree to provide any and all requested documentation to further support the charges being requested for reimbursement.

4/30/2022

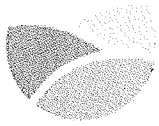
Authorized Signature

Date

Don Bennett Executive Director

Printed Name and Title

Internal Use Only



OVER \$5K NONPROFIT ASSISTANCE REQUEST APPLICATION COVER SHEET

Per City Council RES 83-22 on April 5, 2022, 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: \$41,862.87

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 Rockin' Baker Academy application, it appears that the applicant sustained a strain to the capacity to weather financial hardship and to prepare and provide COVID-19 food donations during 2021 and 2022, as a result of the pandemic, and additional costs related to the establishment of new relief programs. The applicant has, also, faced challenges covering operating costs throughout the pandemic.

Supported amount per applicant documentation: \$40,988.86



CITY OF
FAYETTEVILLE
ARKANSAS

AMERICAN RESCUE PLAN ACT NON-PROFIT ASSISTANCE APPLICATION (Over \$5,000/Organization)

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 meet the following requirements:

- Applications must be submitted by 4/30/22
- 501(c)(3) or 501(c)(19) organization
- 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, 2020
- Nonprofit organizations may apply to one of the following programs: the under \$5,000 assistance program, or the over \$5,000 assistance program

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.

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, 2021 and ending March 3, 2022.
- 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.

ARPA Non-Profit Direct Assistance Application

Assistance Period

In general, applicants may apply for funds to cover COVID-19 related economic loss from costs incurred during the period beginning March 3, 2021 and ending March 3, 2022. Nonprofit entities are permitted to submit one application covering the entire assistance period.

Application Date 4/30/22

Year of Nonprofit Incorporation 2016

Organization Name Rockin' Baker Academy

Mailing Address 3761 N Mall Avenue Suite 4, Fayetteville AR 72703

Physical Address (if different) _____

Organization Phone Number 479-313-6767

Website www.rockinbaker.org

EIN 81-1302899

SAM Unique Entity ID Number Incident ticket re-submitted as RBA not in the system yet
(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 at least minimum wage independently of their capabilities rather than the lower amount allowed by the law.

Rockin' Baker Academy has been educating the community at large about neurodiversity and how this segment of our community remains "invisible" to others, how they're not even participating in all the DEI conversations. Any City resident with children and any family member on the autism spectrum will benefit for the advocacy work that RBA has been leading. One of the biggest misconceptions about neurodivergents is that these individuals are just sitting on their couches, contributing nothing to our society. Rockin' Baker with its training and employment program is serving as a living example of what neurodivergents are capable of. Our cadet bakers are proving that they are more than capable of operating a complex commercial bakery all by themselves. Ensuring that organizations like RBA exist in our region open the doors to other NDs secure meaningful employment and contribute their best to our community. One loaf at a time, RBA is breaking bread at a table where NDs, their families, and the rest of the community have a seat at the table. Representation matters.

ARPA Non-Profit Direct Assistance Application

Describe the services the organization provides to Fayetteville residents:

Rockin' Baker Academy was established over 5 years ago as a training platform for local workforce development for our neurodiverse population. We are 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.

Many neurodiverse people struggle to accomplish what their neurotypical peers take for granted. Our program gives them the confidence to take public transportation to work; participate/initiate conversation; ask questions; express opinions and be a contributing member of our community. Our welcoming environment leads to very low turnover and loyal, dedicated employees. While other businesses struggle recruiting and retaining talent, we retain long-term employees.

RBA cadets learn workplace skills ranging from food preparation to customer service and business management.

This training provides long-term solutions in that the cadets are prepared to seek work beyond the bakery and integrate into a neurotypical workplaces because they understand the skills and expectations of employers. As our cadet bakers become more self-sufficient it benefits the City of Fayetteville to have neurodiverse citizens who are

Describe the organization's target beneficiaries (e.g., seniors, youth, families, veterans, etc.):

Neurodiverse individuals ranging from 18 to mid 30 years-old.

As part of the Rise Together donation program, Rockin' Baker Academy donated to Families (mostly food insecure), Individuals and seniors.

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, 2021 and March 3, 2022, 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.

ARPA Non-Profit Direct Assistance Application

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.):

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 and less people eating out during the various surges of COVID, leading to dropping wholesale sales. The 2022Q1 Sales was 17% lower than 2021Q1. Even with the addition of such a large account as Aramark (Walmart's Cafeteria vendor), the inflation and increasing costs have also impacted our financial health. COGs overall jumped 22% in 2022Q1. i.e.: egg cost increased from \$3.69 to \$9.49/60-ct carton. Utilities and fuel have also increased beyond our forecast. The combination of slower sales, and a significant reduction in grants and donations has deepened the financial gap, compounded by an increase in the minimum wage in 2022 and the continuous various costs increases. Rockin' Baker is committed to paying its cadet bakers not less than minimum wage independently of their capabilities. The decline in revenue with a significant increase in production and delivery costs affects the organization's ability to offset any increase in payroll.

A local CPA firm used to provide pro-bono bookkeeping and payroll services. COVID-19 forced them to end the continuation of this free service as they also experienced a significant drop in revenue from the loss of clients who had to shut down. The increase complexity in bookkeeping and an increase in the number of cadets employed by RBI required the CPA firm to allocated more human and financial resources to continuing providing the pro bono accounting/payroll services. This pro-bono benefit phased out in December 2021. Rockin' Baker has taken these

two (2) roles in house running its payroll through QuickBooks' Payroll/TimeSheets. This transition has added
Indicate how this funding, if provided, would address the negative economic impact sustained by the organization as described above.

Without the necessary financial support, RBA will be in a perilous situation to continue hiring those on the autism spectrum. The organization continues moving toward a more sustainable situation through increasing wholesale & retail revenues. We recently have added Aramark in Feb 2022 (Walmart Cafeteria) with the potential to also provide bread to their other outlets as the new Walmart Home Office complex starts opening up the various facilities. However, until the market stabilizes allowing the organization's wholesale accounts return to their previous volumes, and inflation gets under control bringing down prices, Rockin' Baker needs the financial support to remain in operations in 2022. If this grant is awarded, Rockin' Baker could navigate the financial uncertainties until the revenue returns to pre-pandemic levels.

ARPA Non-Profit Direct Assistance Application

How is the nonprofit organization addressing the financial impacts it has experienced due to COVID-19?

Rockin' Baker launched a Weekly Bread Club program to reverse as much as possible the decline in the retail business. The organization also engaged in aggressively pursuing new accounts beyond the traditional hospitality industry by targeting CSAs, retirement complexes and corporate cafeterias.

Describe 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 has 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.

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 describe:

ARPA Non-Profit Direct Assistance 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:

For clarification, Rockin' Baker Inc. received PP1, PPP2, EIDL and other State grants. Any expenses reimbursed by any of these programs are not included 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

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, 2021 through March 3, 2022?
Fayetteville residents: 5+(weekly) Total residents: 8 RBA+(394+)

Required Information

- Operating budget for current fiscal year and past two fiscal years, showing projected revenue and expenditure by category
- Provide copies of IRS form 990 for last two years
- 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 the last two years, provide a copy of the Financial Audit(s)
- Other supporting documentation if applicable

ARPA Non-Profit Direct Assistance Application

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.

Rockin' Baker never closed its 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 2022, 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.

The employment continuation for one of cadet bakers has allowed him to live independently in Fayetteville. In addition to paying his taxes, he's now also contributing to the City's economy by renting his own apartment, commuting to work on his own, etc. He is a role model for other individuals on the autism spectrum by inspiring them to also achieve their dreams to live an independent life.

Rockin' Baker Academy invoices Rockin' Baker Incorporated based on a formula set by our former CPA firm, Keith Glass CPA in Fayetteville. For the purpose of this application, we're focusing on requesting reimbursement for portion of the following line items: Labor, Utilities, Rent, Ingredients, Insurance, Internet/Phone, Janitorial. The actual total invoices for each of these line items is greater than the amount we're requesting from the City.

Expenses to be Reimbursed

Were all expenses incurred between March 3, 2021 and March 3, 2022? ☒ YES ☐ NO

Please complete the table below for the requested nonprofit reimbursements. Please attach 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): 41,862.87

Please document the Nonprofit expenses being claimed for reimbursement below. If more room is needed, please attach a separate sheet to your completed application.

Date	Vendor	Expense Description	Amount
3/3/21-3/3/22	Rockin' Baker Incorpo	Labor	15,574.36
3/3/21-3/3/22	Rockin' Baker Incorpo	Rent: Creekside Plaza	13,136.82
3/3/21-3/3/22	Rockin' Baker Incorpo	Utilities: Sweptco, Black Hills Energy	4,435.80
3/3/21-3/3/22	Rockin' Baker Incorpo	Ingredients: only Ben E. Keith	4,359.26
3/3/21-3/3/22	Rockin' Baker Incorpo	Intenet/Phone: Cox & AT&T	2,045.36
3/3/21-3/3/22	Rockin' Baker Incorpo	Insurance: Shelter	1,416.32
3/3/21-3/3/22	Rockin' Baker Incorpo	Janitorial: CINTAS	894.95

Total 41,862.87

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 agree to provide any and all requested documentation to further support the charges being requested for reimbursement.

4/30/2022

Authorized Signature

Date

Daymara Baker CEO/Founder

Printed Name and Title

Internal Use Only



OVER \$5K NONPROFIT ASSISTANCE REQUEST APPLICATION COVER SHEET

Per City Council RES 83-22 on April 5, 2022, 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: Good Shepherd Lutheran Church
Requested Amt: \$40,428.20

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 Good Shepherd Lutheran Church., application, it appears that the applicant sustained a strain to the capacity to weather financial hardship and increased costs (uncompensated increase in service need) to prepare and provide COVID-19 relief during 2021 and 2022, as a result of the pandemic, and additional costs related to the establishment of new relief programs.

Supported amount per applicant documentation: \$40,428.20



**AMERICAN RESCUE PLAN ACT
NON-PROFIT ASSISTANCE
APPLICATION (Over \$5,000/Organization)**

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 meet the following requirements:

- Applications must be submitted by 4/30/22
- 501(c)(3) or 501(c)(19) organization
- 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, 2020
- Nonprofit organizations may apply to one of the following programs: the under \$5,000 assistance program, or the over \$5,000 assistance program

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.

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, 2021 and ending March 3, 2022.
- 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.

ARPA Non-Profit Direct Assistance Application

Assistance Period

In general, applicants may apply for funds to cover COVID-19 related economic loss from costs incurred during the period beginning March 3, 2021 and ending March 3, 2022. Nonprofit entities are permitted to submit one application covering the entire assistance period.

Application Date April 25th, 2022

Year of Nonprofit Incorporation 1967

Organization Name Good Shepherd Lutheran Church

Mailing Address 2925 Old Missouri Road

Physical Address (if different) _____

Organization Phone Number 479-521-2113

Website http://goodshepherdnwa.org

EIN 71-0420393

SAM Unique Entity ID Number _____
(see <https://sam.gov/content/entity-registration> for more information)

CEO/Executive Director Name Clint Schnekloth

Phone 4797993120

Email pastorclint@goodshepherdnwa.org

Primary Contact Name Dr. Johanna Thomas

Title Grants Administrator

Phone (225) 772-0565

Email jthomas4150@gmail.com

Please provide the philosophy, purpose, and/or mission statement of the nonprofit entity:

In Christ, For Inclusion, In Interfaith, In Care of Creation, For Service. We're in This Together for Peace and Justice.

Good Shepherd Lutheran Church (GSLC) was founded in 1967 by a community of Lutherans from the University of Arkansas. In 2008, like the rest of the region, the congregation was dramatically impacted by the housing crash, and saw a shift in membership demographics. Over the past decade, the primary growth of GSLC has not been through the transfer of Lutherans from other places (although that still happens) but instead by anchoring itself as an active and bold progressive faith community in Fayetteville. Members now join the congregation from many religious traditions, sometimes as a refuge from previous contexts of religious trauma, and because it is a church that centers the queer experience as a part of regular church life. GSLC has been instrumental in the formation of many impactful ministries, most notably Cooperative Emergency Outreach, Canopy NWA (which was founded at GSLC), the Little Free Pantry movement (also launched at GSLC), and most recently, Queer Camp.

During the pandemic, Good Shepherd Lutheran Church pivoted a significant portion of its congregational energy toward providing relief related to needs as they arose.

ARPA Non-Profit Direct Assistance Application

Describe the services the organization provides to Fayetteville residents:

- Adult Education
- LGBTQ Friendly Youth Programs
- Marshallese Community Outreach
- Emergency Household Support
- Little Free Pantry
- Peace at Home Family Shelter - collects household items and cleaning supplies
- Single Parent Scholarship Fund of Northwest Arkansas. Each year we provide a partial college scholarship, as well as holiday food baskets and Angel Tree gifts
- Sunday Suppers
- Choir and Bells Praise Band
- MOPS Group (Mothers of Preschoolers)
- Partnership with Episcopalians on Campus Ministry
- Summer Interfaith Youth Camp

Describe the organization's target beneficiaries (e.g., seniors, youth, families, veterans, etc.):

We are a neighborhood church in Fayetteville with a Northwest Arkansas impact and a global reach. Our constituency is made up of individuals from across the NWA. We invite both members and non-members to participate in worship and our service opportunities. We strive to serve everyone, especially the most vulnerable.

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, 2021 and March 3, 2022, 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 2021 we had limited operations of the normal "church". We did not provide in person worship and did provide in person educational programs nor did we host large social gatherings. Instead, all of our in-person events (inasmuch as there were those) were focused on responding to the impact of the pandemic on our congregation and the larger community.

Once we opened the Ozark Atolls program, we had many new faces in the building which included those coming for consultations with Ozark Atolls, people who needed food, sewing and baking space, and those using the church for some other programs that arose in 2021 specifically Queer Camp and the Transition Closet. A demand for services grew drastically as the community began to see us as a place of service and refuge.

ARPA Non-Profit Direct Assistance Application

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.):

One of the first things we did during the pandemic was bring Albious Lator onto the church staff. He was providing crucial support in the Marshallese community from the very beginning. This was our single largest new expense in 2021, other than the funds we simply distributed to support utilities, rent, and the purchase of food.

We did see a loss of income related to decline in revenue of 2021. We believe this was because people diverted some of their regular charitable giving to the church toward direct relief.

We have some ongoing increased expenses in 2022 that we know will continue to grow. We are committed to keeping Albious on staff and maintaining and growing the Ozark Atolls program. We are also seeing a much higher level of facility use by the community in 2022, so facility maintenance and improvements is an important next step for us. We hope to build more showers, improve one of our kitchens to commercial grade, and install laundry facilities for neighbors, community members and the unsheltered to use. We also plan to make our facility more ready for emergency shelter in case of storms or other crisis events.

Indicate how this funding, if provided, would address the negative economic impact sustained by the organization as described above.

This funding would cover losses incurred during the period, and would also replenish funds we maintain on the ready to provide emergency community support.

ARPA Non-Profit Direct Assistance Application

How is the nonprofit organization addressing the financial impacts it has experienced due to COVID-19?

One of the primary ways we are addressing financial impacts is through diversifying our fund-raising portfolio while also increasing best practices around donor cultivation and retention. We are finding that many people were very generous at the beginning of the pandemic (they responded to emergencies as they arose), but now two years into the pandemic there is giving fatigue. We have focused our fundraising support back toward much of the general operating expenses, and took part of 2021 to make necessary facility repairs and improvements so we are ready for the next emergency when it (inevitably) arises.

Describe 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.):

We were able to employ Mr. Albious Lator at the cost of \$17,625.00 (March 2021 – December 2021; see attached W-2). An expense for which we were not planning. And while his employment with the church has been invaluable for his work with the community and our outreach efforts, his salary created an overall loss in our general operating funds.

All the main program staff also pivoted during the pandemic. Pastor Clint Schnekloth focused as much as 50% of his time weekly on community relief, including awareness building for rent relief, direct support to congregants and neighbors, the launch of new support services like Ozark Atolls and Queer Camp and The Transition Closet, community awareness raising and advocacy, and more.

During this same time period, the congregation remained completely closed to in-person worship, so donation income was impacted both by this closure and by the diversion of giving from regular operating costs to community support.

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 describe:

ARPA Non-Profit Direct Assistance 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 congregation received PPP loans related to expenses in 2020, the first phase of the pandemic, but prior to the time period under consideration for this grant.

Does your organization operate within a designated Qualified Census Tract as illustrated at this website: City of Fayetteville Qualified Census Tracts ? ☒ YES ☐ NO

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, 2021 through March 3, 2022?
Fayetteville residents: 12,500 Total residents: _____

Required Information

- Operating budget for current fiscal year and past two fiscal years, showing projected revenue and expenditure by category
- Provide copies of IRS form 990 for last two years
- 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 the last two years, provide a copy of the Financial Audit(s)
- Other supporting documentation if applicable

ARPA Non-Profit Direct Assistance Application

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.

We are writing today to ask for pandemic relief funds in the amount of \$50,228.38. Attached you will find itemized expenses that we incurred from March 2021 until March 2022. When the pandemic began in March of 2020 the Marshallese community immediately saw the ramifications of the pandemic on their overall health, mental health, and financial stability of their community. As one of the hardest hit communities in Northwest Arkansas, both health wise and economically, Good Shepherd Lutheran Church (GSLC) stepped up and partnered with Mr. Albious Lator, a member of the community, to create a general pandemic relief program, which is now known as "Ozark Atolls". As this program was not an original mission of the church and our organization, the costs associated with helping the community quickly mounted. GSLC did not waiver in our support of the Marshallese community, continuing to use our general funds, create fundraisers, and to use our special pastoral funds to ensure the community had access to needed goods and services throughout the continued pandemic.

We were able to employ Mr. Lator at the cost of \$17,625.00 (March 2021 – December 2021; see attached W-2). An expense for which we were not planning. And while his employment with the church has been invaluable for his work with the community and our outreach efforts, his salary created an overall loss in our general operating funds.

In addition, we were able to provide relief to the Marshallese community in the forms of direct financial payments. These cash payments went directly to individuals for funeral expenses, hospital bills, rent aid, utilities, food and other basic necessities. While we were able to fundraise for many of these expenses, this is fund raising that went specifically to pandemic relief, and not to the church, as had been the case pre-pandemic. As such, the relief negatively impacted the church and we suffered financial losses (see attached "Marshallese Programs Report") which is an itemized expense list totaling \$17,737.21

Expenses to be Reimbursed

Were all expenses incurred between March 3, 2021 and March 3, 2022? ☒ YES ☐ NO

Please complete the table below for the requested nonprofit reimbursements. Please attach 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): 50,228.38

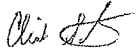
Please document the Nonprofit expenses being claimed for reimbursement below. If more room is needed, please attach a separate sheet to your completed application.

Date	Vendor	Expense Description	Amount
3/21/3-22	GSLC	Wages for Albious Lator (see W-2)	17,625.00
3/21/3-22	GSLC	See itemized List (see Marshallese Program Report)	17,737.21
3/21-3/22	GSLC	Pandemic Relief (see Income Statement)	9,962.25
3/21-3/22	GSLC	Pandemic relief (See Records of Pandemic Relief)	4,903.92

Total 50,228.38

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 agree to provide any and all requested documentation to further support the charges being requested for reimbursement.



Authorized Signature

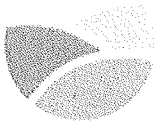
Clint Schnekloth, Pastor

Printed Name and Title

April 27, 2022

Date

Internal Use Only



OVER \$5K NONPROFIT ASSISTANCE REQUEST APPLICATION COVER SHEET

Per City Council RES 83-22 on April 5, 2022, 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 Housing Authority Development Inc
Requested Amt: \$104,936.62

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 Fayetteville Housing Authority Development Inc., application, it appears that the applicant sustained a strain to the capacity to weather financial hardship during 2021 and 2022.

Supported amount per applicant documentation: \$104,936.62



AMERICAN RESCUE PLAN ACT NON-PROFIT ASSISTANCE APPLICATION (Over \$5,000/Organization)

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 meet the following requirements:

- Applications must be submitted by 4/30/22
- 501(c)(3) or 501(c)(19) organization
- 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, 2020
- Nonprofit organizations may apply to one of the following programs: the under \$5,000 assistance program, or the over \$5,000 assistance program

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.

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, 2021 and ending March 3, 2022.
- 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.

ARPA Non-Profit Direct Assistance Application

Assistance Period

In general, applicants may apply for funds to cover COVID-19 related economic loss from costs incurred during the period beginning March 3, 2021 and ending March 3, 2022. Nonprofit entities are permitted to submit one application covering the entire assistance period.

Application Date April 30, 2022

Year of Nonprofit Incorporation 2017

Organization Name FHA Development, Inc.

Mailing Address 1 N School Ave, Fayetteville, AR 72701

Physical Address (if different) 1 N School Ave, Fayetteville, AR 72701

Organization Phone Number 479-521-3850

Website <https://fhadevelopment.org/>

EIN 81-5482199

SAM Unique Entity ID Number LJPRW59XHAZ7
(see <https://sam.gov/content/entity-registration> for more information)

CEO/Executive Director Name Audra Butler, Interim Deputy Director

Phone 479-521-3850

Email audra@fayettevilleha.org

Primary Contact Name Audra Butler

Title Interim Deputy Director

Phone 479-521-3850

Email audra@fayettevilleha.org

Please provide the philosophy, purpose, and/or mission statement of the nonprofit entity:

FHA Development, Inc. is a non-profit housing provider focused on providing affordable housing with dignity and respect to the most vulnerable populations within our community. We believe safe, quality, affordable housing is a basic human right that builds community resilience, improves intergenerational public health outcomes, and increases equitable opportunities. In efforts to provide and promote, affordable, low-income housing in Northwest Arkansas, FHA Development, Inc. has focused efforts on low-income communities in general, as well as, efforts to provide safe and accessible housing to senior and disabled individuals. FHA Development, Inc. is a non-profit related entity of the Fayetteville Housing Authority.

