



**AGENDA**  
**CITY COUNCIL/SUCCESSOR AGENCY/STANTON HOUSING AUTHORITY**  
**JOINT REGULAR MEETING**  
**STANTON CITY HALL, 7800 KATELLA AVENUE, STANTON, CA**  
**TUESDAY, FEBRUARY 22, 2022 - 6:30 P.M. (VIRTUAL)**

**SAFETY ALERT – NOTICE REGARDING COVID-19**

The President, Governor, and the City of Stanton have declared a State of Emergency as a result of the threat of COVID-19 (aka the “Coronavirus”). On September 16, 2021, Assembly Bill 361 (AB 361) was signed by Governor Newsom to allow for the City Council to attend City Council meetings electronically/telephonically and for the public to participate in the City Council meeting by electronic means. Given the health risks associated with COVID-19 and the recent surge of the Omicron variant, state and local officials are recommending measures to promote social distancing. To that end, the Stanton City Council will return to virtual meetings until further notice. The health and well-being of our residents and staff is the top priority for the City of Stanton, and people are urged to take all appropriate health safety precautions.

Members of the public will be able to access the meeting live electronically/telephonically using any of the following sources.

**In order to join the meeting via telephone please follow the steps below:**

1. Dial the following phone number +1 (669) 900-9128 US (San Jose).
2. Dial in the following **Meeting ID: (857 8251 7912)** to be connected to the meeting.

**In order to join the meeting via electronic device please utilize the URL link below:**

- <https://us02web.zoom.us/j/85782517912?pwd=aVgwMU4rK0VLaThtRmNGZ1pTU3ZYUT09>

**ANY MEMBER OF THE PUBLIC WISHING TO PROVIDE PUBLIC COMMENT FOR ANY ITEM ON THE AGENDA MAY DO SO AS FOLLOWS:**

E-Mail your comments to [pvazquez@StantonCA.gov](mailto:pvazquez@StantonCA.gov) with the subject line “PUBLIC COMMENT ITEM #” (*insert the item number relevant to your comment*). Comments received no later than 5:00 p.m. before the meeting (*Tuesday, February 22, 2022*) will be compiled, provided to the City Council, and made available to the public before the start of the meeting. Staff will not read e-mailed comments at the meeting. However, the official record will include all e-mailed comments received until the close of the meeting.

The Stanton City Council and staff thank you for your continued patience and cooperation during these unprecedented times. Should you have any questions related to participation in the City Council Meeting, please contact the City Clerk’s Office at (714) 890-4245.

***In compliance with the Americans With Disabilities Act, if you need special assistance to participate in this meeting, please contact the Office of the City Clerk at (714) 890-4245. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to assure accessibility to this meeting.***

The City Council agenda and supporting documentation is made available for public review and inspection during normal business hours in the Office of the City Clerk, 7800 Katella Avenue, Stanton California 90680 immediately following distribution of the agenda packet to a majority of the City Council. Packet delivery typically takes place on Thursday afternoons prior to the regularly scheduled meeting on Tuesday. The agenda packet is also available for review and inspection on the city's website at [www.ci.stanton.ca.us](http://www.ci.stanton.ca.us).

1. **CLOSED SESSION**           None.
  
2. **CALL TO ORDER STANTON CITY COUNCIL / SUCCESSOR AGENCY / HOUSING AUTHORITY JOINT REGULAR MEETING (6:30 PM)**
  
3. **PLEDGE OF ALLEGIANCE**
  
4. **ROLL CALL** Council / Agency / Authority Member Taylor  
                  Council / Agency / Authority Member Van  
                  Council / Agency / Authority Member Warren  
                  Mayor Pro Tem / Vice Chairman Ramirez  
                  Mayor / Chairman Shawver

5. **SPECIAL PRESENTATIONS AND AWARDS**

Townsend Public Affairs State and Federal Legislative report and update.

6. **CONSENT CALENDAR**

All items on the Consent Calendar may be acted on simultaneously, unless a Council/Board Member requests separate discussion and/or action.

**CONSENT CALENDAR**

6A. **MOTION TO APPROVE THE READING BY TITLE OF ALL ORDINANCES AND RESOLUTIONS. SAID ORDINANCES AND RESOLUTIONS THAT APPEAR ON THE PUBLIC AGENDA SHALL BE READ BY TITLE ONLY AND FURTHER READING WAIVED**

**RECOMMENDED ACTION:**

City Council/Agency Board/Authority Board waive reading of Ordinances and Resolutions.

**6B. APPROVAL OF WARRANTS**

City Council approve demand warrants dated January 28, 2022 – February 22, 2022, in the amount of \$311,449.02.

**6C. APPROVAL OF MINUTES**

City Council/Successor Agency/Housing Authority approve Minutes of Joint Regular Meeting – February 22, 2022.

**6D. DECEMBER 2021 INVESTMENT REPORT**

The Investment Report as of December 31, 2021, has been prepared in accordance with the City’s Investment Policy and California Government Code Section 53646.

**RECOMMENDED ACTION:**

1. City Council find that this item is not subject to California Environmental Quality Act (“CEQA”) pursuant to Sections 15378(b)(5) (Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment); and
2. Receive and file the Investment Report for the month of December 2021.

**6E. DECEMBER 2021 INVESTMENT REPORT (SUCCESSOR AGENCY)**

The Investment Report as of December 31, 2021, has been prepared in accordance with the City’s Investment Policy and California Government Code Section 53646.

**RECOMMENDED ACTION:**

1. Successor Agency find that this item is not subject to California Environmental Quality Act (“CEQA”) pursuant to Sections 15378(b)(5) (Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment); and
2. Receive and file the Investment Report for the month of December 2021.

**6F. DECEMBER 2021 GENERAL FUND REVENUE AND EXPENDITURE REPORT AND STATUS OF CAPITAL IMPROVEMENT PROGRAM**

The Revenue and Expenditure Report for the month ended December 31, 2021, has been provided to the City Manager in accordance with Stanton Municipal Code Section 2.20.080 (D) and is being provided to City Council. This report includes information for both the City's General Fund and the Housing Authority Fund. In addition, staff has provided a status of the City's Capital Improvement Projects (CIP) as of December 31, 2021.

**RECOMMENDED ACTION:**

1. City Council find that this item is not subject to California Environmental Quality Act ("CEQA") pursuant to Sections 15378(b)(5) (Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment); and
2. Receive and file the General Fund and Housing Authority Fund's December 2021 Revenue and Expenditure Report and Status of Capital Improvement Projects for the month ended December 31, 2021.

**6G. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF STANTON, CALIFORNIA APPROVING SUBDIVISION TRACT MAP NO. 19067**

The subdivision tract map for the development of seven detached condominium units for the property located at 7091 Kermore Lane has been submitted by the developer for final certification and recordation.

**RECOMMENDED ACTION:**

1. City Council declare this project categorically exempt under the California Environmental Quality Act, Class 32, and Section 15332; and
2. Adopt Resolution No. 2022-09 approving final Tract Map No. 19067, entitled:  

**"A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF STANTON, CALIFORNIA, APPROVING SUBDIVISION TRACT MAP NO. 19067 FOR THE PROPERTY LOCATED AT 7091 KERMORE LANE";** and
3. Find that the recordation of Tract Map No. 19067 will not be in violation of any of the provisions of Section 66474, 66474.1, and 66474.2 of the Subdivision Map Act; and

4. Find that the proposed subdivision, together with the provisions for its design and improvement, is consistent with the general plan required by Article 5 (commencing with Section 65300) of Chapter 3 of Division 1 of the Government Code, or any specific plan adopted pursuant to Article 8 (commencing with Section 65450) of Chapter 3 of Division 1 of the Government Code; and
5. Direct the City Engineer to review and approve any further technical edits necessary to allow for County Surveyor approval and for recordation of the map with the County Recorder of Orange County, and if edits are necessary, to require a revised Tract Map; and
6. Direct the City Engineer to collect any security instruments required by the Stanton Municipal Code and the Subdivision Map Act to guarantee construction of private and public improvements prior to the City Clerk endorsing the City Clerk's certificate on the face of the Tract Map; and
7. Direct the City Clerk to endorse on the face of the map of the Tract Map, the certificate which embodies the approval of said map, and submit the map to the County Recorder of Orange County for recording.

**6H. AWARD OF CONTRACT TO RJM DESIGN GROUP TO PROVIDE PROFESSIONAL DESIGN CONSULTING SERVICES FOR THE DOG PARK DESIGN PROJECT (TASK CODE 2021-205) AND APPROPRIATION OF FUNDS**

Earlier this year, a conceptual drawing to develop a 54,886±square-foot vacant, underutilized property that runs diagonally east-southeast from Western Avenue to Cerritos Avenue into a dog park was completed. City staff released a "Request for Proposal" (RFP) soliciting proposals to provide professional design consulting services for the final design and all necessary construction documents for the development of a parkette. City staff believes that RJM Design Group is the best qualified to provide professional design consulting services for the Dog Park design and is recommending award of a design contract to that firm. In addition, staff is requesting City Council approval for an appropriation of \$164,000 to increase the budget for the Dog Park Design project from \$50,000 to \$214,000.

**RECOMMENDED ACTION:**

1. City Council declare this project to be categorically exempt under the California Environmental Quality Act, Class 1, Section 15301; and
2. Award a contract to RJM Design Group to provide professional design consulting services for a maximum contract amount of \$193,962.00; and
3. Authorize the City Manager to bind the City of Stanton and RJM Design Group in a contract to provide the services; and

4. Authorize the City Manager to approve contract change orders with RJM Design Group, as needed and determined by City Staff, for any contingencies up to \$20,000; and
5. Appropriate \$164,000 from the Park In Lieu Fees Fund (#310) to increase the Dog Park Design project's budget (Task Code 2021-205) to \$214,000.

**6I. AWARD OF CONTRACT TO BOA ARCHITECTURE TO PROVIDE PROFESSIONAL BUILDING AND LANDSCAPE ARCHITECTURAL DESIGN SERVICES FOR RENOVATIONS TO THE CITY'S FAMILY RESOURCE CENTER**

Earlier this year, the City's Community Services Department obtained a Community Development Block Grant from the County of Orange for renovations to the City's Family Resource Center. City staff released a "Request for Proposal" (RFP) soliciting proposals to provide building and landscape architectural design services. City staff believes that BOA Architecture is the best qualified to provide professional building and landscape architectural design services for renovations to the City's Family Resource Center and is recommending award of a design contract to that firm. City staff is also recommending BOA Architecture also provide construction support services.

**RECOMMENDED ACTION:**

1. City Council declare this project to be categorically exempt under the California Environmental Quality Act, Class 1, Section 15301(a); and
2. Award a contract to BOA Architecture to provide professional architectural design services and construction support services for a maximum contract amount of \$57,600; and
3. Authorize the City Manager to bind the City of Stanton and BOA Architecture in a contract to provide the services; and
4. Authorize the City Manager to approve contract change orders with BOA Architecture, as needed and determined by City Staff, for any contingencies up to \$20,000.

**6J. AWARD OF CONSTRUCTION CONTRACT TO PRO INSTALLATIONS INC. DBA PROSPECTRA CONTRACT FLOORING FOR SHERIFF'S SUBSTATION FLOORING REPLACEMENT PROJECT AND APPROPRIATION OF FUNDS**

The City of Stanton solicited bids for the services of a qualified professional to replace the flooring at the Sheriff's Substation located at 11100 Cedar Street. Normal wear and tear throughout the years has necessitated replacement. A total of five (5) bids were submitted and opened on February 7, 2022. Based on review of the bids and contractual documents submitted, City Staff recommends the lowest responsible and responsive bidder, Pro Installations Inc. dba ProSpectra Contract Flooring, be awarded the construction contract. In addition, staff is requesting City Council approve an appropriation of \$60,000 from the Capital Projects Fund's (#305) available balance to fund the amount of the contract and contingency.

**RECOMMENDED ACTION:**

1. City Council declare that the project is exempt from the California Environmental Quality Act ("CEQA"), Class 1, Section 15301(a); and
2. Award a construction contract to the lowest responsible and responsive bidder, Pro Installations Inc. dba ProSpectra Contract Flooring, to provide professional flooring replacement services for the amount of \$50,001.60; and
3. Authorize the City Manager to bind the City of Stanton and Pro Installations Inc. dba ProSpectra Contract Flooring in a contract to provide the services; and
4. Authorize the City Manager to approve contract change orders with Pro Installations Inc. dba ProSpectra Contract Flooring, as needed and determined by City staff, for any contingencies up to \$10,000; and
5. Appropriate \$60,000 from the Capital Projects Fund (#305) for the Sheriff's Substation Flooring Replacement Project (Task Code 2022-605).

**6K. AWARD OF CONTRACT TO G2 CONSTRUCTION TO INSTALL CATCH BASIN AUTOMATED RETRACTABLE SCREENS AND CONNECTOR PIPE SCREENS**

In 2021, City staff applied for competitive grant funding from the Measure M2 Environmental Cleanup Program administered by the Orange County Transportation Authority (OCTA) for the installation of proprietary G2 Construction, Inc. automated retractable screens and connector pipe screens in 109 catch basins to prevent trash from entering local waterways. The OCTA Environmental Cleanup Program Allocation Committee awarded the requested grant funding to the City for these screens, and as such, the City must now proceed with installations.

**RECOMMENDED ACTION:**

1. City Council declare this project to be categorically exempt under the California Environmental Quality Act, Class 1, Section 15301c; and
2. Accept the Measure M2 Environmental Cleanup Program grant funding in the maximum amount of \$101,780; and
3. Waive competitive bidding requirement in the City's purchasing policy by using the County of Orange Master Agreement with G2 Construction, Inc. to purchase and install the devices; and
4. Approve an appropriation of \$127,225 for the City's Capital Projects Fund (#305) for the Catch Basin Full Trash Capture Installations Project (Task Code # 2022-103), to be funded by a Measure M2 competitive grant and the City's Gas Tax Fund (#211); and
5. Approve an appropriation of \$25,445 from the City's Gas Tax Fund (#211) to fund to fund the City's matching requirement; and
6. Authorize the City Manager to make minor changes, if needed, to the City's construction contract documents with approval of the City Attorney; and
7. Authorize the City Manager to bind the City of Stanton and G2 Construction, Inc. in a contract; and
8. Authorize the City Manager to approve contract change orders with G2 Construction, Inc., as needed and determined by City staff, up to a total contract amount of \$127,225.

**6L. AWARD OF CONTRACT TO BGB DESIGN GROUP TO PROVIDE PROFESSIONAL DESIGN CONSULTING SERVICES FOR ORANGEWOOD PARKETTE AND APPROPRIATION OF FUNDS**

Earlier this year, a conceptual drawing to develop a 9,450±square-foot vacant, underutilized property located at the end of Orangewood Avenue into a parkette was completed. City staff released a “Request for Proposal” (RFP) soliciting proposals to provide professional design consulting services for the final design and all necessary construction documents for the development of a parkette. City staff believes that BGB Design Group is the best qualified to provide professional design consulting services for the Orangewood Parkette design and is recommending award of a design contract to that firm. This project is not included in the City’s Fiscal Year 2021/22 budget. Therefore, staff is requesting an appropriation of \$109,100 from the City’s Park In Lieu Fees Fund.

**RECOMMENDED ACTION:**

1. City Council declare this project to be categorically exempt under the California Environmental Quality Act, Class 1, Section 15301; and
2. Award a contract to BGB Design Group to provide professional design consulting services for a maximum contract amount of \$89,060; and
3. Authorize the City Manager to bind the City of Stanton and BGB Design Group in a contract to provide the services; and
4. Authorize the City Manager to approve contract change orders with BGB Design Group, as needed and determined by City Staff, for any contingencies up to \$20,000; and
5. Appropriate \$109,100 from the Park in Lieu Fees Fund (#310) to add the Orangewood Parkette project (Task Code 2022-203) to the City’s Fiscal Year 2021/22 budget.

**6M. AB 1595 – OC VETERANS CEMETERY**

Adoption of a Resolution of formal support for Assembly Bill 1595, which seeks to facilitate the authorization of a state veterans cemetery at a location within the County of Orange.

**RECOMMENDED ACTION:**

1. City Council declare that this item is not subject to the California Environmental Quality Act (“CEQA”) pursuant to Sections 15060(c)(2) and 15060(c)(3); and
2. Adopt Resolution No. 2022-11, entitled:

**“A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF STANTON, CALIFORNIA, DECLARING SUPPORT FOR ASSEMBLY BILL 1595, WHICH FACILITATES THE AUTHORIZATION OF A STATE VETERANS CEMETERY IN ORANGE COUNTY”.**

**6N. AMENDMENT TO AGREEMENT FOR CONSULTANT SERVICES WITH CHARLES ABBOTT ASSOCIATES, INC. FOR BUILDING SERVICES**

Request authorization to allow the City Manager to amend the Agreement with Charles Abbot Associates, Inc., to extend the existing contract from February 22, 2022, through June 30, 2022.

**RECOMMENDED ACTION:**

1. City Council declare the action not a project as defined by the California Environmental Quality Act (“CEQA”) and will have no result direct or indirect to physical changes in the environment; and
2. Approve the Amendment to the Agreement with Charles Abbott Associates, Inc.; and
3. Authorize the City Manager to bind the City of Stanton and Charles Abbott Associates, Inc. in an amended agreement to provide building services.

## **60. CYPRESS COLLEGE FOUNDATION ANNUAL AMERICANA AWARDS**

City Council consider participation through a sponsorship contribution for the 47<sup>th</sup> Annual Cypress College Foundation Americana Awards Live Stream Gala scheduled for Saturday, March 26, 2022. This gala is used as a fundraiser for the Cypress College Foundation with all proceeds benefiting Cypress College students and programs and also honors the Citizen of the Year from surrounding communities.

### **RECOMMENDED ACTION:**

1. City Council find that this item is not subject to California Environmental Quality Act ("CEQA") pursuant to Sections 15378(b)(5)(Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment); and
2. Approve the City's participation through a sponsorship contribution for the 47<sup>th</sup> Annual Cypress College Foundation Americana Awards; and
3. Direct staff to proceed with selection and purchase of the Benefactor Sponsorship at a cost of \$3,000 for the City's participation through sponsorship contribution for the 47<sup>th</sup> Annual Cypress College Foundation Americana Awards.

**END OF CONSENT CALENDAR**

## **7. PUBLIC HEARINGS**

### **7A. CONSIDERATION OF REVISED CITY COUNCIL DISTRICT ELECTORAL BOUNDARIES AS REQUIRED BY ELECTIONS CODE SECTION 21601**

Pursuant to Election Code section 21601, cities with by-district election systems are required to redraw their district boundary maps to ensure compliance with the California and federal Voting Rights Acts. The process to complete the redistricting requires a minimum of four public hearings and dedicated public outreach to ensure minority populations and communities of interest are aware of the redistricting effort and are provided with options to participate. The City held its first public hearing on November 23, 2021, its second public hearing on December 16, 2021, and its third public hearing on January 25, 2022. The deadline for Stanton to complete the redistricting process is April 17, 2022.

#### **RECOMMENDED ACTION:**

1. City Council declare the action not a project as defined by the California Environmental Quality Act (“CEQA”) and will have no result direct or indirect to physical changes in the environment; and
2. Continue public hearing #4 to the next regularly scheduled City Council meeting of March 8, 2022, at 6:45 pm (City Hall / Council Chambers: 7800 Katella Avenue, Stanton, 90680).

## **8. UNFINISHED BUSINESS**

### **8A. APPROVAL OF ORDINANCE NO. 1119**

This Ordinance was introduced at the regular City Council meeting of February 8, 2022.

#### **RECOMMENDED ACTION:**

1. City Clerk read the title of Ordinance No. 1119, entitled:  
**“AN ORDINANCE ADDING CHAPTERS 19.23 AND 20.211 TO THE STANTON MUNICIPAL CODE TO REGULATE URBAN LOT SPLITS AND TWO-UNIT PROJECTS UNDER SB 9; AND FINDING THE ACTION TO BE EXEMPT FROM CEQA”**; and
2. City Council adopt Ordinance No. 1119.

**8B. CITY OF STANTON'S AMERICAN RESCUE PLAN ACT (ARPA) ALLOCATION OF FUNDS REVIEW AND UPDATE**

Staff will provide an American Rescue Plan Act (ARPA) presentation to provide the City Council with an update and review of the City's ARPA allocation plans.

**RECOMMENDED ACTION:**

1. City Council declare that this item is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) and 15060(c)(3); and
2. Receive and file the presentation.

**9. NEW BUSINESS**

**9A. CONSIDERATION OF RESOLUTION NO. 2022-08 TO PROHIBIT OVERNIGHT PARKING ON MAIN STREET FROM FLOWER AVENUE TO THE ALLEY BETWEEN COURT AVENUE AND SYCAMORE AVENUE, AND RESOLUTION NO. 2022-10 TO ALLOW FOR ANGLED PARKING BETWEEN ROSE STREET AND FLOWER AVENUE**

The recommended resolution would establish no parking from 12:00 a.m. – 6:00 a.m., seven days per week, on Main Street from Flower Avenue to the alleyway between Court Avenue and Sycamore Avenue. A second resolution would establish new angled parking between Rose Street and Flower Avenue.

**RECOMMENDED ACTION:**

1. City Council remove any existing time limit parking on Main Street; and
2. Establish "No Parking" hours from 12:00 a.m. - 6:00 a.m. on Main Street from Flower Avenue to the alleyway between Court Avenue and Sycamore Avenue with a tow away enforcement provision; and
3. Adopt Resolution No. 2022-08 entitled:

**"A RESOLUTION OF THE CITY COUNCIL OF STANTON, CALIFORNIA, TO RESTRICT OVERNIGHT PARKING ON MAIN STREET FROM FLOWER AVENUE TO THE ALLEY BETWEEN COURT AVENUE AND SYCAMORE AVENUE"; and**

4. Declare that this Resolution will not have a significant effect, adverse or otherwise, on the environment pursuant to the California Environment Quality Act ("CEQA") Guidelines Section 15061(b)(3); therefore, this resolution is found and determined to be not subject to analysis under the California Environment Quality Act of 1970, as amended, or the State CEQA Guidelines; and

5. Direct the City Engineer to follow-up with surveyed businesses in approximately six (6) months to ascertain the effects of these actions; and
6. Adopt Resolution No. 2022-10 entitled:  

**“A RESOLUTION OF THE CITY COUNCIL OF STANTON, CALIFORNIA, PERTAINING TO ANGLED PARKING ON MAIN STREET BETWEEN ROSE STREET AND FLOWER AVENUE”**; and
7. Declare that this Resolution falls within the commonsense exemption to the California Environmental Quality Act (“CEQA”) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. Notably, the Resolution will not result in any construction or development that could have a significant effect on the environment. (State CEQA Guidelines, § 15061, subd. (b)(3).) Accordingly, this Resolution, and all parking configurations authorized hereby, are found and determined to be exempt from CEQA. Moreover, the implementation of angled parking on Main Street is additionally categorically exempt from CEQA under the Class 1 and Class 4 exemptions, both of which apply to minor alteration of land or facilities. (State CEQA Guidelines, §§ 15301, 15304).

## **10. ORAL COMMUNICATIONS - PUBLIC**

At this time members of the public may address the City Council/Successor Agency/Stanton Housing Authority regarding any items within the subject matter jurisdiction of the City Council/Successor Agency/Stanton Housing Authority, provided that NO action may be taken on non-agenda items.

- Members of the public wishing to address the Council/Agency/Authority during Oral Communications-Public or on a particular item are requested to fill out a REQUEST TO SPEAK form and submit it to the City Clerk. Request to speak forms must be turned in prior to Oral Communications-Public.
- When the Mayor/Chairman calls you to the microphone, please state your Name, slowly and clearly, for the record. A speaker’s comments shall be limited to a three (3) minute aggregate time period on Oral Communications and Agenda Items. Speakers are then to return to their seats and no further comments will be permitted.
- Remarks from those seated or standing in the back of chambers will not be permitted. All those wishing to speak including Council/Agency/Authority and Staff need to be recognized by the Mayor/Chairman before speaking.

## **11. WRITTEN COMMUNICATIONS                      None.**

**12. MAYOR/CHAIRMAN COUNCIL/AGENCY/AUTHORITY INITIATED BUSINESS**

**12A. COMMITTEE REPORTS/ COUNCIL/AGENCY/AUTHORITY ANNOUNCEMENTS**

At this time Council/Agency/Authority Members may report on items not specifically described on the agenda which are of interest to the community provided no discussion or action may be taken except to provide staff direction to report back or to place the item on a future agenda.

**12B. COUNCIL/AGENCY/AUTHORITY INITIATED ITEMS FOR A FUTURE MEETING**

At this time Council/Agency/Authority Members may place an item on a future agenda.

**12C. COUNCIL/AGENCY/AUTHORITY INITIATED ITEMS FOR A FUTURE STUDY SESSION**

At this time Council/Agency/Authority Members may place an item on a future study session agenda.

**13. ITEMS FROM CITY ATTORNEY/AGENCY COUNSEL/AUTHORITY COUNSEL**

**14. ITEMS FROM CITY MANAGER/EXECUTIVE DIRECTOR**

**14A. ORANGE COUNTY SHERIFF'S DEPARTMENT**

At this time the Orange County Sheriff's Department will provide the City Council with an update on their current operations.

**15. ADJOURNMENT**

I hereby certify under penalty of perjury under the laws of the State of California, the foregoing agenda was posted at the Post Office, Stanton Community Services Center and City Hall, not less than 72 hours prior to the meeting. Dated this 17<sup>th</sup> day of February, 2022.

s/ Patricia A. Vazquez, City Clerk/Secretary

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# Item: 6B

*Click here to return to the agenda.*

## CITY OF STANTON ACCOUNTS PAYABLE REGISTER

January 28, 2022 - February 22, 2022

Electronic Transaction Nos.	1741-1757	\$	129,934.31
Check Nos.	134726-134773	\$	181,514.71

TOTAL	\$	311,449.02
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Demands listed on the attached registers conform to the City of Stanton Annual Budget as approved by the City Council.



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City Manager

Demands listed on the attached registers are accurate and funds are available for payment thereof.



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Finance Director

# Accounts Payable

## Checks by Date - Detail by Check Number

User: mbannigan  
Printed: 2/14/2022 2:39 PM



Check No.	Vendor No Invoice No	Vendor Name Description	CheckDate Reference	Check Amount
1741	REC16138	RECTRAC REFUNDS	01/26/2022	
	25120	Refund Phoebe Tran for Park Shelter Deposit on 01/23/22		100.00
	25183	Refund Juan Bucio for cancelled Skyhawks Soccer 1/21/22-2/25/22		95.00
	25186	Refund Nurdan Ozturk for Multi Purpose Room Deposit on 01/23/22		300.00
Total for Check Number 1741:				495.00
1742	JEN14424	ANA JENSEN	01/28/2022	
	PPE 1/15/2022	Wage Gamishment PPE 1/15/2022		200.00
Total for Check Number 1742:				200.00
1743	OCF2164	OC FIRE AUTHORITY	01/28/2022	
	S0451014	Stn Annex Prop. Tax Pass Thru FY21/22		20,556.50
Total for Check Number 1743:				20,556.50
1744	OCA2137	COUNTY OF ORANGE TREASURER- TAX COLLECTOR	01/28/2022	
	SH 61102	AFIS (Fingerprinting) January 2022		1,529.00
Total for Check Number 1744:				1,529.00
1745	PUB15477	PUBLIC AGENCY RISK SHARING AUTHORITY OF CALIFO	01/28/2022	
	PPE 1/15/2022	PARS-PPE 1/15/2022		1,326.90
Total for Check Number 1745:				1,326.90
1746	REC16138	RECTRAC REFUNDS	01/31/2022	
	24828	Refund Erika Peel for Park Shelter Deposit on 01/15/22		150.00
	25019	Refund Shane Womack for Banquet Hall Deposit 01/18/22 & 01/25/22		600.00
	25124	Refund Abdul Ahamath for Park Shelter Deposit on 01/15/22		150.00
	25129	Refund Shane Womack for Banquet Hall Deposit 1/16, 1/23 & 1/30		1,200.00
	25164	Refund Yanet Hernandez for Multi Purpose Room Deposit 01/16/22		200.00
Total for Check Number 1746:				2,300.00
1747	REC16138	RECTRAC REFUNDS	02/01/2022	
	24893	Refund Noel Luna for Park Shelter Deposit on 01/29/22		100.00
	24998	Refund Tina Trout for Park Shelter Deposit on 01/29/22		150.00
	25128	Refund Jocelyn Jenkins for Multi Purpose Room Deposit on 1/30/22		200.00
	25223	Refund Anay Moreno for Park Shelter Deposit on 01/29/22		150.00
Total for Check Number 1747:				600.00
1748	GOL1321	GOLDEN STATE WATER COMPANY	02/02/2022	
	February 01	Dec 09-Jan10 Water Services Building January 11		348.41
	February 01	Dec 09-Jan10 Water Services Park January 11		2,682.74
	February 01	Dec 09-Jan10 Water Services Median January 11		1,473.69
Total for Check Number 1748:				4,504.84
1749	CAS680	CA ST PERS 103	02/02/2022	
	PPE 1/15/2022	PERS-City's Share T1 PPE 1/15/2022		2,974.88
	PPE 1/15/2022	PERS-City's Share Classic T2 PPE 1/15/2022		3,317.25
	PPE 1/15/2022	PERS-Survivor (Employee) T1 PPE 1/15/2022		9.30
	PPE 1/15/2022	PERS-Employee Classic T2 PPE 1/15/2022		2,684.47

Check No.	Vendor No Invoice No	Vendor Name Description	CheckDate Reference	Check Amount
	PPE 1/15/2022	PERS-Survivor New T3 PPE 1/15/2022		28.83
	PPE 1/15/2022	PERS-City's Share New T3 PPE 1/15/2022		5,964.34
	PPE 1/15/2022	PERS-Employee New T3 PPE 1/15/2022		5,304.23
	PPE 1/15/2022	PERS-Survivor Classic T2 PPE 1/15/2022		6.51
	PPE 1/15/2022	PERS-Employee's Share T1 PPE 1/15/2022		1,913.99
Total for Check Number 1749:				22,203.80
1750	GOL1321 February 02	GOLDEN STATE WATER COMPANY Nov 09-Jan 11 Water Services Median January 12	02/03/2022	574.74
Total for Check Number 1750:				574.74
1751	REC16138 25255 25338	RECTRAC REFUNDS Refund Jamie Ebiya for cancelled Beg Tennis 2/01/22-02/22/22 Refund Nicole Vergara for cancelled Beg Tennis 2/01/22-02/22/22	02/03/2022	40.00 40.00
Total for Check Number 1751:				80.00
1752	GOL1321 February 03	GOLDEN STATE WATER COMPANY Nov 09-Jan 11 Water Services Building January 13	02/04/2022	367.72
Total for Check Number 1752:				367.72
1753	REC16138 25385	RECTRAC REFUNDS Refund April Garcia for Park Shelter Deposit on 02/05/22	02/07/2022	150.00
Total for Check Number 1753:				150.00
1754	EDD1067 1/29/2022 1/29/2022	EDD State Tax Withholding State Unemployment	02/07/2022	5,686.65 1,564.37
Total for Check Number 1754:				7,251.02
1755	ICM1540 PPE 1/29/2022	ICMA RETIREMENT TRUST 302393 PPE 1/29/22-ICMA #302393	02/07/2022	3,970.00
Total for Check Number 1755:				3,970.00
1756	INT1569 1/29/2022 1/29/2022 1/29/2022	INTERNAL REVENUE SERVICE (MC) Medicare-Employee Share (FD) Federal Tax Withholding (ME) Medicare-City Share	02/07/2022	2,256.40 15,935.25 2,256.40
Total for Check Number 1756:				20,448.05
1757	CAS683 Feb-22 Feb-22 Feb-22 Feb-22	CA ST PERS-HEALTH BENEFIT February 22 Health Ins-Employee February 22 Retiree Insurance February 22 Adm Services Health Ins February 22 Health Ins-City Share	02/09/2022	4,416.94 3,655.00 121.99 35,182.81
Total for Check Number 1757:				43,376.74
134726	WEI16219 0777 0777	BRENDA WEINER Temporary Rental Assistance-Robyn Motland (Security Deposit) Temporary Rental Assistance-Robyn Motland (Rent-FEB)	02/03/2022	4,700.00 2,182.14
Total for Check Number 134726:				6,882.14
134727	21114338 HF-2022-008	2-1-1 ORANGE COUNTY CES Access Point Fee	02/10/2022	200.00
Total for Check Number 134727:				200.00
134728	AFL187 828148	AFLAC-FLEX ONE January 22 Employee (Aflac)	02/10/2022	271.26