ARPA Non-Profit Direct Assistance Application

Describe the services the organization provides to Fayetteville residents:

FHA Development, Inc. has worked closely with the local government and non-profit organizations to address the lack of affordable, safe, and accessible housing for low income and vulnerable populations such as seniors, minorities, disabled individuals, and homeless families. Additionally, FHA Development, Inc. continues to champion housing and built environments within and accessible to low-income neighborhoods. FHA Development, Inc. believes addressing the affordable housing crisis in Northwest Arkansas requires a multi-faceted approach that includes the protection of existing affordable housing stock, renovations of existing housing stock to promote housing with dignity, and the connection of low income families to community resources and wrap around services that address barriers to stable housing and improve social determinants of health. FHA Development, Inc. provides affordable housing options to low income and ALICE (Asset Limited, Income Constrained, Employed) individuals and families in Fayetteville. FHA Development, Inc. owns Red Bud Gardens, an affordable housing complex located at 203 E 12th Street. FHA Development, Inc. has actively engaged the 12th Street Neighborhood through the purchase of 18 apartment units with the purpose to preserve them as low-income housing, rehabilitate the apartments, and provide the residence of these units with wrap around services, including case management not typically provided to renters in the private, unsubsidized housing market. FHA Development, Inc. has provided

Describe the organization's target beneficiaries (e.g., seniors, youth, families, veterans, etc.):

FHA Development, Inc. provides affordable housing options to low income and ALICE (Asset Limited, Income Constrained, Employed) households in Fayetteville and the wider Northwest Arkansas region. The Red Bud Gardens and the 12th Street neighborhood, located in a Qualified Census Tract, is home to many senior and disabled residents. Additionally, the neighborhood adjoins a senior living apartment complex. Revitalization of Red Bud Gardens is helping to create a safe and accessible environment for the residents in and around this neighborhood.

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, 2021 and March 3, 2022, 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 health emergency had the following impact on services provided by FHA Development, Inc:

1. Decreased rental revenue, restricting funds available for renovations, routine maintenance, and preparation of vacant units for new residents
2. Increased need for wrap around services including but not limited to assistance applying for emergency rental assistance, emergency food distributions, and scheduling of on site vaccination clinics
3. Restrictions on entering occupied units that affected our organizations ability to provide adequate pest control, maintenance, and resident assistance
4. Limited operations due to office closures, staffing shortages, and increased safety precautions

ARPA Non-Profit Direct Assistance Application

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.):

From 2019-2022, FHA Development, Inc. purchased three properties and leased with the intent to purchase two additional properties in an effort to preserve these properties as affordable housing units and continue the occupancy of the residents at these properties. During the COVID-19 health emergency, FHA Development, Inc. experienced significant decline in revenue as many residents were left unable to pay rent due to loss of employment, decrease in employment opportunities, and increased cost of living expenses while being continuously housed by our organization. Between March 2021 and March 2022, FHA Development, Inc. recorded a loss of revenue of over \$315,000. As a result of the decline in revenue, FHA Development, Inc. has accumulated significant outstanding invoices to vendors providing services necessary to daily operations and has been forced to return the leased properties to the original owner and to sell 2 of the three owned properties to avoid catastrophic financial implications. In addition to the decline in overall income, the increased cost of building materials and delays in the supply chain, has resulted in our organizations inability to fully renovate and address needed repairs and deferred maintenance issues at Red Bud Gardens.

Indicate how this funding, if provided, would address the negative economic impact sustained by the organization as described above.

As described above, FHA Development, Inc. experienced a significant decline in revenue and increase in the cost of operations while continuing to house residents unable to pay rent. If awarded, this funding would allow FHA Development, Inc. to bring our outstanding invoices due to local vendors to near zero. This would financially stabilize FHA Development, Inc. and allow our organization to focus efforts on renovating our current affordable housing stock and the revitalization of the 12th Street Neighborhood.

ARPA Non-Profit Direct Assistance Application

How is the nonprofit organization addressing the financial impacts it has experienced due to COVID-19?

FHA Development, Inc. has taken the following steps to mitigate the financial impact of COVID-19

1. Streamlined organizations housing stock through the sell of two properties and the ending of two leases
2. Worked with residents to apply for and received rental assistance through emergency rental assistance programs, subsidized rental programs, and other community resources
3. Organized community volunteer days to aid in clean up and renovation needs without increasing organizational cost
4. Limited renovation and maintenance to include only those items that address health and safety, livability, and city code requirements

Describe 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 has resulted in our origination experiencing decreased office hours and availability to the public, decreased our ability to safely interact with residents in person, increased cost associated with purchase of safety equipment, limited our maintenance staff's ability to safely enter occupied units to address routine maintenance issues, and resulted in sporadic but impactful staffing shortage due to quarantine and isolation guidelines.

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 describe:

N/A

ARPA Non-Profit Direct Assistance 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:

N/A

Does your organization operate within a designated Qualified Census Tract as illustrated at this website: City of Fayetteville Qualified Census Tracts ? ☒ YES ☐ NO

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, 2021 through March 3, 2022?
Fayetteville residents: 113 Total residents: 113

Required Information

- Operating budget for current fiscal year and past two fiscal years, showing projected revenue and expenditure by category
- Provide copies of IRS form 990 for last two years
- 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 the last two years, provide a copy of the Financial Audit(s)
- Other supporting documentation if applicable

ARPA Non-Profit Direct Assistance Application

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.

FHA Development, Inc. provided services to support long-term housing security for low-income households impacted by COVID-19, specifically low-income households living at Red Bud Gardens located in a Qualified Census Tract. Services included:

1. Affordable housing that helped to mitigate the destabilizing
2. Investment in the revitalization of the 12th street neighborhood
3. Improvement to vacant units and efforts to rehabilitate, maintain, and renovate the existing affordable housing units at this property
4. Operational costs associated with the maintenance and upkeep of an affordable housing facility

Expenses to be Reimbursed

Were all expenses incurred between March 3, 2021 and March 3, 2022? ☒ YES ☐ NO

Please complete the table below for the requested nonprofit reimbursements. Please attach 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): \$104936.62

Please document the Nonprofit expenses being claimed for reimbursement below. If more room is needed, please attach a separate sheet to your completed application.

Date	Vendor	Expense Description	Amount
2/14/2022	Black Hills Energy	Utilities	427.67
1/07/2022	Black Hills Energy	Utilities	191.42
1/27/2022	Black Hills Energy	Utilities	6947.70
07/02/2021	Arkansas One Call	Member and Call Fees	11.40
06/22/2021	Bright Heating & Air	HVAC Repair	2032.75
06/09/2021	Bright Heating & Air	HVAC Repair	3474.00
07/06/2021	Bright Heating & Air	HVAC Repair	423.31
03/31/2022	City Lumber	Maintenance Supplies	57.44
11/30/2021	City Lumber	Maintenance Supplies	298.93
01/31/2022	City Lumber	Maintenance Supplies	112.58
03/01/2022	Fayetteville Glass Co	Window Replacement	396.06
12/21/2021	Grasshopper Construction	Unit Turnover	5788.76
03/25/2022	Locke Supply Co	Maintenance Supplies	770.12

Total See attached

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 agree to provide any and all requested documentation to further support the charges being requested for reimbursement.

Audra Butler

Digitally signed by Audra Butler
Date: 2022.04.30 10:14:49 -05'00'

04.30.2022

Authorized Signature

Date

Audra Butler Interim Deputy Director

Printed Name and Title

Internal Use Only



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:

- | | |
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| ✓ 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:

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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:

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| ✓ 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
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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

⁸ 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).

⁹ U.S. Bureau of Labor Statistics, *supra* note 6.

¹⁰ 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).

¹¹ 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 transmittable 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

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.%20Mortal.Wkly.%20Rep.%2069\(32\):1049–57\(Aug.%2014,%2020\),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.%20Mortal.Wkly.%20Rep.%2069(32):1049–57(Aug.%2014,%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 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).

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.

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

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=hip.

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/>.

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

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

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

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/covid19/issue-brief/the-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-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

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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>.

Continued

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 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-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>.

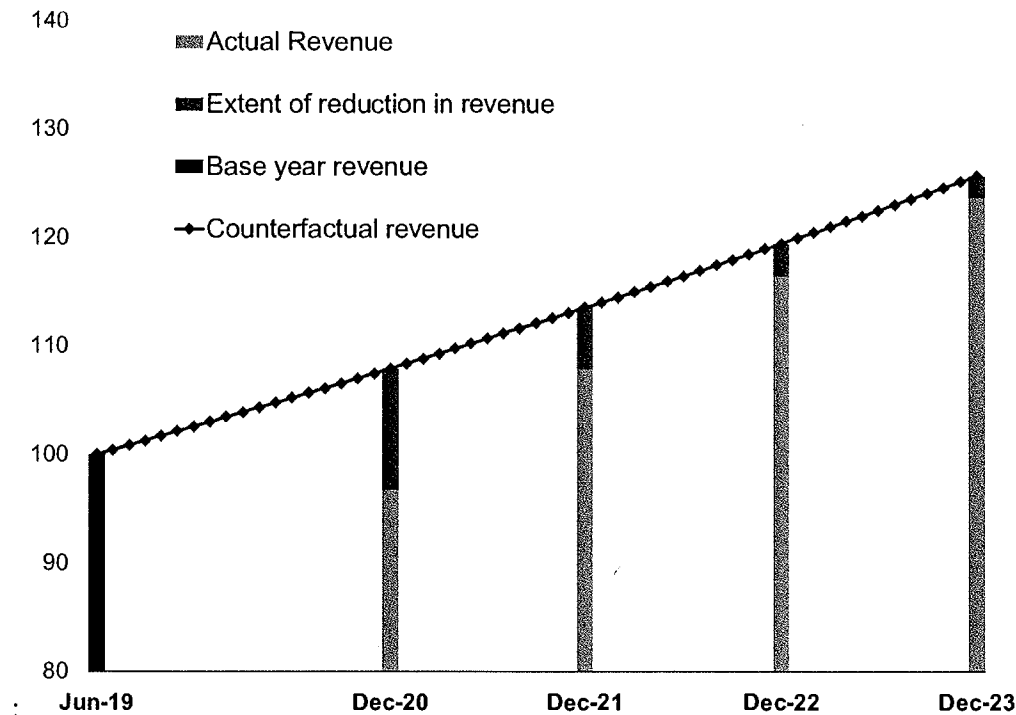
²⁸¹ Pew Research, State and Local Government Job Growth Lags as Economy Recovers (September 2021), available at <https://www.pewtrusts.org/en/research-and-analysis/articles/2021/09/14/state-and-local-government-job-growth-lags-as-economy-recovers>.

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

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 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

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.

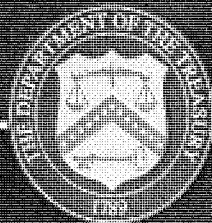
Jacob Leibenluft,
Chief Recovery Officer.

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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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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
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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 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.	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 FSRF.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

Received by Steve Dotson on 12/13/22 at 1:32 PM. Good
Shepherd Lutheran Church revised list of expenses.

Revised list of expenses submitted to the City			
Dates	Vendor	Description	Amount
3/10/21-3/10/22	Payroll	Payroll	\$ 40,428.20
		Total:	\$ 40,428.00

Revised list of expenses submitted to the City			
Date	Vendor	Description	Amount
4/21	01. BancorpsouthPaid Invoices - 5	Mortgage	\$4,614.29
5/21	01. BancorpsouthPaid Invoices - 5	Mortgage	\$4,466.25
6/21	01. BancorpsouthPaid Invoices - 5	Mortgage	\$4,614.29
7/21	01. BancorpsouthPaid Invoices - 5	Mortgage	\$4,466.25
9/21	01. BancorpsouthPaid Invoices - 5	Mortgage	\$4,614.29
4/21	02. Simmons BankPaid Invoices – 19	Mortgage	\$2,361.68
4/21	02. Simmons BankPaid Invoices – 19	Mortgage	\$622.49
4/21	02. Simmons BankPaid Invoices – 19	Mortgage	\$437.06
5/21	02. Simmons BankPaid Invoices – 19	Mortgage	\$750.83
6/21	02. Simmons BankPaid Invoices – 19	Mortgage	\$2,885.51
6/21	02. Simmons BankPaid Invoices – 19	Mortgage	\$662.49
6/21	02. Simmons BankPaid Invoices – 19	Mortgage	\$557.63
7/21	02. Simmons BankPaid Invoices – 19	Mortgage	\$66.25
7/21	02. Simmons BankPaid Invoices – 19	Mortgage	\$684.58
7/21	02. Simmons BankPaid Invoices – 19	Mortgage	\$759.43
2021	02. Simmons BankPaid Invoices – 19	Mortgage	\$1,358.64
2021	02. Simmons BankPaid Invoices – 19	Mortgage	\$1,459.70
9/21	02. Simmons BankPaid Invoices – 19	Mortgage	\$2,671.51
2021	02. Simmons BankPaid Invoices – 19	Mortgage	\$2,989.05
7/21	02. Simmons BankPaid Invoices – 19	Mortgage	\$662.50
2022	02. Simmons BankPaid Invoices – 19	Mortgage	\$3,082.16
2/22	02. Simmons BankPaid Invoices – 19	Mortgage	\$1,382.88
2/22	02. Simmons BankPaid Invoices – 19	Mortgage	\$618.33
2/22	02. Simmons BankPaid Invoices – 19	Mortgage	\$1,616.12
3/21	03. Black Hills EnergyPaid Invoices – 18	Utility	\$72.14
3/21	03. Black Hills EnergyPaid Invoices – 18	Utility	\$341.58
4/21	03. Black Hills EnergyPaid Invoices – 18	Utility	\$368.58
4/21	03. Black Hills EnergyPaid Invoices – 18	Utility	\$11.87
1/21	03. Black Hills EnergyPaid Invoices – 18	Utility	\$1,987.14
5/21	03. Black Hills EnergyPaid Invoices – 18	Utility	\$29.78
5/21	03. Black Hills EnergyPaid Invoices – 18	Utility	\$292.22
3/21	03. Black Hills EnergyPaid Invoices – 18	Utility	\$1,777.38
4/21	03. Black Hills EnergyPaid Invoices – 18	Utility	\$1,155.09
6/21	03. Black Hills EnergyPaid Invoices – 18	Utility	\$1,218.45
6/21	03. Black Hills EnergyPaid Invoices – 18	Utility	\$22.78
6/21	03. Black Hills EnergyPaid Invoices – 18	Utility	\$323.46
6/21	03. Black Hills EnergyPaid Invoices – 18	Utility	\$82.59
7/21	03. Black Hills EnergyPaid Invoices – 18	Utility	\$43.64
7/21	03. Black Hills EnergyPaid Invoices – 18	Utility	\$1,169.69
3/21	04. Swepeco Southwestern Elect Power	Utility	\$576.83
3/21	04. Swepeco Southwestern Elect Power	Utility	\$2,355.83
3/21	04. Swepeco Southwestern Elect Power	Utility	\$1,038.06
3/21	04. Swepeco Southwestern Elect Power	Utility	\$3,203.73
3/21	04. Swepeco Southwestern Elect Power	Utility	\$52.14

Date	Vendor	Description	Amount
3/21	04. Swepco Southwestern Elect Power	Utility	\$163.85
4/21	04. Swepco Southwestern Elect Power	Utility	\$2,282.96
4/21	04. Swepco Southwestern Elect Power	Utility	\$3,484.03
4/21	04. Swepco Southwestern Elect Power	Utility	\$1,507.00
4/21	04. Swepco Southwestern Elect Power	Utility	\$3,210.44
5/21	04. Swepco Southwestern Elect Power	Utility	\$2,440.76
5/21	04. Swepco Southwestern Elect Power	Utility	\$1,561.73
6/21	04. Swepco Southwestern Elect Power	Utility	\$1,277.24
5/21	04. Swepco Southwestern Elect Power	Utility	\$1,680.78
5/21	04. Swepco Southwestern Elect Power	Utility	\$260.79
5/21	04. Swepco Southwestern Elect Power	Utility	\$67.17
Multiple	04. Swepco Southwestern Elect Power	Utility	\$778.23
6/21	04. Swepco Southwestern Elect Power	Utility	\$382.56
6/21	04. Swepco Southwestern Elect Power	Utility	\$2,637.18
6/21	04. Swepco Southwestern Elect Power	Utility	\$3,663.31
6/21	04. Swepco Southwestern Elect Power	Utility	\$75.46
6/21	04. Swepco Southwestern Elect Power	Utility	\$51.46
6/21	04. Swepco Southwestern Elect Power	Utility	\$3,548.68
7/21	04. Swepco Southwestern Elect Power	Utility	\$75.46
7/21	04. Swepco Southwestern Elect Power	Utility	\$1,812.58
7/21	04. Swepco Southwestern Elect Power	Utility	\$1246.14
2021	04. Swepco Southwestern Elect Power	Utility	\$2,342.10
10/21	04. Swepco Southwestern Elect Power	Utility	\$4,817.80
2021	04. Swepco Southwestern Elect Power	Utility	\$370.20
2021	04. Swepco Southwestern Elect Power	Utility	\$3,734.00
2021	04. Swepco Southwestern Elect Power	Utility	\$4,331.05
2021	04. Swepco Southwestern Elect Power	Utility	\$1,999.41
12/21	04. Swepco Southwestern Elect Power	Utility	\$3,249.44
1/22	04. Swepco Southwestern Elect Power	Utility	\$4,136.62
	Total documents submitted:		\$121,715.62
	*Original application request of \$104,936.62, reimbursement will be		
	lesser of original application request or properly supported expenses		

ORDINANCE NO. _____

AN ORDINANCE TO REZONE THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 22-050 LOCATED AT 682 WEST STONE STREET IN WARD 2 FOR APPROXIMATELY 0.11 ACRES FROM RMF-40, RESIDENTIAL MULTI-FAMILY, 40 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-40, Residential Multi-Family, 40 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

2022-1125

Legistar File ID

12/20/2022

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

Jonathan Curth

12/2/2022

DEVELOPMENT REVIEW (630)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

RZN-2022-0050: Rezoning (682 W. STONE ST/KEVLIN, 522): Submitted by MBL PLANNING for property located at 682 W. STONE ST in WARD 2. The property is zoned RMF-40, RESIDENTIAL MULTI-FAMILY, FORTY UNITS PER ACRE and contains approximately 0.11 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	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 DECEMBER 20, 2022

TO: Mayor; Fayetteville City Council

THRU: Susan Norton, Chief of Staff
Jonathan Curth, Development Services Director
Jessie Masters, Development Review Manager

FROM: Ryan Umberger, Senior Planner

DATE: December 2, 2022

SUBJECT: **RZN-2022-0050: Rezoning (682 W. STONE ST/KEVLIN, 522):** Submitted by MBL PLANNING for property located at 682 W. STONE ST in WARD 2. The property is zoned RMF-40, RESIDENTIAL MULTI-FAMILY, FORTY UNITS PER ACRE and contains approximately 0.11 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 located in central Fayetteville, roughly 150 feet east of the intersection of W. Stone Street and S. Hill Avenue. The property is zoned RMF-40, Residential Multi-family, 40 Units per Acre, totals approximately 0.11 acres, and developed with a single-family residence which was built in 1919. Just off-site roughly 200 feet to the east is the Arkansas-Missouri Railroad.

Request: The request is to rezone the property from RMF-40, Residential Multi-Family, 40 Units per Acre to RI-U, Residential Intermediate-Urban.

Public Comment: Staff has not received any public comment on this item.

Land Use Compatibility: Staff finds the request to be compatible with the surrounding context. A wide array of residential uses and densities are located near the subject property. Neighboring properties are of a variety of sizes, largely resulting from the existing development on those properties. 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-40, RI-U would increase the permitted buildable area from 50% to 60% of the lot's overall area. Since the subject property contains roughly 0.11 acres, a maximum of four units are permitted under current entitlements, where rezoning to RI-U would remove the density limitation. That said, any future development would be subject to, and limited by, minimum parking requirements, tree preservation, drainage, and access management standards. RMF-40

zoning allows multi-family dwellings by-right where they are 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. Some bulk and area regulations for RI-U are more permissive than RMF-40. Where the requirements for RMF-40 vary by land use, the minimum lot width and lot area permitted are 30 feet and 2,000 square feet, respectively. RI-U zoning has a minimum lot width requirement of 18 feet and no lot area minimum. Conversely, the aforementioned multi-family allowance under RMF-40 includes a five-story height limit, compared with the smaller single-, 2-, 3-, and 4-family buildings allowed under RI-U with 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 RMF-40 to RI-U serves to contribute towards City Plan 2040 Goals #1 – Appropriate Infill and #6 – Create Opportunities for Attainable Housing. Some site scores high on the Infill Scoring Matrix due to water/sewer access, public schools, the university campus, parks and trails, transit, and groceries nearby. Because of the flexible zoning regulations associated with the RI-U district, rezoning may allow for redevelopment or added density near these services. Additionally, where large multi-family buildings are currently permitted under RMF-40, RI-U encourages more appropriately scaled buildings in relation to the existing neighborhood. The Future Land Use Map designates the site as a City Neighborhood Area – a designation intended to encourage a dense development pattern. Increasing density is likely best facilitated on a site of this size due to the generous regulations in RI-U zoning and it is justified given the property's proximity to commercial and non-residential uses in downtown Fayetteville, a grocery store, Fayetteville High School, and the trail network.

CITY PLAN 2040 INFILL MATRIX: City Plan 2040's Infill Matrix indicates 12 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 (8" sewer main, W. Stone St.)
- Near Water Main (8" water main, W. Stone St.)
- Near Grocery Store (Walmart Neighborhood Market, 660 W. Martin Luther King Jr. Blvd.)
- Near Public School (Fayetteville High School)
- Near University of Arkansas Campus
- Near City Park (Fay Jones Woods)
- Near Paved Trail (Frisco Trail)
- Near ORT Bus Stop (Route 20)
- Near Razorback Transit Stop (Route 13 Detour Peak)
- Appropriate Future Land Use (City Neighborhood Area)
- Sufficient Intersection Density

DISCUSSION:

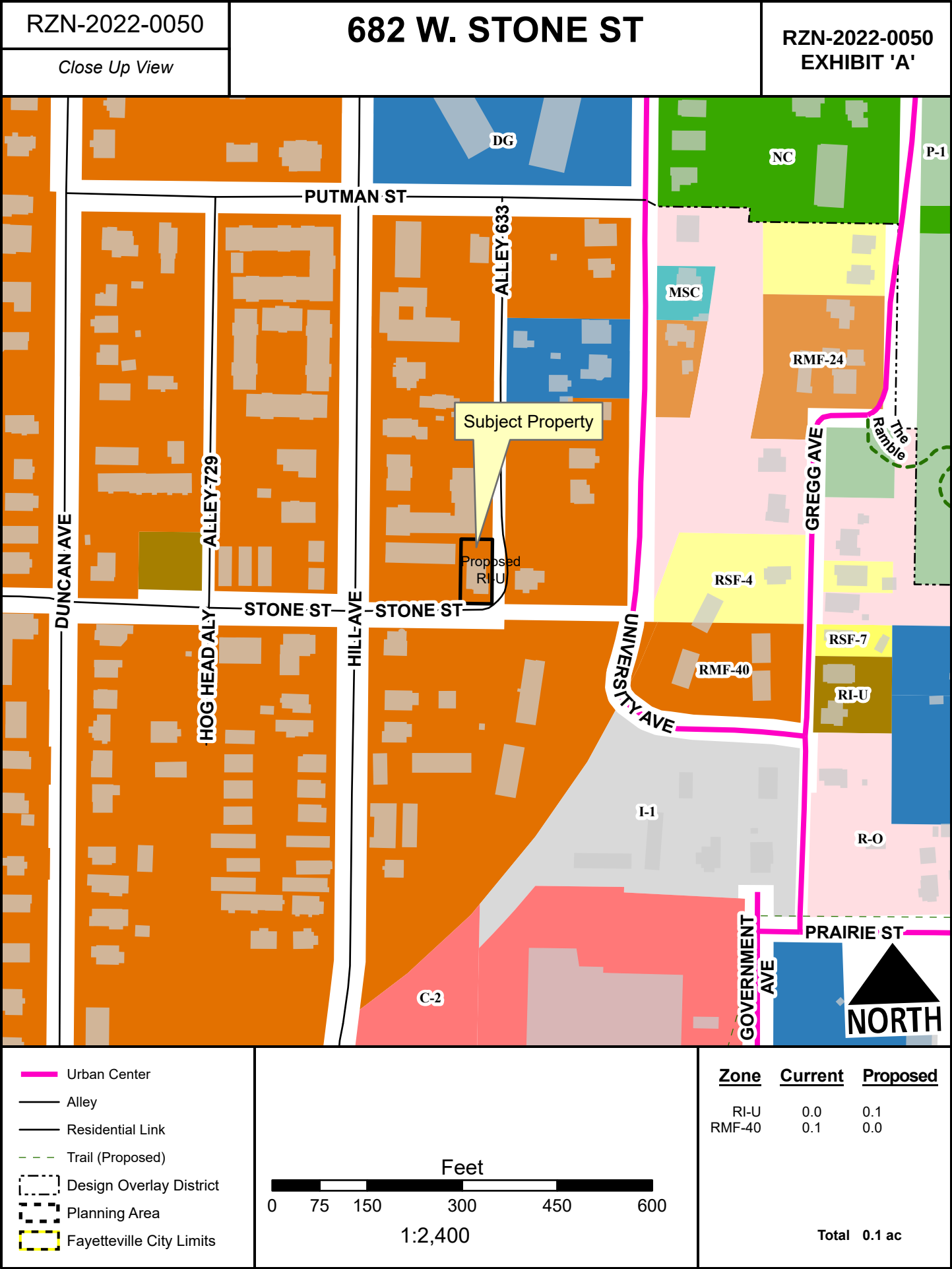
At the November 28, 2022, Planning Commission meeting, a vote of 6-0-0 forwarded the request to City Council with a recommendation of approval. Commissioner Garlock made the motion and Commissioner Madden seconded. Commissioner Garlock posited that the request was compatible with the surroundings and would contribute to a walkable neighborhood. No other members of the Commission spoke on the item. No members of the public spoke during the meeting.

BUDGET/STAFF IMPACT:

N/A

Attachments:

- Exhibit A
- Exhibit B
- Planning Commission Staff Report





Development Services Building
Attn: Planning Division
125 West Mountain Street
Fayetteville, AR 72701

RE: Legal description of 682 West Stone Street

Below is the complete legal description as identified on the Washington County Assessor's Office:

EAST 50 FT. LOTS 11-12 BLOCK 4

FURTHER DESCRIBED FROM 2019-14639 AS:

Beginning at the Southeast corner of Lot 12 in Block 4 of Putman's Addition to Fayetteville, Arkansas, thence North parallel with alley 100 feet, thence West 50 feet, thence South parallel with alley 100 feet, thence East 50 feet to the Point of Beginning, being 50 feet off the East End of Lots 11 and 12, Block 4, Putman's Addition to Fayetteville, Arkansas, as per plat of said addition on file in the Office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas.



TO: Fayetteville Planning Commission

THRU: Jessie Masters, Development Review Manager

FROM: Ryan Umberger, Senior Planner

MEETING DATE: November 28, 2022 (Updated with PC Results)

SUBJECT: **RZN-2022-0050: Rezoning (682 W. STONE ST/KEVLIN, 522):** Submitted by MBL PLANNING for property located at 682 W. STONE ST. The property is zoned RMF-40, RESIDENTIAL MULTI-FAMILY, FORTY UNITS PER ACRE and contains approximately 0.11 acres. The request is to rezone the property to RI-U, RESIDENTIAL INTERMEDIATE-URBAN.

RECOMMENDATION:

Staff recommends forwarding **RZN-2022-0050** to City Council with a recommendation of approval.

RECOMMENDED MOTION:

"I move to forward **RZN-2022-0050** to City Council with a recommendation of approval."

BACKGROUND:

The subject property is located in central Fayetteville, roughly 150 feet east of the intersection of W. Stone Street and S. Hill Avenue. The property is zoned RMF-40, Residential Multi-family, 40 Units per Acre, totals approximately 0.11 acres, and developed with a single-family residence which was built in 1919. Just off-site roughly 200 feet to the east is the Arkansas-Missouri Railroad. 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-40, Residential Multi-Family, 40 Units Per Acre
South	Undeveloped	RMF-40, Residential Multi-Family, 40 Units Per Acre
East	Single-Family Residential	RMF-40, Residential Multi-Family, 40 Units Per Acre
West	Multi-Family Residential	RMF-40, Residential Multi-Family, 40 Units Per Acre

Request: The request is to rezone the property from RMF-40, Residential Multi-Family, 40 Units per Acre to RI-U, Residential Intermediate-Urban.

Public Comment: Staff has not received any public comment on this item.

INFRASTRUCTURE AND ENVIRONMENTAL REVIEW

- Streets:** The subject area has frontage along the north side of W. Stone Street. W. Stone Street 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 development proposal.
- Water:** Public water is available to the subject area. An existing 8-inch water main is present on the south side of W. Stone Street.
- Sewer:** Sanitary Sewer is available to the subject area. An existing 8-inch sanitary sewer main is present on the south side of W. Stone Street.
- Fire:** Station 1, located at 303 W. Center Street protects this site. The property is located approximately 0.6 miles from the fire station with an anticipated drive time of approximately two minutes using existing streets. The anticipated response time would be approximately 4.2 minutes. Fire Department response time is calculated based on the drive time plus one 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 six minutes for an engine and eight 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 lies within the Hillside-Hilltop Overlay District or within a FEMA floodplain, there are no protected streams present in the subject area, nor are there any hydric soils present on the site. Any additional improvements or requirements for drainage will be determined at time of development.
- Tree Preservation:**

The proposed zoning district of RI-U, Residential Intermediate-Urban requires **15% minimum canopy preservation**. The current zoning district of RMF-40, Residential Multi-Family, 40 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 a **City Neighborhood**.

City Neighborhood Areas are more densely developed than residential neighborhood areas and provide a varying mix of nonresidential and residential uses. This designation supports the widest spectrum of uses and encourages density in all housing types, from single family to multi-family. City Neighborhood Areas encourage complete, compact and connected neighborhoods and non-residential uses are intended to serve the residents of Fayetteville, rather than a regional population. While they encourage dense development patterns, they do recognize existing conventional strip commercial developments and their potential for future redevelopment in a more efficient urban layout.

CITY PLAN 2040 INFILL MATRIX: City Plan 2040's Infill Matrix indicates a score of **12** for this site, with a weighted score of **17** at the highest. The following elements of the matrix contribute to the score:

- Adequate Fire Response (Station #1, 303 W. Center St.)
- Near Sewer Main (8" sewer main, W. Stone St.)
- Near Water Main (8" water main, W. Stone St.)
- Near Grocery Store (Walmart Neighborhood Market, 660 W. Martin Luther King Jr. Blvd.)
- Near Public School (Fayetteville High School)
- Near University of Arkansas Campus
- Near City Park (Fay Jones Woods)
- Near Paved Trail (Frisco Trail)
- Near ORT Bus Stop (Route 20)
- Near Razorback Transit Stop (Route 13 Detour Peak)
- Appropriate Future Land Use (City Neighborhood Area)
- Sufficient Intersection Density

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. A wide array of residential uses and densities are located near the subject property. Neighboring properties are of a variety of sizes, largely resulting from the existing development on those properties. 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-40, RI-U would increase the permitted buildable area from 50% to 60% of the lot's overall area. Since the subject property contains roughly 0.11 acres, a maximum of four units are permitted under current entitlements, where rezoning to RI-U would remove the density limitation. That said, any future development would be subject to, and limited by, minimum parking requirements, tree preservation, drainage, and access management standards. RMF-40 zoning allows multi-family dwellings by-right where they are 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. The bulk and area regulations for RI-U are more permissive than RMF-40. Where the requirements for RMF-40 vary by land use, the minimum lot width and lot area permitted are 30 feet and 2,000 square feet, respectively. RI-U zoning has a minimum lot width requirement of 18 feet and no lot area minimum.

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 RMF-40 to RI-U serves to contribute towards City Plan 2040 Goals #1 – Appropriate Infill and #6 – Create Opportunities for Attainable Housing. The site scores high on the Infill Scoring Matrix due to water/sewer access, public schools, the university campus, parks and trails, transit, and groceries nearby. Because of the flexible zoning regulations associated with the RI-U district, rezoning may allow for redevelopment or added density near these services. The Future Land Use Map designates the site as a City

Neighborhood Area – a designation intended to encourage a dense development pattern. Increasing density is likely best facilitated on a site of this size due to the generous regulations in RI-U zoning and it is justified given the property’s proximity to commercial and non-residential uses in downtown Fayetteville, a grocery store, Fayetteville High School, and the trail network.

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 applicant cites, and staff agrees, that the RMF-40 standards are better suited for larger developments and rezoning will allow 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 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 40 units per acre. Staff finds, though, the potential to increase the number of residential units is marginal given the size of the size and unlikely to result in increased traffic danger or congestion. The subject property has access to W. Stone Street, a Residential Link and alley right-of-way to the east. Future development would be subject to the City’s 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 RI-U would increase the load on public services above the potential of the current zoning district, but the impact is not expected to be significant. 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. 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-2022-0050.

PLANNING COMMISSION ACTION: Required YES

Date: November 28, 2022 ☐ Tabled ☒ Forwarded ☐ Denied

Motion: Garlock

Second: Madden

Recommending approval.

Vote: 6-0-0

BUDGET/STAFF IMPACT:

None

Attachments:

- Unified Development Code:
 - §161.12 District RI-U, Residential Intermediate – Urban
 - §161.17 District RMF-40, Residential Multi-Family - Forty (40) Units Per Acre
- Applicant Request Letter
- 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*
-------------------------	----------------------

* 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."

161.17 District RMF-40, Residential Multi-Family - Forty (40) Units Per Acre

(A) *Purpose.* The RMF-40 Multi-family Residential District is designated to protect existing high density multi-family development and to encourage additional development of this type where it is desirable.

(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 CUP
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 occupation
Unit 25	Professional offices
Unit 36	Wireless communications facilities

(C) *Density.*

Units per acre	Forty (40) or less
----------------	--------------------

(D) *Bulk and Area Regulations.*

(1) *Lot Width Minimum.*

Manufactured home park	100 feet
Lot within a Manufactured home park	50 feet
Single-family	30 feet
Two (2) family	30 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	2,500 square feet
Two (2) family	3,000 square feet
Three (3) or more	7,000 square feet
Fraternity or Sorority	1 acre

(3) *Land Area Per Dwelling Unit.*

Manufactured Home	3,000 square feet
Fraternity of Sorority	500 square feet per resident

(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(IV); Ord. No. 2320, 4-5-77; Ord. No. 2700, 2-2-81; Ord. No. 1747, 6-29-70; Code 1991, §160.034; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4178, 8-31-99; Ord. No. 5028, 6-19-07; 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. 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."



Development Services Building
Attn: Planning Division
125 West Mountain Street
Fayetteville, AR 72701

RE: Rezoning request for 682 West Stone Street from RMF-40 District to RI-U District

Along with our application, please consider these justifications for rezoning request.

1. This request is appropriate for a property of this size to remain developable. The subject property is currently zoned Residential Multi-family – Forty Units per Acre (RMF-40) District, but is only approximately 50' by 100' in size. The development standards for the RMF-40 District are intended for larger developments, therefore, rezoning to RI-U District will allow the property to develop under more proportional development standards.
2. Located just over 400 feet to the west, there are two properties zoned RI-U District. This shows that the uses included in the RI-U District have been considered compatible with the RMF-40 District uses in the past. We contend that this remains to be true for the subject property.
3. By rezoning the property from RMF-40 District to RI-U District, the potential unit density of the property is decreased, which will in turn decrease potential vehicular demand, albeit at a negligible rate, on West Stone Street, which is classified as Residential Link. West Stone Street will continue to be fully capable of providing sufficient capacity for the subject property upon approval of this rezoning.

It is for these reasons that this request for rezoning to Residential Intermediate – Urban will not adversely affect nor conflict with the surrounding properties and may be seen as appropriate when applied to 706 West Stone Street.

Sincerely,

Lindsay Hackett

Lindsay Hackett, AICP
Project Manager
MBL Planning

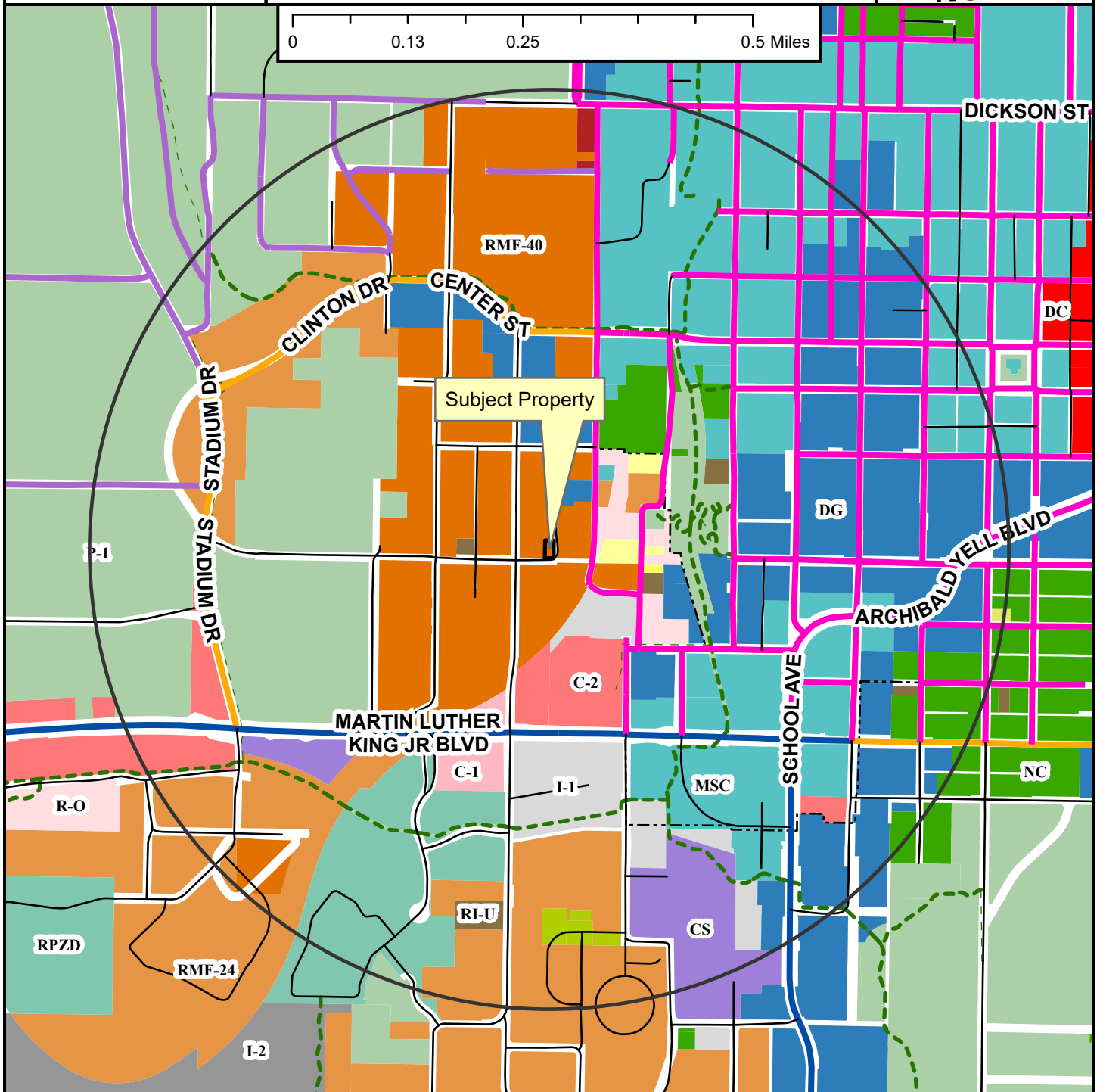
RZN-2022-0050

682 W. STONE ST

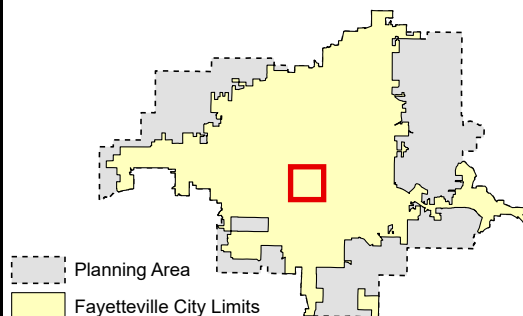
One Mile View



0 0.13 0.25 0.5 Miles



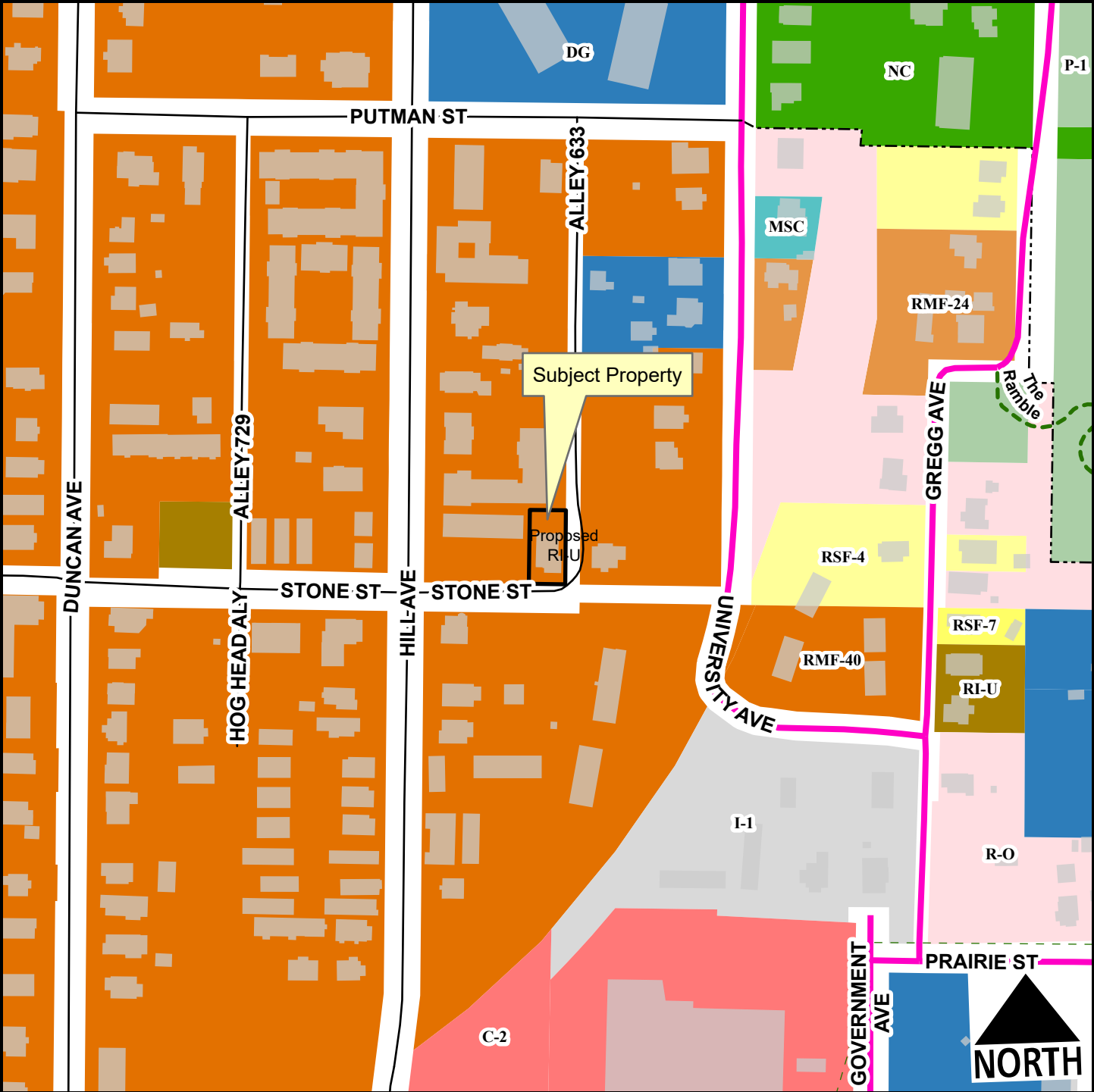
- Neighborhood Link
- Institutional Master Plan
- Regional Link - High Activity
- Urban Center
- Unclassified
- Alley
- Residential Link
- Shared-Use Paved Trail
- Trail (Proposed)
- Design Overlay District
- Fayetteville City Limits
- Planning Area