<b>Check No.</b>	<b>Vendor No Invoice No</b>	<b>Vendor Name Description</b>	<b>CheckDate Reference</b>	<b>Check Amount</b>
	828148	January 22 Employee (Life Ins & Disability Ins)		160.30
Total for Check Number 134728:				431.56
134729	AME15118 151366	AMERICAN RENTALS, INC Scissor lift rental to take down Christmas tree	02/10/2022	435.25
Total for Check Number 134729:				435.25
134730	ATT377 1/24/2022 1/24/2022 1/24/2022	AT&T DMV Access Line-Jan 335-253-0761 Corporate Yard Jan Cerritos Intercon-Jan 335-253-1318	02/10/2022	54.95 443.51 199.21
Total for Check Number 134730:				697.67
134731	ATL16020 1329	ATLAS PLANNING SOLUTIONS DEC-21/Local Hazard Mitigation Plan Prep	02/10/2022	7,274.00
Total for Check Number 134731:				7,274.00
134732	AUT14715 61405597	AUTOMATED GATE SERVICES, INC Repairs to SCP Gate	02/10/2022	330.00
Total for Check Number 134732:				330.00
134733	BOY13501 1957D	BOYS & GIRLS CLUBS OF GARDEN GROVE Contractual Services (FaCT) Invoice for Boys & Girls Club of GG	02/10/2022	3,474.98
Total for Check Number 134733:				3,474.98
134734	C3O13388 142107	C3 TECHNOLOGY SERVICES Front/CR Sharp Copiers/Toner/Maintenance 12/15/21 to 01/14/22	02/10/2022	490.21
Total for Check Number 134734:				490.21
134735	CAA556 29023 29118	CA AUTO & BRAKE INC Repairs to Unit#20-replace oil pressure switch Repairs to Unit #21 - Oil change	02/10/2022	319.62 98.07
Total for Check Number 134735:				417.69
134736	CAS662 555834	CA ST DEPT OF JUSTICE DEC2021/Fingerprints	02/10/2022	98.00
Total for Check Number 134736:				98.00
134737	WES11851 5108	CITY OF WESTMINSTER Animal Control Agmt 2nd Qtr Feb 2022-Apr 2022	02/10/2022	48,620.25
Total for Check Number 134737:				48,620.25
134738	CLI14334 957007407	CLIMATEC, LLC Access Control Management Software/Maint. 10/20/21 to 10/19/22	02/10/2022	160.00
Total for Check Number 134738:				160.00
134739	COL15604 50571	COLANTUONO, HIGHSMITH & WHATLEY, PC DEC-21/Legal Svcs for Collection of UUT	02/10/2022	155.34
Total for Check Number 134739:				155.34
134740	COU15550 PW220036	COUNTY OF ORANGE Concrete and Road maintenance for Dec	02/10/2022	883.55
Total for Check Number 134740:				883.55
134741	DEL13382 74860409 75170879	DE LAGE LANDEN FINANCIAL SERVICES, INC Lease/CH/Sharp copiers 01/01/2022-01/31/2022 Lease/CH/Sharp copiers 02/01/2022-02/28/2022	02/10/2022	526.22 552.54

Check No.	Vendor No Invoice No	Vendor Name Description	CheckDate Reference	Check Amount
Total for Check Number 134741:				1,078.76
134742	DFM981 01-24-2022	DFM ASSOCIATES CA Elections Code Book 2022	02/10/2022	65.55
Total for Check Number 134742:				65.55
134743	FER14172 23	FERNWOOD MOBILE HOME PARK Lease Agreement for property along Stanton Central Park-Feb	02/10/2022	2,575.00
Total for Check Number 134743:				2,575.00
134744	FRI13695 FY2122-05	FRIENDLY CENTER, INC Contractual Services (FaCT) Invoice for Friendly Center	02/10/2022	4,173.61
Total for Check Number 134744:				4,173.61
134745	FRO13927 1/24/22	FRONTIER City Hall frame relay port Jan	02/10/2022	70.39
Total for Check Number 134745:				70.39
134746	GAL1259 19710783 19930437	GALLS LLC Parking Control Clothing:12/08/2021 (2) tactical pant & (1) belt Parking Control Clothing:01/13/2022 (2) tactical pants	02/10/2022	152.97 128.01
Total for Check Number 134746:				280.98
134747	HAR1416 21-0026 22-0027	HARTZOG & CRABILL INC On-Call Traffic Signal Services Ops. for Dec Katella OCTA Comidor Project Support-Dec	02/10/2022	2,716.00 308.00
Total for Check Number 134747:				3,024.00
134748	INT13812 14933	INTELLI-TECH Banacuda Essen Security Edition/3Yr Renewal 12/22/21-12/20/24	02/10/2022	2,049.00
Total for Check Number 134748:				2,049.00
134749	INT1579 FY2122-05STN	INTERVAL HOUSE (FaCT) Invoice for Interval House	02/10/2022	1,402.00
Total for Check Number 134749:				1,402.00
134750	HUN12150 STA1FOG12112 STA1MS412112	JOHN L. HUNTER & ASSOCIATES, INC. FOG-Dec 2021 NPDES-Dec 2021	02/10/2022	2,095.00 4,377.50
Total for Check Number 134750:				6,472.50
134751	KTG15871 0164963	KTGY GROUP, INC Prep Town Center Specific Plan/13 Nov-10 Dec 21	02/10/2022	20,787.50
Total for Check Number 134751:				20,787.50
134752	MER12502 12/14/21 654644 654644 654645 655694 655695 656603	MERCHANTS BUILDING MAINTENANCE LLC Deep Cleaning at SCP-Multipurpose room Janitorial Services at City Hall for Jan 2022 Janitorial Services at FRC for Jan 2022 Dotson Park Restroom-Disinfecting & Sanitizing to mitigate COVID COVID-19 mitigation-Disinfect & sanitation of City Hall for Dec COVID-19 mitigation-Disinfect & sanitation of City Yard for Dec Janitorial Services at Civic Center on 12/29/21	02/10/2022	869.29 1,482.22 303.59 324.00 552.00 507.00 1,953.00
Total for Check Number 134752:				5,991.10
134753	PET14941 21068459	PETS BEST Pet Insurance January 2022	02/10/2022	230.29

Check No.	Vendor No Invoice No	Vendor Name Description	CheckDate Reference	Check Amount
Total for Check Number 134753:				230.29
134754	PSI11874	PSI	02/10/2022	
	32279	Repairs to graffiti pressure washer		73.07
	32327	Repairs to graffiti pressure washer		345.55
	32347	Repairs to graffiti pressure washer		138.63
Total for Check Number 134754:				557.25
134755	MAI113147	QUADIENT LEASING USA, INC	02/10/2022	
	N9199342	Postage Meter Lease 10/30/21-01/29/22		936.59
Total for Check Number 134755:				936.59
134756	RDB16025	RD BANGGALAT CORP	02/10/2022	
	FEBRUARY-22	Emergency Housing Shelter-Robert Silver		1,000.00
	MARCH-22	Emergency Housing Shelter-Robert Silver		1,000.00
Total for Check Number 134756:				2,000.00
134757	RES2489	RESOURCE BUILDING MATERIALS	02/10/2022	
	3275062	Gravel for parking lot on Bell		67.32
	3275102	Gravel for parking lot on Bell		134.63
	3275384	Gravel for parking lot on Bell		134.63
Total for Check Number 134757:				336.58
134758	SMA14803	SMARTCOVER SYSTEM	02/10/2022	
	20789	SmartCover Level Monitor renewal		1,052.00
Total for Check Number 134758:				1,052.00
134759	SOC2734	SO CAL EDISON	02/10/2022	
	01/13/22	Electric Service-Parks Dec		842.15
	01/24/22	Stanton District Light Dec		44.49
	01/24/22	Electric Service-Medians Dec		44.80
	01/26/22	Electric Service-Medians Jan		17.29
	01/26/22	Electric Service-Building Jan		7,019.11
	01/27/2022	Electric Svc/TinaPacific 12/07/21-01/05/22		473.36
	01/31/21	Electric Service-Medians Jan		400.94
	01/31/21	Electric Service-Signals Jan		1,096.56
Total for Check Number 134759:				9,938.70
134760	SOC12606	SO CAL INDUSTRIES	02/10/2022	
	543370	Fence rental for 10652 Bell St Dec-Jan		59.11
	543371	Fence rental for Magnolia and Tina Way Dec-Jan		603.27
	543591	Fence rental for 11870 Beach Blvd Dec-Jan		124.45
	544314	Fence rental for 8970 Pacific Jan-Feb		231.21
	544315	Fence rental for 8870 Pacific Jan-Feb		208.58
Total for Check Number 134760:				1,226.62
134761	GAS1282	SOCALGAS	02/10/2022	
	1/31/2022	Gas service-City Hall Jan		870.22
Total for Check Number 134761:				870.22
134762	BCN14064	SOLEX - FUSION	02/10/2022	
	132139723	OCT/NOV-21/LAN Lines for City Hall/FRC/Corp Yard/SCP		2,592.88
	132146446	DEC-21/LAN Lines for City Hall/FRC/Corp Yard/SCP		1,296.25
Total for Check Number 134762:				3,889.13
134763	SOU2770	SOUTHWEST OFFSET PRINTING	02/10/2022	
	182519	Recreation Brochure-Winter/Spring Brochure 2022		4,806.61

Check No.	Vendor No Invoice No	Vendor Name Description	CheckDate Reference	Check Amount
Total for Check Number 134763:				4,806.61
134764	SPA15432	SPARKLETTS	02/10/2022	
	4096775 012822	JAN-22/Breakroom Water Delivery		168.68
	4096775 123121	DEC-21/Breakroom Water Delivery		63.86
Total for Check Number 134764:				232.54
134765	SPE14381	SPECTRUM	02/10/2022	
	0012363010122	JAN-22/Spectrum TV		97.92
Total for Check Number 134765:				97.92
134766	TAI14271	TAIT & ASSOCIATES INC	02/10/2022	
	145744	FY21/22 Slurry and Reconstruction Design Project		2,219.82
Total for Check Number 134766:				2,219.82
134767	TOT15551	TOTAL POWER SOLUTIONS LLC	02/10/2022	
	1295	Generator Maintenance at City Yard and Sheriff		1,740.00
Total for Check Number 134767:				1,740.00
134768	TOW14437	TOWNSEND PUBLIC AFFAIRS, INC	02/10/2022	
	17921	JAN-2022/Public Advocacy/Consulting Svcs		4,000.00
Total for Check Number 134768:				4,000.00
134769	VAN13002	VAN RY MAINTENANCE	02/10/2022	
	9500	Floor service FRC-Dec 2021		125.00
	9500	Floor service Civic Center-Dec 2021		225.00
	9514	Floor service FRC-Jan 2022		125.00
	9514	Floor service Civic Center-Jan 2022		225.00
Total for Check Number 134769:				700.00
134770	VEN13764	VENCO WESTERN INC	02/10/2022	
	0155874-IN	Stanton Central Park-Jan		4,592.00
	0155874-IN	Street landscape maintenance-Jan		1,490.00
	0155874-IN	Building landscape maintenance-Jan		1,298.00
	0155874-IN	Median landscape maintenance-Jan		7,939.00
	0155874-IN	Park landscape maintenance-Jan		4,685.00
	0155874-IN	Norm Ross baseball field-Jan		900.00
	2502467-IN	Gopher abatement at Hollenbeck Park		1,975.00
Total for Check Number 134770:				22,879.00
134771	VER3059	VERIZON WIRELESS	02/10/2022	
	9897445270	Mobile/Data Plans/Hotspots 12/17/21-01/16/22		740.08
	9897445271	Mobile/Data Plans/Hotspots 12/17/21-01/16/22		965.54
Total for Check Number 134771:				1,705.62
134772	VIS3077	VISTA PAINT CORP	02/10/2022	
	2022-359617-00	Paint Supplies-Graffiti		824.07
	2022-360080-00	Paint Supplies-Graffiti		24.77
	2022-368811-00	Paint Supplies-traffic paint-curb painting		2,231.46
	2022-370484-00	Paint Supplies-Graffiti		35.22
	2022-374978-00	Paint Supplies-Civic Center repaint		65.40
	2022-376396-00	Paint Supplies-Civic Center repaint		52.15
	2022-378675-00	Paint Supplies-Civic Center repaint		79.99
	2022-379016-00	Paint Supplies-Civic Center repaint		20.59
	2022-380131-00	Paint Supplies-Civic Center repaint		92.23
	2022-380291-00	Paint Supplies-Civic Center repaint		32.91
Total for Check Number 134772:				3,458.79
134773	WAG13143	WAGWORKS	02/10/2022	

<b>Check No.</b>	<b>Vendor No Invoice No</b>	<b>Vendor Name Description</b>	<b>CheckDate Reference</b>	<b>Check Amount</b>
	INV3336661	DEC2021/Administration Fee		66.00
	INV3336661	DEC2021/Compliance Fee		50.00
Total for Check Number 134773:				116.00
Report Total (65 checks):				311,449.02

MINUTES OF THE CITY COUNCIL / SUCCESSOR AGENCY / HOUSING AUTHORITY  
OF THE CITY OF STANTON  
JOINT REGULAR MEETING FEBRUARY 8, 2022

1. **CLOSED SESSION** None.

2. **CALL TO ORDER STANTON CITY COUNCIL / SUCCESSOR AGENCY / HOUSING AUTHORITY JOINT REGULAR MEETING**

The City Council / Successor Agency / Housing Authority meeting was called to order at 6:31 p.m. by Mayor / Chairman Shawver.

3. **PLEDGE OF ALLEGIANCE**

Led by Mr. Tom Carpenter.

4. **ROLL CALL**

Present: Council/Agency/Authority Member Taylor, Council/Agency/Authority Member Van, Council/Agency/Authority Member Warren, Mayor Pro Tem/Vice Chairman Ramirez, and Mayor/Chairman Shawver.

Absent: None.

Excused: None.

5. **SPECIAL PRESENTATIONS AND AWARDS**

1. Presentation by Mr. Howard Kummerman, Cypress College Foundation regarding the 47<sup>th</sup> Annual Americana Awards, which will honor Mr. Tom Carpenter as the Cypress College Foundation Americana Awards, 2022 Citizen of the Year for the City of Stanton.

Request to the City Council by Captain Cruz Alday, Orange County Sheriff's Department to recognize the promotions of two outgoing Stanton deputies.

The City Council approved Captain Alday's request.

# DRAFT

2. Presentation by Captain Cruz Alday, Orange County Sheriff's Department commending the services of Investigator Mark Baltodano and Lieutenant Chris McDonald.
  - The City Council expressed their gratitude to outgoing Investigator Mark Baltodano and Lieutenant Chris McDonald for their efforts throughout the years and congratulated them on their promotions.
  - Investigator Mark Baltodano expressed his gratitude to the Orange County Sheriff's Department, City of Stanton, and City Council Members.
  - Lieutenant Chris McDonald expressed his gratitude to the Orange County Sheriff's Department, City of Stanton, and City Council Members.

## 6. CONSENT CALENDAR

Motion/Second: Warren/Taylor

ROLL CALL VOTE:	Council/Agency/Authority Member Taylor	AYE
	Council/Agency/Authority Member Van	AYE
	Council/Agency/Authority Member Warren	AYE
	Mayor Pro Tem/Vice Chairman Ramirez	AYE
	Mayor/Chairman Shawver	AYE

Motion unanimously carried:

## CONSENT CALENDAR

### 6A. MOTION TO APPROVE THE READING BY TITLE OF ALL ORDINANCES AND RESOLUTIONS. SAID ORDINANCES AND RESOLUTIONS THAT APPEAR ON THE PUBLIC AGENDA SHALL BE READ BY TITLE ONLY AND FURTHER READING WAIVED

The City Council/Agency Board/Authority Board waived reading of Ordinances and Resolutions.

### 6B. APPROVAL OF WARRANTS

The City Council approved demand warrants dated January 14, 2022 – January 27, 2022 in the amount of \$1,122,276.88.

### 6C. APPROVAL OF MINUTES

The City Council/Successor Agency/Housing Authority approved Minutes of Joint Regular Meeting – January 25, 2022.

## DRAFT

### 6D. CITY STAFF AUTHORITY TO EXECUTE FUNDING AGREEMENTS AND DOCUMENTS FOR LOCAL TRANSPORTATION PROJECTS

The California Department of Transportation (Caltrans) provides funding via various programs, such as the Local Assistance Program, to help local agencies improve their transportation infrastructure. Caltrans District 12 Local Assistance requested a copy of the City's current Authorized Resolution that contains language that is compliant with an excerpt from Chapter 17 of their Right of Way Manual in order to submit Right of Way Certification packages. Upon further research, City staff found the existing resolution concerning execution of funding agreements with Caltrans may also need updating. City staff is requesting the Public Works Director be given the authority to execute all of these documents.

1. The City Council declared this project categorically exempt under the California Environmental Quality Act ("CEQA") under Section 15378(b)(5) – Organizational or administrative activities of governments that will not result in direct or indirect changes in the environment; and
2. Adopted Resolution No. 2022-07 granting the Director of Public Works authority to execute documents necessary to implement Federal and/or State funded local transportation projects, entitled:

**“A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF STANTON, CALIFORNIA, GRANTING THE PUBLIC WORKS DIRECTOR THE AUTHORITY TO APPROVE AND EXECUTE ALL MASTER AND PROGRAM SUPPLEMENTAL AGREEMENTS, FUND EXCHANGE AGREEMENTS, FUND TRANSFER AGREEMENTS, RIGHT OF WAY CERTIFICATIONS, ANY AMENDMENTS AND/OR OTHER DOCUMENTS NECESSARY TO IMPLEMENT FEDERAL AND/OR STATE FUNDED LOCAL TRANSPORTATION PROJECTS”;** and

3. Approved and granted the Public Works Director the authority to approve and execute all Master and Program Supplemental Agreements, Fund Exchange Agreements, Fund Transfer Agreements, Right of Way Certifications, any amendments and/or other documents necessary to implement Federal and/or State funded local transportation projects.

## **DRAFT**

### **6E. RENEWAL OF AUTHORIZATION FOR VIRTUAL PUBLIC MEETINGS PURSUANT TO AB 361**

Consideration of the circumstances of the state of emergency related to the COVID-19 pandemic to determine whether remote teleconference meetings of the City Council, Committees, and Commissions can continue to be held under the provisions of AB 361.

1. The City Council declared that this item is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) and 15060(c)(3); and
2. Reconsidered the circumstances of the state of emergency; and
3. Finds that state or local officials have continued to impose or recommend measures to promote social distancing; and
4. Directed staff, no later than 30 days after the City Council approves the recommended action, to report back on the state-proclaimed state of emergency so that City Council may reconsider the circumstances of the emergency, and, if appropriate, make findings to continue to hold virtual meetings of City legislative bodies pursuant to AB 361.

### **END OF CONSENT CALENDAR**

### **7. PUBLIC HEARINGS**

#### **7A. GENERAL PLAN AMENDMENT NO. GPA 22-01: 6TH CYCLE HOUSING ELEMENT UPDATE FOR THE 2021-2029 PLANNING PERIOD AND COMMUNITY HEALTH AND SAFETY ELEMENT UPDATE**

Article 10.6 of the California Government Code requires Cities to adopt a Housing Element that provides an analysis of the community's housing needs for all income levels and strategies to address those needs. State Law also requires that at the time of the Housing Element Update, the Community Health and Safety Element also be updated to include a set of adaptation and resiliency goals to address local impacts of climate change.

Introduction by Ms. Jennifer A. Lilley, Community and Economic Development Director.

Presentation by Mr. Perry Banner, Principal Planner, De Novo Planning Group.

# DRAFT

The public hearing was opened.

No one appearing to speak, the public hearing was closed.

Motion/Second: Taylor/Ramirez

ROLL CALL VOTE: Council Member Taylor	AYE
Council Member Van	AYE
Council Member Warren	AYE
Mayor Pro Tem Ramirez	AYE
Mayor Shawver	AYE

Motion unanimously carried:

1. The City Council conducted a public hearing; and
2. Finds the environmental effects of the project are within the scope described in the Final Environmental Impact Report (FEIR) for the Revised City of Stanton General Plan which was certified in 2008 and no subsequent EIR is necessary in compliance with Section 15164 of the California Environmental Quality Act; and
3. Adopted City Council Resolution No. 2022-05 Approving General Plan Amendment No. GPA 22-01 for the Update to the Housing Element for the 2021-2029 Planning Period and the Update to the Community Health and Safety Element, entitled:

**“ADOPTING GENERAL PLAN AMENDMENT NO. GPA 22-01 UPDATE TO THE HOUSING ELEMENT FOR THE 2021-2029 PLANNING PERIOD AND UPDATE TO THE COMMUNITY HEALTH AND SAFETY ELEMENT AND MAKING FINDINGS IN SUPPORT THEREOF”; and**

4. Adopted City Council Resolution No. 2022-06 Adopting an Addendum to the Final Environmental Impact Report for the Revised City of Stanton General Plan, entitled:

**“ADOPTING AN ADDENDUM TO THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE REVISED CITY OF STANTON GENERAL PLAN FOR GENERAL PLAN AMENDMENT NO. GPA 22-01 FOR THE 2021-2029 PLANNING PERIOD AND UPDATE TO THE COMMUNITY HEALTH AND SAFETY ELEMENT”.**

# DRAFT

## 7B. CONSIDERATION OF AN ORDINANCE ADDING CHAPTERS 19.23 AND 20.211 TO THE STANTON MUNICIPAL CODE TO REGULATE URBAN LOT SPLITS AND TWO-UNIT PROJECTS UNDER SB 9; AND FINDING THE ACTION TO BE EXEMPT FROM CEQA

Adopt the proposed Ordinance to update the Municipal Code to address recent changes to the Government Code regarding urban lot splits and two-unit projects in residentially zoned neighborhoods.

Staff report by Ms. Jennifer A. Lilley, Community and Economic Development Director.

The public hearing was opened.

No one appearing to speak, the public hearing was closed.

Motion/Second: Warren/Taylor

ROLL CALL VOTE:	Council Member Taylor	AYE
	Council Member Van	AYE
	Council Member Warren	AYE
	Mayor Pro Tem Ramirez	AYE
	Mayor Shawver	AYE

Motion unanimously carried:

1. The City Council conducted a public hearing; and
2. Finds the project is Categorical Exempt per California Environmental Quality Act, Public Resource Code Section 15301, Class 1(a) (Existing Facilities); and
3. Introduced Ordinance No. 1119, entitled:

**“AN ORDINANCE ADDING CHAPTERS 19.23 AND 20.211 TO THE STANTON MUNICIPAL CODE TO REGULATE URBAN LOT SPLITS AND TWO-UNIT PROJECTS UNDER SB 9; AND FINDING THE ACTION TO BE EXEMPT FROM CEQA”;** and

4. Set Ordinance No. 1119 for second reading and adoption at the February 22, 2022 regularly scheduled City Council meeting.

## **DRAFT**

- 8. UNFINISHED BUSINESS**                      None.
- 9. NEW BUSINESS**                              None.
- 10. ORAL COMMUNICATIONS – PUBLIC**                      None.
- 11. WRITTEN COMMUNICATIONS**                      None.
- 12. MAYOR/CHAIRMAN/COUNCIL/AGENCY/AUTHORITY INITIATED BUSINESS**
- 12A. COMMITTEE REPORTS/COUNCIL/AGENCY/AUTHORITY ANNOUNCEMENTS**
- Council Member Van reported on the upcoming Stanton Community Garden, Open Garden Event, which is scheduled to be held on March 5, 2022, from 10 am to 12pm at the Stanton Community Garden.
  - Council Member Taylor reported that this year the Orange County Mosquito and Vector Control District will be celebrating 75 years of service to the community as a special district, who strives to move forward bringing new technology and innovative concepts to combat vector-borne diseases in Orange County.
  - Mayor Shawver reported that he will be assisting in hosting a free drive thru distribution site providing free food (fresh / canned / non-perishables), and diapers on February 26, 2022, at Stanton Park.
  - Mayor Shawver reported that he will be representing the City at a few Tet Festivals throughout Orange County.
  - Mayor Shawver announced his appointment as a committee member to the Orange County Parks Commission, Trails Subcommittee.
- 12B. COUNCIL/AGENCY/AUTHORITY INITIATED ITEMS FOR A FUTURE COUNCIL MEETING**
- None.
- 12C. COUNCIL/AGENCY/AUTHORITY INITIATED ITEMS FOR A FUTURE STUDY SESSION**
- None.
- 13. ITEMS FROM CITY ATTORNEY/AGENCY COUNSEL/AUTHORITY COUNSEL**
- None.

# DRAFT

## 14. ITEMS FROM CITY MANAGER/EXECUTIVE DIRECTOR

- Mr. Jarad L. Hildenbrand, City Manager reported on upcoming Redistricting Stanton Public Hearing #4, which is scheduled to be held on February 22, 2022, at 6:45 pm.
- Ms. Zenia Bobadilla, Community Services Director, reported that the City is now accepting nominations for the 2022 Women of Distinction Awards.
- Mr. Jarad L. Hildenbrand, City Manager provided the City Council with an update on the City's response to COVID-19 and the recent surge of the Omicron variant.

## 14A. ORANGE COUNTY FIRE AUTHORITY

At this time the Orange County Fire Authority will provide the City Council with an update on their current operations.

Fire Division Chief Chad Gremel provided the City Council with an update on their current operations

- 15. ADJOURNMENT** in observance and celebration of Black History Month  
Motion/Second: Shawver/  
Motion carried at 7:25 p.m.

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MAYOR/CHAIRMAN

ATTEST:

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CITY CLERK/SECRETARY

# CITY OF STANTON

## REPORT TO THE CITY COUNCIL

**TO:** Honorable Mayor and Members of the City Council

**DATE:** February 22, 2022

**SUBJECT: DECEMBER 2021 INVESTMENT REPORT**

**REPORT IN BRIEF:**

The Investment Report as of December 31, 2021, has been prepared in accordance with the City’s Investment Policy and California Government Code Section 53646.

**RECOMMENDED ACTIONS:**

1. City Council find that this item is not subject to California Environmental Quality Act (“CEQA”) pursuant to Sections 15378(b)(5) (Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment); and
2. Receive and file the Investment Report for the month of December 2021.

**BACKGROUND:**

Changes in the City’s cash and investment balances for the month of December are summarized below:

	<u>Beginning Balance</u>	<u>Net Change</u>	<u>Ending Balance</u>
Cash and Investment Accounts (Pooled-All Funds)	\$ 59,031,482.09	\$ (285,090.01)	\$ 58,746,392.08
Cash (Non-Pooled)	4,593,348.54	86,116.27	4,679,464.81
Total Cash and Investments	<u>\$ 63,624,830.63</u>	<u>\$ (198,973.74)</u>	<u>\$ 63,425,856.89</u>

Between November 30, 2021, and December 31, 2021, the City’s total cash and investments decreased by approximately \$199,974.

The attached reports summarize the City investments and deposit balances as of December 31, 2021. The City’s cash and investment balances by fund type are presented in Attachment A. A summary of the City’s investment portfolio is included as Attachment B. The detail of the City’s investments by type are shown in Attachment C.

**ANALYSIS:**

The monthly cash and investment report provides a summary of the cash and investment accounts held by the City as of the end of that month. In order to manage its cash and investments, the City combines cash resources from all funds into a single pool consisting of a variety of accounts and securities. The balance in the pooled cash account includes cash and certain liquid investments that are available to meet the City’s current cash needs. Cash in excess of the City’s current cash needs is invested in interest-bearing investments with various maturities.

Detailed information regarding the securities contained in the City’s investment portfolio is provided in Attachments B and C. As of December 31, 2021, City investments consisted of the following:

	Market Value as of December 31, 2021	Average Interest Rate	Percentage of Portfolio Invested by Type	Maximum Percentage of Portfolio Permitted by Investment Policy	In Compliance?
Local Agency Investment Fund (LAIF)	\$ 40,798,559.11	0.21%	73.39%	100.00%	Yes
California Asset Management Program (CAMP)	5,252,262.69	0.05%	9.45%	100.00%	Yes
Negotiable Certificates of Deposit	7,792,003.53	2.46%	14.02%	30.00%	Yes
Municipal Bonds	<u>1,746,644.80</u>	2.25%	<u>3.14%</u>	100.00%	Yes
Total Investments	<u>\$ 55,589,470.13</u>		<u>100.00%</u>		

As of December 31, 2021, the average purchase yield to maturity earned on the City’s total investment portfolio was 0.57%, which is above the benchmark LAIF return of 0.21%. The weighted average maturity of the City’s was approximately 88 days (approximately 3 months) as of December 31, 2021, which is in compliance with the City’s investment policy restriction of 3.5 years.

**FISCAL IMPACT:**

All deposits and investments have been made in accordance with the City's Fiscal Year 2021-22 Investment Policy. The portfolio will allow the City to meet its expenditure requirements for the next six months. Staff remains confident that the investment portfolio is currently positioned to remain secure and sufficiently liquid.

The City Treasurer controls a \$55.6 million portfolio, with \$9.5 million in investments held in a safekeeping account with Bank of the West.

**ENVIRONMENTAL IMPACT :**

None.

**LEGAL REVIEW:**

None.

**PUBLIC NOTIFICATION :**

Through the normal agenda posting process.