- Zoning**
- RESIDENTIAL SINGLE-FAMILY**
- NS-G
 - RI-U
 - RI-12
 - NS-L
 - Residential-Agricultural
 - RSF-5
 - RSF-2
 - RSF-4
 - RSF-7
 - RSF-8
 - RSF-18
- RESIDENTIAL MULTI-FAMILY**
- RMF-6
 - RMF-12
 - RMF-13
 - RMF-24
 - RMF-40
- INDUSTRIAL**
- I-1 Heavy Commercial and Light Industrial
 - I-2 General Industrial
- EXTRACTION**
- 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

Planning Commission
November 28, 2022

Agenda Item 7



Urban Center

Alley

Residential Link

Trail (Proposed)

Design Overlay District

Planning Area

Fayetteville City Limits

Feet

0 75 150 300 450 600

1:2,400

Zone	Current	Proposed
RI-U	0.0	0.1
RMF-40	0.1	0.0

Total 0.1 ac

Planning Commission

November 28, 2022

Agenda Item 7

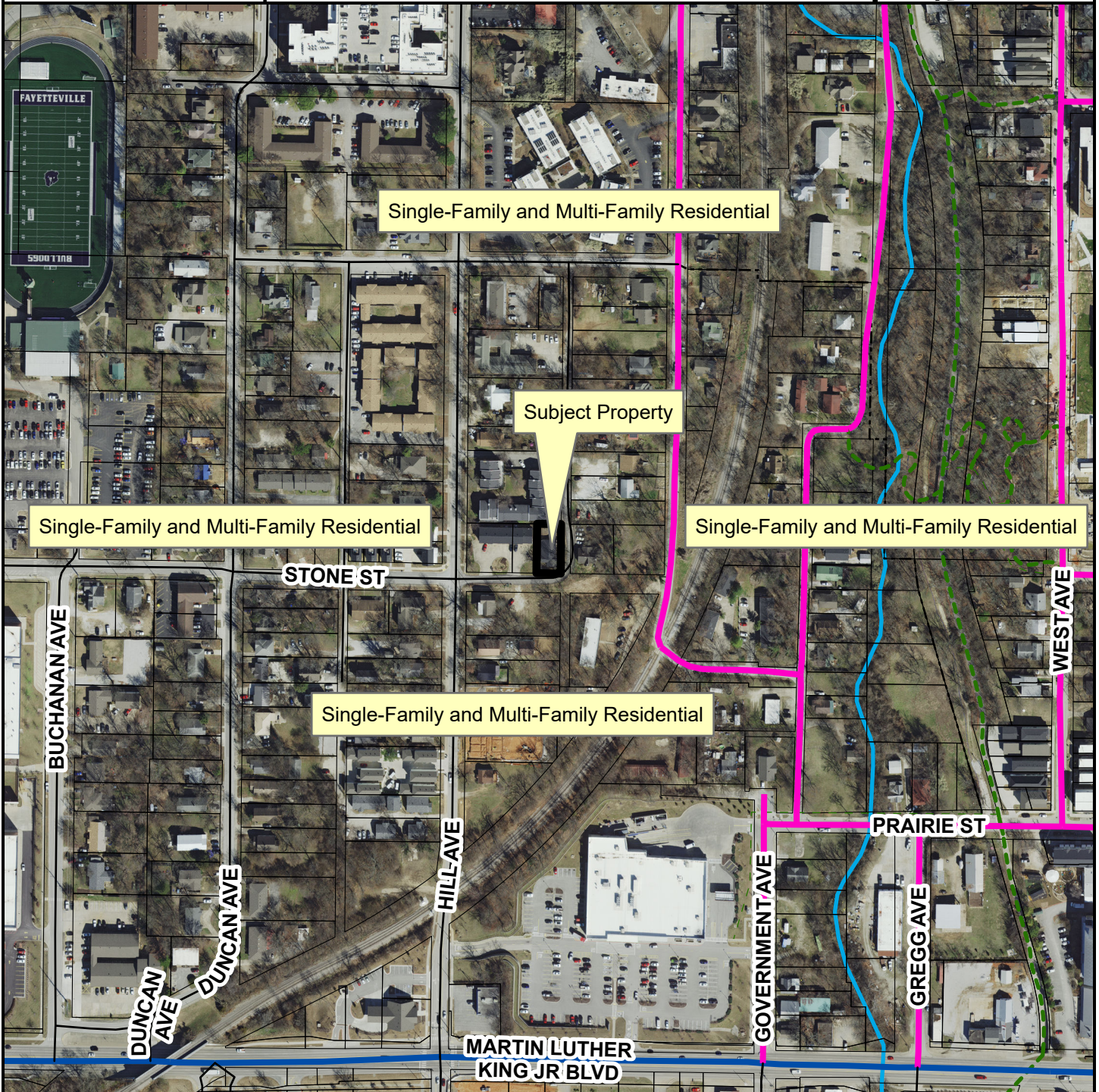
RZN-2022-0050 (KE View)

Page 12 of 14

RZN-2022-0050

682 W. STONE ST

Current Land Use



- Regional Link - High Activity
- Urban Center
- Alley
- Residential Link
- Trail (Proposed)
- Planning Area
- Fayetteville City Limits
- Design Overlay District

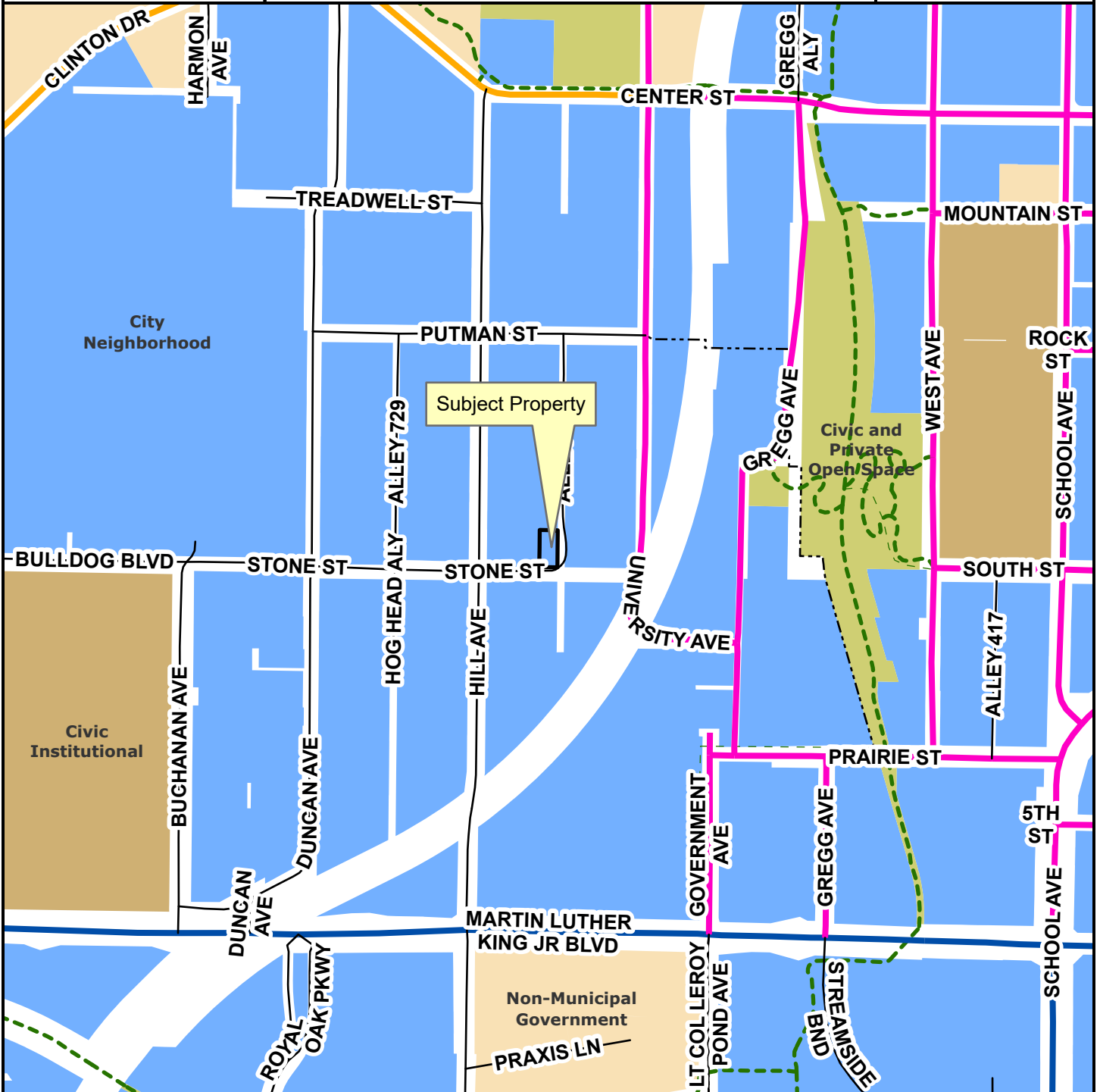


FEMA Flood Hazard Data

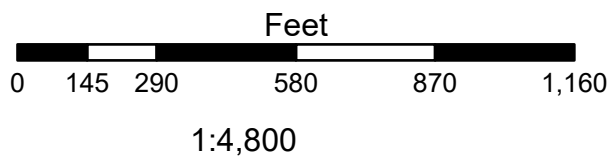
- 100-Year Floodplain
- Floodway



Future Land Use



- Neighborhood Link
- Regional Link - High Activity
- Urban Center
- Alley
- Residential Link
- Planning Area
- Fayetteville City Limits
- - - Trail (Proposed)
- Design Overlay District



- City Neighborhood
- Civic Institutional
- Civic and Private Open Space
- Industrial
- Natural
- Non-Municipal Government
- Residential Neighborhood
- Rural Residential
- Urban Center

ORDINANCE NO. _____

AN ORDINANCE TO REZONE THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 22-049 LOCATED EAST OF SOUTH GARLAND AVENUE IN WARD 1 FOR APPROXIMATELY .45 ACRES FROM RSF-4, RESIDENTIAL SINGLE-FAMILY, 4 UNITS PER ACRE AND I-1, HEAVY COMMERCIAL AND LIGHT INDUSTRIAL 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 RSF-4, Residential Single-Family, 4 Units Per Acre and I-1, Heavy Commercial and Light Industrial 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

2022-1126

Legistar File ID

12/20/2022

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

Jonathan Curth

12/2/2022

DEVELOPMENT REVIEW (630)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

RZN-2022-0049: Rezoning (EAST OF S. GARLAND AVE/KEVLIN, 600): Submitted by MBL PLANNING for properties located EAST OF S. GARLAND AVE in WARD 1. The properties are zoned RSF-4, RESIDENTIAL SINGLE-FAMILY, FOUR UNITS PER ACRE and I-1, HEAVY COMMERCIAL AND LIGHT INDUSTRIAL and contain approximately 0.45 acres. The request is to rezone the subject properties to RI-U, RESIDENTIAL INTERMEDIATE-URBAN.

Budget Impact:

Account Number		Fund	
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 DECEMBER 20, 2022

TO: Mayor; Fayetteville City Council

THRU: Susan Norton, Chief of Staff
Jonathan Curth, Development Services Director
Jessie Masters Development Review Manager

FROM: Ryan Umberger, Senior Planner

DATE: December 2, 2022

SUBJECT: **RZN-2022-0049: Rezoning (EAST OF S. GARLAND AVE/KEVLIN, 600):**
Submitted by MBL PLANNING for properties located EAST OF S. GARLAND AVE in WARD 1. The properties are zoned RSF-4, RESIDENTIAL SINGLE-FAMILY, FOUR UNITS PER ACRE and I-1, HEAVY COMMERCIAL AND LIGHT INDUSTRIAL and contain approximately 0.45 acres. The request is to rezone the subject properties 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 properties are in south Fayetteville, roughly 300 feet north of the intersection of S. Garland Avenue and W. Cato Springs Road. Ellen Smith Headstart and Lifesource neighbor the property to the east. The site totals roughly 0.45 acres, encompasses two lots, and is undeveloped. Single-family dwellings previously occupied both lots; the structures were demolished in 2022. The site is fairly flat, and a few large trees are present. The properties fall within the planning area of the Fayette Junction Neighborhood Plan.

Request: The request is to rezone the property from RSF-4, Residential Single-Family, 4 Units per Acre and I-1, Heavy Commercial and Light Industrial to RI-U, Residential Intermediate-Urban.

Public Comment: Staff has not received any public comment on this item.

Land Use Compatibility: Staff finds the request to rezone the subject properties to RI-U is compatible given the surrounding mix of uses and residential densities. Rezoning allows a variety of housing types, ranging from single- to four-family dwellings by-right. The inclusion of a build-to-zone with RI-U zoning also requires that buildings be placed closer to S. Garland Avenue. The area surrounding the subject property includes a mix of uses and residential densities. The Crown Ridge Apartments are across the street to the west. A grading permit is currently under review for another 43-unit multi-family development immediately to the north of that complex. North and south of the subject property are primarily single-family dwellings with undeveloped properties

and a storage facility further afield to the north; a duplex at the northeast corner of S. Garland Avenue and W. Cato Springs Road is located to the south. East of the subject property are the Ellen Smith Headstart and Lifesource counseling agency. A segment of the Cato Springs Trail and Arkansas Research and Technology Park are also within a quarter mile to the east. Unsurprisingly, there is a patchwork of zoning designations in the near vicinity associated with these uses. Single-family, multi-family, industrial, institutional, and mixed-use zonings are all present within a short distance of the subject area.

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 to RI-U serves to contribute towards City Plan 2040 goals #1 – Appropriate Infill, 4 – Growing a Livable Transportation Network, and 6 – Create Opportunities for Attainable Housing. First, the site scores moderately on the Infill Scoring Matrix. Rezoning would put added residential density on properties with ready access to basic development needs such as public streets, water, and sanitary sewer. The property is also proximate to City parks and trails. Rezoning also aligns with Goal #4 due to its location near the Arkansas Research and Technology Park as well as many industrially zoned properties which either are currently developed with or represent entitlements for non-residential uses or employment centers. Last, RI-U allows more diverse housing options than its current RSF-4 and I-1 zoning. A range of single- to four-family dwellings provides more opportunity for affordable options than a strictly single-family district. In terms of the future land use designation as a City Neighborhood Area, staff finds the request to be consistent. City Neighborhood Areas encourage density in all housing types provide and provide a varying mix of nonresidential and residential uses. The subject request prioritizes redevelopment of an infill site rather than contributing to suburban sprawl, creates opportunities for diverse and attainable housing, and promotes residential development that is connected to non-residential services.

CITY PLAN 2040 INFILL MATRIX: City Plan 2040's Infill Matrix indicates 7 attributes for this site that may contribute to appropriate infill. The following elements of the matrix contribute to the score:

- Adequate Fire Response (Station #9, 2250 S. School Avenue)
- Near Sewer Main (6" sewer main, S. Garland Avenue)
- Near Water Main (6" sewer main, S. Garland Avenue)
- Near City Park (Greathouse Park)
- Near Paved Trail (Cato Springs Trail)
- Appropriate Future Land Use (City Neighborhood Area)
- Within Master Plan Area (Fayette Junction Neighborhood Plan)

DISCUSSION:

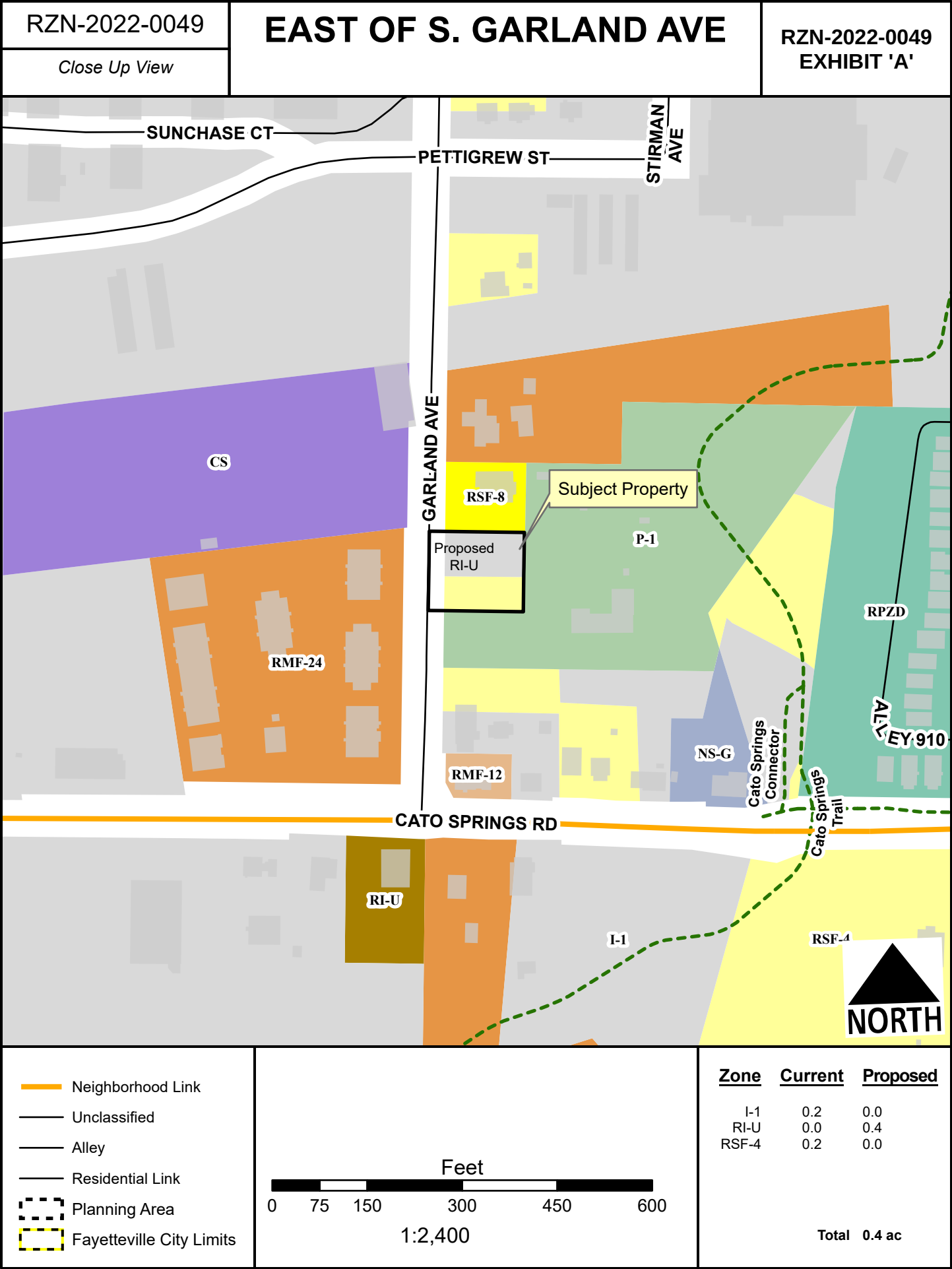
At the November 28, 2022, Planning Commission meeting, a vote of 5-0-0 forwarded the request to City Council with a recommendation of approval. Commissioner Garlock made the motion and Commissioner Brink seconded. Commissioner Garlock said the request represented modest infill which was appropriate for the site. No other members of the Commission spoke on the item. Commissioner McGetrick was absent during the vote. No members of the public spoke during the meeting.

BUDGET/STAFF IMPACT:

N/A

Attachments:

- Exhibit A
- Exhibit B
- Planning Commission Staff Report





Development Services Building
Attn: Planning Division
125 West Mountain Street
Fayetteville, AR 72701

RE: Legal descriptions of 1928 & 1930 South Garland Avenue

Below is the complete legal description of 1928 S. Garland Ave. as identified on the Washington County Assessor's Office:

PT S/2 SW SW 60/150, S 60 OF N 270 OF W 150

FURTHER DESCRIBED FROM 2021-16474 AS:

Beginning at a point Two Hundred and ten (210) feet South of the Northwest corner of the South Half of the Southwest Quarter of the Southwest Quarter Section Twenty-one (21) in Township Sixteen North of Range Thirty (30) West, and running then East one hundred fifty (150) feet; thence South Sixty (60) feet; thence West one hundred and fifty (150) feet, and thence North Sixty (60) feet to the place of beginning.