**STRATEGIC PLAN OBJECTIVE ADDRESSED**

4. Ensure Fiscal Stability and Efficiency in Governance

Prepared by:

Approved by:

/s/ Michelle Bannigan

/s/ Jarad L. Hildenbrand

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Michelle Bannigan, CPA  
Finance Director

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Jarad L. Hildenbrand  
City Manager

**Attachments:**

- A. Cash and Investment Balances by Fund
- B. Investments Portfolio Summary
- C. Investment Portfolio Detail

**CITY OF STANTON  
CASH AND INVESTMENTS REPORT  
MONTH ENDED DECEMBER 31, 2021**

Fund/ Account No.	Fund/Account Name	Beginning Balance	Increases	Decreases	Ending Balance
101-various	General Fund	\$ 18,983,731.94	\$ 10,546,926.48	\$ (10,521,988.80)	\$ 19,008,669.62
102-111101	General Fund (Transactions & Use Tax)	38,356.77	477,899.88	(695,505.05)	(179,248.40)
210-111101	Certified Access Specialists (CASP) Program	44,801.17	4,439.16	-	49,240.33
211-111101	Gas Tax Fund	1,098,534.32	74,957.69	(24,992.13)	1,148,499.88
215-111101	Road Maintenance and Rehabilitation act (RMRA) Fund	596,347.90	64,611.02	(17,674.53)	643,284.39
220-111101	Measure M Fund	844,829.90	1,833.44	(3,616.04)	843,047.30
221-111101	Community Development Block Grant-COVID-19 (CDBG-CV) Fund	-	-	(37,500.00)	(37,500.00)
222-111101	Community Development Block Grant (CDBG) Fund	212,212.34	481.000	(1,843.99)	210,849.35
223-111101	Protective Services Fund	-	127,706.04	(127,706.04)	-
224-111101	Lighting Maintenance 1919 Act Fund	241,027.69	328,972.82	(120,250.93)	449,749.58
225-111101	Lighting/Median Maintenance 1972 Act Fund	1,134,215.91	72,424.71	(42,097.06)	1,164,543.56
226-111101	Air Quality Improvement Fund	157,287.76	13,384.540	(753.10)	169,919.20
242-111101	Supplemental Law Enforcement Grant Fund (current)	411,652.69	18,717.06	(14,359.19)	416,010.56
250-111101	Families and Communities Together (FaCT) Grant Fund	(29,692.58)	28,137.63	(37,163.06)	(38,718.01)
251-111101	Senior Transportation Fund	55,962.17	755.51	(3,477.00)	53,240.68
257-111101	America Rescue Act Plan (ARPA) Fund	4,240,370.24	9,328.24	(454,063.81)	3,795,634.67
261-111101	Street Impact Fees Fund	88,062.10	194.77	(384.14)	87,872.73
262-111101	Traffic Signal Impact Fees Fund	51,131.44	114.91	(226.64)	51,019.71
263-111101	Community Center Impact Fees Fund	160,437.06	360.37	(710.75)	160,086.68
264-111101	Police Services Impact Fees Fund	144,942.04	325.56	(642.09)	144,625.51
280-111101	Stanton Central Park Maintenance Fund	(18,866.33)	3,428.33	(7,167.00)	(22,605.00)
285-various	Stanton Housing Authority Fund	12,327,210.46	1,410.00	(69,812.95)	12,258,807.51
305-111101	Capital Projects Fund	278,929.05	15,020.00	(15,020.00)	278,929.05
310-111101	Park and Recreation Facilities Fund	3,667,130.10	8,180.04	(16,133.24)	3,659,176.90
501-111101	Sewer Maintenance Fund	5,310,066.04	417,856.76	(33,049.33)	5,694,873.47
502-111101	Sewer Capital Improvement Fund	6,337.28	323.10	(19.52)	6,640.86
602-111101	Workers' Compensation Fund	551,095.49	7,286.74	(2,467.34)	555,914.89
603-111101	Liability Risk Management Fund	118,018.50	8,867.88	(528.33)	126,358.05
604-111101	Employee Benefits Fund	61,132.75	117,738.57	(106,963.26)	71,908.06
605-111101	Fleet Maintenance Fund	399,715.42	10,314.02	(9,266.53)	400,762.91
801-111101	Expendable Deposits Fund	(27,445.02)	1,000.00	(13,921.15)	(40,366.17)
901-111101	North Orange County Public Safety Task Force (NOCPSTF) Trust Fund	7,883,947.49	-	(268,783.28)	7,615,164.21
<b>Total Pooled Cash and Investments<sup>(1)</sup></b>		<b>\$ 59,031,482.09</b>	<b>\$ 12,362,996.27</b>	<b>\$ (12,648,086.28)</b>	<b>\$ 58,746,392.08</b>
<b>Less: Investments<sup>(1)</sup></b>		<b>\$ (50,159,416.00)</b>	<b>\$ (6,500,254.90)</b>	<b>\$ 1,070,200.77</b>	<b>\$ (55,589,470.13)</b>
<b>Cash - Bank of the West General Checking Account</b>		<b>\$ 8,872,066.09</b>	<b>\$ 5,862,741.37</b>	<b>\$ (11,577,885.51)</b>	<b>\$ 3,156,921.95</b>

**CITY OF STANTON  
CASH AND INVESTMENTS REPORT  
MONTH ENDED DECEMBER 31, 2021**

Fund/ Account No.	Fund/Account Name	Beginning Balance	Increases	Decreases	Ending Balance
<b><u>CASH-NON-POOLED</u></b>					
101-111103	Payroll Account	\$ -	\$ 236,057.75	\$ (236,057.75)	\$ -
101-111109	Flexible Spending/AFLAC	5,058.51	-	(1,022.42)	4,036.09
101-111505	Petty Cash	500.00	100.000	-	600.00
604-111404	Cash with Fiscal Agent (PARS) <sup>(2)</sup>	4,587,790.03	89,337.040	(2,298.35)	4,674,828.72
	<b>Total Cash-Non-Pooled</b>	<b>\$ 4,593,348.54</b>	<b>\$ 325,494.79</b>	<b>\$ (239,378.52)</b>	<b>\$ 4,679,464.81</b>
<b><u>INVESTMENTS</u></b>					
	POOLED ALL FUNDS	\$ 50,159,416.00	\$ 6,500,254.90	\$ (1,070,200.77)	\$ 55,589,470.13
	<b>Total Investments</b> <sup>(3)</sup>	<b>\$ 50,159,416.00</b>	<b>\$ 6,500,254.90</b>	<b>\$ (1,070,200.77)</b>	<b>\$ 55,589,470.13</b>
	<b>TOTAL CASH AND INVESTMENTS</b>	<b>\$ 63,624,830.63</b>	<b>\$ 12,688,491.06</b>	<b>\$ (12,887,464.80)</b>	<b>\$ 63,425,856.89</b>

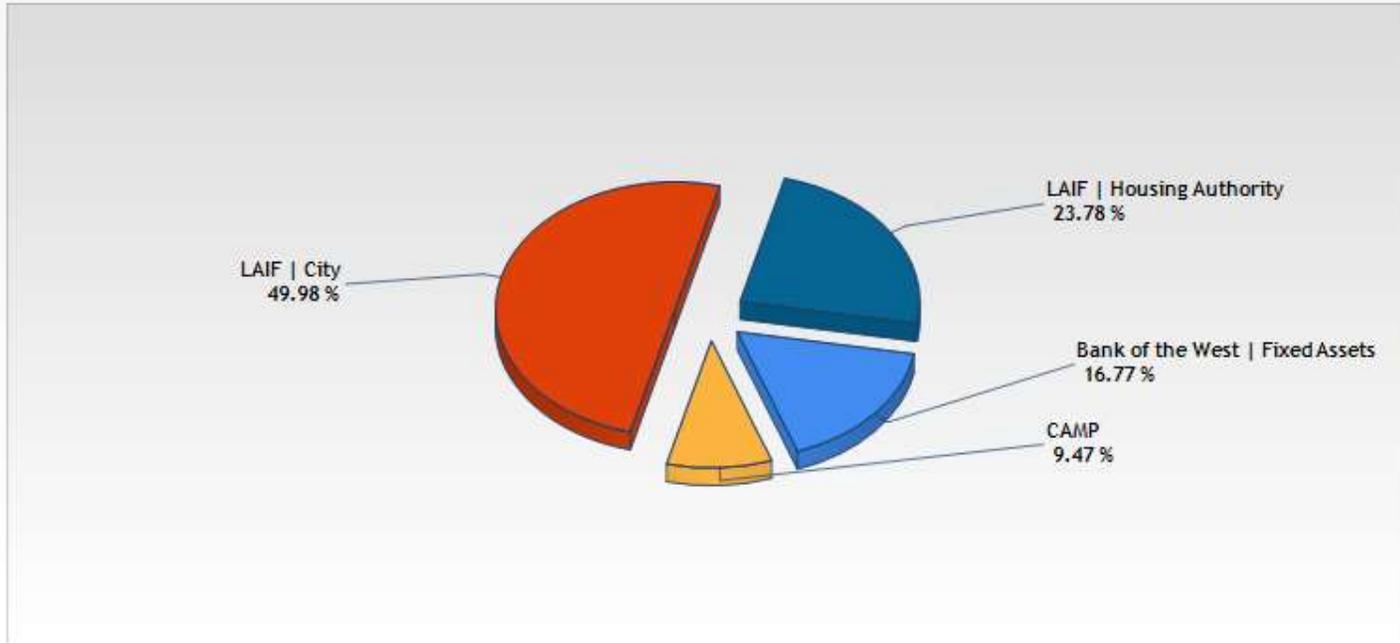
**Notes:**

<sup>(1)</sup> - Pooled cash includes: City's Bank of the West general checking and safekeeping accounts, the City's Local Agency Investment Fund (LAIF) account, the Housing Authority's LAIF account, the California Asset Management Program (CAMP) account, and the Public Agency Retirement Services (PARS) account.

<sup>(2)</sup> - The Public Agency Retirement Services (PARS) account is an irrevocable trust that can be used for pension and other post employment benefits only. This fund is excluded from the compliance requirements set forth in the City's investment policy.

<sup>(3)</sup> - The Portfolio Summary Report and Holdings by Security Type are included in Attachments B and C, respectively.

Portfolio Holdings Distribution by Portfolio Name



Portfolio Name	Face Amount/Shares	YTM @ Cost	Cost Value	Days To Maturity	% of Portfolio	Market Value	Book Value	Duration To Maturity
Bank of the West   Fixed Assets	9,303,000.00	2.420	9,319,816.20	522	16.77	9,538,648.33	9,308,291.64	1.40
CAMP	5,252,262.69	0.050	5,252,262.69	1	9.47	5,252,262.69	5,252,262.69	0.00
LAIF   City	27,716,703.09	0.212	27,716,703.09	1	49.98	27,645,723.93	27,716,703.09	0.00
LAIF   Housing Authority	13,186,604.50	0.212	13,186,604.50	1	23.78	13,152,835.18	13,186,604.50	0.00
<b>TOTAL / AVERAGE</b>	<b>55,458,570.28</b>	<b>0.567</b>	<b>55,475,386.48</b>	<b>88</b>	<b>100</b>	<b>55,589,470.13</b>	<b>55,463,861.92</b>	<b>0.24</b>

City of Stanton  
 Portfolio Holdings  
 Investment Portfolio | by Security Sector  
 Report Format: By Transaction  
 Group By: Security Sector  
 Average By: Face Amount / Shares  
 Portfolio / Report Group: All Portfolios  
 As of 12/31/2021

Description	CUSIP/Ticker	Settlement Date	YTM @ Cost	Face Amount/Shares	Cost Value	Book Value	Market Value	Maturity Date	Days To Maturity	Accrued Interest	% of Portfolio
<b>Certificate Of Deposit</b>											
Allegiance Bank TX 2.65 2/14/2023	01748DBB1	4/11/2019	2.650	249,000.00	249,000.00	249,000.00	255,294.72	2/14/2023	410	307.33	0.45
American Eagle Bank IL 2.1 5/23/2022	02554BCN9	6/9/2017	2.100	150,000.00	150,000.00	150,000.00	151,101.00	5/23/2022	143	69.04	0.27
American Express UT 2.35 8/8/2022	02587DV47	8/8/2017	2.350	247,000.00	247,000.00	247,000.00	250,117.14	8/8/2022	220	2,305.90	0.45
American Express UT 2.4 8/29/2022	02587CFU9	8/29/2017	2.400	247,000.00	247,000.00	247,000.00	250,492.58	8/29/2022	241	1,965.17	0.45
Bank Hapoalim NY 2.9 3/25/2024	06251AW48	4/24/2019	2.900	250,000.00	250,000.00	250,000.00	262,120.00	3/25/2024	815	1,926.71	0.45
Bank of New England NH 2.65 5/23/2024	06426KBE7	5/23/2019	2.650	249,000.00	249,000.00	249,000.00	260,247.33	5/23/2024	874	144.62	0.45
Capital One Bank VA 2.35 3/15/2022	140420Z52	3/15/2017	2.350	248,000.00	248,000.00	248,000.00	249,068.88	3/15/2022	74	1,708.48	0.45
Capital One VA 2.3 7/19/2022	14042RGN5	7/19/2017	2.300	247,000.00	247,000.00	247,000.00	249,778.75	7/19/2022	200	2,568.12	0.45
Cornerstone Community Bank CA 2.6 5/17/2024	219240BY3	5/17/2019	2.600	249,000.00	249,000.00	249,000.00	259,898.73	5/17/2024	868	248.32	0.45
EagleBank MD 2.65 4/28/2023	27002YEL6	4/30/2019	2.650	249,000.00	249,000.00	249,000.00	256,263.33	4/28/2023	483	18.08	0.45
Evansville Teachers FCU IN 2.25 7/22/2024	299547AV1	7/22/2019	2.250	249,000.00	249,000.00	249,000.00	258,217.98	7/22/2024	934	138.14	0.45
First Technology FCU CA 3.35 9/27/2023	33715LCJ7	9/27/2018	3.350	240,000.00	240,000.00	240,000.00	251,546.40	9/27/2023	635	88.11	0.43
First Tier Bank NE 1.95 8/23/2024	33766LAJ7	8/23/2019	1.950	249,000.00	249,000.00	249,000.00	256,425.18	8/23/2024	966	106.42	0.45
Goldman Sachs Bank NY 2.35 6/21/2022	38148PKX4	6/21/2017	2.350	247,000.00	247,000.00	247,000.00	249,474.94	6/21/2022	172	159.03	0.45
Greenstate FCU IA 1.95 2/28/2023	39573LAF5	8/28/2019	1.950	249,000.00	249,000.00	249,000.00	253,459.59	2/28/2023	424	39.91	0.45
Healthcare Systems FCU VA 2.65 4/25/2024	42228LAD3	4/25/2019	2.650	246,000.00	246,000.00	246,000.00	256,846.14	4/25/2024	846	1,196.64	0.44
Horizon Bank NE 1.7 8/29/2023	44042TBQ6	7/29/2019	2.101	249,000.00	245,090.70	247,412.17	255,747.90	8/29/2023	606	23.19	0.45
I&C Bank of China, NY 2.15 4/12/2022	45581EAC5	8/15/2019	2.104	247,000.00	247,296.40	247,031.14	248,328.86	4/12/2022	102	276.44	0.45
Main Street Bank VA 2.6 4/26/2024	56065GAG3	4/26/2019	2.600	249,000.00	249,000.00	249,000.00	259,719.45	4/26/2024	847	88.68	0.45
McGregor TX 2.3 6/28/2024	32112UDA6	7/12/2019	2.200	249,000.00	250,170.30	249,587.41	260,025.72	6/28/2024	910	47.07	0.45
Merrick Bank UT 2.6 8/23/2023	59013J7P8	4/23/2019	2.600	249,000.00	249,000.00	249,000.00	257,388.81	8/23/2023	600	141.90	0.45
Morgan Stanley NY 3.1 2/7/2024	61760AVJ5	2/7/2019	3.100	246,000.00	246,000.00	246,000.00	258,445.14	2/7/2024	768	3,050.40	0.44
Morgan Stanley UT 3.1 2/7/2024	61690UDW7	2/7/2019	3.100	246,000.00	246,000.00	246,000.00	258,445.14	2/7/2024	768	3,050.40	0.44
Mountain America CU UT 3 3/27/2023	62384RAF3	4/9/2019	2.840	249,000.00	250,494.00	249,465.33	256,938.12	3/27/2023	451	81.86	0.45
Raymond James Bank FL 2 8/23/2024	75472RAE1	8/23/2019	2.000	247,000.00	247,000.00	247,000.00	254,681.70	8/23/2024	966	1,759.45	0.45
Sallie Mae Bank UT 2.3 8/2/2022	795450B61	8/2/2017	2.300	248,000.00	248,000.00	248,000.00	250,976.00	8/2/2022	214	2,359.74	0.45
State Bank India NY 2.35 3/14/2022	8562846V1	3/14/2017	2.350	248,000.00	248,000.00	248,000.00	249,054.00	3/14/2022	73	1,724.45	0.45
Synchrony Bank UT 2.4 5/19/2022	87165EL96	5/19/2017	2.400	247,000.00	247,000.00	247,000.00	249,047.63	5/19/2022	139	682.13	0.45

Description	CUSIP/Ticker	Settlement Date	YTM @ Cost	Face Amount/Shares	Cost Value	Book Value	Market Value	Maturity Date	Days To Maturity	Accrued Interest	% of Portfolio
TIAA FSB FL 2.1 7/29/2022	87270LCM3	7/29/2019	2.100	247,000.00	247,000.00	247,000.00	249,625.61	7/29/2022	210	2,202.70	0.45
University of Iowa CU IA 3.05 5/15/2023	91435LAG2	4/25/2019	2.919	248,000.00	249,240.00	248,418.64	256,786.64	5/15/2023	500	621.70	0.45
Washington Federal Bank WA 1.95 8/28/2024	938828BN9	8/28/2019	1.950	249,000.00	249,000.00	249,000.00	256,440.12	8/28/2024	971	39.91	0.45
<b>Sub Total / Average Certificate Of Deposit</b>			<b>2.459</b>	<b>7,583,000.00</b>	<b>7,583,291.40</b>	<b>7,582,914.69</b>	<b>7,792,003.53</b>		<b>535</b>	<b>29,140.04</b>	<b>13.67</b>
<b>Local Government Investment Pool</b>											
CAMP LGIP	CAMP3001	2/29/2020	0.050	5,252,262.69	5,252,262.69	5,252,262.69	5,252,262.69	N/A	1		9.47
LAIF   City LGIP	LAIFCITY0895	2/29/2020	0.212	27,716,703.09	27,716,703.09	27,716,703.09	27,645,723.93	N/A	1		49.98
LAIF   Housing Authority LGIP	LAIFHA0004	2/29/2020	0.212	13,186,604.50	13,186,604.50	13,186,604.50	13,152,835.18	N/A	1		23.78
<b>Sub Total / Average Local Government Investment Pool</b>			<b>0.194</b>	<b>46,155,570.28</b>	<b>46,155,570.28</b>	<b>46,155,570.28</b>	<b>46,050,821.80</b>		<b>1</b>	<b>0.00</b>	<b>83.23</b>
<b>Municipal</b>											
Arvin Community CA 2.5 3/1/2023	043288AK5	8/8/2019	2.350	275,000.00	276,399.75	275,457.26	280,420.25	3/1/2023	425	2,291.67	0.50
Fort Bragg CA 1.871 8/1/2024	347028JZ6	9/18/2019	1.750	205,000.00	206,150.05	205,610.26	207,314.45	8/1/2024	944	1,598.15	0.37
Riverside Pension CA 2.5 6/1/2022	769036BB9	6/20/2017	2.251	500,000.00	505,800.00	500,487.88	504,120.00	6/1/2022	152	1,041.67	0.90
Riverside Pension CA 2.5 6/1/2022	769036BB9	7/24/2017	2.401	240,000.00	241,080.00	240,092.59	241,977.60	6/1/2022	152	500.00	0.43
Riverside Pension CA 2.75 6/1/2024	769036BD5	8/28/2019	2.030	250,000.00	258,120.00	254,123.04	258,425.00	6/1/2024	883	572.92	0.45
Stockton CA 2.5 9/1/2023	861403AU7	5/1/2019	2.600	250,000.00	248,975.00	249,605.92	254,387.50	9/1/2023	609	2,083.33	0.45
<b>Sub Total / Average Municipal</b>			<b>2.247</b>	<b>1,720,000.00</b>	<b>1,736,524.80</b>	<b>1,725,376.95</b>	<b>1,746,644.80</b>		<b>463</b>	<b>8,087.74</b>	<b>3.10</b>
<b>Total / Average</b>			<b>0.567</b>	<b>55,458,570.28</b>	<b>55,475,386.48</b>	<b>55,463,861.92</b>	<b>55,589,470.13</b>		<b>88</b>	<b>37,227.78</b>	<b>100</b>

## CITY OF STANTON

### REPORT TO THE SUCCESSOR AGENCY TO THE STANTON REDEVELOPMENT AGENCY

**TO:** Honorable Chair and Members of the Successor Agency

**DATE:** February 22, 2022

**SUBJECT: DECEMBER 2021 INVESTMENT REPORT (SUCCESSOR AGENCY)**

#### **REPORT IN BRIEF:**

The Investment Report as of December 31, 2021, has been prepared in accordance with the City's Investment Policy and California Government Code Section 53646.

#### **RECOMMENDED ACTIONS:**

1. Successor Agency find that this item is not subject to California Environmental Quality Act ("CEQA") pursuant to Sections 15378(b)(5) (Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment); and
2. Receive and file the Investment Report for the month of December 2021.

#### **BACKGROUND:**

The attached reports summarize the Successor Agency investments and deposit balances as of December 2021. During the month of December, the Successor Agency's total cash and investment balances decreased by approximately \$32,200. The Successor Agency received \$3.6 million in its semi-annual redevelopment property tax funds distribution from the County of Orange in December. These funds were transferred to U.S. Bank to hold to fund future debt service payments. The Successor Agency's cash and investment balances by fund are presented in Attachment A. The Successor Agency's investments and deposits are included as Attachment B.

#### **ANALYSIS:**

The Successor Agency's share of the City's investment in the State Treasurer's Local Agency Investment Fund (LAIF) continues to be available on demand. The effective yield on LAIF for the month of December 2021 was 0.21%.

The Successor Agency's investments are shown on Attachment B and have a weighted investment yield of 0.21%, which is equal to the benchmark LAIF return of 0.21%, as the

entire portfolio (excluding funds held with the bond fiscal agents) represents the Successor Agency's portion of LAIF and Bank of the West funds invested by the City.

With a completely liquid portfolio, the weighted average maturity of the Successor Agency's investments on December 31, 2021, is 1 day. LAIF's average maturity on December 31, 2021, is approximately 332 days.

**FISCAL IMPACT:**

All deposits and investments have been made in accordance with the City's Fiscal Year 2021-22 Investment Policy.

The portfolio will allow the Successor Agency to meet its expenditure requirements for the next six months.

**ENVIRONMENTAL IMPACT:**

None

**LEGAL REVIEW:**

None.

**PUBLIC NOTIFICATION:**

Through the agenda posting process.

**STRATEGIC PLAN OBJECTIVE ADDRESSED:**

4. Ensure Fiscal Stability and Efficiency in Governance

Prepared by:

Approved by:

/s/ Michelle Bannigan

/s/ Jarad L. Hildenbrand

\_\_\_\_\_  
Michelle Bannigan, CPA  
Finance Director

\_\_\_\_\_  
Jarad L. Hildenbrand  
City Manager

**Attachments:**

- A. Cash and Investment Balances by Fund
- B. Investments and Deposits

SUCCESSOR AGENCY TO THE STANTON REDEVELOPMENT AGENCY  
CASH AND INVESTMENTS REPORT  
MONTH ENDED DECEMBER 31, 2021

Fund/ Account No.	Fund/Account Name	Beginning Balance	Increases	Decreases	Ending Balance
<b><u>CASH-POOLED</u></b>					
712-111101	Redevelopment Obligation Retirement Fund	\$ 1,662,014.83	\$ 3,573,871.00	\$ (5,966.67)	\$ 5,229,919.16
	<b>Total Cash-Pooled <sup>(1)</sup></b>	<b>\$ 1,662,014.83</b>	<b>\$ 3,573,871.00</b>	<b>\$ (5,966.67)</b>	<b>\$ 5,229,919.16</b>
<b><u>CASH-RESTRICTED (with Fiscal Agent)</u></b>					
712-111423	2016 Tax Allocation Bonds, Series A and B	\$ 1,350,560.83	\$ 5.55	\$ (1,350,537.50)	\$ 28.88
712-111425	2016 Tax Allocation Bonds, Series C and D	1,825,892.05	7.50	(1,825,881.25)	18.30
712-111426	2020 Tax Allocation Refunding Bonds, Series A	423,700.00	0.52	(423,700.00)	0.52
	<b>Total Cash-Restricted (with Fiscal Agent)</b>	<b>\$ 3,600,152.88</b>	<b>\$ 13.57</b>	<b>\$ (3,600,118.750)</b>	<b>\$ 47.70</b>
	<b>TOTAL CASH AND INVESTMENTS</b>	<b>\$ 5,262,167.71</b>	<b>\$ 3,573,884.57</b>	<b>\$ (3,606,085.42)</b>	<b>\$ 5,229,966.86</b>

Note:

<sup>(1)</sup> - Includes the Successor Agency's share of the City's Bank of the West checking account and Local Agency Investment Fund (LAIF).

**SUCCESSOR AGENCY TO THE STANTON REDEVELOPMENT AGENCY  
INVESTMENTS AND DEPOSITS  
MONTH ENDED DECEMBER 31, 2021**

Investment Type	Institution	Issuer/ Broker	Date of Maturity	Interest Rate	Cost	Market Value	MV Source
LAIF and BOW General Acct	State of California/ BOW	State of California	On Demand	0.21% N/A	\$ 5,229,919	\$ 5,229,919	LAIF

**Total Cash Investments and Deposits**

1	0.21%	<b>\$ 5,229,919</b>	<b>\$ 5,229,919</b>
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Weighted Average/eighted Average  
Maturity (days) Yield

Bond Funds Held by Trustees:

Investment Type	Institution	Issuer/ Broker	CUSIP Number	Date of Maturity	Interest Rate	Par Value	Cost	Market Value	MV Source
<b>2016 Series A and B</b>									
Debt Service:									
Cash Equivalent	US Bank Money Market	US Bank	9AMMF05B2	On Demand	0.02%	\$ 28	\$ 28	\$ 28	US Bank
Principal:									
Cash Equivalent	US Bank Money Market	US Bank	9AMMF05B2	On Demand	0.02%	1	1	1	US Bank
Interest:									
Cash Equivalent	US Bank Money Market	US Bank	9AMMF05B2	On Demand	0.02%	-	-	-	US Bank

Total 2016 Series A and B \$ 29 \$ 29

Investment Type	Institution	Issuer/ Broker	CUSIP Number	Date of Maturity	Interest Rate	Par Value	Cost	Market Value	MV Source
<b>2016 Series C and D</b>									
Debt Service:									
Cash Equivalent	US Bank Money Market	US Bank	9AMMF05B2	On Demand	0.02%	\$ 17	\$ 17	\$ 17	US Bank
Principal:									
Cash Equivalent	US Bank Money Market	US Bank	9AMMF05B2	On Demand	0.02%	1	1	1	US Bank

Total 2016 Series C and D \$ 18 \$ 18

Investment Type	Institution	Issuer/ Broker	CUSIP Number	Date of Maturity		Interest Rate	Par Value	Cost	Market Value	MV Source
<b>2020 Tax Allocation Refunding Bonds</b>										
Special Fund:										
Cash Equivalent	US Bank Money Market	US Bank	9AMMF05B2	On Demand		0.02%	\$ 1	\$ 1	\$ 1	US Bank

Total 2010 Tax Allocation Bonds (Tax-Exempt)

\$ 1 \$ 1

**Total Bond Fund Investments and Deposits (3)**

**\$ 48 \$ 48**

**TOTAL - ALL CASH AND INVESTMENTS**

**\$5,229,967 \$5,229,967**

Notes:

- (1) - There have been no exceptions to the Investment Policy.
- (2) - The Successor Agency is able to meet its expenditure requirements for the next six months.
- (3) - Restricted Bond Funds are held by the fiscal agent.

## CITY OF STANTON

### REPORT TO THE CITY COUNCIL

**TO:** Honorable Mayor and City Council

**DATE:** February 22, 2022

**SUBJECT: DECEMBER 2021 GENERAL FUND REVENUE AND EXPENDITURE REPORT AND STATUS OF CAPITAL IMPROVEMENT PROGRAM**

#### **REPORT IN BRIEF:**

The Revenue and Expenditure Report for the month ended December 31, 2021, has been provided to the City Manager in accordance with Stanton Municipal Code Section 2.20.080 (D) and is being provided to City Council. This report includes information for both the City's General Fund and the Housing Authority Fund. In addition, staff has provided a status of the City's Capital Improvement Projects (CIP) as of December 31, 2021.

#### **RECOMMENDED ACTION:**

1. City Council find that this item is not subject to California Environmental Quality Act ("CEQA") pursuant to Sections 15378(b)(5) (Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment); and
2. Receive and file the General Fund and Housing Authority Fund's December 2021 Revenue and Expenditure Report and Status of Capital Improvement Projects for the month ended December 31, 2021.

#### **ANALYSIS:**

##### *General Fund Revenue and Expenditure Reports*

Attachments A and B summarize the General Fund's revenue and expenditure activity through December 31, 2021. The reports include information for the month of November, on a year-to-date basis through November, the current fiscal year's budgeted balance and the year-to-date as a percentage of the budget. In addition, for comparison purposes, the year-to-date amount, final amount, and a percentage of final for the previous fiscal year (through December) is included as well.

As of December 31, total General Fund revenues received to date was approximately \$9.9 million represents 37% of the Fiscal Year 2021/22 budgeted amount and is

approximately \$896,000 (10%) higher than the revenues collected for the same period last year (Attachment A, page 2). The primary reason for the increase is because of increased taxes collected during the current year for property tax, transient occupancy tax, sales tax, and transaction and use tax. Fees and permits revenues collected through December are 40% lower than the previous fiscal year. The City issued 43 building permits (with a valuation of \$481,500) through December 31, 2021, compared to 465 building permits with a valuation of \$29.0 million issued through December 31, 2020. Staff will be reviewing the Fiscal Year 2021/22 revenue estimates and provide revised projections at the City's Mid-Year Budget Update for Fiscal Year 2021/22.

Total General Fund expenditures were approximately \$12.6 million through December 31, which represents 47% of the 2021/22 projected expenditures and is approximately \$829,000 (7%) higher than the expenditures incurred for the same period last year (Attachment B, page 2). The primary reason for the increase is due to law enforcement and fire protection services contact costs which were 7% and 5% higher, respectively, than the same period last year.

#### *Housing Authority Revenue and Expenditure Reports*

Attachment D summarizes the Housing Authority Fund's revenue and expenditure activity through December 31, 2021. The report includes information for the activity during the month of December, information on a year-to-date basis through November, the current fiscal year's budgeted balance and the year-to-date as a percentage of the budget. In addition, for comparison purposes, the year-to-date amount, final amount, and a percentage of final for the previous fiscal year (through November) is included as well.

As of December 31, total Housing Authority Fund revenues received to date was approximately \$729,000, which represents 112% of the Fiscal Year 2021/22 budgeted amount and is approximately \$381,000 (109%) more than the revenue collected through the same period last year. In October, the Housing Authority received \$606,902 for the sale of the property located at 7455 Katella Avenue. This revenue will be adjusted with the City's proposed budget adjustments at the upcoming Mid-Year Budget Update for Fiscal Year 2021/22.

Total Housing Authority Fund expenditures were approximately \$1.5 million through December 31, which represents 35% of the 2021/22 projected expenditures and is approximately \$1.5 million (51%) lower than the expenditures incurred for the same period last year. In December 2020, the Housing Authority made \$2.6 million in payments for Project Homekey.

#### *Status of Capital Improvement Projects (CIP) (Attachment F)*

The Fiscal Year 2021/22 CIP budget includes \$3.3 million from the Fiscal Year 2021/22 Adopted Budget and \$822,843 in carryover funding from Fiscal Year 2020/21, for a total amended budget of \$4.2 million as of December 31, 2021. As of December 31, capital

project expenditures totaled \$42,377 (1% of the amended budget) with an additional \$127,673 (3% of the amended budget) under contract (encumbered) for work currently underway, for a total amount spent or encumbered to date of \$170,050 (4% of the amended budget) as of December 31, 2021.

**FISCAL IMPACT:**

Per Attachment C, the City’s General Fund reserves is expected to be \$22.2 million by June 30, 2022.

Per Attachment E, the City’s Housing Authority Fund reserves is expected to be \$10.2 million by June 30, 2022.

**ENVIRONMENTAL IMPACT:**

None.

**LEGAL REVIEW:**

None.

**PUBLIC NOTIFICATION:**

Through the normal agenda posting process.