Below is the complete legal description of 1930 S. Garland Ave. as identified on the Washington County Assessor's Office:

PT S/2 SW SW .25 AC

FURTHER DESCRIBED FROM 2016-37271 AS: P

part of the South Half of the Southwest Quarter of the Southwest Quarter of Section Twenty-one (21) in Township Sixteen (16) North, Range Thirty (30) West, described as follows: Beginning at the Southwest corner of said twenty (20) acre tract, and running; thence North three hundred twenty-five (325) feet for a beginning point; thence North sixty-five (65) feet; thence East one hundred fifty (150) feet; thence South sixty-five (65) feet; thence West one hundred fifty (150) feet to the place of beginning.



TO: Fayetteville Planning Commission

THRU: Jessie Masters, Development Review Manager

FROM: Ryan Umberger, Senior Planner

MEETING DATE: November 28, 2022 (Updated with PC Results)

SUBJECT: **RZN-2022-0049: Rezoning (EAST OF S. GARLAND AVE/KEVLIN, 600):**
Submitted by MBL PLANNING for properties located EAST OF S. GARLAND AVE. The properties are zoned RSF-4, RESIDENTIAL SINGLE-FAMILY, FOUR UNITS PER ACRE and I-1, HEAVY COMMERCIAL AND LIGHT INDUSTRIAL and contain approximately 0.45 acres. The request is to rezone the subject properties to RI-U, RESIDENTIAL INTERMEDIATE-URBAN.

RECOMMENDATION:

Staff recommends forwarding **RZN-2022-0049** to City Council with a recommendation of approval.

RECOMMENDED MOTION:

"I move to forward **RZN-2022-0049** to City Council with a recommendation of approval."

BACKGROUND:

The subject properties are in south Fayetteville, roughly 300 feet north of the intersection of S. Garland Avenue and W. Cato Springs Road. Ellen Smith Headstart and Lifesource neighbor the property to the east. The site totals roughly 0.45 acres, encompasses two lots, and is undeveloped. Single-family dwellings previously occupied both lots; the structures were demolished in 2022. The site is fairly flat, and a few large trees are present. The properties fall within the planning area of the Fayette Junction Neighborhood Plan. 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-8, Residential Single-Family, 8 Units per Acre
South	Ellen Smith Headstart and Lifesource	P-1, Institutional
East	Ellen Smith Headstart and Lifesource	RI-U, Residential Intermediate-Urban
West	Multi-Family Residential	RMF-24, Residential Multi-Family, 24 Units per Acre

Request: The request is to rezone the property from RSF-4, Residential Single-Family, 4 Units per Acre and I-1, Heavy Commercial and Light Industrial to RI-U, Residential Intermediate-Urban.

Public Comment: Staff has not received any public comment on this item.

INFRASTRUCTURE AND ENVIRONMENTAL REVIEW

- Streets:** The subject area has frontage along the east side of S. Garland Avenue. S. Garland 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 development proposal.
- Water:** Public water is available to the subject area. An existing 6-inch water main is present on the west side of S. Garland Avenue.
- Sewer:** Sanitary Sewer is available to the subject area. An existing 6-inch sanitary sewer main is present on the east side of S. Garland Avenue.
- Fire:** Fire apparatus access and fire protection water supplies will be reviewed for compliance with the Arkansas Fire Prevention Code at the time of development. Station 9, located at 2250 S. School Avenue protects this site. The property is located approximately 0.8 miles from the fire station with an anticipated drive time of approximately two minutes using existing streets. The anticipated response time would be approximately 4.2 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 six minutes for an engine and eight 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 or within a FEMA floodplain, there are no protected streams present in the subject area, nor are there any hydric soils present on the site. Any additional improvements or requirements for drainage will be determined at time of development.

Tree Preservation:

The proposed zoning district of RI-U, Residential Intermediate - Urban requires **15% minimum canopy preservation**. The current zoning district of RSF-4, Residential Single-Family, 4 Units per Acre requires **25% minimum canopy preservation**; I-1, Heavy Commercial and Light Industrial requires **15% 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 **City Neighborhood Area**.

City Neighborhood Areas are more densely developed than residential neighborhood areas and provide a varying mix of nonresidential and residential uses. This designation supports the widest spectrum of uses and encourages density in all housing types, from single family to multi-family. City Neighborhood Areas encourage complete, compact and connected neighborhoods and non-residential uses are intended to serve the residents of Fayetteville, rather than a regional population. While they encourage dense development patterns, they do recognize existing conventional strip commercial developments and their potential for future redevelopment in a more efficient urban layout.

CITY PLAN 2040 INFILL MATRIX: City Plan 2040's Infill Matrix indicates a score of 7 for this site,

with a weighted score of 7. The following elements of the matrix contribute to the score:

- Adequate Fire Response (Station #9, 2250 S. School Avenue)
- Near Sewer Main (6" sewer main, S. Garland Avenue)
- Near Water Main (6" sewer main, S. Garland Avenue)
- Near City Park (Greathouse Park)
- Near Paved Trail (Cato Springs Trail)
- Appropriate Future Land Use (City Neighborhood Area)
- Within Master Plan Area (Fayette Junction Neighborhood Plan)

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 rezone the subject properties to RI-U is compatible given the surrounding mix of uses and residential densities. Rezoning allows a variety of housing types, ranging from single- to four-family dwellings by-right. The inclusion of a build-to-zone with RI-U zoning also requires that buildings be placed closer to S. Garland Avenue. The area surrounding the subject property includes a mix of uses and residential densities. The Crown Ridge Apartments are across the street to the west. A grading permit is currently under review for another 43-unit multi-family development immediately to the north of that complex. North and south of the subject property are primarily single-family dwellings with undeveloped properties and a storage facility further afield to the north; a duplex at the northeast corner of S. Garland Avenue and W. Cato Springs Road is located to the south. East of the subject property are the Ellen Smith Headstart and Lifesource counseling agency. A segment of the Cato Springs Trail and Arkansas Research and Technology Park are also within a quarter mile to the east. Unsurprisingly, there is a patchwork of zoning designations in the near vicinity associated with these uses. Single-family, multi-family, industrial, institutional, and mixed-use zonings are all present within a short distance of the subject area.

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 to RI-U serves to contribute towards City Plan 2040 goals #1 – Appropriate Infill, 4 – Growing a Livable Transportation Network, and 6 – Create Opportunities for Attainable Housing. First, the site scores moderately on the Infill Scoring Matrix. Rezoning would put added residential density on properties with ready access to basic development needs such as public streets, water, and sanitary sewer. The property is also proximate to City parks and trails. Rezoning also aligns with Goal #4 due to its location near the Arkansas Research and Technology Park as well as many industrially zoned properties which either are currently developed with or represent entitlements for non-residential uses or employment centers. Last, RI-U allows more diverse housing options than its current RSF-4 and I-1 zoning. A range of single- to four-family dwellings provides more opportunity for affordable options than a strictly single-family district. In

terms of the future land use designation as a City Neighborhood Area, staff finds the request to be consistent. City Neighborhood Areas encourage density in all housing types provide and provide a varying mix of nonresidential and residential uses. The subject prioritizes redevelopment of an infill site rather than contributing to suburban sprawl, creates opportunities for diverse and attainable housing, and promotes residential development that is connected to non-residential services.

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: Staff believes that there is sufficient justification for rezoning the property to RI-U, including diversifying the mix of residential uses, allowing varied lot sizes, and bringing appropriate density to the site while aligning with the future land use map.

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: Rezoning the property to RI-U carries an associated potential to increase traffic at this location above the potential of the current zoning district. However, the impact is unlikely to be detrimental to pedestrian and vehicular danger or worsen congestion. The 0.45-acre lot is of a modest size which limits the amount of additional traffic generated from the site. Future developments will access S. Garland Avenue which has seen very few traffic incidents (two at the intersection of S. Garland and W. Cato Springs Road) since 2017. AADT counts were not recorded on the segment of S. Garland Avenue between W. 15th Street and W. Cato Springs Road but the nearest volume count on W. Cato Springs Road suggests the existing street system can accommodate additional volume. At that location, roughly 800 feet southwest of the subject properties, 3,000 vehicle trips were recorded on a Neighborhood Link Street which is designed to serve up to 6,000 vehicles per day. Further, nearby access to the regional trail system offers an opportunity for future residents to use alternative modes. Not only is the Cato Springs Trail present in close proximity to the east, but the Town Branch Trail crosses S. Garland Avenue roughly 850 feet to the north. New development on the site would be required to improve the property's frontage to the 2040 Master Street Plan requirements, including six-foot greenspaces and sidewalks, which would be the first along the east side of this segment of S. Garland Avenue, incrementally improving pedestrian connectivity to the trail and complement the non-motorized transportation network.

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 RSF-4 to RI-U has the capacity to increase the population density at this location. Staff finds that limitations such as the property's size, required parking, and other development obligations such as required drainage and tree preservation will prevent an increase in

density beyond what the site can handle. Water and sewer are available at this location, negating the need to extend or improve services and the existing street system can support added density. The Fayetteville Public School District 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-2022-0049.

PLANNING COMMISSION ACTION:				Required	<u>YES</u>
Date: <u>November 28, 2022</u>	☐ Tabled	☒ Forwarded	☐ Denied		
Motion: Garlock					
Second: Brink		Recommending approval.			
Vote: 5-0-0		McGetrick absent during vote.			

BUDGET/STAFF IMPACT:

None

Attachments:

- Unified Development Code:
 - §161.07 District RSF-4, Residential Single-Family - Four (4) Units Per Acre
 - §161.12 District RI-U, Residential Intermediate – Urban
 - §161.30 District I-1, Heavy Commercial and Light Industrial
- 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)

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."

161.12 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."

161.30 District I-1, Heavy Commercial And Light Industrial

(A) *Purpose.* The Heavy Commercial District is designed primarily to accommodate certain commercial and light industrial uses which are compatible with one another but are inappropriate in other commercial or industrial districts. The Light Industrial District is designed to group together a wide range of industrial uses, which do not produce objectionable environmental influences in their operation and appearance. The regulations of this district are intended to provide a degree of compatibility between uses permitted in this district and those in nearby residential districts.

(B) *Uses.*

(1) *Permitted Uses.*

Unit 1	City-wide uses by right
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 5	Government Facilities
Unit 6	Agriculture
Unit 13	Eating places
Unit 16	Shopping goods
Unit 17	Transportation trades and services
Unit 18	Gasoline service stations and drive-in/drive-through restaurants
Unit 21	Warehousing and wholesale
Unit 22	Manufacturing
Unit 25	Offices, studios and related services
Unit 27	Wholesale bulk petroleum storage facilities with underground storage tanks
Unit 42	Clean technologies
Unit 46	Short-term rentals

(2) *Conditional Uses.*

Unit 2	City-wide uses by conditional use permit
Unit 19	Commercial recreation, small sites
Unit 20	Commercial recreation, large sites
Unit 28	Center for collecting recyclable materials
Unit 36	Wireless communications facilities
Unit 38	Mini-storage units
Unit 43	Animal boarding and training

(C) *Density.* None.

(D) *Bulk and Area Regulations.* None.

(E) *Setback Regulations.*

Front, when adjoining A or R districts	50 feet
Front, when adjoining C, I, or P districts	25 feet
Side, when adjoining A or R districts	50 feet
Side, when adjoining C, I, or P districts	10 feet
Rear	25 feet

(F) *Height Regulations.* There shall be no maximum height limits in I-1 District, provided, however, that 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 boundary line of an adjacent residential 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.* None.

(Code 1965, App. A., Art. 5(VIII); Ord. No. 2351, 6-2-77; Ord. No. 2430, 3-21-78; Ord. No. 2516, 4-3-79; Ord. No. 1747, 6-29-70; Code 1991, §160.039; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4178, 8-31-99; Ord. No. 4992, 3-06-07; Ord. No. 5028, 6-19-07; Ord. No. 5195, 11-6-08; Ord. No. 5312, 4-20-10; Ord. No. 5339, 8-3-10; Ord. No. 5353, 9-7-10; Ord. No. 5472; 12-20-11; Ord. No. 5800 , §1(Exh. A), 10-6-15; Ord. No. 5945 , §§5, 7, 1-17-17; Ord. No. 5982 , §1, 6-20-17; Ord. No. 6015 , §1(Exh. A), 11-21-17; Ord. No. 6521 , §6, 1-18-22)



Development Services Building
Attn: Planning Division
125 West Mountain Street
Fayetteville, AR 72701

RE: Rezoning request for 1928 & 1930 South Garland Avenue from I-1 & RSF-4 Districts to RI-U District

Along with our application, please consider these justifications for rezoning request.

1. The subject properties are currently zoned a combination of I-1 and RSF-4 Districts. They are surrounded by Institutional District (P-1) on two sides, adjacent to the south and east. Adjacent property to the north is RSF-8 District. Across S. Garland Ave is RMF-24 and CS Districts.
2. Due to the variety of low to moderate intensity zoning districts in the immediate and surrounding areas, we submit that this request for RI-U District is reasonable and appropriate due to the compatibility of uses.
3. By rezoning the applicable portion of the subject property from Heavy Commercial and Light Industrial District (I-1) to RI-U District, a potential nuisance will be avoided for the surrounding properties.
4. Another instance of the RI-U District in this area is located less than 400 feet to the south of the subject properties. This represents that the uses permitted in the requested District have previously been considered appropriate for the area. These uses are solely residential which will blend well with both the fabric of the existing developments, as well as any future uses permissible for the surrounding properties.
5. South Garland Avenue is classified as Residential Link, which will provide sufficient capacity for the vehicular needs of the subject properties. Additionally, the nearby connection to W. Cato Springs Road, which has a Neighborhood Link classification, will serve in providing connection to the neighborhood and beyond.

It is for these reasons that this request for rezoning to Residential Intermediate – Urban will not adversely affect nor conflict with the surrounding properties and may be seen as appropriate when applied to 1928 & 1930 S. Garland Avenue.

Sincerely,

Lindsay Hackett

Lindsay Hackett, AICP
Project Manager
MBL Planning

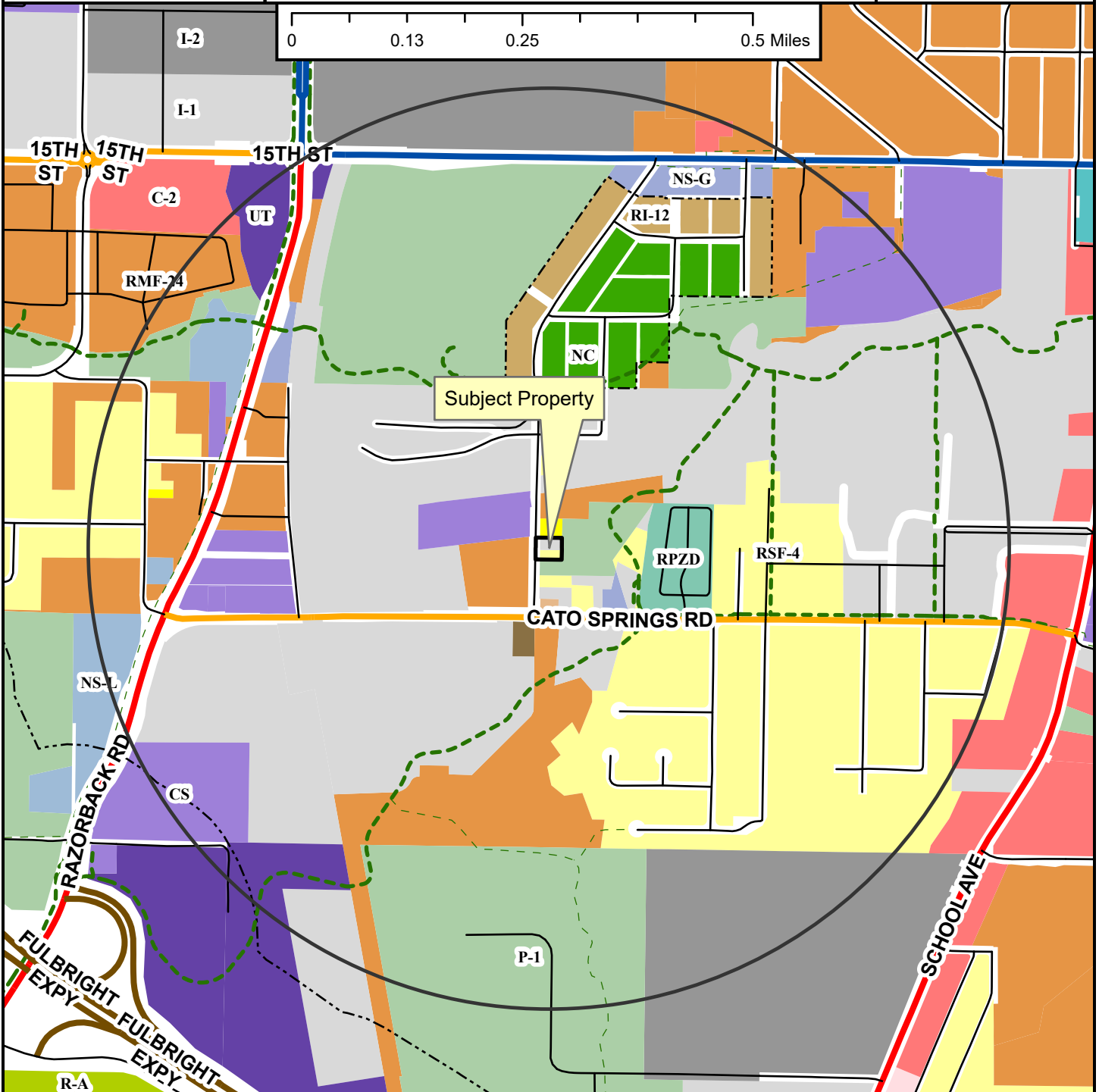
RZN-2022-0049

EAST OF S. GARLAND AVE

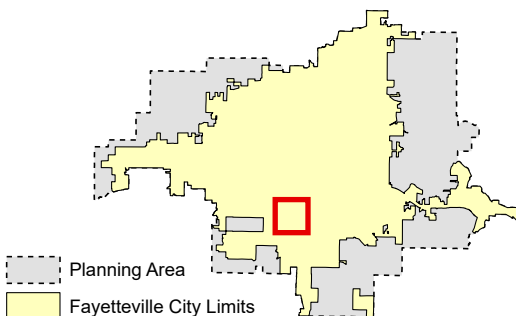
One Mile View



0 0.13 0.25 0.5 Miles



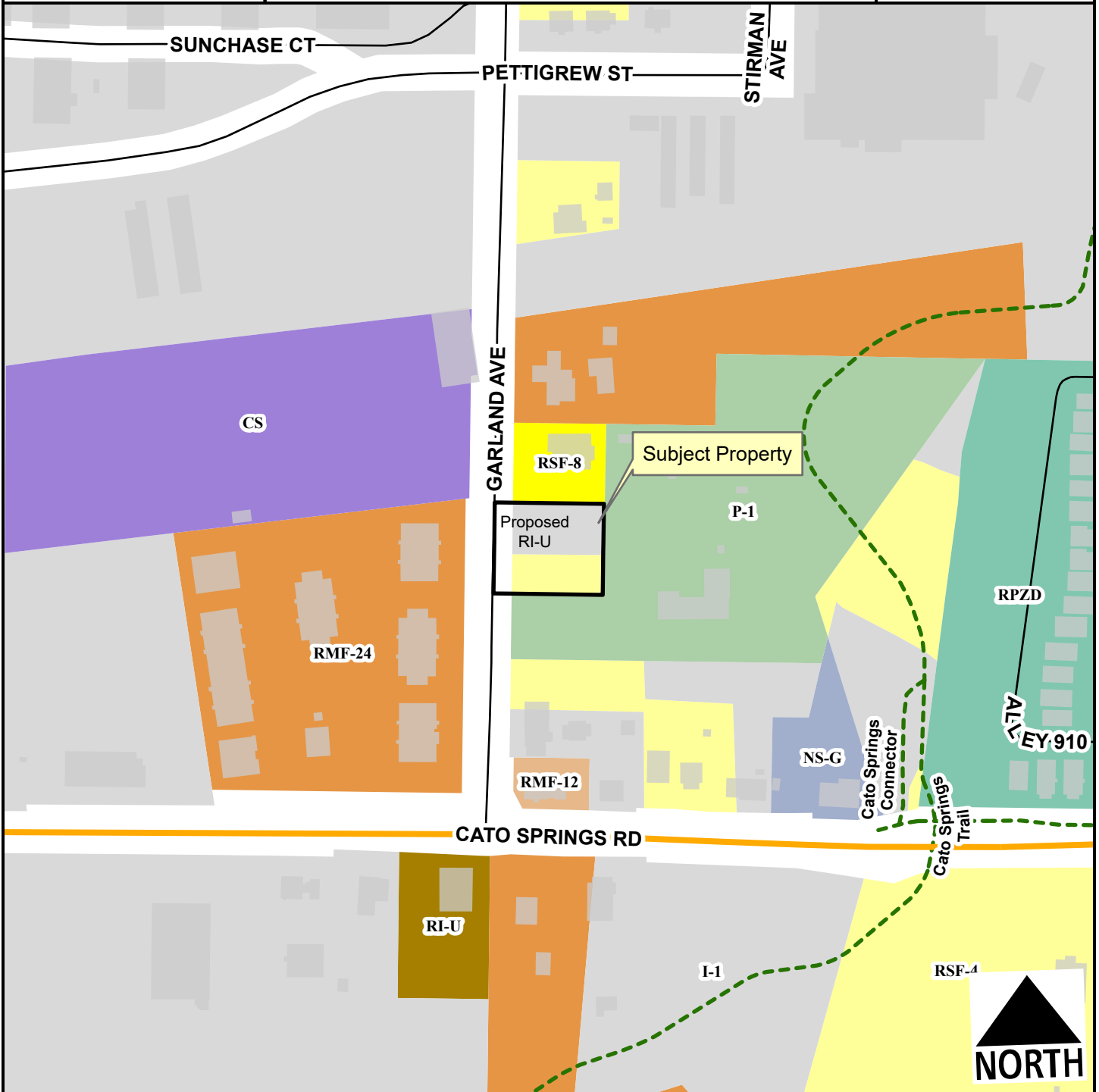
- Regional Link
- Neighborhood Link
- Regional Link - High Activity
- Freeway/Expressway
- Unclassified
- Alley
- Residential Link
- Shared-Use Paved Trail
- Trail (Proposed)
- Design Overlay District
- Fayetteville City Limits
- Planning Area