**STRATEGIC PLAN OBJECTIVE ADDRESSED**

4. Ensure Fiscal Stability and Efficiency in Governance

Prepared by:

Approved by:

/s/ Michelle Bannigan

/s/ Jarad L. Hildenbrand

\_\_\_\_\_  
Michelle Bannigan, CPA  
Finance Director

\_\_\_\_\_  
Jarad L. Hildenbrand  
City Manager

**Attachments:**

- A. December 2021 General Fund Revenues
- B. December 2021 General Fund Expenditures
- C. General Fund Reserves Projected as of June 30, 2022
- D. December 2021 Housing Authority Revenue and Expenditures
- E. Housing Authority Fund Available Fund Balance Projected as of June 30, 2022
- F. Status of Capital Improvement Projects as of December 31, 2021

**CITY OF STANTON**  
**December 2021 General Fund Revenues (50% of year)**

	FY 2021/22 Adopted Budget	FY 2021/22 Amended Budget	FY 2021/22			FY 2020/21 Actual	% Change From Prior Year
			Activity During December	Year To Date Actual *	Percent of Budget		
<b>TAXES</b>							
Property Tax	\$ 7,213,500	\$ 7,213,500	\$ 1,178,598	\$ 1,448,016	20.07%	\$ 1,230,968	17.63%
Sales and Use Tax	4,810,000	4,810,000	423,039	1,802,881	37.48%	1,685,243	6.98%
Transactions and Use Tax	4,998,000	4,998,000	446,334	1,952,184	39.06%	1,736,247	12.44%
Transient Occupancy Tax	480,000	480,000	11,715	253,391	52.79%	225,374	12.43%
Franchise Fees	1,109,500	1,109,500	-	242,293	21.84%	264,608	-8.43%
Business Licenses	160,000	160,000	36,178	84,145	52.59%	57,409	46.57%
Utility Users Tax	1,881,000	1,881,000	165,012	898,952	47.79%	904,768	-0.64%
Tax Increment Pass-thru Payment	338,000	338,000	270,516	270,516	80.03%	215,950	25.27%
<b>TAXES-TOTAL</b>	<b>20,990,000</b>	<b>20,990,000</b>	<b>2,531,392</b>	<b>6,952,378</b>	<b>33.12%</b>	<b>6,320,567</b>	<b>10.00%</b>
<b>INTERGOVERNMENTAL</b>							
County WDA Shared Revenue	160,000	160,000	-	101,376	63.36%	-	100.00%
Mandated Cost Reimbursement	30,000	30,000	-	-	0.00%	-	**
Motor Vehicle In Lieu	20,000	20,000	-	-	0.00%	-	**
Public Safety Augmentation Tax	161,075	161,075	17,631	70,969	44.06%	67,306	5.44%
<b>INTERGOVERNMENTAL-TOTAL</b>	<b>371,075</b>	<b>371,075</b>	<b>17,631</b>	<b>172,345</b>	<b>46.44%</b>	<b>67,306</b>	<b>156.06%</b>
<b>CHARGES FOR SERVICES</b>							
Charges for Services	105,280	86,030	514	41,083	47.75%	44,231	-7.12%
Information Technology Charges	30,345	30,345	2,529	15,173	50.00%	12,143	100.00%
<b>CHARGES FOR SERVICES-TOTAL</b>	<b>135,625</b>	<b>116,375</b>	<b>3,043</b>	<b>56,256</b>	<b>48.34%</b>	<b>56,374</b>	<b>-0.21%</b>
<b>FEES AND PERMITS</b>							
Solid Waste Impact Fees	1,150,000	1,150,000	-	376,478	32.74%	337,202	11.65%
Building Permits and Fees	1,300,000	1,300,000	78,461	475,082	36.54%	826,129	-42.49%
Planning Permits and Fees	106,250	106,250	6,762	42,845	40.32%	45,249	-5.31%
Engineering Permits and Fees	73,300	73,300	16,745	49,711	67.82%	36,071	37.81%
Public Benefit Fee	-	-	-	-	**	325,897	-100.00%
Recycling Fees	93,750	93,750	-	19,525	20.83%	20,320	-3.91%
Other Permits and Fees	267,500	267,500	43,074	132,210	49.42%	274,799	-51.89%
Community Services Fees	46,500	46,500	5,425	39,827	85.65%	11,590	70.90%
<b>FEES AND PERMITS -TOTAL</b>	<b>3,037,300</b>	<b>3,037,300</b>	<b>150,467</b>	<b>1,135,678</b>	<b>37.39%</b>	<b>1,877,257</b>	<b>-39.50%</b>

**CITY OF STANTON**  
**December 2021 General Fund Revenues (50% of year)**

	FY 2021/22 Adopted Budget	FY 2021/22 Amended Budget	FY 2021/22		Percent of Budget	FY 2020/21 Actual	% Change From Prior Year
			Activity During December	Year To Date Actual *			
<b>FINES AND FORFEITURES</b>							
General Fines	600	600	56	18,170	3028.33%	478	3701.26%
Motor Vehicle Fines	120,670	120,670	2,003	20,777	17.22%	49,832	-58.31%
Parking Citations	205,000	205,000	26,682	123,124	60.06%	127,554	-3.47%
DMV Parking Collections	70,300	70,300	5,569	28,906	41.12%	17,811	62.29%
Administrative Citation	15,000	15,000	900	3,460	23.07%	3,795	-8.83%
<b>FINES AND FORFEITURES-TOTAL</b>	<b>411,570</b>	<b>411,570</b>	<b>35,210</b>	<b>194,437</b>	<b>47.24%</b>	<b>199,470</b>	<b>-2.52%</b>
<b>USE OF MONEY AND PROPERTY</b>							
Investment Earnings	185,000	185,000	26,500	71,192	38.48%	116,871	-39.08%
Unrealized Gains (Losses)	-	-	3,173	(127,660)	**	(53,728)	137.60%
Interest on Loan to Landscape District Fund	16,570	16,570	3,627	10,882	65.67%	-	100.00%
Rental Income	28,305	28,305	7,053	28,039	99.06%	5,360	423.12%
<b>USE OF MONEY AND PROPERTY-TOTAL</b>	<b>229,875</b>	<b>229,875</b>	<b>40,353</b>	<b>(17,547)</b>	<b>-7.63%</b>	<b>68,503</b>	<b>-125.61%</b>
<b>MISCELLANEOUS REVENUE</b>							
Miscellaneous Revenue	198,700	269,500	4,278	122,216	45.35%	41,063	197.63%
<b>MISCELLANEOUS REVENUE-TOTAL</b>	<b>198,700</b>	<b>269,500</b>	<b>4,278</b>	<b>122,216</b>	<b>45.35%</b>	<b>41,063</b>	<b>197.63%</b>
<b>TRANSFERS IN</b>							
From Gas Tax Fund	205,000	205,000	17,083	102,500	50.00%	60,250	70.12%
From Protective Services Fund	375,000	375,000	127,706	193,216	51.52%	242,758	-20.41%
From Supplemental Law Enforcement Grants Fund	150,000	150,000	12,500	75,000	50.00%	46,795	60.27%
From Housing Authority Fund	-	890,000	-	890,000	100.00%	-	100.00%
<b>TRANSFERS IN-TOTAL</b>	<b>730,000</b>	<b>1,620,000</b>	<b>157,289</b>	<b>1,260,716</b>	<b>77.82%</b>	<b>349,803</b>	<b>72.25%</b>
<b>TOTAL REVENUES AND TRANSFERS IN</b>	<b>\$ 26,104,145</b>	<b>\$ 27,045,695</b>	<b>\$ 2,939,663</b>	<b>\$ 9,876,479</b>	<b>36.52%</b>	<b>\$ 8,980,343</b>	<b>9.98%</b>

\* = Actual data is reported through December.

**TAXES**  
**December 2021 General Fund Revenues (50% of year)**

Acct. No.	Description	FY 2021/22	FY 2021/22	FY 2021/22		% of Budget	FY 2020/21	% Change
		Adopted Budget	Amended Budget	Activity During December	Year To Date Actual *		Actual	From Prior Year
<b>101</b>	<b>General Fund</b>							
430100	Current Year-Secured	\$ 1,144,000	\$ 1,144,000	\$ 375,017	\$ 563,929	49.29%	574,787	-1.89%
430105	Current Year-Unsecured	32,500	32,500	-	18,532	57.02%	15,253	21.50%
430115	Property Tax-Supplemental	23,000	23,000	1,437	5,475	23.80%	5,403	1.33%
430120	Residual Redevelopment Property Tax	1,267,000	1,267,000	791,483	791,483	62.47%	582,742	35.82%
430121	In-Lieu Vehicle License Fee	4,640,000	4,640,000	-	-	0.00%	-	**
430135	Homeowners Tax Relief	1,000	1,000	744	744	74.40%	781	-4.74%
430140	Property Transfer Tax	106,000	106,000	9,917	67,853	64.01%	52,002	30.48%
430200	Sales And Use Tax	4,810,000	4,810,000	423,039	1,802,881	37.48%	1,685,243	6.98%
430300	Transient Occupancy Tax	480,000	480,000	11,715	253,391	52.79%	225,374	12.43%
430405	Franchise Tax/Cable TV	224,500	224,500	-	51,718	23.04%	85,382	-39.43%
430410	Franchise Tax/Electric	214,000	214,000	-	-	0.00%	-	**
430415	Franchise Tax/Gas	58,000	58,000	-	-	0.00%	-	**
430420	Franchise Tax/Refuse	525,000	525,000	-	190,575	36.30%	179,226	6.33%
430425	Franchise Tax/Water	88,000	88,000	-	-	0.00%	-	**
430500	Business License Tax	160,000	160,000	36,178	84,145	52.59%	57,409	46.57%
430600	Util User Tax/Electricity	935,500	935,500	77,400	526,749	56.31%	535,541	-1.64%
430605	Util User Tax/Telephone	316,000	316,000	15,613	83,482	26.42%	92,390	-9.64%
430610	Util User Tax/Gas	211,000	211,000	21,586	80,444	38.13%	61,081	31.70%
430615	Util User Tax/Water	418,500	418,500	50,413	208,277	49.77%	215,756	-3.47%
440100	AB 1389 Pass Through from RDA	338,000	338,000	270,516	270,516	80.03%	215,950	25.27%
<b>101</b>	<b>General Fund</b>	<b>15,992,000</b>	<b>15,992,000</b>	<b>2,085,058</b>	<b>5,000,194</b>	<b>31.27%</b>	<b>4,584,320</b>	<b>9.07%</b>
<b>102</b>	<b>General Fund (Transactions &amp; Use Tax)</b>							
430250	Transactions & Use Tax	4,998,000	4,998,000	446,334	1,952,184	39.06%	1,736,247	12.44%
<b>102</b>	<b>General Fund (Transactions &amp; Use Tax)</b>	<b>4,998,000</b>	<b>4,998,000</b>	<b>446,334</b>	<b>1,952,184</b>	<b>39.06%</b>	<b>1,736,247</b>	<b>12.44%</b>
<b>TAXES - TOTAL</b>		<b>\$ 20,990,000</b>	<b>\$ 20,990,000</b>	<b>\$ 2,531,392</b>	<b>\$ 6,952,378</b>	<b>33.12%</b>	<b>\$ 6,320,567</b>	<b>10.00%</b>

\* = Actual data is reported through December.

**CHARGES FOR SERVICES**  
**December 2021 General Fund Revenues (50% of year)**

Acct. No.	Description	FY 2021/22		FY 2021/22			FY 2020/21	% Change From Prior Year
		Adopted Budget	Amended Budget	Activity During December	Year To Date Actual *	% of Budget		
<b>101</b>	<b>General Fund</b>							
433100	Charges For Services	\$ 105,280	\$ 86,030	\$ 514	\$ 41,083	47.75%	\$ 44,231	-7.12%
433136	Information Technology Charges	30,345	30,345	2,529	15,173	50.00%	12,143	19.97%
<b>CHARGES FOR SERVICES - TOTAL</b>		<b>\$ 135,625</b>	<b>\$ 116,375</b>	<b>\$ 3,043</b>	<b>\$ 56,256</b>	<b>48.34%</b>	<b>\$ 56,374</b>	<b>-0.21%</b>

\* = Actual data is reported through December.

**INTERGOVERNMENTAL**  
**December 2021 General Fund Revenues (50% of year)**

Acct. No.	Description	FY 2021/22	FY 2021/22	FY 2021/22		% of Budget	FY 2020/21 Actual	% Change From Prior Year
		Adopted Budget	Amended Budget	Activity During December	Year To Date Actual *			
<b>101</b>	<b>General Fund</b>							
432121	County WDA Shared Revenue	\$ 160,000	\$ 160,000	\$ -	\$ 101,376	63.36%	\$ -	100.00%
432135	Mandated Cost Reimbursement	30,000	30,000	-	-	0.00%	-	**
432150	Motor Vehicle In Lieu	20,000	20,000	-	-	0.00%	-	**
432180	Public Safety Augmentation Tax	161,075	161,075	17,631	70,969	44.06%	67,306	5.16%
<b>INTERGOVERNMENTAL - TOTAL</b>		<b>\$ 371,075</b>	<b>\$ 371,075</b>	<b>\$ 17,631</b>	<b>\$ 172,345</b>	<b>46.44%</b>	<b>\$ 67,306</b>	<b>156.06%</b>

\* = Actual data is reported through December.

**FEES AND PERMITS**  
**December 2021 General Fund Revenues (50% of year)**

Acct. No.	Description	FY 2021/22	FY 2021/22	FY 2021/22			FY 2020/21	% Change
		Adopted Budget	Amended Budget	Activity During December	Year To Date Actual *	% of Budget	Actual	From Prior Year
<b>101</b>	<b>General Fund</b>							
431100	Building Plan Check Fees	\$ 70,000	\$ 70,000	\$ 44,909	\$ 137,299	196.14%	\$ 36,677	274.35%
431105	Mechanical Permits	250,000	250,000	4,390	37,840	15.14%	112,970	-66.50%
431110	Building Permits	750,000	750,000	18,976	230,504	30.73%	537,000	-57.08%
431115	Plumbing Permits	80,000	80,000	2,525	19,790	24.74%	46,190	-57.16%
431120	Electrical Permits	150,000	150,000	7,661	49,649	33.10%	93,292	-46.78%
431130	Engineering Plan Check Fees	33,300	33,300	13,245	24,405	73.29%	14,745	65.51%
431135	Public Works Permits	40,000	40,000	3,500	25,306	63.27%	21,326	18.66%
431140	S M I P - Commercial Fees	500	500	-	7	1.40%	205	-96.59%
431145	S M I P-Residential Permits	1,000	1,000	34	41	4.10%	33	24.24%
431146	SB 1473 Fee	2,500	2,500	15	402	16.08%	1,330	-69.77%
431150	Grading Plan Review	-	-	2,890	7,225	**	8,670	-16.67%
431155	Grading Permits	-	-	735	2,940	**	3,675	-25.00%
431160	Solid Waste Impact Fees	1,150,000	1,150,000	-	376,478	32.74%	337,202	11.65%
431185	Parking Permits	50,000	50,000	5,375	10,782	21.56%	7,543	42.94%
431190	Towing Franchise Fee	30,000	30,000	720	11,700	39.00%	23,670	-50.57%
431194	Public Benefit Fee	-	-	-	-	**	325,897	-100.00%
431195	Other Fees & Permits	15,000	15,000	1,770	12,770	85.13%	17,050	-25.10%
431200	Cannabis Business Initial Permit Fee	-	-	-	-	**	143,000	-100.00%
433200	Conditional Use Permit	6,000	6,000	2,485	12,425	207.08%	-	100.00%
433205	Precise Plan Of Design	15,000	15,000	1,050	2,100	14.00%	9,230	-77.25%
433210	Variance	2,000	2,000	-	-	0.00%	-	**
433220	Preliminary Plan Review	6,000	6,000	-	7,500	125.00%	1,875	75.00%
433225	Environmental Services	4,400	4,400	75	505	11.48%	3,790	-86.68%
433227	Foreclosure Registration	10,850	10,850	217	2,469	22.76%	4,375	-43.57%
433230	Zoning Entitlements	5,000	5,000	-	-	0.00%	-	**
433235	Land Divisions	10,000	10,000	-	2,500	25.00%	3,730	-32.98%
433240	Special Event Permits	500	500	-	180	36.00%	180	0.00%
433245	Sign/Ban'R/Gar Sa/Temp Use Per	6,000	6,000	230	3,600	60.00%	1,365	163.74%

**FEES AND PERMITS**  
**December 2021 General Fund Revenues (50% of year)**

Acct. No.	Description	FY 2021/22	FY 2021/22	FY 2021/22		% of Budget	FY 2020/21	% Change
		Adopted Budget	Amended Budget	Activity During December	Year To Date Actual *		Actual	From Prior Year
<b>101</b>	<b>General Fund</b>							
433250	Ministerial Services	15,000	15,000	2,275	8,550	57.00%	8,345	2.46%
433260	Landscape Plan Check	1,000	1,000	325	1,300	130.00%	-	100.00%
433270	General Plan Maint Surcharge	15,000	15,000	105	1,507	10.05%	11,330	-86.70%
433285	Other Developmental Fees	5,000	5,000	-	389	7.78%	1,209	-67.82%
433305	General Recreation Programs	24,000	24,000	1,955	21,617	90.07%	-	100.00%
433315	Sports Fields	22,500	22,500	3,470	18,210	80.93%	11,590	36.35%
437115	Recycling Fees	93,750	93,750	-	19,525	20.83%	20,320	-3.91%
430505	New/Moved Bus Lic Appl Rev	40,000	40,000	2,190	16,540	41.35%	16,954	-2.44%
430510	Business Tax Renewal Process	130,000	130,000	31,372	68,772	52.90%	51,808	32.74%
430515	SB 1186	3,000	3,000	(2,027)	851	28.37%	681	24.96%
<b>FEES AND PERMITS - TOTAL</b>		<b>\$ 3,037,300</b>	<b>\$ 3,037,300</b>	<b>\$ 150,467</b>	<b>\$ 1,135,678</b>	<b>37.39%</b>	<b>\$ 1,877,257</b>	<b>-39.50%</b>

\* = Actual data is reported through December.

**FINES AND FORFEITURES**  
**December 2021 General Fund Revenues (50% of year)**

Acct. No.	Description	FY 2021/22	FY 2021/22	FY 2021/22		% of Budget	FY 2020/21	% Change From Prior Year
		Adopted Budget	Amended Budget	Activity During December	Year To Date Actual *			
<b>101</b>	<b>General Fund</b>							
434100	General Fines	\$ 600	\$ 600	\$ 56	\$ 18,170	3028.33%	\$ 478	3701.26%
434105	Motor Vehicle Fines	120,670	120,670	2,003	20,777	17.22%	49,832	-58.31%
434110	Parking Citations	205,000	205,000	26,682	123,124	60.06%	127,554	-3.47%
434115	DMV Parking Collections	70,300	70,300	5,569	28,906	41.12%	17,811	62.29%
434120	Administrative Citations	15,000	15,000	900	3,460	23.07%	3,795	-8.83%
<b>FINES AND FORFEITURES - TOTAL</b>		<b>\$ 411,570</b>	<b>\$ 411,570</b>	<b>\$ 35,210</b>	<b>\$ 194,437</b>	<b>47.24%</b>	<b>\$ 199,470</b>	<b>-2.52%</b>

\* = Actual data is reported through December.

**USE OF MONEY AND PROPERTY**  
**December 2021 General Fund Revenues (50% of year)**

Acct. No.	Description	FY 2021/22	FY 2021/22	FY 2021/22			FY 2020/21	% Change From Prior Year
		Adopted Budget	Amended Budget	Activity During December	Year To Date Actual *	% of Budget	Actual	
<b>101</b>	<b>General Fund</b>							
435100	Interest Earned	\$ 185,000	\$ 185,000	\$ 26,500	\$ 71,192	38.48%	\$ 116,871	-39.08%
435110	Unrealized Gains (Losses)	-	-	3,173	(127,660)	**	(53,728)	137.60%
435200	Interest on Loan to Landscape District Fund	16,570	16,570	3,627	10,882	65.67%	-	100.00%
436125	Indoor Facility Rental	-	-	4,490	5,450	**	(3,144)	-273.35%
436127	Outdoor Picnic Shelters	7,450	7,450	775	12,080	162.15%	-	100.00%
436135	Pac Bell Mobile Svcs-Rent	20,855	20,855	1,788	10,509	50.39%	8,504	23.58%
<b>USE OF MONEY AND PROPERTY - TOTAL</b>		<b>\$ 229,875</b>	<b>\$ 229,875</b>	<b>\$ 40,353</b>	<b>\$ (17,547)</b>	<b>-7.63%</b>	<b>\$ 68,503</b>	<b>-125.61%</b>

**MISCELLANEOUS REVENUE**  
**December 2021 General Fund Revenues (50% of year)**

Acct. No.	Description	FY 2021/22	FY 2021/22	FY 2021/22		% of Budget	FY 2020/21	% Change
		Adopted Budget	Amended Budget	Activity During December	Year To Date Actual *		Actual	From Prior Year
<b>101</b>	<b>General Fund</b>							
432256	Grant (non-government agency)	\$ 4,200	\$ 74,200	\$ 903	\$ 74,514	100.42%	\$ 3,755	1884.39%
437100	Sale Of Publications	-	-	-	121	**	3	3933.33%
437105	Firework Services	475	475	-	-	0.00%	-	**
437125	Donations	-	800	-	800	100.00%	600	25.00%
437135	Expense Reimbursement	-	-	-	39,292	**	7,500	80.91%
437137	Loan Repayment from Landscape Maintenance District	164,025	164,025	-	-	0.00%	-	**
437195	Other Revenue	30,000	30,000	3,375	7,489	24.96%	29,205	-74.36%
<b>MISCELLANEOUS REVENUE - TOTAL</b>		<b>\$ 198,700</b>	<b>\$ 269,500</b>	<b>\$ 4,278</b>	<b>\$ 122,216</b>	<b>45.35%</b>	<b>\$ 41,063</b>	<b>197.63%</b>

\* = Actual data is reported through December.

**TRANSFERS IN**  
**December 2021 General Fund Revenues (50% of year)**

Acct. No.	Description	FY 2021/22	FY 2021/22	FY 2021/22			FY 2020/21	% Change
		Adopted Budget	Amended Budget	Activity During December	Year To Date Actual *	% of Budget	Actual	From Prior Year
<b>101</b>	<b>General Fund</b>							
439211	Transfer From Gas Tax Fund	\$ 205,000	\$ 205,000	\$ 17,083	\$ 102,500	50.00%	\$ 60,250	41.22%
439223	Transfer From Protective Services Fund	375,000	375,000	127,706	193,216	51.52%	242,758	-25.64%
439242	Transfer Fr Supp Law Enf Grant	150,000	150,000	12,500	75,000	50.00%	46,795	37.61%
439285	Transfer From Housing Authority	-	890,000	-	890,000	100.00%	-	100.00%
<b>TRANSFERS IN - TOTAL</b>		<b>\$ 730,000</b>	<b>\$ 1,620,000</b>	<b>\$ 157,289</b>	<b>\$ 1,260,716</b>	<b>77.82%</b>	<b>\$ 349,803</b>	<b>72.25%</b>

**City of Stanton  
December 2021 General Fund Expenditures (50% of year)**

Division No.	Description	FY 2021/22						% Change from Prior Year
		FY 2021/22 Adopted Budget	FY 2021/22 Amended Budget	Activity During December	Year to Date Actual *	Percent of Budget	FY 2020/21 Actual	
1100	City Council	\$ 116,710	\$ 116,710	\$ 13,963	\$ 68,461	58.66%	\$ 45,469	50.57%
1200	City Attorney	302,000	302,000	88,683	138,398	45.83%	62,058	123.01%
1300	City Manager	473,195	473,195	39,093	235,614	49.79%	207,981	13.29%
1400	City Clerk	190,515	190,515	15,037	88,783	46.60%	82,630	7.45%
1410	Personnel/Risk Management	176,885	176,885	16,208	75,660	42.77%	65,573	15.38%
1510	Information Technology	524,980	531,098	30,030	292,312	55.04%	318,566	-8.24%
	<b>Administration</b>	<b>1,784,285</b>	<b>1,790,403</b>	<b>203,014</b>	<b>899,228</b>	<b>50.22%</b>	<b>782,277</b>	<b>14.95%</b>
1500	Finance	862,565	890,691	76,208	390,392	43.83%	396,231	-1.47%
1600	Non-Dept (excludes Transfers)	48,000	48,000	-	446	0.93%	20,754	-97.85%
	<b>Finance</b>	<b>910,565</b>	<b>938,691</b>	<b>76,208</b>	<b>390,838</b>	<b>41.64%</b>	<b>416,985</b>	<b>-6.27%</b>
1520	Emergency Preparedness	5,000	57,796	4,630	18,003	31.15%	-	100.00%
2100	Law Enforcement	12,197,850	12,197,850	1,021,461	6,109,712	50.09%	5,663,109	7.31%
2200	Fire Protection	5,166,860	5,166,860	1,283,387	2,566,775	49.68%	2,454,530	4.57%
2230	Contractual Ambulance Svcs	2,500	2,500	-	100	4.00%	1,286	-92.22%
2400	Animal Control Services	191,390	191,390	48,620	94,925	49.60%	90,405	4.76%
2500	Public Safety-Other	110,175	110,175	6,436	67,151	60.95%	63,617	5.56%
4300	Parking Control	250,890	250,890	21,694	122,076	48.66%	106,396	14.74%
6200	Code Enforcement	519,870	519,870	38,662	234,188	45.05%	225,089	4.04%
	<b>Public Safety</b>	<b>18,444,535</b>	<b>18,497,331</b>	<b>2,424,890</b>	<b>9,212,930</b>	<b>49.81%</b>	<b>8,604,432</b>	<b>7.07%</b>
3000	Public Works Administration	507,575	521,468	36,782	232,060	44.50%	234,715	-1.13%
3100	Engineering	145,390	162,110	3,010	37,422	23.08%	72,269	-48.22%
3200	Public Facilities	436,340	441,620	46,659	204,561	46.32%	170,092	20.26%
3300	Crossing Guard	43,165	43,165	2,169	13,582	31.47%	543	96.00%
3400	Parks Maintenance	412,680	443,580	30,486	185,940	41.92%	172,825	7.59%
3500	Street Maintenance	498,980	498,980	19,220	155,187	31.10%	192,202	-19.26%
3600	Storm Drains	115,860	115,860	42,985	46,781	40.38%	72,184	-35.19%
6300	Graffiti Abatement	101,900	101,900	2,947	18,137	17.80%	36,820	-50.74%
	<b>Public Works</b>	<b>2,261,890</b>	<b>2,328,683</b>	<b>184,258</b>	<b>893,670</b>	<b>38.38%</b>	<b>951,650</b>	<b>-6.09%</b>

\* = Actual data is reported through December.

**City of Stanton**  
**December 2021 General Fund Expenditures (50% of year)**

Division No.	Description	FY 2021/22 Adopted Budget	FY 2021/22 Amended Budget	FY 2021/22			FY 2020/21 Actual	% Change from Prior Year
				Activity During December	Year to Date Actual *	Percent of Budget		
4000	Community Development Administration	313,625	313,625	18,794	150,957	48.13%	86,588	74.34%
4100	Planning	344,590	607,787	60,513	254,976	41.95%	164,697	54.82%
4200	Building Regulation	784,255	787,455	121,048	212,450	26.98%	340,678	-37.64%
4400	Business Relations	37,800	37,800	-	570	1.51%	269	111.90%
	<b>Community Development</b>	<b>1,480,270</b>	<b>1,746,667</b>	<b>200,355</b>	<b>618,953</b>	<b>35.44%</b>	<b>592,232</b>	<b>4.51%</b>
5000	Public Information Office <sup>(1)</sup>	120,600	120,850	9,294	52,646	43.56%	50	99.91%
5100	Community Services Administration	509,015	579,265	109,369	318,007	54.90%	318,026	-0.01%
5200	Community Center Operations	170,530	170,530	6,929	38,441	22.54%	2,217	1633.92%
5300	Park Operations	224,470	224,470	17,298	100,508	44.78%	72,521	38.59%
5400	Senior Citizen Programs	61,515	61,815	3,761	25,820	41.77%	20,876	23.68%
5500	Recreation Programs <sup>(1)</sup>	48,900	48,900	9,501	25,146	51.42%	3,125.000	87.57%
	<b>Community Services</b>	<b>1,135,030</b>	<b>1,205,830</b>	<b>156,152</b>	<b>560,568</b>	<b>46.49%</b>	<b>416,815</b>	<b>34.49%</b>
	Transfer to FACT Grant	17,100	17,100	-	7,125	41.67%	12,375	-73.68%
	Transfer to Senior Transportation Fund	10,565	10,565	634	3,673	34.77%	1,706	115.30%
	Transfer to SCP Maintenance	41,140	41,140	3,428	20,570	50.00%	-	100.00%
	<b>Transfers to Other Funds</b>	<b>68,805</b>	<b>68,805</b>	<b>4,062</b>	<b>31,368</b>	<b>45.59%</b>	<b>14,081</b>	<b>122.77%</b>
	<b>TOTAL EXPENDITURES</b>	<b>\$ 26,085,380</b>	<b>\$ 26,576,410</b>	<b>\$ 3,248,939</b>	<b>\$ 12,607,555</b>	<b>47.44%</b>	<b>\$ 11,778,472</b>	<b>7.04%</b>

(1) - New division in the Fiscal Year 2021/22 Adopted Budget.

\* = Actual data is reported through December.

**Administration - Vazquez**  
**December 2021 General Fund Expenditures (50% of year)**

Acct. No.	Description	FY 2021/22					FY 2020/21 Actual	% Change From Prior Year
		FY 2021/22 Adopted Budget	FY 2021/22 Amended Budget	Activity During December	Year to Date Actual *	% of Budget		
<b>101</b>	<b>General Fund</b>							
<b>1100</b>	<b>City Council</b>							
501105	Salaries-Elected	\$ 52,200	\$ 52,200	\$ 4,023	\$ 26,100	50.00%	\$ 24,591	6.14%
502120	Medicare/Fica	740	740	58	378	51.08%	356	6.18%
502130	Other Benefit Charges	770	770	61	455	59.09%	296	53.72%
602100	Special Dept Expense	10,000	10,000	266	5,652	56.52%	2,872	96.80%
602110	Office Expense	2,000	2,000	35	148	7.40%	234	-36.75%
602115	Postage	-	-	-	3	**	5	-40.00%
607100	Membership/Dues	36,585	36,585	9,365	27,732	75.80%	13,455	106.11%
607110	Travel/Conference/Meetings	11,000	11,000	50	5,073	46.12%	125	97.54%
612115	Liability Insurance Charge	3,415	3,415	105	2,920	85.51%	3,535	-21.06%
<b>1100</b>	<b>City Council Total</b>	<b>116,710</b>	<b>116,710</b>	<b>13,963</b>	<b>68,461</b>	<b>58.66%</b>	<b>45,469</b>	<b>50.57%</b>
<b>1200</b>	<b>City Attorney</b>							
608105	Professional Services	302,000	302,000	88,683	138,398	45.83%	62,058	123.01%
<b>1200</b>	<b>City Attorney Total</b>	<b>302,000</b>	<b>302,000</b>	<b>88,683</b>	<b>138,398</b>	<b>45.83%</b>	<b>62,058</b>	<b>123.01%</b>
<b>1300</b>	<b>City Manager</b>							
501110	Salaries-Regular	269,710	269,710	23,375	128,503	47.64%	111,571	15.18%
501115	Salaries-Overtime	-	-	39	141	**	-	100.00%
502100	Retirement	79,735	79,735	5,831	32,284	40.49%	27,342	18.07%
502105	Workers Comp Insurance	6,250	6,250	463	2,544	40.70%	-	100.00%
502110	Health/Life Insurance	25,545	25,545	3,582	15,714	61.51%	9,991	57.28%
502111	Medical In-Lieu Pay	2,100	2,100	85	510	24.29%	-	100.00%
502115	Unemployment Insurance	525	525	-	-	0.00%	2	-100.00%
502120	Medicare/Fica	3,580	3,580	334	1,851	51.70%	1,616	14.54%
502130	Other Benefit Charges	1,730	1,730	206	1,131	65.38%	56	95.05%
602110	Office Expense	1,200	1,200	232	2,308	192.33%	2,503	-7.79%
602115	Postage	250	250	-	2	0.80%	12	-500.00%
607100	Membership/Dues	800	800	-	926	115.75%	400	56.80%

\* = Actual data is reported through December.

**Administration - Vazquez**  
**December 2021 General Fund Expenditures (50% of year)**

Acct. No.	Description	FY 2021/22					FY 2020/21 Actual	% Change From Prior Year
		FY 2021/22 Adopted Budget	FY 2021/22 Amended Budget	Activity During December	Year to Date Actual *	% of Budget		
<b>1300</b>	<b>City Manager, Continued</b>							
607110	Travel/Conference/Meetings	5,600	5,600	45	1,865	33.30%	266	85.74%
608105	Professional Services	48,000	48,000	4,000	24,000	50.00%	24,265	-1.10%
612105	Vehicle Replacement Charge	700	700	58	350	50.00%	355	-1.43%
612115	Liability Insurance Charge	27,470	27,470	843	23,485	85.49%	29,602	-26.05%
<b>1300</b>	<b>City Manager Total</b>	<b>473,195</b>	<b>473,195</b>	<b>39,093</b>	<b>235,614</b>	<b>49.79%</b>	<b>207,981</b>	<b>13.29%</b>
<b>1400</b>	<b>City Clerk</b>							
501110	Salaries-Regular	110,905	110,905	8,225	49,876	44.97%	49,545	0.67%
501115	Salaries-Overtime	-	-	59	211	**	133	58.65%
502100	Retirement	34,480	34,480	2,769	16,789	48.69%	15,739	6.67%
502105	Workers Comp Insurance	1,985	1,985	163	988	49.77%	-	100.00%
502110	Health/Life Insurance	19,080	19,080	1,569	8,409	44.07%	7,851	7.11%
502115	Unemployment Insurance	330	330	-	-	0.00%	2	-100.00%
502120	Medicare/Fica	1,550	1,550	115	699	45.10%	685	2.04%
502130	Other Benefit Charges	965	965	72	439	45.49%	25	94.31%
602110	Office Expense	2,250	2,250	213	1,515	67.33%	305	79.87%
602115	Postage	500	500	68	254	50.80%	224	11.81%
602120	Books/Periodicals	100	100	-	-	0.00%	-	**
607100	Membership/Dues	1,130	1,130	200	415	36.73%	520	-25.30%
607110	Travel/Conference/Meetings	750	750	-	-	0.00%	-	**
607115	Training	2,500	2,500	-	70	2.80%	-	100.00%
608105	Professional Services	6,000	6,000	500	1,981	33.02%	1,266	56.48%
608140	Elections	360	360	820	820	227.78%	(1,179)	-169.55%
612105	Vehicle Replacement Charge	580	580	48	290	50.00%	293	-1.03%
612115	Liability Insurance Charge	7,050	7,050	216	6,027	85.49%	7,221	-19.81%
<b>1400</b>	<b>City Clerk Total</b>	<b>190,515</b>	<b>190,515</b>	<b>15,037</b>	<b>88,783</b>	<b>46.60%</b>	<b>82,630</b>	<b>7.45%</b>
<b>1510</b>	<b>Information Technology</b>							
501110	Salaries-Regular	81,120	81,120	6,498	39,098	48.20%	34,820	12.29%

\* = Actual data is reported through December.