- 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-13
 - RMF-24
 - RMF-40
- INDUSTRIAL**
- I-1 Heavy Commercial and Light Industrial
 - I-2 General Industrial
- EXTRACTION**
- 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

Planning Commission
November 28, 2022

Agenda Item 6



Neighborhood Link

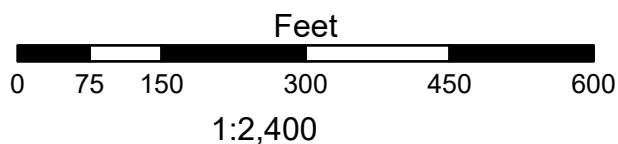
Unclassified

Alley

Residential Link

Planning Area

Fayetteville City Limits



Zone	Current	Proposed
I-1	0.2	0.0
RI-U	0.0	0.4
RSF-4	0.2	0.0

Total 0.4 ac
Planning Commission

November 28, 2022

Agenda Item 6

RZN-2022-0049

EAST OF S. GARLAND AVE

Current Land Use



- Neighborhood Link
- Unclassified
- Alley
- Residential Link
- Planning Area
- Fayetteville City Limits
- Design Overlay District



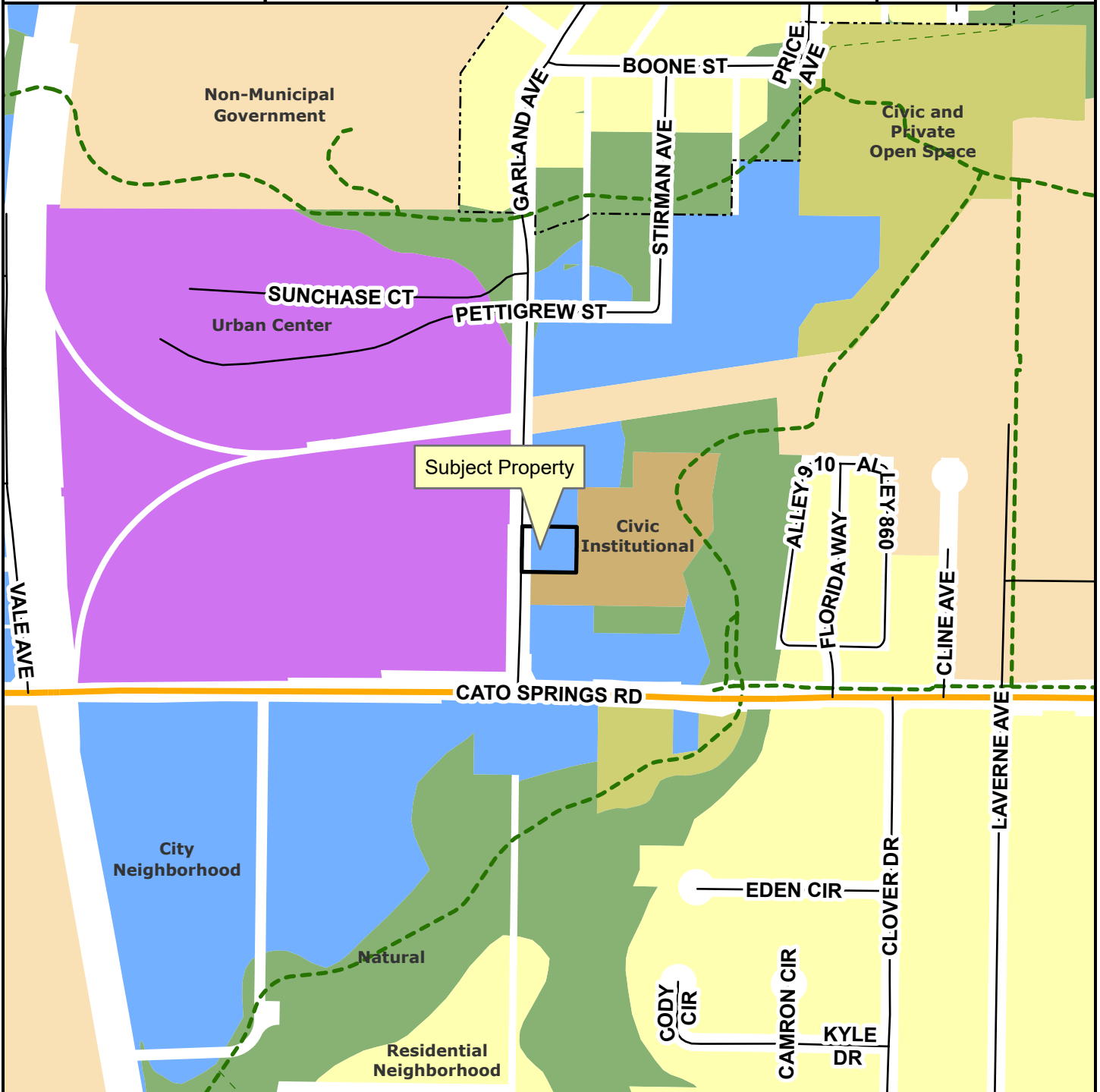
FEMA Flood Hazard Data

- 100-Year Floodplain
- Floodway

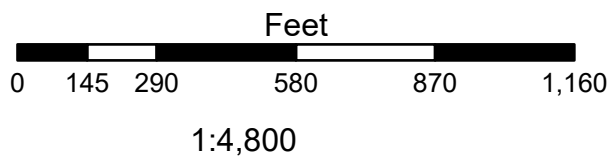
RZN-2022-0049

EAST OF S. GARLAND AVE

Future Land Use



- Regional Link
- Neighborhood Link
- Unclassified
- Alley
- Residential Link
- Planning Area
- Fayetteville City Limits
- Trail (Proposed)
- Design Overlay District



- City Neighborhood
- Civic Institutional
- Civic and Private Open Space
- Industrial
- Natural
- Non-Municipal Government
- Residential Neighborhood
- Rural Residential
- Urban Center

RESOLUTION NO. _____

A RESOLUTION TO AUTHORIZE THE CITY ATTORNEY TO SEEK CONDEMNATION AND POSSESSION OF CERTAIN LANDS OWNED BY THE STANLEY W. SMITH REVOCABLE LIVING TRUST NEEDED FOR THE MIDTOWN CORRIDOR PROJECT

WHEREAS, the City of Fayetteville and the Stanley W. Smith Revocable Living Trust have been unable to agree upon a fair price for approximately 5,783 square feet of permanent easements, right-of-way and temporary construction easements needed to complete the Midtown Corridor 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 for 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 Midtown Corridor Project and owned by the Stanley W. Smith Revocable Living Trust, that is needed for right-of-way or other easements for the Project, and to pay into the registry of the Circuit Court just compensation in the amount of \$50,000.00.

City of Fayetteville Staff Review Form

2022-1127

Legistar File ID

12/20/2022

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

Matt Casey

11/30/2022

ENGINEERING (621)

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 the Stanley W. Smith Revocable Living Trust necessary for the Midtown Corridor Project.

Budget Impact:

4602.860.7218-5805.00

Street Project 2019 Bonds Fund

Account Number

Fund

46020.7218.1020

Midtown Corridor

Project Number

Project Title

Budgeted Item? Yes

Current Budget \$ 136,270.00

Funds Obligated \$ 3,500.00

Current Balance **\$ 132,770.00**

Does item have a cost? Yes

Item Cost \$ 50,000.00

Budget Adjustment Attached? No

Budget Adjustment \$ -

Remaining Budget **\$ 82,770.00**

V20210527

Purchase Order Number: _____

Previous Ordinance or Resolution # _____

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



MEETING OF DECEMBER 20, 2022

TO: Mayor and City Council

THRU: Susan Norton, Chief of Staff
Chris Brown, Public Works Director

FROM: Matt Casey, Engineering Design Manager

DATE: November 29, 2022

SUBJECT: **Approval of a Resolution authorizing the City Attorney to seek condemnation and an order of possession of certain land owned by the Stanley W. Smith Revocable Living Trust necessary for the Midtown Corridor 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 the Stanley W. Smith Revocable Living Trust necessary for the Midtown Corridor Project.

BACKGROUND:

The Midtown Corridor is a project in the 2019 Transportation Bond Program and includes several different components. The corridor is 2.3 miles in length and runs in an east-west direction through a flat part of the middle of the city from I-49 at Porter to College Avenue at Poplar Street. The project includes vehicular improvements to the intersection of Porter Road and I-49 with a roundabout to improve the traffic flow for the large volume of traffic from the west of I-49 turning onto the interstate heading north. Along Porter Road and Deane Street from the interstate to Garland Avenue the project includes street improvements with new turn lanes and drainage as well as separated pedestrian and bicycle facilities. The street, drainage pedestrian, and bicycle improvements will continue along Sycamore Street from Garland Avenue to the Razorback Greenway. From the Greenway to College Avenue, the project will include multi-use trail construction along the Poplar Street alignment. Finally, a connection to the south from Poplar Street to Gregory Park was included in the design.

The first phase of this corridor included the improvements to Porter Road and Deane Street from I-49 to the east side of the new fire station. The design for this phase was completed in January of 2022. In February of 2022, the City Council approved a change order with Flintco to include this phase in the Police Headquarters Project. Construction is currently underway and is expected to be complete in early 2023.

The design for the remainder of this corridor is complete and a Construction Manager at Risk contract with Crossland Heavy Contractors was approved by the City Council at the August 16th city council meeting. Crossland Heavy is currently working on the bidding of the project and is expected to have a guaranteed maximum price for consideration by the City Council in early 2023. Construction is expected to begin in March of 2023.

DISCUSSION:

Right of way and easement acquisition began for this project in January of 2022. Staff has been successful in acquiring all but a few of the properties for this project. The owner of this property at 1641 N. Oakland Avenue has refused to sign right-of-way and easement documents. This is one of the last of the 73 properties to be acquired for this portion of the project. Staff will continue to negotiate with this property owner to avoid condemnation if possible. However, it is imperative that the right of way be acquired in a timely manner so as not to delay the construction. The City is acquiring 2,752 square feet (.063 acres) of utility easement, 1,443 square feet (.033 acres) of temporary construction easement and 1,009 square feet (.033 acres) of drainage easement from this property.

BUDGET/STAFF IMPACT:

The corridor improvements are funded by the 2019 Transportation Bond Program. The agenda item staff review form indicates \$50,000.00 as the cost of this request. It should be noted that this is an estimate, based on the appraised values of the properties, 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 each property.

Attachments:

Correspondence History
ROW and Easement Exhibits
Vicinity Map

MIDTOWN CORRIDOR
1641 N. OAKLAND AVE.

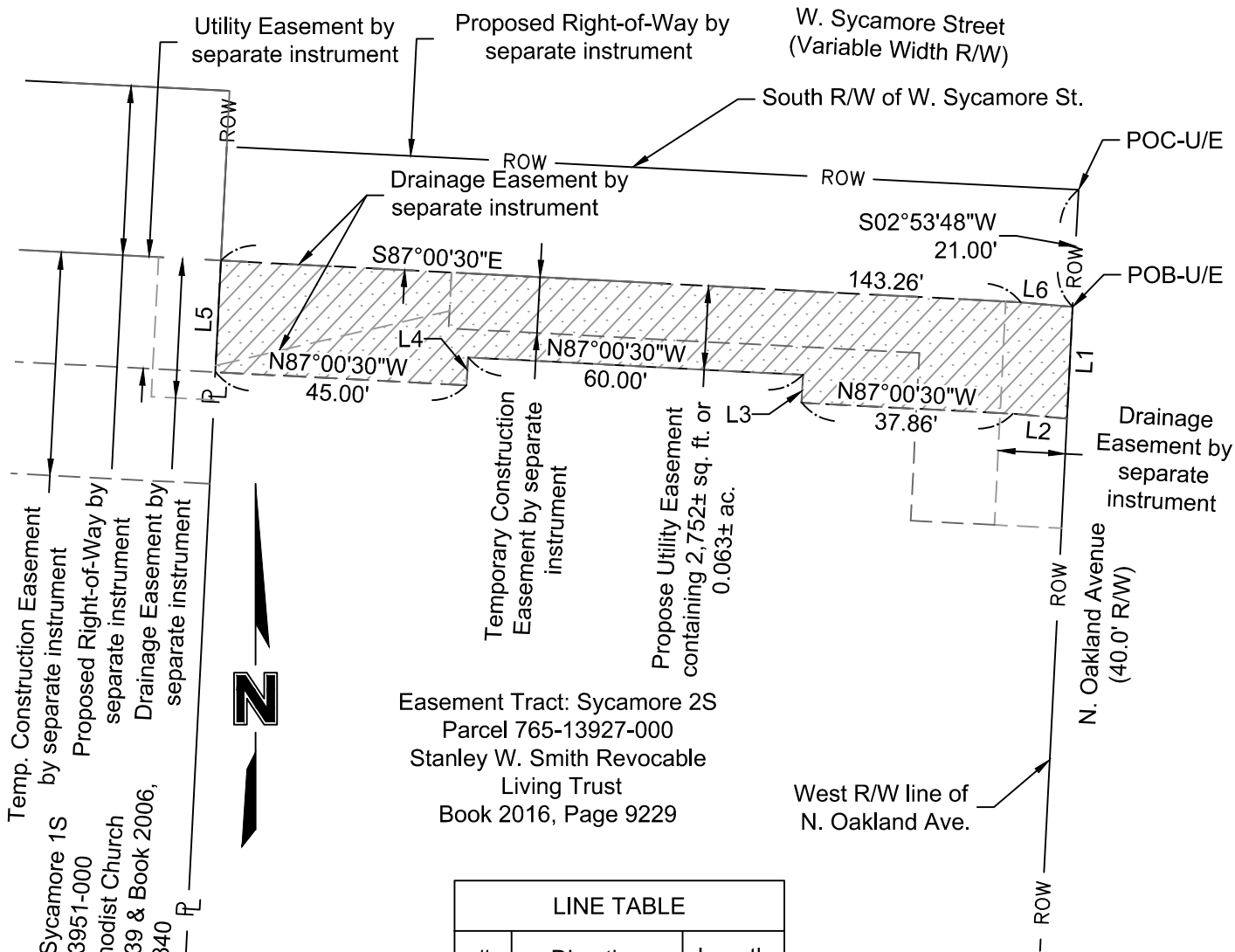


USER: dchance
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May 06, 2022 12:23pm
XREFS: V_XTOPO_0193988_SYCAMORE V_PESMT_0193988_SYCAMORE V_XBOU_0193988_SYCAMORE



LEGEND

	Permanent Utility Easement (U/E)
	Existing Right-of-Way line
	Existing Property Line



LINE TABLE

#	Direction	Length
L1	S02°53'48"W	20.02'
L2	N84°52'06"W	9.73'
L3	N02°59'30"E	5.00'
L4	S02°59'30"W	5.00'
L5	N02°53'48"E	20.00'
L6	S84°52'06"E	9.32'

DWG: This sketch is not a boundary survey. It is intended to show the configuration of a proposed permanent utility easement. It should not be used to locate property lines and does not meet the Standards for Property Boundary Surveys.

PROJECT NO: 019-3988
DRAWN BY: DRC
DATE: 05.06.2022

EASEMENT DRAWING - STREET
IMPROVEMENT - SYCAMORE STREET
PARCEL NO. 765-13927-000
STANLEY W. SMITH REVOCABLE TRUST

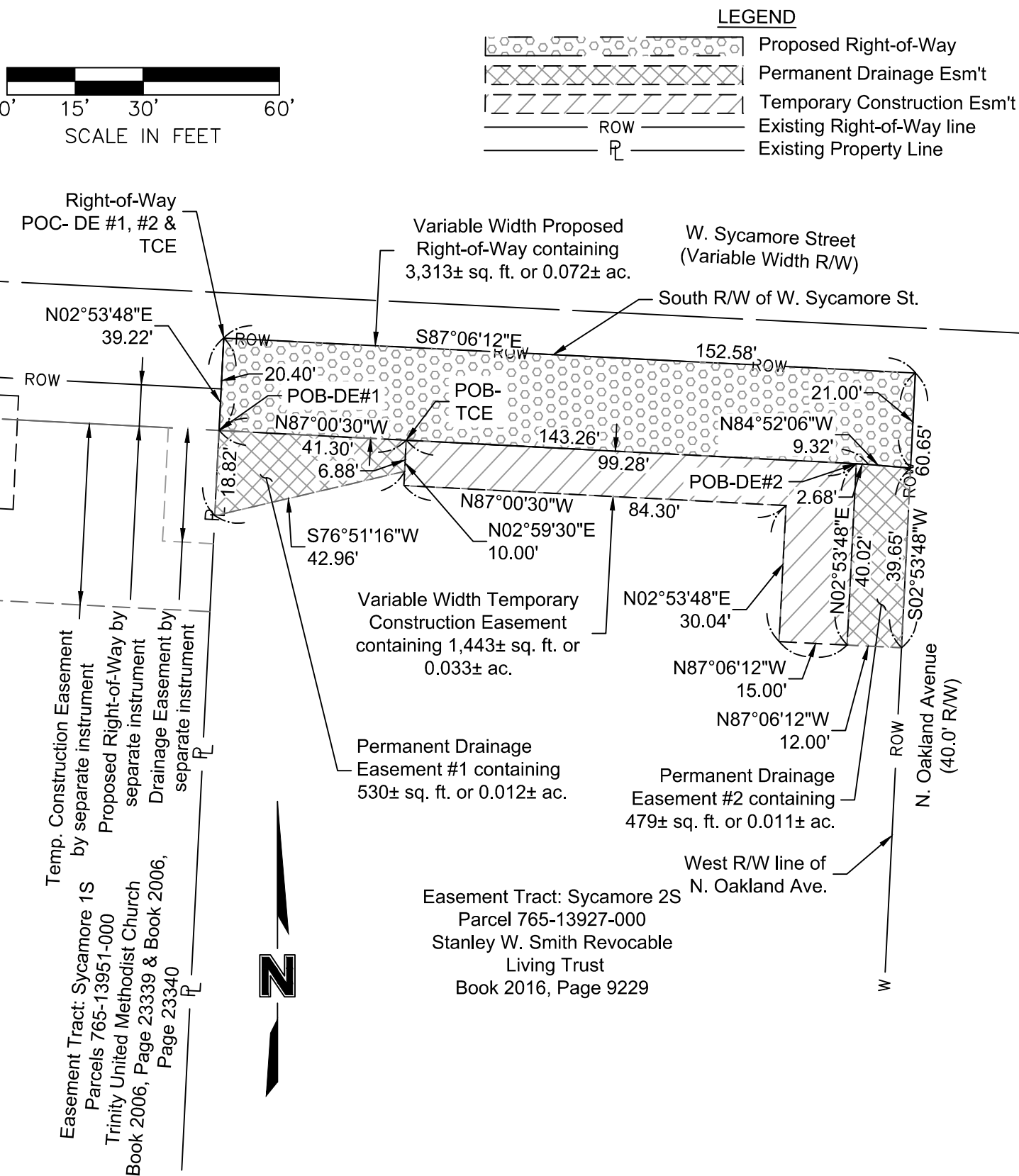
olsson

302 East Millsap Road
Fayetteville, AR 72703
TEL 479.443.3404

EXHIBIT

1

USER: dchance
DWG: F:\2019\3501-4000\019-3988\40-Design\Survey\SRVY\Sheets\SYCAMORE\ESMT_0193988-PARCEL 76513927000-SYCAMORE 2S.dwg
DATE: Nov 17, 2021 11:48am
XREFS: V_XTOPO_0193988_SYCAMORE V_PESMT_0193988_SYCAMORE V_XBOU_0193988_SYCAMORE



This sketch is not a boundary survey. It is intended to show the configuration of a proposed right of way, a proposed permanent drainage easement and a proposed temporary construction easement. It should not be used to locate property lines and does not meet the Standards for Property Boundary Surveys.

PROJECT NO: 019-3988	EASEMENT DRAWING - STREET IMPROVEMENT - SYCAMORE STREET	olsson	302 East Millsap Road Fayetteville, AR 72703 TEL 479.443.3404	EXHIBIT
DRAWN BY: DRC	PARCEL NO. 765-13927-000			1
DATE: 11.16.21	STANLEY W. SMITH REVOCABLE TRUST			

DRAINAGE EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT **Stanley W. Smith, Trustee of the Stanley W. Smith Revocable Living Trust u/t/d April 1, 2016**, 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, do 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 excavate, construct, maintain, repair and/or replace an earthen retaining levee, drainage tile area, open ditch, concrete channel and/or concrete inlet box on, over, and through the following described land situated in the County of Washington, State of Arkansas, to-wit:

PROPERTY DESCRIPTION: (Warranty Deed: 2016-9229)

Tract 8 Part of the NW1/4 of the NW1/4 of Section 9, Township 16 North, Range 30 West, Washington County, Arkansas, being more particularly described as follows: Beginning at a point which is 465.00 feet East and 10.00 feet South of the NW corner of said 40 acre tract, and running thence East 152.58 feet to the West Right-of-Way of Oakland Avenue; thence South along said Right-of-Way 90.00 feet; thence West 152.58 feet; thence North 90.00 feet to the point of beginning.