**Administration - Vazquez**  
**December 2021 General Fund Expenditures (50% of year)**

Acct. No.	Description	FY 2021/22					FY 2020/21 Actual	% Change From Prior Year
		FY 2021/22 Adopted Budget	FY 2021/22 Amended Budget	Activity During December	Year to Date Actual *	% of Budget		
<b>1510</b>	<b>Information Technology, Continued</b>							
501115	Salaries-Overtime	10,000	10,000	539	2,711	27.11%	5,084	-46.68%
502100	Retirement Charges	22,940	22,940	2,053	12,397	54.04%	11,014	12.56%
502105	Workers Comp Insurance	1,320	1,320	129	774	58.64%	-	100.00%
502110	Health/Life Insurance	19,550	19,550	1,602	7,357	37.63%	6,604	11.40%
502115	Unemployment Insurance	300	300	-	-	0.00%	-	100.00%
502120	Medicare/Fica	1,080	1,080	88	555	51.39%	534	3.93%
502130	Other Benefit Charges	680	680	57	344	50.59%	17	100.00%
602140	Materials & Supplies	15,000	15,000	657	5,112	34.08%	4,366	17.09%
603105	Equipment Maintenance	25,000	25,000	8,364.000	11,340	45.36%	14,029	-23.71%
604100	Communications	97,900	97,900	7,959	41,094	41.98%	30,585	25.57%
608100	Contractual Services	244,925	244,925	1,292	165,996	67.77%	107,424	54.52%
608145	Information Technology	-	-	-	-	**	23,372	-100.00%
612115	Liability Insurance Charge	5,165	5,165	158	4,416	85.50%	-	100.00%
701050	Computer Software	-	6,118	634	1,118	18.27%	41,617	-97.31%
701105	Equipment-General	-	-	-	-	**	39,100	-100.00%
<b>1510</b>	<b>Information Technology Total</b>	<b>524,980</b>	<b>531,098</b>	<b>30,030</b>	<b>292,312</b>	<b>55.04%</b>	<b>318,566</b>	<b>-8.24%</b>
<b>TOTAL ADMINISTRATION-VAZQUEZ</b>		<b>\$ 1,607,400</b>	<b>\$ 1,613,518</b>	<b>\$ 186,806</b>	<b>\$ 823,568</b>	<b>51.04%</b>	<b>\$ 716,704</b>	<b>14.91%</b>

\* = Actual data is reported through December.

**Administration - Guzman**  
**December 2021 General Fund Expenditures (50% of year)**

Acct. No.	Description	FY 2021/22						FY 2020/21 Actual	% Change From Prior Year
		FY 2021/22 Adopted Budget	FY 2021/22 Amended Budget	Activity During December	Year to Date Actual *	% of Budget			
<b>101</b>	<b>General Fund</b>								
<b>1410</b>	<b>Personnel/Risk Management</b>								
501110	Salaries-Regular	\$ 91,820	\$ 91,820	\$ 6,876	\$ 40,288	43.88%	\$ 40,118	0.42%	
501115	Salaries-Overtime	-	-	-	244	**	-	100.00%	
502100	Retirement	18,940	18,940	1,607	9,415	49.71%	8,880	6.02%	
502105	Workers Comp Insurance	1,590	1,590	136	798	50.19%	-	100.00%	
502110	Health/Life Insurance	16,075	16,075	1,327	6,227	38.74%	6,322	-1.50%	
502111	Medical In-Lieu Pay	-	-	-	500	**	-	100.00%	
502115	Unemployment Insurance	300	300	-	-	0.00%	-	**	
502120	Medicare/FICA	1,285	1,285	96	589	45.84%	585	0.68%	
502130	Other Benefit Charges	800	800	61	355	44.38%	20	1675.00%	
602110	Office Expense	1,400	1,400	-	33	2.36%	193	-82.90%	
602115	Postage	200	200	32	83	41.50%	71	14.46%	
607100	Membership/Dues	725	725	-	425	58.62%	300	29.41%	
607110	Travel/Conference/Meetings	2,000	2,000	-	-	0.00%	-	**	
607115	Training	6,000	6,000	23	(140)	-2.33%	-	100.00%	
607120	Education Reimbursement Program	10,000	10,000	-	-	0.00%	-	**	
608105	Professional Services	10,000	10,000	2,957	4,884	48.84%	5,758	-15.18%	
608125	Advertising/ Business Dev't	1,800	1,800	-	2,117	117.61%	75	2722.67%	
609125	Employee/Volunteer Recognition	7,500	7,500	2,863	4,544	60.59%	2,943	54.40%	
612105	Vehicle Replacement Charge	610	610	51	305	50.00%	308	-0.98%	
612115	Liability Insurance Charge	5,840	5,840	179	4,993	85.50%	-	100.00%	
<b>TOTAL ADMINISTRATION-GUZMAN</b>		<b>\$ 176,885</b>	<b>\$ 176,885</b>	<b>\$ 16,208</b>	<b>\$ 75,660</b>	<b>42.77%</b>	<b>\$ 65,573</b>	<b>15.38%</b>	

\* = Actual data is reported through December.

**Finance-Bannigan**  
**December 2021 General Fund Expenditures (50% of year)**

Acct. No.	Description	FY 2021/22					FY 2020/21 Actual	% Change From Prior Year
		FY 2021/22 Adopted Budget	FY 2021/22 Amended Budget	Activity During December	Year to Date Actual *	% of Budget		
<b>101</b>	<b>General Fund</b>							
<b>1500</b>	<b>Finance</b>							
501110	Salaries-Regular	\$ 466,220	\$ 469,790	\$ 34,777	\$ 209,502	44.59%	\$ 195,942	6.92%
501115	Salaries-Overtime	500	500	-	116	23.20%	-	100.00%
501120	Salaries-Part Time	42,415	38,575	3,213	20,411	52.91%	26,664	-23.45%
502100	Retirement	112,590	112,860	9,275	56,044	49.66%	49,649	12.88%
502105	Workers Comp Insurance	8,960	8,960	752	4,552	50.80%	-	100.00%
502110	Health/Life Insurance	53,520	53,520	4,101	22,005	41.12%	19,358	13.67%
502111	Medical In-Lieu Pay	4,920	4,920	505	3,030	61.59%	-	100.00%
502115	Unemployment Insurance	1,935	1,935	-	-	0.00%	846	-100.00%
502120	Medicare/FICA	7,120	7,120	472	2,870	40.31%	2,792	2.79%
502130	Other Benefit Charges	4,470	4,470	308	1,854	41.48%	482	74.00%
602110	Office Expense	8,000	8,000	67	568	7.10%	976	-41.80%
602115	Postage	5,000	5,000	1,010	1,955	39.10%	1,178	39.74%
602120	Books/Periodicals	415	415	(92)	38	9.16%	-	100.00%
607100	Membership/Dues	795	795	110	302	37.99%	110	63.58%
607110	Travel/Conference/Meetings	4,200	4,200	769	2,028	48.29%	-	100.00%
607115	Training	1,700	1,700	410	410	24.12%	150	173.33%
608105	Professional Services	88,035	116,161	18,466	32,179	27.70%	16,858	47.61%
608107	Financial Services	17,600	17,600	971	4,193	23.82%	7,644	-45.15%
608130	Temporary Help	-	-	-	-	**	35,287	-100.00%
611116	Payment to Other Agencies	-	-	-	68	**	55	23.64%
612105	Vehicle Replacement Charge	1,220	1,220	102	610	50.00%	618	-1.31%
612115	Liability Insurance Charge	32,350	32,350	992	27,657	85.49%	37,622	-36.03%
702100	Furniture-Office	600	600	-	-	0.00%	-	**
<b>1500</b>	<b>Finance Total</b>	<b>862,565</b>	<b>890,691</b>	<b>76,208</b>	<b>390,392</b>	<b>43.83%</b>	<b>396,231</b>	<b>-1.47%</b>

\* = Actual data is reported through December.

**Finance-Bannigan  
December 2021 General Fund Expenditures (50% of year)**

Acct. No.	Description	FY 2021/22			FY 2020/21 Actual	% Change From Prior Year
		FY 2021/22 Adopted Budget	FY 2021/22 Amended Budget	Activity During December		
<b>1600</b>	<b>Non-Departmental</b>					
602100	Special Dept Expense	3,000	3,000	-	446	14.87%
602110	Office Expense	-	-	-	-	**
611105	Revenue Sharing-City of Anaheim	40,000	40,000	-	-	0.00%
611116	Payment to Other Agencies	5,000	5,000	-	-	0.00%
<b>1600</b>	<b>Non-Departmental Total</b>	<b>48,000</b>	<b>48,000</b>	<b>-</b>	<b>446</b>	<b>0.93%</b>
	<b>TOTAL FINANCE</b>	<b>\$ 910,565</b>	<b>\$ 938,691</b>	<b>\$ 76,208</b>	<b>\$ 390,838</b>	<b>41.64%</b>
						<b>\$ 416,985</b>
						<b>-6.27%</b>

\* = Actual data is reported through December.

**Public Safety-Wren  
December 2021 General Fund Expenditures (50% of year)**

Acct. No.	Description	FY 2021/22					FY 2020/21 Actual	% Change From Prior Year
		FY 2021/22 Adopted Budget	FY 2021/22 Amended Budget	Activity During December	Year to Date Actual *	% of Budget		
<b>101</b>	<b>General Fund</b>							
<b>1520</b>	<b>Emergency Services</b>							
602140	Materials & Supplies	\$ 5,000	\$ 5,000	\$ -	\$ 55	1.10%	\$ -	100.00%
608105	Professional Services	-	52,796	4,630	17,948	33.99%	-	100.00%
<b>1520</b>	<b>Emergency Services</b>	<b>5,000</b>	<b>57,796</b>	<b>4,630</b>	<b>18,003</b>	<b>31.15%</b>	<b>-</b>	<b>100.00%</b>
<b>2100</b>	<b>Law Enforcement</b>							
602100	Special Dept Expense	3,000	3,000	-	-	0.00%	527	-100.00%
602110	Office Expense	1,500	1,500	403	1,170	78.00%	353	69.83%
602145	Gas/Oil/Lube	3,000	3,000	26	323	10.77%	571	-76.78%
603125	Vehicle Maintenance	-	-	-	-	**	1,989	-100.00%
604100	Communications	36,030	36,030	-	14,716	40.84%	14,867	-1.02%
608100	Contractual Services	18,350	18,350	1,529	9,174	49.99%	15,046	-39.03%
608160	O.C.S.D. Contract	8,629,270	8,629,270	710,583	4,290,935	49.73%	2,531,357	69.51%
612105	Vehicle Replacement Charge	8,700	8,700	725	4,350	50.00%	4,410	-1.38%
702100	Furniture-Office	-	-	-	-	**	108	-100.00%
<b>2100</b>	<b>Law Enforcement Total</b>	<b>8,699,850</b>	<b>8,699,850</b>	<b>713,266</b>	<b>4,320,668</b>	<b>49.66%</b>	<b>2,569,228</b>	<b>40.54%</b>
<b>2200</b>	<b>Fire Protection</b>							
602100	Special Department Expense	40,800	40,800	-	-	0.00%	-	**
608185	O.C.F.A. Contract	3,626,060	3,626,060	927,643	1,855,286	51.17%	1,855,091	0.01%
<b>2200</b>	<b>Fire Protection Total</b>	<b>3,666,860</b>	<b>3,666,860</b>	<b>927,643</b>	<b>1,855,286</b>	<b>50.60%</b>	<b>1,855,091</b>	<b>0.01%</b>
<b>2230</b>	<b>Ambulance Services</b>							
608190	Contractual Ambulance Svcs	2,500	2,500	-	100	4.00%	1,286	-92.22%
<b>2230</b>	<b>Ambulance Services Total</b>	<b>2,500</b>	<b>2,500</b>	<b>-</b>	<b>100</b>	<b>4.00%</b>	<b>1,286</b>	<b>-92.22%</b>
<b>2400</b>	<b>Animal Control Services</b>							
608170	Animal Control Services	191,390	191,390	48,620	94,925	49.60%	90,405	4.76%
<b>2400</b>	<b>Animal Control Services Total</b>	<b>191,390</b>	<b>191,390</b>	<b>48,620</b>	<b>94,925</b>	<b>49.60%</b>	<b>90,405</b>	<b>4.76%</b>

\* = Actual data is reported through December.

**Public Safety-Wren  
December 2021 General Fund Expenditures (50% of year)**

Acct. No.	Description	FY 2021/22					FY 2020/21 Actual	% Change From Prior Year
		FY 2021/22 Adopted Budget	FY 2021/22 Amended Budget	Activity During December	Year to Date Actual *	% of Budget		
<b>2500</b>	<b>Public Safety-Other</b>							
501110	Salaries-Regular	58,390	58,390	4,059	29,171	49.96%	23,699	23.09%
501120	Salaries-Part Time	-	-	-	-	**	4,445	-100.00%
502100	Retirement Charges	11,765	11,765	980	5,925	50.36%	5,960	-0.59%
502105	Workers Comp Insurance	945	945	80	486	51.43%	-	100.00%
502110	Health/Life Insurance	705	705	34	193	27.38%	258	-25.19%
502111	Medical In-Lieu Pay	2,100	2,100	175	1,050	50.00%	-	100.00%
502115	Unemployment Insurance	105	105	-	-	0.00%	-	**
502120	Medicare/FICA	785	785	61	371	47.26%	423	-12.29%
502130	Other Benefit Charges	375	375	36	216	57.60%	76	64.81%
602100	Special Department Expense	-	-	-	100	**	-	100.00%
602110	Office Expense	1,200	1,200	147	372	31.00%	771	-51.75%
602115	Postage	250	250	-	1	0.40%	101	-99.01%
602135	Safety Equipment	-	-	-	436	**	-	100.00%
602140	Materials & Supplies	-	-	-	64	**	-	100.00%
607115	Training	700	700	-	-	0.00%	-	**
608100	Contractual Services	4,680	4,680	-	4,678	99.96%	-	100.00%
612115	Liability Insurance Charge	28,175	28,175	864	24,088	85.49%	27,884	-15.76%
<b>2500</b>	<b>Public Safety-Other Total</b>	<b>110,175</b>	<b>110,175</b>	<b>6,436</b>	<b>67,151</b>	<b>60.95%</b>	<b>63,617</b>	<b>5.56%</b>
<b>4300</b>	<b>Parking Control</b>							
501110	Salaries-Regular	142,590	142,590	10,455	64,896	45.51%	64,135	1.19%
502115	Salaries-Overtime	-	-	-	33	**	-	100.00%
501120	Salaries-Part Time	12,350	12,350	1,108	6,367	51.55%	5,950	7.01%
502100	Retirement	36,055	36,055	3,159	19,438	53.91%	18,536	4.87%
502105	Workers Comp Insurance	2,735	2,735	229	1,411	51.59%	-	100.00%
502110	Health/Life Insurance	14,050	14,050	1,125	6,046	43.03%	5,670	6.63%
502111	Medical In-Lieu Pay	4,140	4,140	370	2,070	50.00%	-	100.00%
502115	Unemployment Insurance	705	705	-	-	0.00%	-	**

\* = Actual data is reported through December.

**Public Safety-Wren  
December 2021 General Fund Expenditures (50% of year)**

Acct. No.	Description	FY 2021/22					FY 2020/21 Actual	% Change From Prior Year
		FY 2021/22 Adopted Budget	FY 2021/22 Amended Budget	Activity During December	Year to Date Actual *	% of Budget		
<b>4300</b>	<b>Parking Control, Continued</b>							
502120	Medicare/FICA	2,220	2,220	171	1,053	47.43%	1,032	2.03%
502130	Other Benefit Charges	1,445	1,445	93	574	39.72%	118	79.44%
602110	Office Expense	6,500	6,500	-	5,302	81.57%	154	97.10%
602115	Postage	500	500	12	119	23.80%	78	34.45%
602130	Clothing	4,500	4,500	-	129	2.87%	-	100.00%
604100	Communications	1,000	1,000	55	200	20.00%	490	-145.00%
608105	Professional Services	15,000	15,000	4,325	10,888	72.59%	8,435	22.53%
612105	Vehicle Replacement Charge	7,100	7,100	592	3,550	50.00%	1,798	49.35%
<b>4300</b>	<b>Parking Control Total</b>	<b>250,890</b>	<b>250,890</b>	<b>21,694</b>	<b>122,076</b>	<b>48.66%</b>	<b>106,396</b>	<b>14.74%</b>
<b>6200</b>	<b>Code Enforcement</b>							
501110	Salaries-Regular	330,660	330,660	24,343	148,928	45.04%	141,904	4.95%
502115	Salaries-Overtime	-	-	-	14	**	-	100.00%
501120	Salaries-Part Time	12,350	12,350	1,108	6,367	51.55%	5,565	14.41%
502100	Retirement	82,925	82,925	6,856	41,865	50.49%	38,930	7.54%
502105	Workers Comp Insurance	6,050	6,050	504	3,075	50.83%	-	100.00%
502110	Health/Life Insurance	40,430	40,430	3,563	19,315	47.77%	17,683	9.23%
502111	Medical In-Lieu Pay	4,560	4,560	405	2,280	50.00%	-	100.00%
502115	Unemployment Insurance	1,290	1,290	-	-	0.00%	-	**
502120	Medicare/FICA	4,835	4,835	366	2,241	46.35%	2,118	5.81%
502130	Other Benefit Charges	3,010	3,010	215	1,314	43.65%	151	88.51%
602110	Office Expense	1,500	1,500	-	-	0.00%	146	**
602115	Postage	1,000	1,000	9	334	33.40%	457	-36.83%
602160	Code Enforcement Equipment	8,000	8,000	-	108	1.35%	-	100.00%
603105	Equipment Maintenance	1,000	1,000	-	-	0.00%	-	**
604100	Communications	800	800	-	-	0.00%	624	-100.00%
607100	Membership/Dues	800	800	-	380	47.50%	-	**
607105	Mileage Reimbursement	100	100	-	-	0.00%	-	**

\* = Actual data is reported through December.

**Public Safety-Wren  
December 2021 General Fund Expenditures (50% of year)**

Acct. No.	Description	FY 2021/22		FY 2021/22		% of Budget	FY 2020/21 Actual	% Change From Prior Year
		Adopted Budget	Amended Budget	Activity During December	Year to Date Actual *			
<b>6200</b>	<b>Code Enforcement, Continued</b>							
607110	Travel/Conference/Meetings	1,500	1,500	-	-	0.00%	-	**
607115	Training	1,000	1,000	-	250	25.00%	-	**
608100	Contractual Services	4,000	4,000	315	1,575	39.38%	1,575	0.00%
608105	Professional Services	5,000	5,000	223	1,612	32.24%	-	100.00%
608180	Prosecution/Code Enforcement	-	-	-	-	**	13,146	-100.00%
612105	Vehicle Replacement Charge	9,060	9,060	755	4,530	50.00%	2,790	38.41%
<b>6200</b>	<b>Code Enforcement Total</b>	<b>519,870</b>	<b>519,870</b>	<b>38,662</b>	<b>234,188</b>	<b>45.05%</b>	<b>225,089</b>	<b>4.04%</b>
<b>101</b>	<b>GENERAL FUND TOTAL</b>	<b>\$ 13,446,535</b>	<b>\$ 13,499,331</b>	<b>\$ 1,760,951</b>	<b>\$ 6,712,397</b>	<b>49.72%</b>	<b>\$ 4,911,112</b>	<b>36.68%</b>
<b>102</b>	<b>General Fund (Transactions &amp; Use Tax)</b>							
<b>2100</b>	<b>Law Enforcement</b>							
608160	O.C.S.D. Contract	3,498,000	3,498,000	308,195	1,789,044	51.14%	3,093,881	-42.17%
<b>2100</b>	<b>Law Enforcement Total</b>	<b>3,498,000</b>	<b>3,498,000</b>	<b>308,195</b>	<b>1,789,044</b>	<b>51.14%</b>	<b>3,093,881</b>	<b>-42.17%</b>
<b>2200</b>	<b>Fire Protection</b>							
608185	O.C.F.A. Contract	1,500,000	1,500,000	355,744.000	711,489	47.43%	599,439	18.69%
<b>2200</b>	<b>Fire Protection Total</b>	<b>1,500,000</b>	<b>1,500,000</b>	<b>355,744.000</b>	<b>711,489</b>	<b>47.43%</b>	<b>599,439</b>	<b>18.69%</b>
<b>102</b>	<b>TRANSACTIONS AND USE TAX TOTAL</b>	<b>\$ 4,998,000</b>	<b>\$ 4,998,000</b>	<b>\$ 663,939</b>	<b>\$ 2,500,533</b>	<b>50.03%</b>	<b>\$ 3,693,320</b>	<b>-32.30%</b>
	<b>TOTAL PUBLIC SAFETY</b>	<b>\$ 18,444,535</b>	<b>\$ 18,497,331</b>	<b>\$ 2,424,890</b>	<b>\$ 9,212,930</b>	<b>49.81%</b>	<b>\$ 8,604,432</b>	<b>7.07%</b>

\* = Actual data is reported through December.

**Public Works - Ames**  
**December 2021 General Fund Expenditures (50% of year)**

Acct. No.	Description	FY 2021/22					FY 2020/21 Actual	% Change From Prior Year
		FY 2021/22 Adopted Budget	FY 2021/22 Amended Budget	Activity During December	Year to Date Actual *	% of Budget		
<b>101</b>	<b>General Fund</b>							
<b>3000</b>	<b>Public Works Administration</b>							
501110	Salaries-Regular	\$ 318,785	\$ 329,551	\$ 24,145	\$ 124,011	37.63%	\$ 131,224	-5.50%
501120	Salaries-Part Time	16,710	16,710	1,461	7,468	44.69%	6,699	11.48%
502100	Retirement Charges	68,410	70,924	5,833	29,981	42.27%	29,692	0.97%
502105	Workers Comp Insurance	5,820	6,037	507	2,603	43.12%	-	100.00%
502110	Health/Life Insurance	50,580	50,720	2,528	13,321	26.26%	19,024	-29.98%
502111	Medical In-Lieu Pay	600	600	550	2,300	383.33%	-	100.00%
502115	Unemployment Insurance	1,200	1,200	-	224	18.67%	-	100.00%
502120	Medicare/FICA	4,575	4,732	373	1,906	40.28%	1,988	-4.12%
502130	Other Benefit Charges	2,680	2,779	213	1,095	39.40%	162	85.21%
608130	Temporary Help	-	-	-	16,480	**	-	100.00%
612115	Liability Insurance Charge	38,215	38,215	1,172	32,671	85.49%	45,926	-40.57%
<b>3000</b>	<b>Public Works Administration Total</b>	<b>507,575</b>	<b>521,468</b>	<b>36,782</b>	<b>232,060</b>	<b>44.50%</b>	<b>234,715</b>	<b>-1.13%</b>
<b>3100</b>	<b>Engineering</b>							
501110	Salaries-Regular	39,040	47,830	1,787	14,209	29.71%	23,189	-38.73%
501115	Salaries-Overtime	-	-	-	-	**	411	-100.00%
502100	Retirement	8,525	11,140	416	2,728	24.49%	5,263	-48.17%
502105	Workers Comp Insurance	715	965	35	281	29.12%	-	100.00%
502110	Health/Life Insurance	8,920	10,460	466	1,132	10.82%	5,358	-78.87%
502115	Unemployment Insurance	135	195	57	57	29.23%	-	100.00%
502120	Medicare/FICA	565	695	26	202	29.06%	319	-57.92%
502130	Other Benefit Charges	360	445	16	125	28.09%	12	90.40%
602110	Office Expense	2,100	2,100	23	76	3.62%	-	100.00%
602115	Postage	-	-	1	13	**	317	-95.90%
602140	Materials & Supplies	2,500	2,500	126	585	23.40%	281	108.19%
607100	Membership/Dues	1,850	1,850	-	900	48.65%	115	87.22%

\* = Actual data is reported through December.

**Public Works - Ames  
December 2021 General Fund Expenditures (50% of year)**

Acct. No.	Description	FY 2021/22					FY 2020/21 Actual	% Change From Prior Year
		FY 2021/22 Adopted Budget	FY 2021/22 Amended Budget	Activity During December	Year to Date Actual *	% of Budget		
<b>3100</b>	<b>Engineering, Continued</b>							
607110	Travel/Conference/Meetings	1,300	1,300	-	21	1.62%	-	100.00%
607115	Training	1,000	1,000	-	-	0.00%	-	**
608100	Contractual Services	-	-	-	-	**	2,640	-100.00%
608105	Professional Services	-	-	-	-	**	864	-100.00%
608110	Engineering Services	44,400	47,650	-	15,987	33.55%	22,829	-29.97%
608120	Plan Checking Services	33,300	33,300	-	766	2.30%	10,326	-92.58%
612105	Vehicle Replacement Charge	680	680	57	340	50.00%	345	-1.47%
<b>3100</b>	<b>Engineering Total</b>	<b>145,390</b>	<b>162,110</b>	<b>3,010</b>	<b>37,422</b>	<b>23.08%</b>	<b>72,269</b>	<b>-48.22%</b>
<b>3200</b>	<b>Public Facilities</b>							
501110	Salaries-Regular	21,950	21,950	5,745	29,352	133.72%	11,030	166.11%
501115	Salaries-Overtime	300	300	23	441	147.00%	74	83.22%
502100	Retirement	5,185	5,185	1,343	6,849	132.09%	2,506	173.30%
502105	Workers Comp Insurance	425	425	114	581	136.71%	-	100.00%
502110	Health/Life Insurance	4,820	4,820	832	3,772	78.26%	2,019	86.83%
502115	Unemployment Insurance	150	150	-	34	22.67%	-	100.00%
502120	Medicare/FICA	305	305	84	432	141.64%	160	170.00%
502130	Other Benefit Charges	200	200	51	258	129.00%	6	4200.00%
602100	Special Dept Expense	7,885	7,885	337	364	4.62%	2,414	-84.92%
602110	Office Expense	2,100	2,100	-	-	0.00%	54	-100.00%
602130	Clothing	3,500	3,500	(58)	1,833	52.37%	1,376	33.21%
602135	Safety Equipment	500	500	-	-	0.00%	563	-100.00%
602140	Materials & Supplies	8,000	8,000	731	1,654	20.68%	3,087	-46.42%
603110	Building Maintenance	123,240	123,240	14,470	32,071	26.02%	34,284	-6.45%
604100	Communications	35,000	35,000	957	2,817	8.05%	2,055	37.08%
604105	Utilities	140,000	140,000	12,174	74,304	53.07%	67,603	9.02%
608100	Contractual Services	65,000	70,280	9,551	33,984	48.36%	23,302	45.84%
611110	O.C. Sanitation District User Fee	14,120	14,120	-	13,985	99.04%	17,704	-26.59%

\* = Actual data is reported through December.

**Public Works - Ames**  
**December 2021 General Fund Expenditures (50% of year)**

Acct. No.	Description	FY 2021/22					FY 2020/21 Actual	% Change From Prior Year
		FY 2021/22 Adopted Budget	FY 2021/22 Amended Budget	Activity During December	Year to Date Actual *	% of Budget		
<b>3200</b>	<b>Public Facilities, Continued</b>							
612105	Vehicle Replacement Charge	3,660	3,660	305	1,830	50.00%	1,855	-1.37%
<b>3200</b>	<b>Public Facilities Total</b>	<b>436,340</b>	<b>441,620</b>	<b>46,659</b>	<b>204,561</b>	<b>46.32%</b>	<b>170,092</b>	<b>20.26%</b>
<b>3300</b>	<b>Crossing Guard</b>							
608175	Crossing Guard Services	43,165	43,165	2,169	13,582	31.47%	543	96.00%
<b>3300</b>	<b>Crossing Guard Total</b>	<b>43,165</b>	<b>43,165</b>	<b>2,169</b>	<b>13,582</b>	<b>31.47%</b>	<b>543</b>	<b>96.00%</b>
<b>3400</b>	<b>Parks Maintenance</b>							
501110	Salaries-Regular	75,595	75,595	4,928	34,570	45.73%	28,410	21.68%
501115	Salaries-Overtime	2,500	2,500	389	1,763	70.52%	1,194	47.65%
502100	Retirement	15,705	15,705	1,142	8,033	51.15%	6,405	25.42%
502105	Workers Comp Insurance	1,320	1,320	98	684	51.82%	-	100.00%
502110	Health/Life Insurance	11,420	11,420	851	5,620	49.21%	4,206	33.62%
502111	Medicare/FICA	840	840	70	402	47.86%	-	100.00%
502115	Unemployment Insurance	405	405	-	30	7.41%	-	100.00%
502120	Medicare/Fica	1,060	1,060	78	533	50.28%	433	23.09%
502130	Other Benefit Charges	680	680	43	304	44.71%	14	95.39%
602100	Special Dept Expense	5,000	5,000	285	595	11.90%	188	216.49%
603105	Equipment Maintenance	15,000	15,000	893	8,180	54.53%	7,887	3.71%
604105	Utilities	176,000	176,000	15,753	80,424	45.70%	81,645	-1.52%
605100	Land Lease	3,000	33,900	-	3,259	9.61%	5,161	-36.85%
608100	Contractual Services	99,700	99,700	5,585	39,315	39.43%	35,024	12.25%
612105	Vehicle Replacement Charge	4,455	4,455	371	2,228	50.01%	2,258	-1.33%
<b>3400</b>	<b>Parks Maintenance Total</b>	<b>412,680</b>	<b>443,580</b>	<b>30,486</b>	<b>185,940</b>	<b>41.92%</b>	<b>172,825</b>	<b>7.59%</b>
<b>3500</b>	<b>Street Maintenance</b>							
501110	Salaries-Regular	106,230	106,230	6,886	43,248	40.71%	44,689	-3.22%
501115	Salaries-Overtime	4,000	4,000	447	2,479	61.98%	1,450	70.97%
502100	Retirement	23,180	23,180	1,601	9,964	42.99%	10,134	-1.68%
502105	Workers Comp Insurance	1,930	1,930	136	856	44.35%	-	100.00%

\* = Actual data is reported through December.

**Public Works - Ames  
December 2021 General Fund Expenditures (50% of year)**

Acct. No.	Description	FY 2021/22					FY 2020/21 Actual	% Change From Prior Year
		FY 2021/22 Adopted Budget	FY 2021/22 Amended Budget	Activity During December	Year to Date Actual *	% of Budget		
<b>3500</b>	<b>Street Maintenance, Continued</b>							
502110	Health/Life Insurance	16,000	16,000	1,407	7,083	44.27%	6,474	9.41%
502111	Medical In-Lieu Pay	2,310	2,310	193	1,107	47.92%	-	100.00%
502115	Unemployment Insurance	615	615	9,000	54	8.78%	-	100.00%
502120	Medicare/FICA	1,515	1,515	109	679	44.82%	677	0.30%
502130	Other Benefit Charges	970	970	61	381	39.28%	22	94.23%
602100	Special Dept Expense	3,000	3,000	-	-	0.00%	-	**
602125	Small Tools	4,000	4,000	-	-	0.00%	921	-100.00%
602140	Materials & Supplies	65,000	65,000	2,173	9,836	15.13%	30,495	-67.75%
603105	Equipment Maintenance	2,000	2,000	-	999	49.95%	-	100.00%
608100	Contractual Services	190,000	190,000	4,679	69,386	36.52%	92,400	-24.91%
612105	Vehicle Replacement Charge	18,230	18,230	1,519	9,115	50.00%	4,940	45.80%
710190	Pavement Maintenance	60,000	60,000	-	-	0.00%	-	**
<b>3500</b>	<b>Street Maintenance Total</b>	<b>498,980</b>	<b>498,980</b>	<b>19,220</b>	<b>155,187</b>	<b>31.10%</b>	<b>192,202</b>	<b>-19.26%</b>
<b>3600</b>	<b>Storm Drain Maintenance</b>							
608155	Storm Water Monitor Program	115,860	115,860	42,985	46,781	40.38%	72,184	-35.19%
<b>3600</b>	<b>Storm Drain Maintenance Total</b>	<b>115,860</b>	<b>115,860</b>	<b>42,985</b>	<b>46,781</b>	<b>40.38%</b>	<b>72,184</b>	<b>-35.19%</b>
<b>6300</b>	<b>Graffiti Abatement</b>							
501110	Salaries-Regular	38,570	38,570	544	2,989	7.75%	17,561	-487.52%
501115	Salaries-Overtime	8,000	8,000	50	769	9.61%	212	72.43%
502100	Retirement Charges	8,935	8,935	127	679	7.60%	3,984	-486.75%
502105	Workers Comp Insurance	735	735	11	59	8.03%	-	100.00%
502110	Health/Life Insurance	8,215	8,215	145	742	9.03%	3,215	-333.29%
502115	Unemployment Insurance	255	255	-	7	2.75%	-	100.00%
502120	Medicare/FICA	540	540	9	54	10.00%	256	-374.07%
502130	Other Benefit Charges	350	350	5	26	7.43%	9	65.38%
602100	Special Dept Expense	-	-	-	-	#DIV/0!	-	#DIV/0!
602140	Materials & Supplies	15,000	15,000	659	5,665	37.77%	3,887	45.74%

\* = Actual data is reported through December.

**Public Works - Ames  
December 2021 General Fund Expenditures (50% of year)**

Acct. No.	Description	FY 2021/22 Adopted Budget	FY 2021/22 Amended Budget	FY 2021/22			FY 2020/21 Actual	% Change From Prior Year
				Activity During December	Year to Date Actual *	% of Budget		
<b>6300</b>	<b>Graffiti Abatement, Continued</b>							
603105	Equipment Maintenance	7,500	7,500	247	247	3.29%	703	-64.86%
612105	Vehicle Replacement Charge	13,800	13,800	1,150	6,900	50.00%	6,993	-1.35%
<b>6300</b>	<b>Graffiti Abatement Total</b>	<b>101,900</b>	<b>101,900</b>	<b>2,947</b>	<b>18,137</b>	<b>17.80%</b>	<b>36,820</b>	<b>100.00%</b>
<b>TOTAL PUBLIC WORKS</b>		<b>\$ 2,261,890</b>	<b>\$ 2,328,683</b>	<b>\$ 184,258</b>	<b>\$ 893,670</b>	<b>38.38%</b>	<b>\$ 951,650</b>	<b>-6.09%</b>

\* = Actual data is reported through December.

**Community Development-Lilley  
December 2021 General Fund Expenditures (50% of year)**

Acct. No.	Description	FY 2021/22					FY 2020/21 Actual	% Change From Prior Year
		FY 2021/22 Adopted Budget	FY 2021/22 Amended Budget	Activity During December	Year to Date Actual *	% of Budget		
<b>101</b>	<b>General Fund</b>							
<b>4000</b>	<b>Community Development Administration</b>							
501110	Salaries-Regular	\$ 177,760	\$ 177,760	\$ 12,732	\$ 76,564	43.07%	\$ 33,988	125.27%
501115	Salaries-Overtime	-	-	49	176	**	-	100.00%
502100	Retirement Charges	52,005	52,005	2,768	18,152	34.90%	8,732	107.88%
502105	Workers Comp Insurance	4,280	4,280	252	1,516	35.42%	-	100.00%
502110	Health/Life Insurance	17,810	17,810	975	6,284	35.28%	3,713	69.24%
502115	Unemployment Insurance	345	345	-	-	0.00%	82	-100.00%
502120	Medicare/FICA	2,315	2,315	183	1,093	47.21%	477	129.14%
502130	Other Benefit Charges	1,145	1,145	112	674	58.86%	17	97.48%
602110	Office Expense	1,000	1,000	98	728	72.80%	747	-2.54%
602120	Books/Periodicals	1,200	1,200	-	178	14.83%	337	-89.33%
607100	Membership/Dues	1,600	1,600	-	-	0.00%	-	**
607110	Travel/Conference/Meetings	-	-	-	22	**	-	100.00%
607115	Training	1,200	1,200	-	289	24.08%	-	100.00%
612115	Liability Insurance Charge	52,965	52,965	1,625	45,281	85.49%	38,261	15.50%
702100	Office Furniture	-	-	-	-	**	234	-100.00%
<b>4000</b>	<b>Community Development Administration Total</b>	<b>313,625</b>	<b>313,625</b>	<b>18,794</b>	<b>150,957</b>	<b>48.13%</b>	<b>86,588</b>	<b>74.34%</b>
<b>4100</b>	<b>Planning</b>							
501110	Salaries-Regular	207,355	204,825	14,275	101,206	49.41%	116,911	-13.43%
501115	Salaries-Overtime	1,200	1,200	88,000	637	53.08%	870	-26.78%
501125	Salaries-Appointed	9,000	9,000	692	4,500	50.00%	3,617	24.41%
502100	Retirement	65,640	65,415	3,336	23,318	35.65%	25,578	-8.84%
502105	Workers Comp Insurance	5,655	5,655	283	2,004	35.44%	-	100.00%
502110	Health/Life Insurance	29,995	29,580	2,043	12,240	41.38%	14,222	-13.94%
502115	Unemployment Insurance	900	900	-	6	0.67%	464	-98.71%
502120	Medicare/FICA	3,140	3,110	218	1,539	49.49%	1,730	-11.04%
502130	Other Benefit Charges	2,095	2,095	126	891	42.53%	58	93.49%

\* = Actual data is reported through December.

**Community Development-Lilley  
December 2021 General Fund Expenditures (50% of year)**

Acct. No.	Description	FY 2021/22					FY 2020/21 Actual	% Change From Prior Year
		FY 2021/22 Adopted Budget	FY 2021/22 Amended Budget	Activity During December	Year to Date Actual *	% of Budget		
<b>4100</b>	<b>Planning, Continued</b>							
602110	Office Expense	-	-	-	49	**	(99)	-100.00%
602115	Postage	750	750	(103)	176	23.47%	413	-134.66%
602140	Materials & Supplies	1,000	1,000	-	-	0.00%	-	**
607100	Membership/Dues	2,500	2,500	-	721	28.84%	470	34.81%
607110	Travel/Conference/Meetings	8,200	8,200	114	114	1.39%	155	-26.45%
607115	Training	1,550	1,550	-	-	0.00%	-	**
608100	Contractual Services	4,000	4,000	1,706	1,706	42.65%	-	100.00%
608105	Professional Services	-	261,087	37,684	105,564	40.43%	-	100.00%
608135	Microfilming	1,000	1,000	-	-	0.00%	-	**
612105	Vehicle Replacement Charge	610	610	51	305	50.00%	308	-0.98%
<b>4100</b>	<b>Planning Total</b>	<b>344,590</b>	<b>602,477</b>	<b>60,513</b>	<b>254,976</b>	<b>42.32%</b>	<b>164,697</b>	<b>54.82%</b>
<b>4200</b>	<b>Building Regulation</b>							
501110	Salaries-Regular	50,370	52,900	3,773	22,145	41.86%	30,814	-28.13%
502100	Retirement	14,085	14,310	882	5,175	36.16%	6,920	-25.22%
502105	Workers Comp Insurance	1,130	1,130	75,000	438	38.76%	-	100.00%
502110	Health/Life Insurance	9,760	10,175	774	4,062	39.92%	4,735	-14.21%
502111	Medical In-Lieu Pay	-	-	30	183	**	-	100.00%
502115	Unemployment Insurance	300	300	-	104	34.67%	27	285.19%
502120	Medicare/FICA	730	760	55	324	42.63%	435	-25.52%
502130	Other Benefit Charges	480	480	33	195	40.63%	15	92.31%
602110	Office Expense	200	200	11	45	22.50%	114	-60.53%
602115	Postage	700	700	-	6	0.86%	94	-93.62%
602120	Books/Periodicals	500	500	-	-	0.00%	-	**
607100	Membership/Dues	250	250	-	-	0.00%	-	**
607110	Travel/Conference/Meetings	500	500	-	-	0.00%	-	**
607115	Training	1,000	1,000	-	-	0.00%	-	**
608115	Inspection Services	700,000	700,000	115,415	179,638	25.66%	296,729	-39.46%

\* = Actual data is reported through December.

**Community Development-Lilley  
December 2021 General Fund Expenditures (50% of year)**

Acct. No.	Description	FY 2021/22					FY 2020/21 Actual	% Change From Prior Year
		FY 2021/22 Adopted Budget	FY 2021/22 Amended Budget	Activity During December	Year to Date Actual *	% of Budget		
<b>4200</b>	<b>Building Regulation, Continued</b>							
608135	Microfilming	2,000	2,000	-	-	0.00%	-	**
611116	Payment to Other Agencies	2,250	2,250	-	135	6.00%	795	-83.02%
<b>4200</b>	<b>Building Regulation Total</b>	<b>784,255</b>	<b>787,455</b>	<b>121,048</b>	<b>212,450</b>	<b>26.98%</b>	<b>340,678</b>	<b>-37.64%</b>
<b>4400</b>	<b>Business Relations</b>							
607100	Membership/Dues	2,000	2,000	-	570	28.50%	-	100.00%
607115	Training	2,500	2,500	-	-	0.00%	-	**
608100	Contractual Services	2,250	2,250	-	-	0.00%	-	**
608105	Professional Services	15,000	15,000	-	-	0.00%	-	**
608145	Information Technology	3,750	3,750	-	-	0.00%	250	-100.00%
609100	Special Events	12,300	12,300	-	-	0.00%	-	**
610210	Business Relations Programs	-	-	-	-	**	19	-100.00%
<b>4400</b>	<b>Business Relations</b>	<b>37,800</b>	<b>37,800</b>	<b>-</b>	<b>570</b>	<b>1.51%</b>	<b>269</b>	<b>111.90%</b>
<b>101</b>	<b>GENERAL FUND TOTAL</b>	<b>\$ 1,480,270</b>	<b>\$ 1,741,357</b>	<b>\$ 200,355</b>	<b>\$ 618,953</b>	<b>35.54%</b>	<b>\$ 592,232</b>	<b>4.51%</b>
<b>102</b>	<b>General Fund (Transactions &amp; Use Tax)</b>							
<b>4100</b>	<b>Planning</b>							
608105	Professional Services	-	5,310	-	-	0.00%	-	**
<b>102</b>	<b>TRANSACTIONS AND USE TAX TOTAL</b>	<b>\$ -</b>	<b>\$ 5,310</b>	<b>\$ -</b>	<b>\$ -</b>	<b>0.00%</b>	<b>\$ -</b>	<b>**</b>
	<b>TOTAL COMMUNITY DEVELOPMENT</b>	<b>\$ 1,480,270</b>	<b>\$ 1,746,667</b>	<b>\$ 200,355</b>	<b>\$ 618,953</b>	<b>35.44%</b>	<b>\$ 592,232</b>	<b>4.51%</b>

\* = Actual data is reported through December.

**Community Service - Bobadilla**  
**December 2021 General Fund Expenditures (50% of year)**

Acct. No.	Description	FY 2021/22					FY 2020/21 Actual	% Change From Prior Year
		FY 2021/22 Adopted Budget	FY 2021/22 Amended Budget	Activity During December	Year to Date Actual *	% of Budget		
<b>101</b>	<b>General Fund</b>							
<b>5000</b>	<b>Public Information Office</b>							
501110	Salaries-Regular	\$ 82,975	\$ 82,975	\$ 6,257	\$ 36,294	43.74%	\$ -	100.00%
502100	Retirement Charges	18,765	18,765	1,462	8,482	45.20%	-	100.00%
502105	Workers Comp Insurance	1,575	1,575	124	719	45.65%	-	100.00%
502110	Health/Life Insurance	12,445	12,445	1,012	5,409	43.46%	-	100.00%
502115	Unemployment Insurance	375	375	-	-	0.00%	-	**
502120	Medicare/FICA	1,190	1,190	91	526	44.20%	-	100.00%
502130	Other Benefit Charges	775	775	55	319	41.16%	-	100.00%
602113	Social Media	2,500	2,500	293	645	25.80%	50	92.25%
607100	Membership/Dues	-	250	-	252	100.80%	-	100.00%
<b>5000</b>	<b>Public Information Office</b>	<b>120,600</b>	<b>120,850</b>	<b>9,294</b>	<b>52,646</b>	<b>43.56%</b>	<b>50</b>	<b>99.91%</b>
<b>5100</b>	<b>Community Services Administration</b>							
501110	Salaries-Regular	279,875	279,875	20,563	122,878	43.90%	166,593	-26.24%
501120	Salaries-Part Time	1,840	1,840	421	1,882	102.28%	21,656	-91.31%
502100	Retirement	65,905	65,905	5,362	32,111	48.72%	41,255	-22.16%
502105	Workers Comp Insurance	4,940	4,940	415	2,470	50.00%	-	100.00%
502110	Health/Life Insurance	29,000	29,000	2,343	12,680	43.72%	19,722	-35.71%
502111	Medical In-Lieu Pay	6,000	6,000	500	3,125	52.08%	-	100.00%
502115	Unemployment Insurance	900	900	-	2	0.22%	9	-77.78%
502120	Medicare/FICA	3,890	3,890	298	1,769	45.48%	2,683	-34.07%
502130	Other Benefit Charges	2,245	2,245	181	1,082	48.20%	395	63.49%
602100	Special Dept Expense	18,950	86,950	68,710	71,237	81.93%	1,985	3488.77%
602110	Office Expense	3,185	3,185	1,014	1,544	48.48%	589	162.14%
602115	Postage	500	500	327	360	72.00%	3,219	-794.17%
603110	Building Maintenance	10,485	10,485	225	1,125	10.73%	-	100.00%
607100	Membership/Dues	1,160	910	-	892	98.02%	-	100.00%
607115	Training	1,500	1,500	175	295	19.67%	-	100.00%

\* = Actual data is reported through December.

**Community Service - Bobadilla  
December 2021 General Fund Expenditures (50% of year)**

Acct. No.	Description	FY 2021/22					FY 2020/21 Actual	% Change From Prior Year
		FY 2021/22 Adopted Budget	FY 2021/22 Amended Budget	Activity During December	Year to Date Actual *	% of Budget		
<b>5100</b>	<b>Community Services Administration, Continued</b>							
609100	Special Events	11,500	14,000	6,362	9,939	70.99%	2,884	70.98%
612105	Vehicle Replacement Charge	7,845	7,845	654	3,923	50.01%	3,400	13.33%
612115	Liability Insurance Charge	59,295	59,295	1,819	50,693	85.49%	53,636	-5.81%
<b>5100</b>	<b>Community Services Administration Total</b>	<b>509,015</b>	<b>579,265</b>	<b>109,369</b>	<b>318,007</b>	<b>54.90%</b>	<b>318,026</b>	<b>-0.01%</b>
<b>5200</b>	<b>Community Center Operations</b>							
501110	Salaries-Regular	34,750	34,750	1,980	12,467	35.88%	-	100.00%
501115	Salaries-Overtime	-	-	-	164	**	-	100.00%
501120	Salaries-Part Time	92,150	92,150	2,992	13,055	14.17%	-	100.00%
502100	Retirement	14,905	14,905	516	3,289	22.07%	-	100.00%
502105	Workers Comp Insurance	2,260	2,260	98	505	22.35%	-	100.00%
502110	Health/Life Insurance	6,130	6,130	334	1,897	30.95%	-	100.00%
502111	Medical In-Lieu Pay	2,700	2,700	250	1,375	50.93%	-	100.00%
502115	Unemployment Insurance	1,500	1,500	-	4	0.27%	-	100.00%
502120	Medicare/FICA	1,855	1,855	76	392	21.13%	-	100.00%
502130	Other Benefit Charges	1,370	1,370	19	116	8.47%	-	100.00%
602100	Special Dept Expense	4,820	4,820	(75)	2,081	43.17%	-	100.00%
602110	Office Expense	1,000	1,000	277	451	45.10%	-	100.00%
603110	Building Maintenance	6,695	6,695	429	2,447	36.55%	2,017	21.32%
612105	Vehicle Replacement Charge	395	395	33	198	50.13%	200	-1.01%
<b>5200</b>	<b>Community Center Operations</b>	<b>170,530</b>	<b>170,530</b>	<b>6,929</b>	<b>38,441</b>	<b>22.54%</b>	<b>2,217</b>	<b>94.23%</b>
<b>5300</b>	<b>Park Operations</b>							
501110	Salaries-Regular	76,300	76,300	5,331	32,253	42.27%	26,385	22.24%
501115	Salaries-Overtime	-	-	100	1,691	**	-	100.00%
501120	Salaries-Part Time	102,715	102,715	8,599	49,113	47.81%	34,585	42.01%
502100	Retirement	15,310	15,310	1,246	7,537	49.23%	5,995	25.72%
502105	Workers Comp Insurance	3,540	3,540	276	1,611	45.51%	-	100.00%
502110	Health/Life Insurance	11,275	11,275	821	4,424	39.24%	3,542	24.90%

\* = Actual data is reported through December.

**Community Service - Bobadilla  
December 2021 General Fund Expenditures (50% of year)**

Acct. No.	Description	FY 2021/22					FY 2020/21 Actual	% Change From Prior Year
		FY 2021/22 Adopted Budget	FY 2021/22 Amended Budget	Activity During December	Year to Date Actual *	% of Budget		
<b>5300</b>	<b>Park Operations, Continued</b>							
502111	Medical In-Lieu Pay	2,000	2,000	50	650	32.50%	-	100.00%
502115	Unemployment Insurance	2,025	2,025	152	631	31.16%	337	87.24%
502120	Medicare/FICA	2,545	2,545	204	1,213	47.66%	897	35.23%
502130	Other Benefit Charges	2,260	2,260	51	308	13.63%	511	-65.91%
602100	Special Dept Expense	5,500	5,500	400	992	18.04%	-	100.00%
602110	Office Expense	1,000	1,000	68	85	8.50%	269	-68.40%
<b>5300</b>	<b>Park Operations</b>	<b>224,470</b>	<b>224,470</b>	<b>17,298</b>	<b>100,508</b>	<b>44.78%</b>	<b>72,521</b>	<b>38.59%</b>
<b>5400</b>	<b>Senior Citizens Programs</b>							
501110	Salaries-Regular	18,040	18,040	1,201	8,621	47.79%	3,854	123.69%
501115	Salaries-Overtime	-	-	-	74	**	-	100.00%
501120	Salaries-Part Time	31,995	31,995	1,797	11,813	36.92%	15,013	-21.31%
502100	Retirement	3,470	3,470	281	2,015	58.07%	876	130.02%
502105	Workers Comp Insurance	880	880	59	405	46.02%	-	100.00%
502110	Health/Life Insurance	2,890	2,890	203	1,261	43.63%	590	113.73%
502111	Medical In-Lieu Pay	1,050	1,050	100	600	57.14%	-	100.00%
502115	Unemployment Insurance	600	600	-	-	0.00%	-	**
502120	Medicare/FICA	725	725	45	306	42.21%	280	9.29%
502130	Other Benefit Charges	665	665	11	82	12.33%	218	-165.85%
609200	Senior Citizen Program	1,200	1,500	64	643	42.87%	45	93.00%
<b>5400</b>	<b>Senior Citizens Programs</b>	<b>61,515</b>	<b>61,815</b>	<b>3,761</b>	<b>25,820</b>	<b>41.77%</b>	<b>20,876</b>	<b>23.68%</b>
<b>5500</b>	<b>Recreation Programs</b>							
602115	Postage	9,000	9,000	3,169	6,216	69.07%	-	100.00%
602150	Recreation Brochure Mailing	23,100	23,100	3,150	10,671	46.19%	3,125	70.72%
608150	Contractual Recreation Program	16,800	16,800	3,182	8,259	49.16%	-	100.00%
<b>5500</b>	<b>Recreation Programs</b>	<b>48,900</b>	<b>48,900</b>	<b>9,501</b>	<b>25,146</b>	<b>51.42%</b>	<b>3,125</b>	<b>87.57%</b>
<b>TOTAL COMMUNITY SERVICES</b>		<b>\$ 1,135,030</b>	<b>\$ 1,205,830</b>	<b>\$ 156,152</b>	<b>\$ 560,568</b>	<b>46.49%</b>	<b>\$ 416,815</b>	<b>34.49%</b>

\* = Actual data is reported through December.

**Transfers to Other Funds-Bannigan  
December 2021 General Fund Expenditures (50% of year)**

Acct. No.	Description	FY 2021/22 Adopted Budget	FY 2021/22 Amended Budget	FY 2021/22			FY 2020/21 Actual	% Change From Prior Year
				Activity During December	Year to Date Actual *	% of Budget		
<b>101</b>	<b>General Fund</b>							
<b>1600</b>	<b>Non-Departmental</b>							
800250	Transfer to FACT Grant	\$ 17,100	\$ 17,100	\$ -	\$ 7,125	41.67%	\$ 12,375	-73.68%
800251	Transfer to Senior Transportation Fund	10,565	10,565	634	3,673	34.77%	1,706	115.30%
800280	Transfer to SCP Maintenance Fund	41,140	41,140	3,428	20,570	50.00%	-	100.00%
	<b>TOTAL TRANSFERS OUT</b>	<b>\$ 68,805</b>	<b>\$ 68,805</b>	<b>\$ 4,062</b>	<b>\$ 31,368</b>	<b>45.59%</b>	<b>\$ 14,081</b>	<b>122.77%</b>

\* = Actual data is reported through December.

ATTACHMENT C

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**General Fund - Fund Balance Status**

	General Fund (101)	Measure GG Transaction & Use Tax Fund (102)	Total
<i>Reserves as of June 30, 2021:</i>			
Capital Improvement (A)	\$ 5,000,000		\$ 5,000,000
Economic Uncertainty (B)	5,217,000		5,217,000
Emergency Disaster Continuity (C)	2,609,000		2,609,000
Equipment and Maintenance (A)	150,000		150,000
Technology Equipment (A)	150,000		150,000
Subtotal	13,126,000	-	13,126,000
Available Fund Balance (unreserved)	7,867,648	363,790	8,231,438
<b>Total Fund Balance (Reserves &amp; Available Fund Balance) as of June 30, 2021 **</b>	<b>20,993,648</b>	<b>363,790</b>	<b>21,357,438</b>
Estimated increase (decrease) of fund balance during Fiscal Year 2021-22	856,870	-	856,870
<b>Total Projected Fund Balance (Reserves &amp; Available Fund Balance) as of June 30, 2022</b>	<b>\$ 21,850,518</b>	<b>\$ 363,790</b>	<b>\$ 22,214,308</b>

Notes:

(A) - Flat amounts per Reserve Policy adopted on June 22, 2021 (City Resolution No. 2021-23).

(B) - Amount is equal to 20% of Fiscal Year 2021/22 operating expenditures budgeted in General Fund per Reserve Policy adopted on June 22, 2021 (City Resolution No. 2021-23).

(C) - Amount is equal to 10% of Fiscal Year 2021/22 operating expenditures budgeted in General Fund per Reserve Policy adopted on June 22, 2021 (City Resolution No. 2021-23).

\*\* - Preliminary balance pending issuance of City's Fiscal Year 2020/21 audited financial statements.

**HOUSING AUTHORITY FUND (#285)  
December 2021 Revenues and Expenditures (50% of year)**

Account No.	Description	FY 2021/22					FY 2020/21 Actual *	% Change From Prior Year
		FY 2021/22 Adopted Budget	FY 2021/22 Amended Budget	Activity During December	Year to Date Actual *	% of Budget		
<b>REVENUES</b>								
435100	Interest	\$ 150,000	\$ 150,000	\$ 7,591	\$ 15,616	10.41%	\$ 56,548	-262.12%
435110	Unrealized Gains/Losses	-	-	(11,332)	(34,862)	**	(35,728)	-2.48%
436140	Tina Way/Pacific Ave. Property Rent	500,000	500,000	1,410	141,797	28.36%	116,406	21.81%
437135	Expense Reimbursement	2,000	2,000	-	-	0.00%	1,171	-100.00%
437145	Sale Of Assets	-	-	-	606,902	**	210,000	65.40%
<b>TOTAL REVENUES</b>		<b>\$ 652,000</b>	<b>\$ 652,000</b>	<b>\$ (2,331)</b>	<b>\$ 729,453</b>	<b>111.88%</b>	<b>\$ 348,397</b>	<b>109.37%</b>
<b>ESTIMATED EXPENDITURES AND OTHER USES</b>								
<b>Salaries and Benefits</b>								
501110	Salaries-Regular	259,540	143,180	9,531	60,195	42.04%	83,602	-28.00%
501115	Salaries-Overtime	5,000	-	59	263	**	215	18.25%
501120	Salaries-Part-Time	2,230	2,020	169	1,074	53.17%	1,044	2.87%
502100	Retirement	71,340	46,215	2,456	15,571	33.69%	19,014	-18.11%
502105	Workers' Compensation	4,500	2,390	192	1,213	50.75%	-	100.00%
502110	Health/Life Insurance	36,455	16,770	1,137	6,310	37.63%	9,180	-31.26%
502111	Medical in Lieu	480	480	60	360	75.00%	-	100.00%
502115	Unemployment Insurance	1,035	435	-	-	0.00%	532	-100.00%
502120	Medicare/FICA	3,675	1,985	132	836	42.12%	1,171	-40.07%
502130	Other Benefits	2,205	1,125	84	530	47.11%	57	89.25%
608130	Temporary Help	-	-	-	-	**	1,851	-100.00%
<b>Total-Salaries and Benefits</b>		<b>386,460</b>	<b>214,600</b>	<b>13,820</b>	<b>86,352</b>	<b>40.24%</b>	<b>116,666</b>	<b>-25.98%</b>
<b>Maintenance and Operations</b>								
602100	Special Department Expense	-	-	-	-	**	26,144	-100.00%
602110	Office Expense	1,000	1,000	-	147	14.70%	-	100.00%
602115	Postage	500	500	-	14	2.80%	208	-93.27%
602140	Materials and Supplies	5,000	5,000	190	546	10.92%	-	100.00%
602145	Gas/Oil/Lube	-	-	-	20	**	-	100.00%
603120	Minor Repairs	15,000	15,000	-	-	0.00%	4,743	-100.00%

**HOUSING AUTHORITY FUND (#285)**  
**December 2021 Revenues and Expenditures (50% of year)**

Account No.	Description	FY 2021/22 Adopted Budget	FY 2021/22 Amended Budget	FY 2021/22			FY 2020/21 Actual *	% Change From Prior Year
				Activity During December	Year to Date Actual *	% of Budget		
<b>Maintenance and Operations , Continued</b>								
604105	Utilities	50,000	50,000	8,118	25,553	51.11%	34,070	-33.33%
607100	Membership Dues	5,300	5,300	-	-	0.00%	4,630	-100.00%
607110	Travel/Conference/Meetings	1,000	1,000	-	-	0.00%	-	**
607115	Training	2,500	2,500	-	-	0.00%	-	**
608100	Contractual Services	-	2,457,940	1,168	312,202	12.70%	607,712	-94.65%
608105	Professional Services	437,000	410,000	24,155	91,843	22.40%	105,252	-14.60%
610135	Relocation Assistance	40,000	40,000	6,207	17,388	43.47%	70,832	-307.36%
610230	Navigation Center (North SPA)	30,000	30,000	-	-	0.00%	-	**
611110	O.C. Sanitation User Fee	21,400	21,400	-	20,837	97.37%	20,933	-0.46%
<b>Total-Maintenance and Operations</b>		<b>608,700</b>	<b>3,039,640</b>	<b>39,838</b>	<b>468,550</b>	<b>15.41%</b>	<b>874,524</b>	<b>-46.42%</b>
<b>Allocated Charges</b>								
612105	Vehicle Replacement Charge	10,075	10,075	840	5,038	50.00%	1,535	69.53%
612115	Liability Insurance Charge	16,190	16,190	497,000	13,841	85.49%	-	100.00%
612140	Information Technology Charge	24,075	24,075	2,006	12,038	50.00%	8,855	26.44%
614205	Admin Overhead	40,100	20,850	1,481	9,565	45.88%	14,402	-33.59%
<b>Total-Allocated Charges</b>		<b>90,440</b>	<b>71,190</b>	<b>4,824</b>	<b>40,482</b>	<b>56.86%</b>	<b>24,792</b>	<b>63.29%</b>
<b>Capital Outlay</b>								
760100	Demolition/Condemnation	-	-	-	-	**	43,686	-100.00%
790100	Land Acquisition	-	-	-	-	**	1,961,438	-100.00%
<b>Total-Capital Outlay</b>		<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>**</b>	<b>2,005,124</b>	<b>-100.00%</b>
<b>Transfers to Other Funds</b>								
800101	Transfer to General Fund	-	890,000	-	890,000	100.00%	-	100.00%
<b>Total-Transfers to Other Funds</b>		<b>-</b>	<b>890,000</b>	<b>-</b>	<b>890,000</b>	<b>100.00%</b>	<b>-</b>	<b>100.00%</b>
<b>TOTAL EXPENDITURES</b>		<b>\$ 1,085,600</b>	<b>\$ 4,215,430</b>	<b>\$ 58,482</b>	<b>\$ 1,485,384</b>	<b>35.24%</b>	<b>\$ 3,021,106</b>	<b>-50.83%</b>
<b>REVENUES OVER (UNDER) EXPENDITURES</b>		<b>\$ (433,600)</b>	<b>\$ (3,563,430)</b>	<b>\$ (60,813)</b>	<b>\$ (755,931)</b>		<b>\$ (2,672,709)</b>	

\* = Actual data is reported through December.

**Housing Authority Fund (Fund 285) - Fund Balance Status**

Available Fund Balance as of June 30, 2021 **	\$ 10,576,841
Estimated increase (decrease) of fund balance during Fiscal Year 2021-22	<u>(418,640)</u>
<b>Projected Available Fund Balance as of June 30, 2022</b>	<b><u><u>\$ 10,158,201</u></u></b>

\*\* - Preliminary balance pending issuance of the City's Fiscal Year 2020/21 audited financial statements.

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**CITY OF STANTON**  
**FY 2021/22**  
**STATUS OF CAPITAL IMPROVEMENT PROJECTS (CIP)**  
**JULY 1, 2021 THROUGH DECEMBER 31, 2021**

Task Code	Description	Adopted Budget 2021/22	FY 2020/21 Budget Carryover	Amended Budget 2021/22	YTD Actual 2021/22	Encumbrances	% Spent (Includes Encumbrances)	Remaining Budget
<b>Street Projects</b>								
2021-105	Traffic Signal Improvements - Fiscal Year 2020/21	\$ -	\$ 200,740	\$ 200,740	\$ -	\$ 109,784	54.7%	\$ 90,956
2022-101	Citywide Street Rehabilitation - Fiscal Year 2021/22	2,075,000	49,253	2,124,253	41,864	17,889	2.8%	\$ 2,064,500
2022-102	Citywide Street Sign Replacement	150,000	-	150,000	513	-	0.3%	149,487
<b>Total Street Projects</b>		<b>\$ 2,225,000</b>	<b>\$ 249,993</b>	<b>\$ 2,474,993</b>	<b>\$ 42,377</b>	<b>\$ 127,673</b>	<b>6.9%</b>	<b>\$ 2,304,943</b>
<b>Parks Projects</b>								
2021-201	Park Master Plan	\$ -	\$ 100,870	\$ 100,870	\$ -	\$ -	0.0%	\$ 100,870
2021-202	Hollenbeck Rubber Replacement	-	200,735	200,735	-	-	0.0%	200,735
2021-203	Premier Park Play Equipment and Rubber	-	200,735	200,735	-	-	0.0%	200,735
2021-204	Harry Dotson Rubber	-	70,510	70,510	-	-	0.0%	70,510
2021-205	Dog Park (design)	50,000	-	50,000	-	-	0.0%	50,000
2022-201	Family Resource Center Improvements	425,000	-	425,000	-	-	0.0%	425,000
2022-202	Rehabilitate Building at Dotson Park	141,000	-	141,000	-	-	0.0%	141,000
<b>Total Parks Projects</b>		<b>\$ 616,000</b>	<b>\$ 572,850</b>	<b>\$ 1,188,850</b>	<b>\$ -</b>	<b>\$ -</b>	<b>0.0%</b>	<b>\$ 1,188,850</b>
<b>Sewer</b>								
2022-301	Sewer Master Plan Update	\$ 500,000	-	\$ 500,000	-	-	0.0%	\$ 500,000
<b>Total Sewer</b>		<b>\$ 500,000</b>	<b>\$ -</b>	<b>\$ 500,000</b>	<b>\$ -</b>	<b>\$ -</b>	<b>0.0%</b>	<b>\$ 500,000</b>
<b>GRAND TOTAL</b>		<b>\$ 3,341,000</b>	<b>\$ 822,843</b>	<b>\$ 4,163,843</b>	<b>\$ 42,377</b>	<b>\$ 127,673</b>	<b>4.1%</b>	<b>\$ 3,993,793</b>
<b>Funding Source</b>								
211	Gas Tax Fund	\$ 381,431	\$ -	\$ 381,431	\$ 513	\$ -	0.1%	\$ 380,918
215	Road Maintenance Rehabilitation Account (RMRA) (SB-1)	1,060,640	49,253	1,109,893	41,864	17,889	5.4%	1,050,140
220	Measure M Turnback Fund	750,000	174,740	924,740	-	83,784	9.1%	840,956
222	CDBG Grant Fund	350,000	-	350,000	-	-	0.0%	350,000
262	Traffic Signal Impact Fees Fund	-	26,000	26,000	-	26,000	100.0%	-
263	Community Center Impact Fees Fund	141,000	-	141,000	-	-	0.0%	141,000
305	Capital Projects Fund (Reserves)	32,929	-	32,929	-	-	0.0%	32,929
310	Park In-Lieu Fund	125,000	572,850	697,850	-	-	0.0%	697,850
501	Sewer Maintenance Fund	500,000	-	500,000	-	-	0.0%	500,000
<b>GRAND TOTAL</b>		<b>\$ 3,341,000</b>	<b>\$ 822,843</b>	<b>\$ 4,163,843</b>	<b>\$ 42,377</b>	<b>\$ 127,673</b>	<b>4.1%</b>	<b>\$ 3,993,793</b>

## CITY OF STANTON

### REPORT TO THE CITY COUNCIL

**TO:** Honorable Mayor and City Council

**DATE:** February 22, 2022

**SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF STANTON, CALIFORNIA APPROVING SUBDIVISION TRACT MAP NO. 19067**

#### **REPORT IN BRIEF:**

The subdivision tract map for the development of seven detached condominium units for the property located at 7091 Kermore Lane has been submitted by the developer for final certification and recordation.