ALSO, a part of the NW1/4 of the NW1/4 of Section 9, Township 16 North, Range 30 West, Washington County, Arkansas, being more particularly described as follows: Beginning at a point which is 465.0 feet East and 100.00 feet South of the NW corner of said forty acre tract and running thence South 90.00 feet; thence East 152.58 feet to the West Right-of-Way of Oakland Avenue; thence North along said Right-of-Way 90.00 feet; thence West 152.58 feet to the point of beginning.

LESS AND EXCEPT: that portion conveyed to the City of Fayetteville in conjunction with the improvements to Sycamore Street and described as: A part of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 9, Township 16 North, Range 30 West in Washington County, Arkansas being more particularly described as follows: Commence at the Northwest Corner of said forty acre and run thence South 87°05'58" East 465.00 feet; thence South 02°53'48" West 10.00 feet to the point of intersection of the South Right-of-Way line of W. Sycamore Street, as now established, and the West line of Parcel 765-13927-000 for the "TRUE POINT OF BEGINNING" of this description; thence S87°06'12"E along said South Right-of-Way line and the North line of said Parcel, 152.58 feet to the point of intersection of said South Right-of-Way line and the West Right-of-Way line of N. Oakland Avenue, as now established; thence departing said South Right-of-Way line S02°53'48"W along said West Right-of-Way line, 21.00 feet; thence departing said West Right-of-Way line N84°52'06"W, 9.32 feet; thence N87°00'30"W, 143.26 feet to said West line; thence N02°53'48"E along said West line, 20.40 feet to the Point of Beginning, containing 3,313 square feet or 0.072 acres, more or less.

PERMANENT EASEMENT DESCRIPTION:

A permanent drainage easement lying South of and adjacent to the above described proposed Right-of-Way, being more particularly described as follows: COMMENCING at the point of intersection of the South Right-of-Way line of W. Sycamore Street, as now established, and the West line of Grantor's above described property; thence S02°53'48"W along said West line, a distance of 20.40 feet for a TRUE POINT OF BEGINNING; thence departing said West line S87°00'30"E, a distance of 41.30 feet; thence S02°59'30"W, a distance of 6.88 feet; thence S76°51'16"W, a distance of 42.96 feet to a point in said West line; thence N02°53'48"E along said West line, a distance of 18.82 feet to the POINT OF BEGINNING, containing 530 square feet or 0.012 acres, more or less.

AND

A permanent drainage easement lying South of and adjacent to the above described proposed Right-of-Way, being more particularly described as follows: COMMENCING at the point of intersection of the South Right-of-Way line of W. Sycamore Street, as now established, and the West line of Grantor's above described property; thence S02°53'48"W along said West line, 20.40 feet; thence departing said West line S87°00'30"E, 140.58 feet for a TRUE POINT OF BEGINNING; thence continuing S87°00'30"E, 2.68 feet; thence S84°52'06"E, 9.32 feet to a point in the West Right-of-Way line of N. Oakland Avenue, as now established; thence S02°53'48"W along said West Right-of-Way line, 39.65 feet; thence departing said West Right-of-Way line N86°06'12"W, 12.00 feet; thence N02°53'48"E, 40.02 feet to the POINT OF BEGINNING, containing 497 square feet or 0.011 acres, more or less.

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.

Page 2 of 2

TO HAVE AND TO HOLD unto said Grantee, its successors and assigns, together with free ingress to and egress from the real estate first herein above described for the uses and purposes herein above 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 pay any damages which may arise to existing fences, holding Grantor harmless if damage occurs during construction or maintenance of the above described drainage structure.

The Grantor agrees not to erect any buildings or permanent structures in said permanent easement.

The Grantee shall have the right to construct additional drainage structures within the above described permanent easement at any time in the future and agrees to pay any damages because of such future construction as set out in this easement.

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 _____ day of _____, 2022.

Stanley W. Smith Revocable Living Trust u/t/d April 1, 2016

BY: Stanley W. Smith, Trustee

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, **Stanley W. Smith, Trustee of the Stanley W. Smith Revocable Living Trust u/t/d April 1, 2016**, to me well known as the persons who executed the foregoing document, and who further stated and acknowledged that 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 _____, 2022.

MY COMMISSION EXPIRES:

Notary Public

GENERAL UTILITY EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT **Stanley W. Smith, Trustee of the Stanley W. Smith Revocable Living Trust u/t/d April 1, 2016**, 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 the public utilities holding a franchise granted by said City of Fayetteville, a permanent easement for the purpose of construction, maintenance, repair and/or replacement, enlargement and operations of general utilities including water and/or sanitary sewer pipe line or lines, manholes, natural gas, electrical power, telephone, fiber optic cable(s) and television communication line or lines, traffic signal poles and equipment, 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: (Warranty Deed: 2016-9229)

Tract 8 Part of the NW1/4 of the NW1/4 of Section 9, Township 16 North, Range 30 West, Washington County, Arkansas, being more particularly described as follows: Beginning at a point which is 465.00 feet East and 10.00 feet South of the NW corner of said 40 acre tract, and running thence East 152.58 feet to the West Right-of-Way of Oakland Avenue; thence South along said Right-of-Way 90.00 feet; thence West 152.58 feet; thence North 90.00 feet to the point of beginning.

ALSO, a part of the NW1/4 of the NW1/4 of Section 9, Township 16 North, Range 30 West, Washington County, Arkansas, being more particularly described as follows: Beginning at a point which is 465.0 feet East and 100.00 feet South of the NW corner of said forty acre tract and running thence South 90.00 feet; thence East 152.58 feet to the West Right-of-Way of Oakland Avenue; thence North along said Right-of-Way 90.00 feet; thence West 152.58 feet to the point of beginning.

LESS AND EXCEPT: that portion conveyed to the City of Fayetteville in conjunction with the improvements to Sycamore Street and described as: A part of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 9, Township 16 North, Range 30 West in Washington County, Arkansas being more particularly described as follows: Commence at the Northwest Corner of said forty acre and run thence South 87°05'58" East 465.00 feet; thence South 02°53'48" West 10.00 feet to the point of intersection of the South Right-of-Way line of W. Sycamore Street, as now established, and the West line of Parcel 765-13927-000 for the "TRUE POINT OF BEGINNING" of this description; thence S87°06'12"E along said South Right-of-Way line and the North line of said Parcel, 152.58 feet to the point of intersection of said South Right-of-Way line and the West Right-of-Way line of N. Oakland Avenue, as now established; thence departing said South Right-of-Way line S02°53'48"W along said West Right-of-Way line, 21.00 feet; thence departing said West Right-of-Way line N84°52'06"W, 9.32 feet; thence N87°00'30"W, 143.26 feet to said West line; thence N02°53'48"E along said West line, 20.40 feet to the Point of Beginning, containing 3,313 square feet or 0.072 acres, more or less.

PERMANENT EASEMENT DESCRIPTION:

A permanent utility easement across the Northern portion of Grantor's above described property, being more particularly described as follows: COMMENCING at the point of intersection of the South Right-of-Way line of W. Sycamore Street, as now established, and the East line of Grantor's above described property; thence departing said South Right-of-Way line S02°53'48"W along said East line, 21.00 feet for a TRUE POINT OF BEGINNING; thence continuing along said East line S02°53'48"W, 20.02 feet; thence departing said East line N84°52'06"W, 9.73 feet; thence N87°00'30"W, 37.86 feet; thence N02°59'30"E, 5.00 feet; thence N87°00'30"W, 60.00 feet; thence S02°59'30"W, 5.00 feet; thence N87°00'30"W, 45.00 feet to a point in the West line of said Grantor's property; thence N02°53'48"E along said West line, 20.00 feet; thence S87°00'30"E, 143.26 feet; thence S84°54'06"E, 9.32 feet to the POINT OF BEGINNING, containing 2,752 square feet or 0.063 acres, more or less.

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 and the public utilities holding a franchise granted by said City of Fayetteville, until the use of said permanent easement is relinquished, abandoned or vacated and so long as such pipe line or lines, electrical power, telephone and/or television lines or cables, manholes and/or appurtenances thereto shall be maintained, together with free ingress to and egress from the real estate first herein above described for the uses and purposes herein above set forth.

The said Grantor is to fully use and enjoy the said premises except for the purposes hereinbefore granted to the said Grantee and its associated franchisees, which hereby agree to bury all pipes, lines and/or cables 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 water.

WARRANTY DEED

BE IT KNOWN BY THESE PRESENTS:

THAT **Stanley W. Smith, Trustee of the Stanley W. Smith Revocable Living Trust u/t/d April 1, 2016**, 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, do hereby grant, bargain, sell and convey unto the **City of Fayetteville, Arkansas, a municipal corporation**, hereinafter called GRANTEE, and unto Grantee's successors and assigns, the following described land situated in the County of Washington, State of Arkansas, to-wit:

A part of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 9, Township 16 North, Range 30 West in Washington County, Arkansas being more particularly described as follows: Commence at the Northwest Corner of said forty acre and run thence South 87°05'58" East 465.00 feet; thence South 02°53'48" West 10.00 feet to the point of intersection of the South Right-of-Way line of W. Sycamore Street, as now established, and the West line of Parcel 765-13927-000 for the "TRUE POINT OF BEGINNING" of this description; thence S87°06'12"E along said South Right-of-Way line and the North line of said Parcel, 152.58 feet to the point of intersection of said South Right-of-Way line and the West Right-of-Way line of N. Oakland Avenue, as now established; thence departing said South Right-of-Way line S02°53'48"W along said West Right-of-Way line, 21.00 feet; thence departing said West Right-of-Way line N84°52'06"W, 9.32 feet; thence N87°00'30"W, 143.26 feet to said West line; thence N02°53'48"E along said West line, 20.40 feet to the Point of Beginning, containing 3,313 square feet or 0.072 acres, more or less.

TO HAVE AND TO HOLD the said lands and appurtenances hereunto belonging unto the said Grantee and Grantee's successors and assigns, forever. And the said Grantor hereby covenants that it is lawfully seized of said lands and premises; that the same is unencumbered, and that the Grantor will forever warrant and defend the title to the said lands against all legal claims whatever.

WITNESS the execution hereof on this _____ day of _____, 2022.

REVENUE STAMPS AFFIDAVIT

The foregoing deed has the correct amount of Revenue Stamps affixed to it or is **exempt** from such stamps.

Signed: _____

City of Fayetteville
113 W. Mountain
Fayetteville, AR 72701

**Stanley W. Smith Revocable
Living Trust u/t/d April 1, 2016**

BY: _____
Stanley W. Smith, Trustee

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, **Stanley W. Smith, Trustee of the Stanley W. Smith Revocable Living Trust u/t/d April 1, 2016**, to me well known as the persons who executed the foregoing document, and who further stated and acknowledged that 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 _____, 2022.

MY COMMISSION EXPIRES:

Notary Public

TEMPORARY CONSTRUCTION AND GRADING EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT **Stanley W. Smith, Trustee of the Stanley W. Smith Revocable Living Trust u/t/d April 1, 2016**, 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, do 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 temporary construction and grading easement on, over, and through the following described land situated in the County of Washington, State of Arkansas, for the sole purposes necessary for construction of a trail, to-wit:

PROPERTY DESCRIPTION: (Warranty Deed: 2016-9229)

Tract 8 Part of the NW1/4 of the NW1/4 of Section 9, Township 16 North, Range 30 West, Washington County, Arkansas, being more particularly described as follows: Beginning at a point which is 465.00 feet East and 10.00 feet South of the NW corner of said 40 acre tract, and running thence East 152.58 feet to the West Right-of-Way of Oakland Avenue; thence South along said Right-of-Way 90.00 feet; thence West 152.58 feet; thence North 90.00 feet to the point of beginning.

ALSO, a part of the NW1/4 of the NW1/4 of Section 9, Township 16 North, Range 30 West, Washington County, Arkansas, being more particularly described as follows: Beginning at a point which is 465.0 feet East and 100.00 feet South of the NW corner of said forty acre tract and running thence South 90.00 feet; thence East 152.58 feet to the West Right-of-Way of Oakland Avenue; thence North along said Right-of-Way 90.00 feet; thence West 152.58 feet to the point of beginning.

LESS AND EXCEPT: that portion conveyed to the City of Fayetteville in conjunction with the improvements to Sycamore Street and described as: A part of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 9, Township 16 North, Range 30 West in Washington County, Arkansas being more particularly described as follows: Commence at the Northwest Corner of said forty acre and run thence South 87°05'58" East 465.00 feet; thence South 02°53'48" West 10.00 feet to the point of intersection of the South Right-of-Way line of W. Sycamore Street, as now established, and the West line of Parcel 765-13927-000 for the "TRUE POINT OF BEGINNING" of this description; thence S87°06'12"E along said South Right-of-Way line and the North line of said Parcel, 152.58 feet to the point of intersection of said South Right-of-Way line and the West Right-of-Way line of N. Oakland Avenue, as now established; thence departing said South Right-of-Way line S02°53'48"W along said West Right-of-Way line, 21.00 feet; thence departing said West Right-of-Way line N84°52'06"W, 9.32 feet; thence N87°00'30"W, 143.26 feet to said West line; thence N02°53'48"E along said West line, 20.40 feet to the Point of Beginning, containing 3,313 square feet or 0.072 acres, more or less.

TEMPORARY CONSTRUCTION AND GRADING EASEMENT DESCRIPTION:

A temporary easement lying South of, adjacent to and parallel with, the above described Proposed Right of Way, being more particularly described as follows: COMMENCING at the point of intersection of the South Right-of-Way line of W. Sycamore Street, as now established, and the West line of Grantor's above described property; thence S02°53'48"W along said West line, 20.40 feet; thence departing said West line S87°00'30"E, 41.30 feet for a TRUE POINT OF BEGINNING; thence continuing S87°00'30"E, 99.28 feet; thence S02°53'48"W, 40.02 feet; thence N86°06'12"W, 15.00 feet; thence N02°53'48"E, 30.04 feet; thence N87°00'30"W, 84.30 feet; thence N02°59'30"E, 10.00 feet to the POINT OF BEGINNING, containing 1,443 square feet or 0.033 acres, more or less. This Temporary Construction Easement shall terminate upon completion of the street construction and has been accepted by the City of Fayetteville, Arkansas.

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.

This temporary construction and grading easement as conditioned above, shall terminate when the hereinabove referenced project has been completed by the contractor and accepted by the City of Fayetteville, Arkansas.

It is expressly understood that the above temporary construction and grading easement shall exclude any permanent structure(s) which may be located or under construction within said temporary construction easement area during the construction of this project.

TO HAVE AND TO HOLD the same unto the said Grantee, its successors and assigns, together with free ingress to and egress from the real estate first herein above described for the uses and purposes herein above set forth.

The consideration first above recited as being paid to the 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 easement on behalf of the Grantee is without authority to make any covenant or agreement not herein expressed.

WITNESS the execution hereof on this _____ day of _____, 2022.

Stanley W. Smith Revocable Living Trust u/t/d April 1, 2016

BY: Stanley W. Smith, Trustee

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, **Stanley W. Smith, Trustee of the Stanley W. Smith Revocable Living Trust u/t/d April 1, 2016**, to me well known as the persons who executed the foregoing document, and who further stated and acknowledged that 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 _____, 2022.

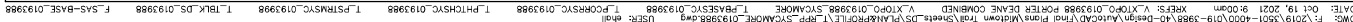
MY COMMISSION EXPIRES:

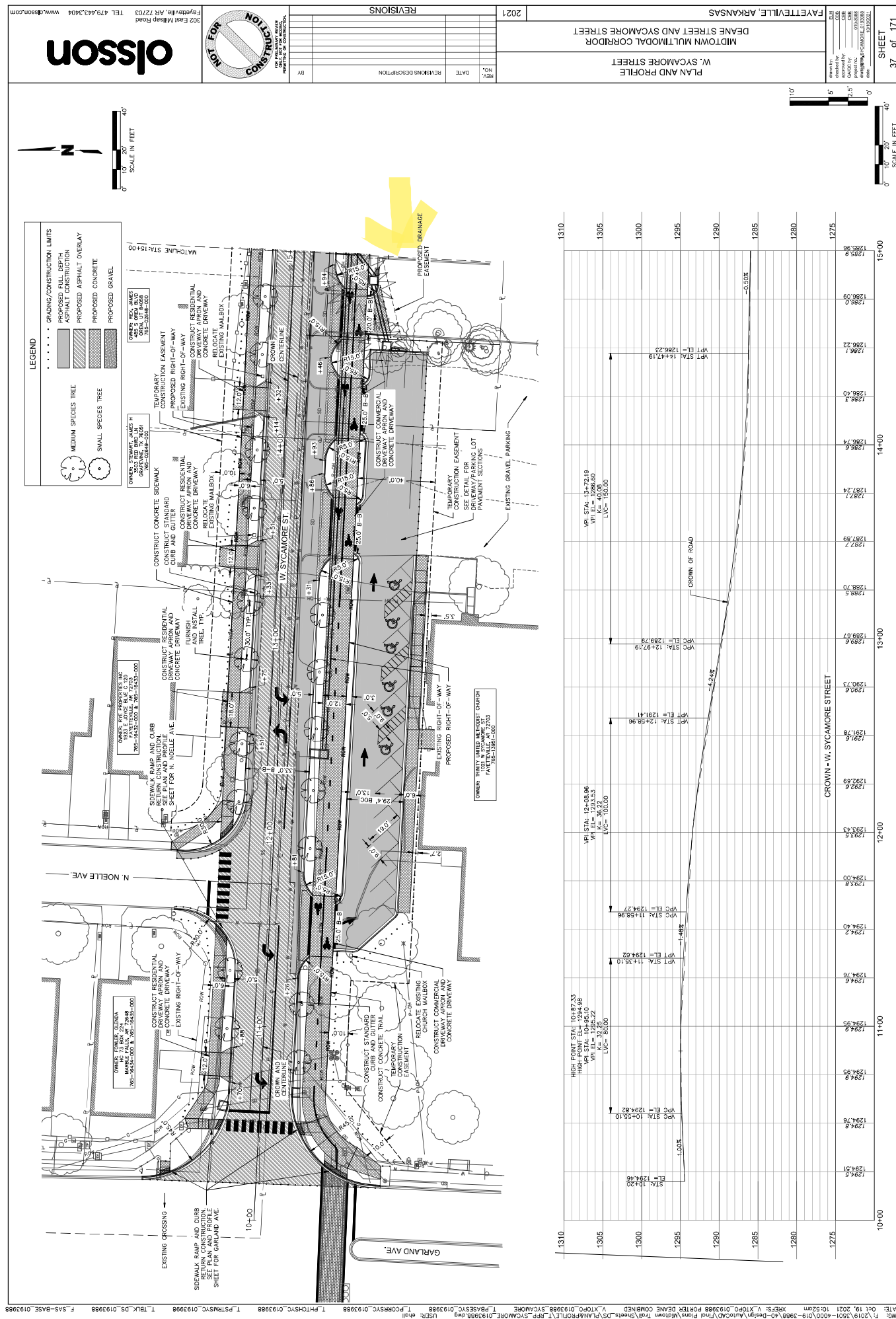
Notary Public

Case History

Stanley W. Smith Revocable Living Trust-Case History
RE: 1641 N Oakland Avenue

- 1/12/2022 An offer was mailed to Mr. Smith requesting 3313 square feet of additional right of way (\$8090), 1027 square feet of permanent drainage easement (\$630) and 1443 square feet of temporary construction and grading easement, totaling \$9070.00 and based on the Washington County Assessor's 2022 assessed value of the land only for this tract, with the right of way valued at fee simple and the drainage easement at 25% and TCE at 10%.
- 3/4/2022 MC received an email from David Fleming, the property manager of this tract. He indicated that their concern was drainage along Oakland and wanted to meet. It appears that they did meet on March 8.
- 3/10/2022 A revised offer was mailed to Mr. Smith and emailed to Mr. Fleming, adding \$5500 for landscaping damages for the removal of 4 pine trees within the proposed right of way, to the original offer of \$9070.00 for a total new offer of \$14,570.00.
- Mr. Smith called HJ and said he would do whatever Mr. Fleming told him to do. HJ let him know that the signature would have to come from him, not Mr. Fleming, who is not the Trustee of the Trust.
- 5/11/2022 A second revised offer was mailed to Mr. Smith and emailed to Mr. Fleming when we became aware of the fact that we would have to also acquire a small amount of general utility easement to move some utilities out of the right of way. This easement is in the same general location as the drainage easement and mostly "stacked on top" of easement we've already requested. The offer for 2752 square feet of general utility easement was based on the same base value as the first offer at a 25% rate for an addition of \$1680, taking the new offer to \$16,250.00.
- 7/26/2022 HJ emailed Mr. Fleming to get an update on the status of the easements since Mr. Smith has turned everything over to D. Fleming. He sent an email back and asked HJ to stop contacting Mr. Smith until the City has agreed to repair Oakland and indicated that if the City agreed to make all drainage repairs to the east side of the property, they would sign all the paperwork. MC responded and let him know that HJ would be responding with the next steps if they were refusing to cooperate.
- 7/28/2022 HJ mailed an Appraisal Notification Letter indicating that negotiations and discussions had broken down with Mr. Smith's agent and we were ordering an appraisal to present a final offer. We also stated that this would be sent to Council should this final offer be declined, and the Condemnation Brochure was mailed along with it. A copy was mailed to Mr. Fleming's office as well as the entire packet of documents for their review.
- 10/25/2022 The appraisal was received from Holland Commercial Appraisal and Valuation Services.
- 10/27/2022 HJ mailed a final offer to Mr. Smith and emailed the same to Mr. Fleming, based on Holland's Appraisal: 3313 square feet of right of way (\$36,000), 2752 square feet of general utility easement (\$6,660), 1,027 square feet of drainage easement (\$2,740), 1443 square feet of temporary construction and grading easement (\$1,600) and \$3,000.00 for landscaping damages for 4 pine trees for a total offer of \$50,000. They had until November 8, 2022 to respond. They did not.
- 11/14/2022 HJ Mailed and emailed the Notification Letter to both Mr. Smith and Mr. Fleming to inform them of the December 20, 2022 Council meeting.
- 11/28/2022 Mr. Fleming emailed HJ regarding an existing easement that the City is failing to maintain or repair on their property on the east side at Oakland. There is no easement found filed or noted on the City's GIS therefore maintenance would be the owner's responsibility.