#### **RECOMMENDED ACTION:**

1. City Council declare this project categorically exempt under the California Environmental Quality Act, Class 32, and Section 15332; and
2. Adopt Resolution No. 2022-09 approving final Tract Map No. 19067, entitled:  
  
**“A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF STANTON, CALIFORNIA, APPROVING SUBDIVISION TRACT MAP NO. 19067 FOR THE PROPERTY LOCATED AT 7091 KERMORE LANE”**; and
3. Find that the recordation of Tract Map No. 19067 will not be in violation of any of the provisions of Section 66474, 66474.1, and 66474.2 of the Subdivision Map Act; and
4. Find that the proposed subdivision, together with the provisions for its design and improvement, is consistent with the general plan required by Article 5 (commencing with Section 65300) of Chapter 3 of Division 1 of the Government Code, or any specific plan adopted pursuant to Article 8 (commencing with Section 65450) of Chapter 3 of Division 1 of the Government Code; and
5. Direct the City Engineer to review and approve any further technical edits necessary to allow for County Surveyor approval and for recordation of the map with the County Recorder of Orange County, and if edits are necessary, to require a revised Tract Map; and

6. Direct the City Engineer to collect any security instruments required by the Stanton Municipal Code and the Subdivision Map Act to guarantee construction of private and public improvements prior to the City Clerk endorsing the City Clerk's certificate on the face of the Tract Map; and
7. Direct the City Clerk to endorse on the face of the map of the Tract Map, the certificate which embodies the approval of said map, and submit the map to the County Recorder of Orange County for recording.

**BACKGROUND:**

On May 20, 2020, the Planning Commission of the City of Stanton adopted Planned Development Permit No. PDP 20-03 and Tentative Tract Map No. 19067, for development of seven (7) detached condominium units, with a private driveway, and common open space amenities located at 7091 Kermore Lane. The project is currently underway and a Tract Map must be recorded prior to the sale of any unit.

**ANALYSIS AND JUSTIFICATION:**

Recording of the final tract map is required per Section 66426 of the Subdivision Map Act. The City Engineer has reviewed the subdivision Tract Map No. 19067 and all associated documentation, and is satisfied that the final tract map substantially complies with the Planned Development Permit No. PDP 20-03.

Orange County Public Works has also reviewed Tract Map No. 19067 and has certified to the technical correctness of the Map and its compliance with the provisions of the Subdivision Map Act.

**FISCAL IMPACT:**

None.

**ENVIRONMENTAL IMPACT:**

In accordance with the requirements of the California Environmental Quality Act (CEQA), this project has been determined to be categorically exempt under Section 15332, Class 32 (In-Fill Development).

**PUBLIC NOTIFICATION:**

Public notification provided through the regular agenda process.

**LEGAL REVIEW:**

None.

**STRATEGIC PLAN OBJECTIVE ADDRESSED:**

5 - Provide a high quality of life.

Prepared by:

Approved by:

/s/ Joe Ames

/s/ Jarad L. Hildenbrand

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Joe Ames, P.E.  
Director of Public Works/City Engineer

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Jarad L. Hildenbrand  
City Manager

**Attachments:**

- A. Resolution No. 2022-09
- B. Final Tract Map No. 19067

**RESOLUTION NO. 2022-09**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF STANTON, CALIFORNIA, APPROVING SUBDIVISION TRACT MAP NO. 19067 FOR THE PROPERTY LOCATED AT 7091 KERMORE LANE**

**WHEREAS**, on May 20, 2020, the Planning Commission of the City of Stanton adopted Planned Development Permit No. PDP 20-03 and Tentative Tract Map No. 19067 which approved the development of seven detached condominium units located at 7091 Kermore Lane; and

**WHEREAS**, all necessary documentation associated with this subdivision have been reviewed by the City Engineer; and

**WHEREAS**, the final map is substantially in compliance with the previously approved Planned Development Permit No. PDP 20-03 and Tentative Tract Map No. 19067; and

**WHEREAS**, the City Council has made the finding that none of the conditions for mandatory denial exist relative to the proposed subdivision, in accordance with Section 66474, 66474.1 and 66474.2 of the Subdivision Map Act; and

**WHEREAS**, the City Council finds that the proposed subdivision, together with the provisions for its design and improvement, is consistent with the general plan required by Article 5 (commencing with Section 65300) of Chapter 3 of Division 1 of the Government Code, or any specific plan adopted pursuant to Article 8 (commencing with Section) 65450) of Chapter 3 of Division 1 of the Government Code; and

**WHEREAS**, the City Council finds that final Tract Map No. 19067 satisfies the provisions of the Subdivision Map Act, Stanton Municipal Code and the Conditions of Approval.

**NOW THEREFORE, BE IT RESOLVED** that the City Council of the City of Stanton, California, hereby approves final Tract Map No. 19067.

**ADOPTED, SIGNED AND APPROVED** this 22<sup>nd</sup> day of February, 2022.

---

DAVID J. SHAWVER, MAYOR

APPROVED AS TO FORM:

\_\_\_\_\_  
HONGDAO NGUYEN, CITY ATTORNEY

ATTEST:

I, Patricia A. Vazquez, City Clerk of the City of Stanton, California DO HEREBY CERTIFY that the foregoing Resolution, being Resolution No. 2022-09 has been duly signed by the Mayor and attested by the City Clerk, all at a regular meeting of the Stanton City Council, held on February 22, 2022, and that the same was adopted, signed and approved by the following vote to wit:

AYES: \_\_\_\_\_

NOES: \_\_\_\_\_

ABSENT: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

\_\_\_\_\_  
PATRICIA A. VAZQUEZ, CITY CLERK

SHEET 1 OF 3 SHEETS  
NUMBER OF LOTS : 1 NUMBERED  
AREA: 30,616 SF (GROSS)  
25,891 SF (NET)  
DATE OF SURVEY: AUGUST 2019  
ALL OF TENTATIVE TRACT NO. 19067

# TRACT NO. 19067

IN THE CITY OF STANTON, COUNTY OF ORANGE, STATE OF CALIFORNIA

BEING A SUBDIVISION OF LOT 29 AND THE WEST ONE-HALF OF LOT 28 OF TRACT NO. 473,  
AS SHOWN ON A MAP FILED IN BOOK 23, PAGE 28 OF MISCELLANEOUS MAPS, IN THE  
OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

DMS CONSULTANTS, INC.

AUGUST 2019

WILLIAM A. PATAPOFF, R.C.E. 24967

FOR CONDOMINIUM PURPOSES

ACCEPTED AND FILED AT THE  
REQUEST OF  
CHICAGO TITLE COMPANY  
DATE \_\_\_\_\_  
TIME \_\_\_\_\_ FEE \$ \_\_\_\_\_  
INSTRUMENT NO. \_\_\_\_\_  
BOOK \_\_\_\_\_ PAGES \_\_\_\_\_  
HUGH NGUYEN  
COUNTY CLERK-RECORDER

BY: \_\_\_\_\_  
DEPUTY

### OWNERSHIP CERTIFICATE

WE, THE UNDERSIGNED, BEING ALL PARTIES HAVING ANY RECORD TITLE INTEREST IN THE LAND COVERED BY THIS MAP, DO HEREBY CONSENT TO THE PREPARATION AND RECORDATION OF SAID MAP, AS SHOWN WITHIN THE DISTINCTIVE BORDER LINE.

WE ALSO HEREBY DEDICATE TO THE CITY OF STANTON:

1. THE EASEMENT FOR VEHICULAR ACCESS, ACCESS RIGHTS IN, OVER, ACROSS, UPON AND THROUGH LOT 1 OF THIS TRACT FOR EMERGENCY INGRESS & EGRESS PURPOSES WITHIN SAID LOT 1, AS SHOWN ON SAID MAP.

WE ALSO HEREBY RELEASE AND RELINQUISH TO THE CITY OF STANTON:

1. ALL VEHICULAR ACCESS RIGHTS TO KERMORE LANE EXCEPT AT APPROVED ACCESS LOCATIONS.

OWNER:

NAC GROUP, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_

BENEFICIARY:

AMERICAN PLUS BANK, N.A. BENEFICIARY UNDER DEED OF TRUST RECORDED  
NOVEMBER 4, 2021 AS INSTRUMENT NO. 2021000669112 OF OFFICIAL RECORDS

BY: \_\_\_\_\_ BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_ TITLE: \_\_\_\_\_

### NOTARY ACKNOWLEDGMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA )  
)SS  
COUNTY OF ORANGE )

ON \_\_\_\_\_ BEFORE ME, \_\_\_\_\_, A NOTARY  
PUBLIC, PERSONALLY APPEARED \_\_\_\_\_

WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND :

SIGNATURE: \_\_\_\_\_ MY PRINCIPAL PLACE OF BUSINESS IS  
NOTARY PUBLIC IN AND FOR SAID STATE IN \_\_\_\_\_ COUNTY.  
MY COMMISSION EXPIRES: \_\_\_\_\_  
(PRINT NAME)

### CITY CLERK'S CERTIFICATE

STATE OF CALIFORNIA )  
) SS  
COUNTY OF ORANGE )

I HEREBY CERTIFY THAT THIS MAP WAS PRESENTED FOR APPROVAL TO THE CITY COUNCIL OF THE CITY OF STANTON AT A REGULAR MEETING THEREOF HELD ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2022, AND THAT THEREUPON SAID COUNCIL DID, BY AN ORDER DULY PASSED AND ENTERED, APPROVE SAID MAP.

AND DID ACCEPT ON BEHALF OF THE CITY OF STANTON.

1. THE EASEMENT FOR VEHICULAR ACCESS, ACCESS RIGHTS IN, OVER, ACROSS, UPON AND THROUGH LOT 1 OF THIS TRACT FOR EMERGENCY INGRESS & EGRESS PURPOSES WITHIN SAID LOT 1, AS DEDICATED.
2. THE VEHICULAR ACCESS RIGHTS TO KERMORE LANE EXCEPT AT APPROVED ACCESS LOCATIONS, AS RELEASED AND RELINQUISHED.

AND DID ALSO APPROVE SUBJECT MAP PURSUANT TO THE PROVISIONS OF SECTION 66436 (a)(3)(A) OF THE SUBDIVISION MAP ACT.

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2022.

\_\_\_\_\_  
PATRICIA A. VAZQUEZ  
CITY CLERK OF THE CITY OF STANTON

### COUNTY TREASURER-TAX COLLECTOR'S CERTIFICATE

STATE OF CALIFORNIA )  
) SS  
COUNTY OF ORANGE )

I HEREBY CERTIFY THAT ACCORDING TO THE RECORDS OF MY OFFICE, THERE ARE NO LIENS AGAINST THE LAND COVERED BY THIS MAP OR ANY PART THEREOF FOR UNPAID STATE, COUNTY, MUNICIPAL OR LOCAL TAXES OR SPECIAL ASSESSMENTS COLLECTED AS TAXES, EXCEPT TAXES OR SPECIAL ASSESSMENTS COLLECTED AS TAXES NOT YET PAYABLE.

AND DO CERTIFY TO THE RECORDER OF ORANGE COUNTY THAT THE PROVISIONS OF THE SUBDIVISION MAP ACT HAVE BEEN COMPLIED WITH REGARDING DEPOSITS TO SECURE PAYMENT OF TAXES OR SPECIAL ASSESSMENTS COLLECTED AS TAXES ON THE LAND COVERED BY THIS MAP.

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2022

\_\_\_\_\_  
SHARI L. FREIDENRICH BY: \_\_\_\_\_  
COUNTY TREASURER-TAX COLLECTOR TREASURER-TAX COLLECTOR

### SIGNATURE OMISSION:

PURSUANT TO SECTION 66436(a)(3)(C) OF THE SUBDIVISION MAP ACT, THE FOLLOWING SIGNATURES HAVE BEEN OMITTED:

SECURITY FIRST NATIONAL BANK OF LOS ANGELES, A NATIONAL BANKING ASSOCIATION, HOLDERS OF OIL, GAS AND OTHER HYDROCARBON SUBSTANCES WITH RIGHT OF ENTRY TO PROSPECT, DRILL WELLS AND EXTRACT ANY AND ALL SAID MINERAL SUBSTANCES AS RESERVED IN A DOCUMENT RECORDED JULY 21, 1933 IN BOOK 625, PAGE 288 OF OFFICIAL RECORDS.

### ENGINEER'S STATEMENT

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF NAC GROUP, LLC IN AUGUST 2019. I HEREBY STATE THAT ALL MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED, OR THAT THEY WILL BE SET IN POSITIONS WITHIN 90 DAYS AFTER COMPLETION OF IMPROVEMENTS; AND THAT SAID MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED. I HEREBY STATE THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED TENTATIVE MAP.

DATED THIS \_\_\_\_\_ 11TH DAY OF \_\_\_\_\_ FEBRUARY \_\_\_\_\_, 2022

\_\_\_\_\_  
WILLIAM A. PATAPOFF  
DATE: \_\_\_\_\_ 02/11/2022  
R.C.E. NO. 24967  
MY LICENSE EXPIRES: \_\_\_\_\_ 12/31/2023



### CITY ENGINEER'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THIS MAP AND HAVE FOUND IT TO BE SUBSTANTIALLY IN CONFORMANCE WITH THE TENTATIVE MAP, IF REQUIRED, AS FILED WITH, AMENDED AND APPROVED BY THE CITY PLANNING COMMISSION; THAT ALL PROVISIONS OF THE SUBDIVISION MAP ACT AND CITY SUBDIVISION REGULATIONS HAVE BEEN COMPLIED WITH.

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2022

\_\_\_\_\_  
JOSEPH JOHN AMES  
CITY ENGINEER  
R.C.E. 66999  
EXPIRES: \_\_\_\_\_



### COUNTY SURVEYOR'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THIS MAP AND HAVE FOUND THAT ALL MAPPING PROVISIONS OF THE SUBDIVISION MAP ACT HAVE BEEN COMPLIED WITH AND I AM SATISFIED SAID MAP IS TECHNICALLY CORRECT.

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2022

\_\_\_\_\_  
KEVIN R. HILLS, COUNTY SURVEYOR,  
L.S. 6617

BY: \_\_\_\_\_  
LILY M. N. SANDBERG, DEPUTY COUNTY SURVEYOR  
P.L.S. 8402



NOTE :  
SEE SHEET 2 OF 3 FOR BENEFICIARY NOTARY ACKNOWLEDGMENT



SHEET 3 OF 3 SHEETS  
 NUMBER OF LOTS : 1 NUMBERED  
 AREA: 30,616 SF (GROSS)  
 25,891 SF (NET)  
 DATE OF SURVEY: AUGUST 2019  
 ALL OF TENTATIVE TRACT NO. 19067

# TRACT NO. 19067

IN THE CITY OF STANTON, COUNTY OF ORANGE, STATE OF CALIFORNIA  
 DMS CONSULTANTS, INC. WILLIAM A. PATAPOFF, R.C.E. 24967

CERRITOS AVENUE

WESTERN AVENUE  
 FOUND PUNCHED HEX BAR DOWN 0.8' IN O.C.S. WELL MONUMENT PER PARCEL MAP NO. 2018-112, PMB 403/5-6. OCS GPS POINT NO. 3730 N2242862.88-E6029486.77  
 SCALE: 1"=40'

JONATHAN AVENUE  
 FOUND GEAR SPIKE & WASHER, STAMPED "LS 7707" PER (R6), FLUSH.

FOR CONDOMINIUM PURPOSES

FOUND SPIKE & WASHER, STAMPED "LS 8765" PER (R6), FLUSH. N00°15'30"E 0.36' OFFSET. NOT HELD FOR LINE

SFN. ESTABLISHED BY INTERSECTION & HOLDING RECORD DISTANCE OF 334.00' PER (R1, R4&R6).

SFN. ESTABLISHED BY HOLDING RECORD DISTANCE OF 334.00' PER (R1, R4&R6).

CENTERLINE S.P.R.R. R/W ESTABLISHED BY HOLDING RECORD DISTANCE OF 334.00' PARALLEL WITH CENTERLINE KERMORE LANE PER (R1, R4&R6).

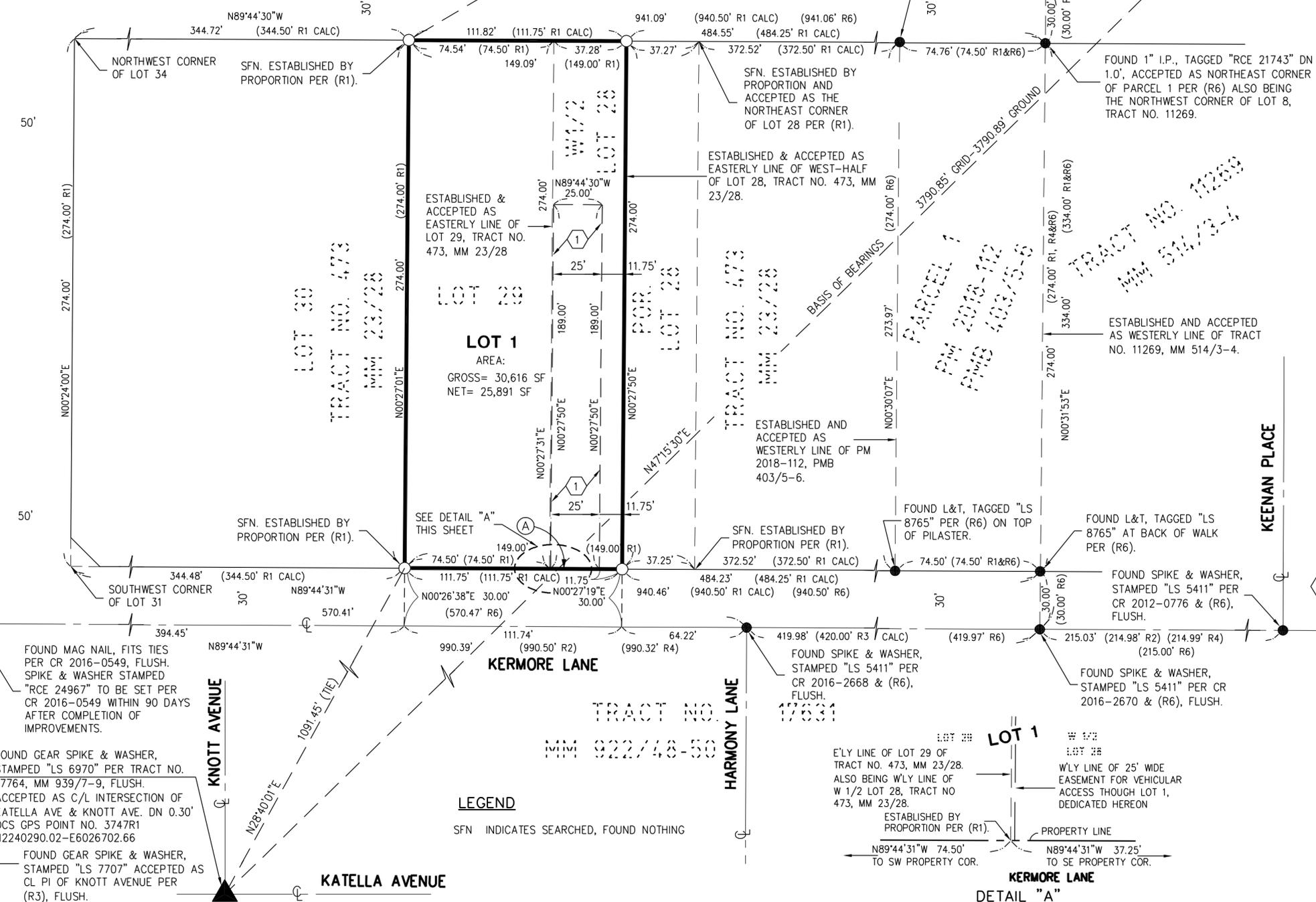
KNOTT AVENUE (FORMERLY HANSEN STREET) 847.87'  
 (334.00' R1, R4&R6) (493.97' R3 CALC)

N00°24'00"E

N00°24'00"E

N00°24'00"E

N00°24'00"E



**MONUMENT NOTES**

- INDICATES FOUND MONUMENTS AS NOTED HEREON.
- 2" I.P. TAGGED "RCE 24967", OR A LEAD & TAG STAMPED "RCE 24967" IN CONC. OR A NAIL & TAG STAMPED "RCE 24967" IN CONC. OR AN 8" SPIKE & WASHER STAMPED "RCE 24967" IN ASPHALT OR A TAG "RCE 24967" SECURED WITH EPOXY TO BE SET FLUSH AT ALL TRACT BOUNDARY CORNERS.
- ▲ INDICATES OCS GPS HORIZONTAL CONTROL STATION MONUMENT PER RECORDS ON FILE IN THE OFFICE OF THE ORANGE COUNTY SURVEYOR.  
 ALL MONUMENTS SHOWN AS "SET" WILL BE SET WITHIN 90 DAYS AFTER COMPLETION OF IMPROVEMENTS, UNLESS OTHERWISE NOTED.

**RECORD MAPS & DATA NOTES**

- (R1) INDICATES RECORD DATA PER TRACT NO. 473, MM 23/28.
- (R2) INDICATES RECORD DATA PER TRACT NO. 17764, MM 939/7-9.
- (R3) INDICATES RECORD DATA PER TRACT NO. 17631, MM 922/48-50.
- (R4) INDICATES RECORD DATA PER TRACT NO. 11269, MM 514/3-4.
- (R5) INDICATES RECORD DATA PER TRACT NO. 8472, MM 384/8-11.
- (R6) INDICATES RECORD DATA PER PARCEL MAP NO. 2018-112, PMB 403/5-6.

**BASIS OF BEARINGS**

THE BEARINGS SHOWN HEREON ARE BASED ON THE BEARING BETWEEN O.C.S. HORIZONTAL CONTROL STATION GPS NO. 3730 & STATION GPS NO. 3747R1 BEING N47°15'30"E PER RECORDS ON FILE IN THE OFFICE OF THE ORANGE COUNTY SURVEYOR.

**DATUM STATEMENT**

COORDINATES SHOWN HEREON ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM (CCS83), ZONE VI, 1983 NAD. (2017.50 EPOCH OCS GPS ADJUSTMENT). ALL DISTANCES SHOWN ARE GROUND, UNLESS OTHERWISE NOTED. TO OBTAIN GRID DISTANCE MULTIPLY GROUND DISTANCE BY 0.99998858 (PROJECT SPECIFIC)

**EASEMENT NOTES:**

AN EASEMENT FOR VEHICULAR ACCESS, ACCESS RIGHTS IN, OVER, ACROSS, UPON AND THROUGH LOT 1 OF THIS TRACT FOR EMERGENCY INGRESS & EGRESS PURPOSES WITHIN SAID LOT 1, DEDICATED HEREON TO THE CITY OF STANTON.

**RELINQUISHMENT NOTE**

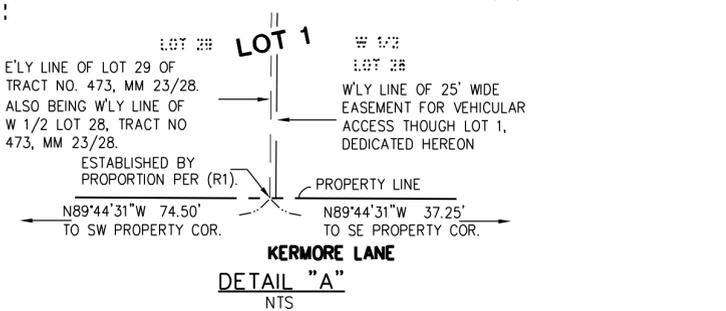
VEHICULAR ACCESS RIGHTS TO KERMORE LANE ARE RELEASED AND RELINQUISHED HEREON TO THE CITY OF STANTON EXCEPT AT APPROVED ACCESS LOCATIONS.

**SURVEYOR'S BOUNDARY NOTE**

THERE ARE NO CONFLICTS WITH EXISTING VISIBLE IMPROVEMENTS AND THE EXTERIOR BOUNDARY LINE (DISTINCTIVE BORDER) OF THIS MAP AS ESTABLISHED HEREON.

**LEGEND**

SFN INDICATES SEARCHED, FOUND NOTHING



DETAIL "A" NTS

## CITY OF STANTON

### REPORT TO CITY COUNCIL

**TO:** Honorable Mayor and Members of the City Council

**DATE:** February 22, 2022

**SUBJECT: AWARD OF CONTRACT TO RJM DESIGN GROUP TO PROVIDE PROFESSIONAL DESIGN CONSULTING SERVICES FOR THE DOG PARK DESIGN PROJECT (TASK CODE 2021-205) AND APPROPRIATION OF FUNDS**

#### **REPORT IN BRIEF:**

Earlier this year, a conceptual drawing to develop a 54,886±square-foot vacant, underutilized property that runs diagonally east-southeast from Western Avenue to Cerritos Avenue into a dog park was completed. City staff released a “Request for Proposal” (RFP) soliciting proposals to provide professional design consulting services for the final design and all necessary construction documents for the development of a parkette. City staff believes that RJM Design Group is the best qualified to provide professional design consulting services for the Dog Park design and is recommending award of a design contract to that firm. In addition, staff is requesting City Council approval for an appropriation of \$164,000 to increase the budget for the Dog Park Design project from \$50,000 to \$214,000.

#### **RECOMMENDED ACTIONS:**

1. City Council declare this project to be categorically exempt under the California Environmental Quality Act, Class 1, Section 15301; and
2. Award a contract to RJM Design Group to provide professional design consulting services for a maximum contract amount of \$193,962.00; and
3. Authorize the City Manager to bind the City of Stanton and RJM Design Group in a contract to provide the services; and
4. Authorize the City Manager to approve contract change orders with RJM Design Group, as needed and determined by City Staff, for any contingencies up to \$20,000; and
5. Appropriate \$164,000 from the Park In Lieu Fees Fund (#310) to increase the Dog Park Design project’s budget (Task Code 2021-205) to \$214,000.

## **BACKGROUND:**

The Orange County Transportation Authority (“OCTA”) owns the railroad right-of-way between Western Avenue and Cerritos Avenue, in the City of Stanton. The 54,886±square-foot, vacant, underutilized property runs diagonally east-southeast from Western Avenue. Conceptual drawings to develop this underutilized property into a dog park was completed by David Volz Design.

The conceptual design for the dog park includes the following elements:

- Two-lane bike trail
- Sidewalk and decorative rock cobble
- Lighting
- Bollards at entry points
- Tube-steel fencing enclosing park and dog areas
- Decorative trellises and vines
- Drought-tolerant landscaping (succulents)
- Focal tree
- Seating areas and seat-walls
- Shade structures
- Drinking fountains
- Dog agility equipment
- Dog bag dispensers

Since the conceptual drawings for the dog park were completed, City staff released a “Request for Proposal” (RFP) soliciting proposals to provide professional design consulting services for the final design and development of all necessary construction drawings and documents for the development of the park. The RFP was released in a two-envelope format in accordance with the City’s Purchasing Policy and Procedures which requires that at least three design firms be solicited to provide proposals. City staff solicited proposals from multiple firms. The first envelope consists of a written proposal highlighting the firm’s experience and qualifications, and a second separate, sealed envelope contains the fee proposal. The written proposal envelopes are opened, and the enclosed proposals are evaluated by City staff. Once a consensus is reached on the best written proposal, City staff will negotiate a fee with the best qualified consultant. In the event the City cannot negotiate a fee with the best qualified consultant, the City will negotiate a fee with the second ranked consultant, and so on until an agreement is reached. In this way, contract award is based on best-qualified contractor rather than low-bid, which is appropriate for a design contract.

**ANALYSIS/JUSTIFICATION:**

A Request for Proposals was issued on November 8, 2021 with a proposal due date of December 21, 2021. Five firms provided proposals: STOSS Landscape Urbanism, David Volz Design, BGB Design Group, RJM Design Group, and JMC2. The proposals were evaluated by the City Manager, the Public Works Department and the Community Services Department, and City Staff came to a consensus that RJM Design Group provided the best proposal.

City staff believes that RJM Design Group is qualified to provide professional design consulting services for the design of a new dog park because RJM Design Group has successfully provided dog park design services to other cities, such as Mission Viejo, Encinitas, Lake Forest, and San Diego. The total lump sum design fee is \$178,962.00 with reimbursable expenses fee, such as printing, plotting, copying, scanning, photography, graphic expenses, permits, plan check, and inspection fees, and City business License fees, of \$15,000.00.

**FISCAL IMPACT:**

The Fiscal Year 2021/2022 Budget for the Dog Park Design project (Task Code 2021-205) is \$50,000. Staff is requesting City Council approval to appropriate \$164,000 from the Park In Lieu Fees Fund to increase the budget to \$214,000. The Park in Lieu Fees Fund (#310) has an available balance of approximately \$2.9 million.

**ENVIRONMENTAL IMPACT:**

The action requested in this report is categorically exempt under the California Environmental Quality Act, Class 1, Section 15301.

**LEGAL REVIEW:**

None.

**STRATEGIC PLAN OBJECTIVE ADDRESSED:**

3 – Provide a high-quality infrastructure.

Prepared by:

Reviewed by:

/s/ Han Sol Yoo

/s/ Joe Ames

\_\_\_\_\_  
Han Sol Yoo  
Associate Engineer

\_\_\_\_\_  
Joe Ames, P.E., T.E.  
Director of Public Works/City Engineer

Concurred by:

/s/ Michelle Bannigan

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Michelle Bannigan, CPA  
Finance Director

Approved by:

/s/ Jarad L. Hildenbrand

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Jarad L. Hildenbrand  
City Manager

**Attachments:**

- A) Draft Professional Services Agreement
- B) RJM Design Group's proposal and fee proposal

**CITY OF STANTON  
PROFESSIONAL SERVICES AGREEMENT  
FOR  
DOG PARK CONSULTING DESIGN SERVICES**

**1. PARTIES AND DATE.**

This Agreement is made and entered into this 22nd day of February, 2022 by and between the City of Stanton, a municipal organization organized under the laws of the State of California with its principal place of business at 7800 Katella Avenue, Stanton, California 90680 (“City”) and **RJM DESIGN GROUP, INC.**, a **CORPORATION**, with its principal place of business at **31591 CAMINO CAPISTRANO, SAN JUAN CAPISTRANO, CA 92675** (“Consultant”). City and Consultant are sometimes individually referred to herein as “Party” and collectively as “Parties.”

**2. RECITALS.**

**2.1 Consultant.**

Consultant desires to perform and assume responsibility for the provision of professional **DOG PARK DESIGN** consultant services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing professional **DOG PARK DESIGN** consultant services to public clients, is licensed in the State of California, and is familiar with the plans of City.

**2.2 Project.**

City desires to engage Consultant to render such services for the **DOG PARK CONSULTING DESIGN SERVICES** project (“Project”) as set forth in this Agreement.

**3. TERMS.**

**3.1 Scope of Services and Term.**

**3.1.1 General Scope of Services.** Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional **DOG PARK DESIGN** consultant services necessary for the Project (“Services”). The Services are more particularly described in Exhibit “A” attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

**3.1.2 Term.** The term of this Agreement shall be from **February 22, 2022 to December 31, 2023**, unless earlier terminated as provided herein.