RESOLUTION NO. _____

A RESOLUTION TO AUTHORIZE THE CITY ATTORNEY TO SEEK CONDEMNATION AND POSSESSION OF CERTAIN LANDS OWNED BY CHARLES N. MAYES NEEDED FOR THE MIDTOWN CORRIDOR PROJECT

WHEREAS, the City of Fayetteville and Charles N. Mayes have been unable to agree upon a fair price for approximately 2,227 square feet of drainage easements and temporary construction easements needed to complete the Midtown Corridor 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 for 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 Midtown Corridor Project and owned by Charles N. Mayes, that is needed for right-of-way or other easements for the Project, and to pay into the registry of the Circuit Court just compensation in the amount of \$4,340.00.

City of Fayetteville Staff Review Form

2022-1128

Legistar File ID

12/20/2022

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

Matt Casey

11/30/2022

ENGINEERING (621)

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 Charles N. Mayes for the Midtown Corridor Project.

Budget Impact:

4602.860.7218-5805.00

Street Project 2019 Bonds Fund

Account Number

Fund

46020.7218.1020

Midtown Corridor

Project Number

Project Title

Budgeted Item? Yes

Current Budget \$ 136,270.00

Funds Obligated \$ 3,500.00

Current Balance \$ 132,770.00

Does item have a cost? Yes

Item Cost \$ 4,340.00

Budget Adjustment Attached? No

Budget Adjustment \$ -

Remaining Budget \$ 128,430.00

V20210527

Purchase Order Number: _____

Previous Ordinance or Resolution # _____

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



MEETING OF DECEMBER 20, 2022

TO: Mayor and City Council

THRU: Susan Norton, Chief of Staff
Chris Brown, Public Works Director

FROM: Matt Casey, Engineering Design Manager

DATE: November 29, 2022

SUBJECT: **Approval of a Resolution authorizing the City Attorney to seek condemnation and an order of possession of certain land owned by Charles N. Mayes necessary for the Midtown Corridor 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 Charles N. Mayes for the Midtown Corridor Project.

BACKGROUND:

The Midtown Corridor is a project in the 2019 Transportation Bond Program and includes several different components. The corridor is 2.3 miles in length and runs in an east-west direction through a flat part of the middle of the city from I-49 at Porter to College Avenue at Poplar Street. The project includes vehicular improvements to the intersection of Porter Road and I-49 with a roundabout to improve the traffic flow for the large volume of traffic from the west of I-49 turning onto the interstate heading north. Along Porter Road and Deane Street from the interstate to Garland Avenue the project includes street improvements with new turn lanes and drainage as well as separated pedestrian and bicycle facilities. The street, drainage pedestrian, and bicycle improvements will continue along Sycamore Street from Garland Avenue to the Razorback Greenway. From the Greenway to College Avenue, the project will include multi-use trail construction along the Poplar Street alignment. Finally, a connection to the south from Poplar Street to Gregory Park was included in the design.

The first phase of this corridor included the improvements to Porter Road and Deane Street from I-49 to the east side of the new fire station. The design for this phase was completed in January of 2022. In February of 2022, the City Council approved a change order with Flintco to include this phase in the Police Headquarters Project. Construction is currently underway and is expected to be complete in early 2023.

The design for the remainder of this corridor is complete and a Construction Manager at Risk contract with Crossland Heavy Contractors was approved by the City Council at the August 16th city council meeting. Crossland Heavy is currently working on the bidding of the project and is expected to have a guaranteed maximum price for consideration by the City Council in early 2023. Construction is expected to begin in March of 2023.

DISCUSSION:

Right of way and easement acquisition began for this project in January of 2022. Staff has been successful in acquiring all but a few of the properties for this project. The owner of this property at 1641 N. Leverett Avenue has refused to sign easement documents. This is one of the last of the 73 properties to be acquired for this portion of the project. Staff will continue to negotiate with this property owner to avoid condemnation if possible. However, it is imperative that the right of way be acquired in a timely manner so as not to delay the construction. The City is acquiring 1,946 square feet (.045 acres) of temporary construction easement and 281 square feet (.006 acres) of drainage easement from this property.

BUDGET/STAFF IMPACT:

The corridor improvements are funded by the 2019 Transportation Bond Program. The agenda item staff review form indicates \$4,340.00 as the cost of this request. It should be noted that this is an estimate, based on the appraised values of the properties, 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 each property.

Attachments:

Correspondence History
ROW and Easement Exhibits
Vicinity Map

MIDTOWN CORRIDOR
1641 N. LEVERETT AVE

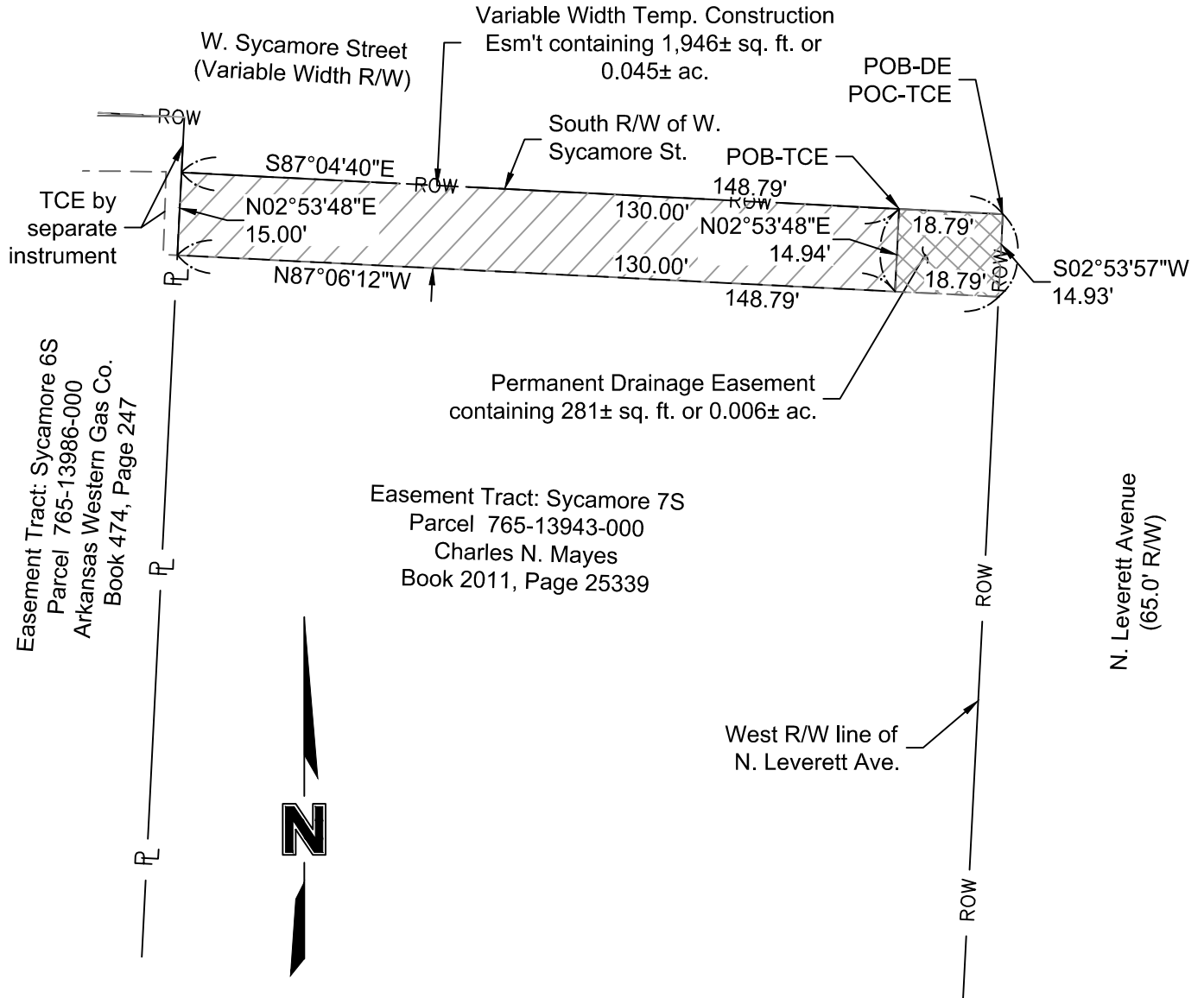
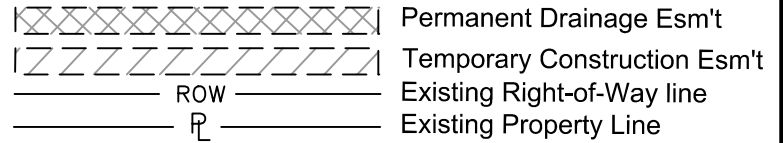


USER: gdenzer

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DATE: Nov 29, 2021 9:17am
XREFS: V_XTOPO_0193988_SYCAMORE V_PESMT_0193988_SYCAMORE V_XBOU_0193988_SYCAMORE



LEGEND



This sketch is not a boundary survey. It is intended to show the configuration of a proposed permanent drainage easement and a proposed temporary construction easement. It should not be used to locate property lines and does not meet the Standards for Property Boundary Surveys.

PROJECT NO: 019-3988	EASEMENT DRAWING - STREET IMPROVEMENT - SYCAMORE STREET	olsson	302 East Millsap Road Fayetteville, AR 72703 TEL 479.443.3404	EXHIBIT
DRAWN BY: DRC	PARCEL NO. 765-13943-000			1
DATE: 11.16.21	CHARLES N. MAYES			

TEMPORARY CONSTRUCTION AND GRADING EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT **Charles N. Mayes, a married 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, do 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 temporary construction and grading easement on, over, and through the following described land situated in the County of Washington, State of Arkansas, for the sole purposes necessary for construction of a trail, to-wit:

PROPERTY DESCRIPTION: (Deed Ref: 2011-25339)

Part of the Northwest Quarter of the Northwest Quarter of Section 9, Township 16 North, Range 30 West of the 5th Principal Meridian, more particularly described as follows: Beginning at the Northeast corner of the said 40 acre tract and running thence South 87 feet; thence West 180 feet; thence North 87 feet; thence East 180 feet to the place of beginning. LESS AND EXCEPT: A part of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 9 in Township 16 North, Range 30 West of the 5th Principal Meridian, more particularly described as follows: Beginning at the Northeast corner of said 40 acre tract and running South 87 feet; thence West 30 feet; thence North 47 feet; thence West 150 feet; thence North 40 feet; thence East 180 feet to the Point of Beginning, containing 0.20 acre (8610 square feet) more or less. ALSO, LESS AND EXCEPT: Part of the NW of the NW of 9-16-30 Beginning at a point which is South 87 feet from the NE corner of said 40 acre tract; thence West 30 feet; thence South 63 feet; thence East 30 feet; thence North 63 feet to the point of beginning, containing 1890 sf.

TEMPORARY CONSTRUCTION AND GRADING EASEMENT DESCRIPTION:

A temporary construction easement across the North portion of Grantor's above described property, being more particularly described as follows: COMMENCING at the point of intersection of the South Right-of-Way line of W. Sycamore Street, as now established, and the West Right-of-Way line of N. Leverett Avenue, as now established, said point being the Northeast corner of Grantor's above described property; thence N87°04'40"W along said South Right-of-Way line, a distance of 18.79 feet for a TRUE POINT OF BEGINNING; thence departing said South Right-of-Way line S02°53'48"W, a distance of 14.94 feet; thence N87°06'12"W, a distance of 130.00 feet to a point in the West line of said Grantor's property; thence N02°53'48"E along said West line, a distance of 15.00 feet to a point in the said South Right-of-Way line; thence S87°04'40"E along said South Right-of-Way line, a distance of 130.00 feet to the POINT OF BEGINNING, containing 1,946 square feet or 0.045 acres, more or less.

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.

This temporary construction and grading easement as conditioned above, shall terminate when the hereinabove referenced project has been completed by the contractor and accepted by the City of Fayetteville, Arkansas.

It is expressly understood that the above temporary construction and grading easement shall exclude any permanent structure(s) which may be located or under construction within said temporary construction easement area during the construction of this project.

TO HAVE AND TO HOLD the same unto the said Grantee, its successors and assigns, together with free ingress to and egress from the real estate first herein above described for the uses and purposes herein above set forth.

The consideration first above recited as being paid to the 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 easement on behalf of the Grantee is without authority to make any covenant or agreement not herein expressed.

WITNESS the execution hereof on this _____ day of _____, 2022.

Charles N. Mayes

Tracie S. Mayes

ACKNOWLEDGMENT

STATE OF ARKANSAS

COUNTY OF _____

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}
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 **Charles N. Mayes and Tracie S. Mayes, his spouse**, to me well known as the persons who executed the foregoing document, and who stated and acknowledged that 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 _____, 2022.

MY COMMISSION EXPIRES:

Notary Public

DRAINAGE EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT **Charles N. Mayes, a married 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, do 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 excavate, construct, maintain, repair and/or replace an earthen retaining levee, drainage tile area, open ditch, concrete channel and/or concrete inlet box on, over, and through the following described land situated in the County of Washington, State of Arkansas, to-wit:

PROPERTY DESCRIPTION: (Deed Ref: 2011-25339)

Part of the Northwest Quarter of the Northwest Quarter of Section 9, Township 16 North, Range 30 West of the 5th Principal Meridian, more particularly described as follows: Beginning at the Northeast corner of the said 40 acre tract and running thence South 87 feet; thence West 180 feet; thence North 87 feet; thence East 180 feet to the place of beginning. LESS AND EXCEPT: A part of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of Section 9 in Township 16 North, Range 30 West of the 5th Principal Meridian, more particularly described as follows: Beginning at the Northeast corner of said 40 acre tract and running South 87 feet; thence West 30 feet; thence North 47 feet; thence West 150 feet; thence North 40 feet; thence East 180 feet to the Point of Beginning, containing 0.20 acre (8610 square feet) more or less. ALSO, LESS AND EXCEPT: Part of the NW of the NW of 9-16-30 Beginning at a point which is South 87 feet from the NE corner of said 40 acre tract; thence West 30 feet; thence South 63 feet; thence East 30 feet; thence North 63 feet to the point of beginning, containing 1890 sf.

PERMANENT EASEMENT DESCRIPTION:

A permanent drainage easement across the North portion of Grantor's above described property, being more particularly described as follows: BEGINNING at the point of intersection of the South Right-of-Way line of W. Sycamore Street, as now established, and the West Right-of-Way line of N. Leverett Avenue, as now established, said point being the Northeast corner of Grantor's above described property; thence S02°53'57"W along said West Right-of-Way line, a distance of 14.93 feet; thence departing said West Right-of-Way line N87°06'12"W, a distance of 18.79 feet; thence N02°53'48"E, a distance of 14.94 feet to a point in the said South Right-of-Way line; thence S87°04'40"E along said South Right-of-Way line, a distance of 18.79 feet to the POINT OF BEGINNING, containing 281 square feet or 0.006 acres, more or less.

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, together with free ingress to and egress from the real estate first herein above described for the uses and purposes herein above 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 pay any damages which may arise to existing fences, holding Grantor harmless if damage occurs during construction or maintenance of the above described drainage structure.

The Grantor agrees not to erect any buildings or permanent structures in said permanent easement.

The Grantee shall have the right to construct additional drainage structures within the above described permanent easement at any time in the future and agrees to pay any damages because of such future construction as set out in this easement.

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.

DRAINAGE EASEMENT

Page 2 of 2

WITNESS the execution hereof on this _____ day of _____, 2022.

Charles N. Mayes

Tracie S. Mayes

ACKNOWLEDGMENT

STATE OF ARKANSAS

COUNTY OF

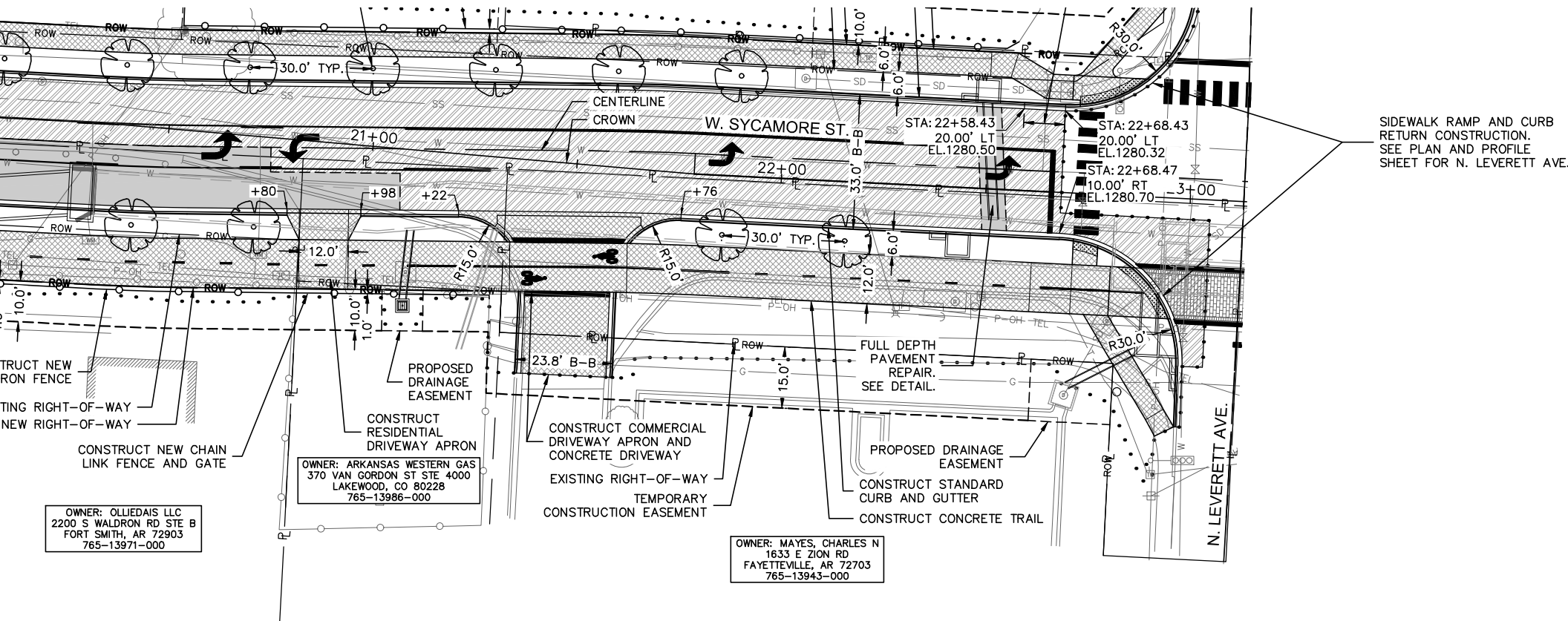
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BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared **Charles N. Mayes and Tracie S. Mayes, his spouse**, to me well known as the persons who executed the foregoing document, and who stated and acknowledged that 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 _____, 2022.

MY COMMISSION EXPIRES:

Notary Public



1295

Case History

Charles N. Mayes

RE: 1641 N Leverett Avenue (Mayes Auto)

- 1/12/2022 Offer Letter mailed to Mr. Mayes at 1633 E Zion Road, Fayetteville. We asked for 281 square feet of drainage easement (\$380) and 1946 square feet of temporary construction easement (\$1060) and based the offer on the price per square foot of the property he owned as valued by the Washington County Assessor for the 2022 Valuation-\$5.44/sf fee times 25% for the drainage easement and 10% for TCE.
- 1/24/2022 Mr. Mayes called and first had some complaints about Zion Road construction, then asked that the easements be staked on this tract so that he could see what we were requesting. HJ emailed Olsson and requested their survey team tackle that request.
- 1/25/2022 HJ called Mr. Mayes and left a message on his cell phone that the staking/painting had been done so he could now see where the easements were and reminded him that the TCE was only temporary. He was also told to call after seeing the staking so that the easements could be discussed. He did not return the call.
- 3/30/2022 A reminder letter, signed by HJ, was mailed to Mr. Mayes.
- 7/7/2022 A text was sent to Mr. Mayes by HJ from her personal cell phone to the number he called from in January, requesting a call to discuss the project. He did not.
- 7/20/2022 An email address was found on BeenVerified for Mr. Mayes and the entire packet of documents was emailed to Mr. Mayes. Again, HJ requested a call back or some form of response. None was received.
- 10/25/2022 We received an appraisal from Holland Commercial Appraisal and Valuation Services for Mr. Mayes property.
- 10/27/2022 A Final Offer based on the appraisal was mailed to Mr. Mayes requesting 281 square feet of drainage easement (\$2000) and 1946 square feet of temporary easement (\$2340) for a total of \$4340. The offer requested he contact us by 11-8-2022.
- 11/14/2022 Notification letter mailed by HJ to Mr. Mayes informing him that this tract was being sent to Council on December 20th for resolution for condemnation.