**3.2 Responsibilities of Consultant.**

3.2.1 Independent Contractors, Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee. Consultant shall complete, execute, and submit to City a Request for Taxpayer Identification Number and Certification (IRS Form W-9) prior to commencement of any Services under this Agreement. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City and shall at all times be under Consultant's exclusive direction and control. Neither City, nor any of its officials, officers, directors, employees or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, City shall respond to Consultant's submittals in a timely manner. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of City.

3.2.4 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the City. The key personnel for performance of this Agreement are as follows: **Larry P. Ryan.**

3.2.5 City's Representative. The City hereby designates the City Manager, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. The City Manager hereby designates **the Public Works Director**, or his or her designee, as the City's contact for the implementation of the Services hereunder. Consultant shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.2.6 Consultant's Representative. Consultant hereby designates **Larry P. Ryan**, or his or her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Consultant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant represents that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold City, its officials, directors, officers, employees, agents and volunteers free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.10 Insurance.

3.2.10.1 Time for Compliance. Consultant shall not commence Work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subconsultant to

commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this section.

3.2.10.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder and without limiting the indemnity provisions of the Agreement, the Consultant in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement, the following policies of insurance. If the existing policies do not meet the Insurance Requirements set forth herein, Consultant agrees to amend, supplement or endorse the policies to do so.

- (a) **Commercial General Liability:** Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 0001, with minimum limits of at least \$1,000,000 per occurrence, and if written with an aggregate, the aggregate shall be double the per occurrence limit. Defense costs shall be paid in addition to the limits.

The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; or (3) contain any other exclusion contrary to the Agreement.

- (b) **Automobile Liability Insurance:** Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1) with minimum limits of \$1,000,000 each accident.

If the Consultant does not own any company vehicles, Automobile Liability Insurance for HIRED AUTOS and NON-OWNED AUTOS with a limit of not less than \$1,000,000 each accident is required.

- (c) **Professional Liability:** Professional Liability insurance with minimum limits of \$1,000,000. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusions that may potentially affect the work to be performed (for example, any exclusions relating to lead, asbestos, pollution, testing, underground storage tanks, laboratory analysis, soil work, etc.).

If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least three (3) years from termination or expiration of this Agreement.

- (d) **Workers' Compensation:** Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury and disease.

3.2.10.3 Endorsements. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval.

- (a) The policy or policies of insurance required by Section 3.2.10.2 (a) Commercial General Liability and (c) Contractor's Pollution Liability shall be endorsed to provide the following:

- (1) **Additional Insured:** The City, its officials, officers, employees, agents, and volunteers shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement.

Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Consultant; or (4) contain any other exclusions contrary to the Agreement.

- (2) **Cancellation:** Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

- (b) The policy or policies of insurance required by Section 3.2.10.2 (b) Automobile Liability and (d) Professional Liability shall be endorsed to provide the following:

- (1) **Cancellation:** Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

- (c) The policy or policies of insurance required by Section 3.2.10.2 (e) Workers' Compensation shall be endorsed to provide the following:

- (1) **Waiver of Subrogation:** A waiver of subrogation stating that the insurer waives all rights of subrogation against the indemnified parties.

- (2) **Cancellation:** Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day

written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

3.2.10.4 Primary and Non-Contributing Insurance. All insurance coverages shall be primary and any other insurance, deductible, or self-insurance maintained by the indemnified parties shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

3.2.10.5 Waiver of Subrogation. Required insurance coverages shall not prohibit Consultant from waiving the right of subrogation prior to a loss. Consultant shall waive all subrogation rights against the indemnified parties. Policies shall contain or be endorsed to contain such provisions.

3.2.10.6 Deductible. Any deductible or self-insured retention must be approved in writing by the City and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

3.2.10.7 Evidence of Insurance. The Consultant, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates and endorsements on forms approved by the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

3.2.10.8 Failure to Maintain Coverage. Consultant agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to the City. The City shall have the right to withhold any payment due Consultant until Consultant has fully complied with the insurance provisions of this Agreement.

In the event that the Consultant's operations are suspended for failure to maintain required insurance coverage, the Consultant shall not be entitled to an extension of time for completion of the Services because of production lost during suspension.

3.2.10.9 Acceptability of Insurers. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

3.2.10.10 Insurance for Subconsultants. All Subconsultants shall be included as additional insureds under the Consultant's policies, or the Consultant shall be

responsible for causing Subconsultants to purchase the appropriate insurance in compliance with the terms of these Insurance Requirements, including adding the City as an Additional Insured to the Subconsultant's policies.

3.2.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subconsultants, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

### 3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed **ONE HUNDRED NINETY-THREE THOUSAND, NINE HUNDRED SIXTY-TWO DOLLARS (\$193,962)** ("Total Compensation") without written approval of City's **Public Works Director**. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from the City.

3.3.5 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance"

projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. It is the intent of the parties to effectuate the requirements of sections 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code within this Agreement, and Consultant shall therefore comply with such Labor Code sections to the fullest extent required by law. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees, agents and volunteers free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

### **3.4 Accounting Records.**

3.4.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

### **3.5 General Provisions.**

#### **3.5.1 Termination of Agreement.**

3.5.1.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

**Consultant:**

RJM Design Group  
31591 Camino Capistrano  
San Juan Capistrano, CA 92675  
Attn: **Larry P. Ryan, President**

**City:**

City of Stanton  
7800 Katella Avenue  
Stanton, CA 90680  
Attn: **Joe Ames, Department of Public Works**

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.3 Ownership of Materials and Confidentiality.

3.5.3.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant shall require all subconsultants to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by the City. City shall not be limited in any way in its use of the Documents and Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

3.5.3.2 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of City, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related

industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

3.5.3.3 Confidential Information. The City shall refrain from releasing Consultant's proprietary information ("Proprietary Information") unless the City's legal counsel determines that the release of the Proprietary Information is required by the California Public Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case the City shall notify Consultant of its intention to release Proprietary Information. Consultant shall have five (5) working days after receipt of the Release Notice to give City written notice of Consultant's objection to the City's release of Proprietary Information. Consultant shall indemnify, defend and hold harmless the City, and its officers, directors, employees, and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. City shall not release the Proprietary Information after receipt of the Objection Notice unless either: (1) Consultant fails to fully indemnify, defend (with City's choice of legal counsel), and hold City harmless from any legal action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that City release such information.

3.5.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.5 Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.5.6 Indemnification.

To the fullest extent permitted by law, Consultant shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorneys fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the Consultant or the City, its officials, officers, employees, agents or volunteers.

If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that

arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

The obligation to indemnify, as provided herein, shall survive the termination or expiration of this Agreement.

**3.5.7 Entire Agreement.** This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

**3.5.8 Governing Law.** This Agreement shall be governed by the laws of the State of California. Venue shall be in Orange County.

**3.5.9 Time of Essence.** Time is of the essence for each and every provision of this Agreement.

**3.6 City's Right to Employ Other Consultants.** City reserves right to employ other consultants in connection with this Project.

**3.7 Successors and Assigns.** This Agreement shall be binding on the successors and assigns of the parties.

**3.8 Assignment or Transfer.** Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

**3.9 Construction; References; Captions.** Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

**3.10 Amendment; Modification.** No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

**3.11 Waiver.** No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or

service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

**3.12 No Third Party Beneficiaries.** There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

**3.13 Invalidity; Severability.** If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

**3.14 Prohibited Interests.** Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

**3.15 Equal Opportunity Employment.** Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

**3.16 Labor Certification.** By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

**3.17 Authority to Enter Agreement.** Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

**3.18 Counterparts.** This Agreement may be signed in counterparts, each of which shall constitute an original.

**3.19 Declaration of Political Contributions.** Consultant shall, throughout the term of this Agreement, submit to City an annual statement in writing declaring any political contributions of money, in-kind services, or loan made to any member of the City Council within the previous

twelve-month period by the Consultant and all of Consultant's employees, including any employee(s) that Consultant intends to assign to perform the Services described in this Agreement.

**3.20 Subcontracting.**

3.20.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

*[Signatures on following page.]*

IN WITNESS WHEREOF, the parties have executed this Professional Services Agreement on this \_\_\_\_ day of \_\_\_\_\_, 202\_.

CITY OF STANTON

RJM DESIGN GROUP, INC.

By: \_\_\_\_\_  
Jarad Hildenbrand  
City Manager

By: \_\_\_\_\_  
Name: Larry P. Ryan  
Title: President

By: \_\_\_\_\_  
Name: Zachary Mueting  
Title: Secretary

**ATTEST:**

By: \_\_\_\_\_  
Patricia Vazquez  
City Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Best Best & Krieger LLP  
City Attorney

## **EXHIBIT "A"**

### **SCOPE OF SERVICES**

The City desires to retain an experienced team for the final design and development of all necessary construction drawings and documents for the development of the dog park.

The Consultant is expected to establish and maintain a close working relationship with City Staff and OCTA throughout each phase of the project.

Services and deliverables shall include, but are not limited to, the following:

- Program review and verification;
- Meetings with City staff, residents/citizens, and any ad-hoc design committee established by City Council;
- Parking and use analysis
- Successive, refined concept designs/renderings that expand on the City's current conceptual plan/vision, incorporating the City's review/input;
- Design development plans that include complete specifications and drawings for onsite amenities, infrastructure/utilities, grading and drainage, landscape, signage, lighting, etc.;
- Final construction plans, in electronic PDF and AutoCAD DWG formats, that expand on the design development plans and create full working drawings ready for bidding and construction;
- As-built drawings in electronic PDF and Auto CAD DWG formats, along with final signed mylar sheets;
- Contract documents;
- Assistance with bidding process and bid evaluations; and
- Construction design support.
- Optionally: Construction management / contract administration (provide optional scope and fee with proposal).

The Consultant shall assemble a team to provide all key services related to the necessary architecture and engineering to produce a complete, biddable, and constructible design package. The City anticipates that such a design team may include, but is not limited to, specialists in the following fields:

- Dog Park Design
- Landscape Architecture
- Civil Engineering
- Traffic Engineering
- Mechanical, Electrical, and Plumbing Engineering
- Utility Coordination
- Environmental Consulting
- Cost Estimating

The consultant's proposal and any promises made regarding deliverables is also incorporated herein by reference.

## EXHIBIT "B"

### SCHEDULE OF SERVICES

Per the Request for Proposal, the City is expecting final design plans to be completed within six months of the contract award.

RJM Design Group, Inc. provided a Project Schedule to complete the project, as shown below.

### Schedule

CITY of STANTON		PROJECT SCHEDULE																											
		FEB				MAR				APR				MAY				JUN				JUL							
STANTON DOG PARK		1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4
<b>Phase I: Project Familiarization</b>																													
A	Award of Contract																												
B	Meet with City Staff to Review Scope, Schedule, etc.																												
C	Site Base Plan Preparation																												
D	Visual Field Investigation																												
<b>Phase II: Community Input &amp; Conceptual Design</b>																													
A	Community Meeting - Design Charette																												
B	Preparation of Two (2) Color Conceptual Designs																												
C	Review Meeting with City Staff and Ad-Hoc Committee																												
D	Preparation of Refined Conceptual Design for City Selected Layout																												
E	CEQA Document Preparation																												
F	Anticipated Use Study																												
<b>Phase III: Design Development</b>																													
A	Preparation of Design Development 60% Progress Set																												
B	60% Progress Set Review Meeting with City Staff																												
C	Preparation of Design Development 90% Progress Set																												
D	90% Progress Set Review Meeting with City Staff																												
<b>Phase IV: Construction Documents</b>																													
A	Completion of 100% Construction Document Set, Specifications & Estimate																												
B	City Approval of Complete Project Plan Set																												

- Community Meetings (Key Date)
- Meetings with City of Stanton
- Bidding & Construction Administration Omitted (Hourly as Needed)

**EXHIBIT "C"**  
**COMPENSATION**

City of Stanton Stanton Dog Park														
Task Description	LEAD CONSULTANT						SUB-CONSULTANTS					PHASE FEE TOTALS		
	RJM Design Group						Phil Martin	Hartzog	CivTec	FBA	Glasir			
	Principal		Landscape Architect		CADD Technician		Admin.	Environ.	Traffic	Civil	Electrical		Irrigation	
Hourly Rate	\$165		\$165		\$125		\$85							
	Hours	Amount	Hours	Amount	Hours	Amount	Hours	Amount	Fees	Fees	Fees	Fees	Fees	
<b>PHASE I - Project Familiarization</b>														
Task 1 - Kickoff Meeting	4	\$780	4	\$620		\$0	12	\$1,020						
Task 2 - Preparation of Base / Survey		\$0	8	\$1,240		\$0		\$0			\$10,925			
Task 3 - Site Visit	4	\$780	4	\$620		\$0		\$0						
<b>PHASE I - SUBTOTALS</b>	<b>8</b>	<b>\$1,660</b>	<b>16</b>	<b>\$2,480</b>	<b>0</b>	<b>\$0</b>	<b>12</b>	<b>\$1,020</b>	<b>\$0</b>	<b>\$0</b>	<b>\$10,925</b>	<b>\$0</b>	<b>\$0</b>	
<b>PHASE I - TOTAL FEES</b>				<b>\$5,060</b>							<b>\$10,925</b>		<b>\$15,985</b>	
<b>PHASE II - Community Input &amp; Conceptual Design</b>														
Task 1 - Prep for Community Meeting	8	\$1,660	16	\$2,480	24	\$3,000		\$0						
Task 2 - Community Meeting	6	\$1,170	6	\$930	6	\$750		\$0						
Task 3 - Composite Plan		\$0	8	\$1,240	8	\$1,000		\$0						
Task 4 - Two Colored Conceptual Plans	12	\$2,340	16	\$2,480	16	\$2,000		\$0						
Task 5 - Review Meeting with Staff and Ad-Hoc	8	\$1,660	8	\$1,240		\$0		\$0						
Task 6 - Refine Colored Schematic Plan & Cost Estimate	4	\$780	16	\$2,480	16	\$2,000		\$0						
Task 7 - Preparation of Presentation	4	\$780	16	\$2,480		\$0		\$0						
Task 8 - Prepare for and Attend Public Presentation	0	\$1,170	8	\$1,240		\$0		\$0						
<b>PHASE II - SUBTOTALS</b>	<b>48</b>	<b>\$9,360</b>	<b>84</b>	<b>\$14,570</b>	<b>70</b>	<b>\$8,760</b>	<b>0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	
<b>PHASE II - TOTAL FEES</b>				<b>\$32,680</b>							<b>\$0</b>		<b>\$32,680</b>	
<b>PHASE III - Design Development</b>														
Task 1 - 60% Progress Set	4	\$780	30	\$4,650	50	\$6,250		\$0						
Task 2 - 60% Review Meeting	4	\$780	4	\$620		\$0		\$0						
Task 3 - 90% Progress Set	4	\$780	60	\$9,300	50	\$6,250		\$0			\$31,625	\$5,175	\$1,771	
Task 4 - 90% Review Meeting	4	\$780	4	\$620		\$0		\$0						
Task 5 - CEQA Environmental Review		\$0	2	\$310		\$0		\$11,818						
Task 6 - Anticipated Use Study		\$0	2	\$310		\$0		\$23,920						
<b>PHASE III - SUBTOTALS</b>	<b>16</b>	<b>\$3,120</b>	<b>102</b>	<b>\$15,810</b>	<b>100</b>	<b>\$12,600</b>	<b>0</b>	<b>\$0</b>	<b>\$11,818</b>	<b>\$23,920</b>	<b>\$31,625</b>	<b>\$5,175</b>	<b>\$1,771</b>	
<b>PHASE III - TOTAL FEES</b>				<b>\$31,430</b>						<b>\$74,307</b>			<b>\$106,737</b>	
<b>PHASE IV - Construction Documents</b>														
Task 1 - 100% Construction Set	4	\$780	24	\$3,720	32	\$4,000	12	\$1,020					\$3,922	
Task 2 - Specifications		\$0	24	\$3,720		\$0		\$0						
Task 3 - Cost Estimate	4	\$780	12	\$1,860	8	\$1,000		\$0					\$1,618	
Task 4 - Mylar Production		\$0	8	\$1,240	8	\$1,000		\$0						
<b>PHASE IV - SUBTOTALS</b>	<b>8</b>	<b>\$1,680</b>	<b>68</b>	<b>\$10,540</b>	<b>48</b>	<b>\$6,000</b>	<b>12</b>	<b>\$1,020</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$5,440</b>	
<b>PHASE IV - TOTAL FEES</b>				<b>\$18,120</b>						<b>\$5,440</b>			<b>\$24,560</b>	
<b>COMBINED PHASE FEE TOTAL</b>				<b>\$88,290</b>					<b>\$13,588</b>	<b>\$27,508</b>	<b>\$48,933</b>	<b>\$5,951</b>	<b>\$8,203</b>	<b>\$178,062</b>
<b>FEE GRAND TOTAL</b>									<b>\$178,962</b>					
The above hourly fee breakdown consists of ESTIMATES ONLY. Billings will be based on actual percentage completion of each phase per contracted fixed fee.														
Phase V - Bidding Support & Construction Administration will be completed on an Hourly as Requested basis.														

It is the objective of our Design Team to provide the most comprehensive, yet efficient, approach to the development of the Stanton Dog Park. This fee includes all costs to be incurred by RJM Design Group, Inc. Fees for the work are as follows:

<b>PHASE / TASK</b>	<b>FEE</b>
Phase 1 - Project Familiarization	\$15,985.00
Phase 2 - Community Input & Conceptual Design	\$32,680.00
Phase 3 - Design Development	\$105,737.00
Phase 4 - Construction Documents	\$24,560.00
Phase 5 - Bidding Support & Construction Administration	Hourly as Requested
<b>TOTAL FOR ALL PHASES</b>	<b>\$178,962.00</b>
<b>Total*:</b>	<b>\$178,962.00</b>

\*Note: This fee summary represents our current understanding of the project scope and complexity associated with an estimated construction budget of +/- \$1.7M. The scope of work and associated fees are anticipating a single phase of construction. The scope and fees are subject to refinement per City's request.

**REIMBURSABLE EXPENSES (Estimated Allowance \$15,000.00)**

When incurred, the following project expenses will be billed at cost plus 15% administrative fee in addition to the above professional services fee:

- Printing, plotting, copying, scanning, photography, graphic expenses
- Delivery, shipping, and handling of documents
- Permits, plan check, and inspection fees
- City business license
- Soils testing

**PAYMENTS**

Payments are due and payable on a monthly basis following the completion of any substantial phase of work. Carrying charges for overdue accounts beyond 30 days of billing date are charged at 1½% of the amount due, compounded monthly.

**ADDITIONAL SERVICES**

Professional services not specifically identified in the scope of work will be considered additional services and may be performed at Client's request, reimbursable at Consultant's standard hourly rates. Additional services may include, but are not limited to:

- Additional meetings, presentations, or site visits beyond those identified in the scope of work.
- Exhibit preparation beyond that identified in the scope of work.
- Revisions to documents required as a result of changes in Client's direction; changes subsequent to Client's approval; or changes in governmental codes or regulations.

- Design of improvements beyond the designated project site, or due to changes in project phasing schedule.
- Specialized billing or accounting forms, invoices, spreadsheets.
- Engagement of other consultants not specifically identified below.

#### CONSULTANTS' HOURLY RATES

Compensation for additional services will be billed hourly at our standard rates\* below:

<b>RJM DESIGN GROUP, INC.</b>	
Principal Landscape Architect	\$195 per hour
Associate Landscape Architect	\$175 per hour
Landscape Architect	\$155 per hour
Job Captain / Landscape Designer	\$140 per hour
CADD Technician / Graphics	\$125 per hour
Clerical	\$85 per hour
<b>CIVTEC (CIVIL ENGINEERING/SURVEY)</b>	
Principal	\$185 per hour
Project Manager	\$150 per hour
Project Engineer	\$125 per hour
Project Surveyor	\$120 per hour
Design Engineer	\$100 per hour
Draftperson	\$75 per hour
Project Assistant	\$60 per hour
2-Man Survey Crew	\$265 per hour
3-Man Survey Crew	\$345 per hour
<b>FBA ENGINEERING</b>	
Principal / Project Director	\$210 per hour
V.P. / Senior Associate	\$160 per hour
Associate / Project Manager	\$160 per hour
Construction Support	\$135 per hour
Electrical Designer	\$110 per hour
CAD / BIM Designer	\$90 per hour
Technical Typist	\$50 per hour
<b>GLASIR</b>	
On-Site Consulting	\$135 per hour
Irrigation Designer	\$110 per hour
Plan Check	\$110 per hour
<b>PHIL MARTIN ASSOCIATES</b>	
Environmental Consulting	\$175 per hour

<b>HARTZOG &amp; CRABILL</b>	
Expert Witness / Deposition	\$285 per hour
Litigation Consultation	\$255 per hour
Two-Person Survey Crew	\$255 per hour
Litigation Field Evaluation	\$230 per hour
Principal Consultant	\$175 per hour
Project Manager	\$165 per hour
Registered Land Surveyor	\$160 per hour
Senior Engineer	\$150 per hour
Storm Water Permit Compliance Engineer	\$150 per hour
Associate Engineer	\$145 per hour
Construction Manager	\$135 per hour
Traffic Signal System Supervisor	\$135 per hour
Mural Artist	\$135 per hour
Senior Designer	\$130 per hour
Traffic Signal Systems Specialist	\$125 per hour
Assistant Engineer	\$120 per hour
Draftsperson	\$100 per hour
Technician	\$85 per hour
Word Processor	\$70 per hour
Clerical	\$55 per hour

\*Charges for subconsultant services are billed at cost plus a 15% coordination fee.

Billings for all time and materials and contract extension work shall be in accordance with the level of work performed based on the categories listed above.

Hourly rates will be escalated each August 1st in accordance with any increase in the Consumer Price Index or other mutually agreed upon cost index, beginning with August 1, 2022. Provisions for fee escalation pertain to all contract extensions and additional work.

**Attachment: B**

*Click here to return to the agenda.*

# **Dog Park Consulting Design Services**

City of Stanton

December 22, 2021



**RJM** DESIGN GROUP

# Table of Contents

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# Cover Letter

31591 Camino Capistrano  
San Juan Capistrano, CA 92675  
www.RJMdesigngroup.com  
[949] 493-2690 *fax*  
[949] 493-2600 *phone*



December 22, 2021

Joe Ames  
Public Works Director, City Engineer  
City of Stanton  
7800 Katella Avenue  
Stanton, CA 90680

**Re: PROPOSAL FOR DOG PARK CONSULTING DESIGN SERVICES**

Dear Mr. Ames:

We are celebrating 34 years of successful business this year. As an established house of design, our team has a proven track record of managing highly sophisticated, multipurpose projects with excellent attention to detail. RJM partners with the best consultants to deliver unparalleled service. By thoughtful organization, we are confident in developing a successful dog park in the City of Stanton that will maximize the use of space and address current opportunities. This new dog park will bring the dog owner community together and provide a place for the betterment of health and wellness for dogs and dog owners.

Our unique process combines the collective talents and information available from the City of Stanton and key stakeholders. Due to the nature of this project, our team's expertise encompasses dog park planning and design, neighborhood-based workshops, and creating community inspired spaces. We are enthusiastic about this opportunity and would be honored to help Stanton's vision for a new dog park become a reality.

In accordance with the requirements set forth in the City's RFP, the following statements are provided:

- RJM Design Group has thoroughly examined the work required within this RFP and is capable of performing quality work to achieve the objectives of the City.
- RJM Design Group has received and acknowledges Addendum No. 1, dated November 23, 2021.
- This proposal is valid for a period of 90 calendar days from the date of this letter.
- All information submitted within this proposal is true and correct.

Sincerely,  
RJM Design Group, Inc.



Larry P. Ryan ASLA  
Principal

## Qualifications, Relevant Experience, & References



Established in 1987, RJM Design Group has evolved into a multi-disciplinary landscape architectural, planning, and design firm committed to serving the needs of cities, public agencies, and organizations throughout California. RJM is comprised of talented individuals with varied backgrounds and interests. Among these dynamic professionals are licensed landscape architects, designers, and planners, most of whom are LEED Accredited Professionals. Each person brings a unique, yet complementary experience and passion to the firm, who will be dedicated to the duration of the project as needed.

<b>Firm Legal Name</b>	<b>RJM Design Group, Inc.</b>
<b>Type of Business</b>	<b>California Corporation, SBE</b>
<b>Number of Years in Business</b>	<b>34 Years (Since 1987)</b>
<b>CA Business License Number</b>	<b>12483</b>
<b>Contact Information</b>	<b>(949) 493-2600</b>
<b>List of Owners</b>	<b>Larry P. Ryan – President, <a href="mailto:larryr@rjmdesigngroup.com">larryr@rjmdesigngroup.com</a> Zachary Mueting – Secretary, <a href="mailto:zach@rjmdesigngroup.com">zach@rjmdesigngroup.com</a></b>
<b>Principal Contact</b>	<b>Larry P. Ryan / <a href="mailto:larryr@rjmdesigngroup.com">larryr@rjmdesigngroup.com</a></b>
<b>Office Location</b>	<b>31591 Camino Capistrano, San Juan Capistrano, CA 92675</b>
<b>Firm Size</b>	<b>16 Personnel</b>
<b>Personnel</b>	<b>(10) Licensed Landscape Architects, Project Managers (5) Technical Support (4) Administrative Support (3) LEED Accredited Professionals (2) Certified Arborists</b>



Redhawk Dog Park • Temecula, CA (RJM Project)

## Qualifications, Relevant Experience, & References

RJM Design Group's design approach is based upon our growing experience in successful dog park design projects, including:

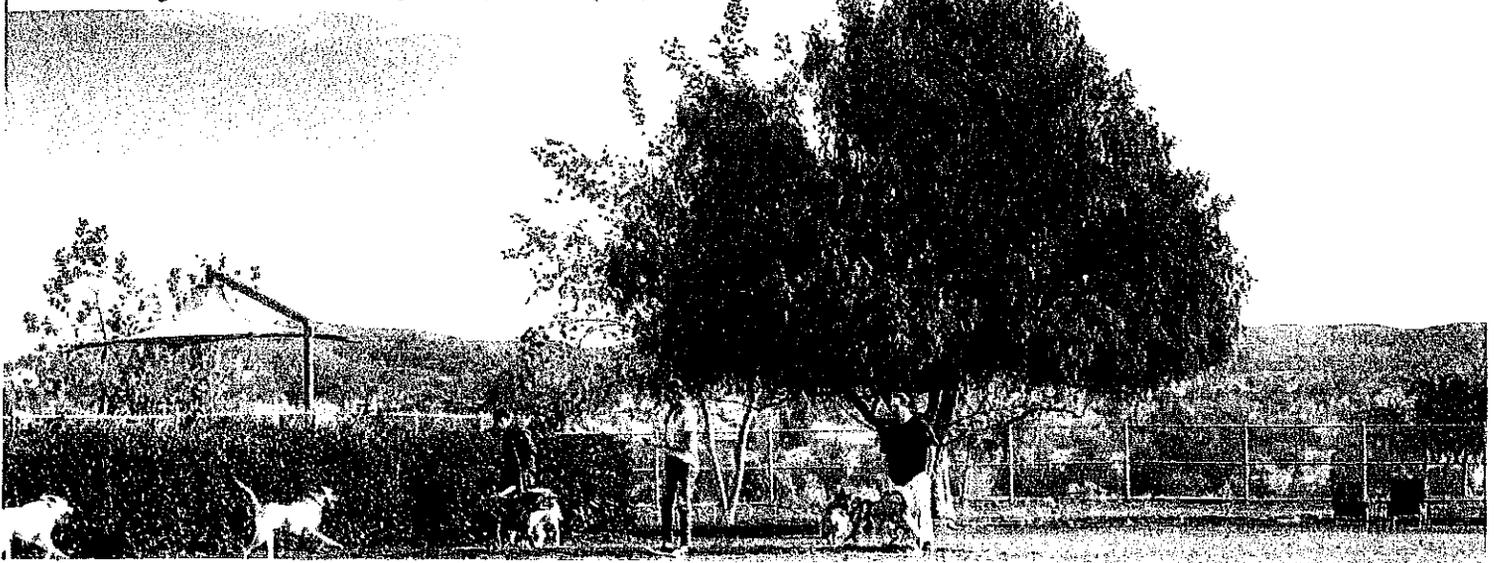
- La Paws Park in the City of Mission Viejo
  - 2014 APWA Project of the Year
  - 2015 OC Register Peoples Choice Award for Best Dog Park in Orange County
  - 2019 Los Angeles Times Reader Choice Award for Favorite Dog Park
- Portola Dog Park in Lake Forest
- Dali Dog Park in Los Angeles
- College Park Dog Park in Oxnard
- Redhawk Community Park Dog Park in Temecula
- Pooch Park Renovation in Laguna Niguel
- Maggie Houlihan Memorial Dog Park in Encinitas

Our approach in providing dog park design services to meet the client's needs focuses on an interactive process between City staff, the dog owning community, and RJM Design Group. Our proposed methodology is both efficient and effective, and our key team members are well-equipped to undertake the work proposed in this RFP. RJM Design Group is in good financial standing, with no record of bankruptcy, pending litigation, or other adverse conditions.

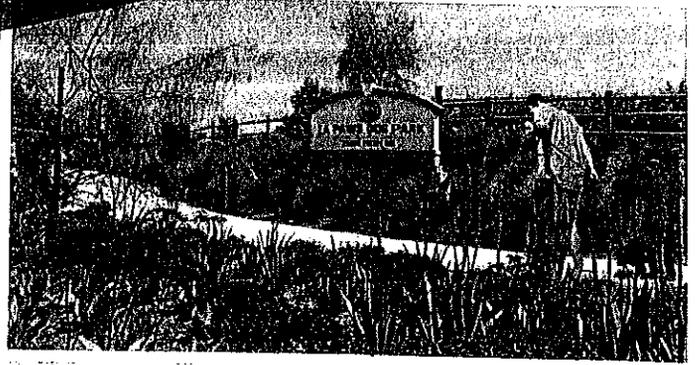
The design elements described below highlight our current dog park design thought process. We are open to new ideas and input based on the needs of the City of Stanton and the specific needs of your dog park site.

- Meet with City staff, residents, and representatives of special interest groups to discuss and gather information on park wants and needs.
- Review City park planning, policies, and regulations.
- Develop list of dog park site design and improvement criteria based on input from City staff and community groups.
- Evaluate potential site amenities such as large vs. small dog areas, fencing, surfacing, site furnishings, dog play equipment, and walking path.
- Provide double entry/exit gate system to minimize pet confrontations.
- Locate "center of activity areas" away from entry/exit gate.
- Provide shade, seating areas, posted park rules, signage and lighting.
- Assess site design compliance with ADA rules and regulations.
- Review site maintenance program (i.e. waste pick up, dust control, surfacing issues, landscaping)

La Paws Dog Park • Mission Viejo, CA (RJM Project)



## Project Experience



## La Paws Dog Park

Mission Viejo, CA

Start/End Dates: Jan 2012 - Jan 2014  
Project Size: 6 acres  
Design Cost: \$35,500  
Construction Cost: \$1.1M

Client Reference  
Keith Rattay, Assistant City Manager  
City of Mission Viejo  
200 Civic Center Drive  
Mission Viejo, CA 92692  
(949) 470-3018  
[krattay@cityofmissionviejo.org](mailto:krattay@cityofmissionviejo.org)

### Project Summary

La Paws Dog Park, Mission Viejo's signature dog park, is six-acres and boasts three separate areas for large, small and single dog areas. The park also includes a gravel parking lot that accommodates up to 42 vehicles.

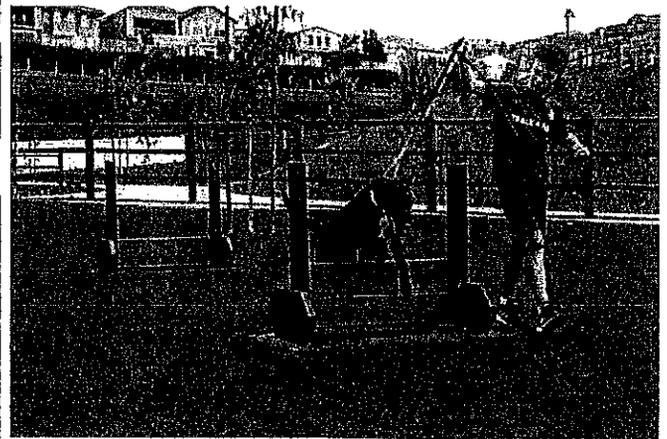
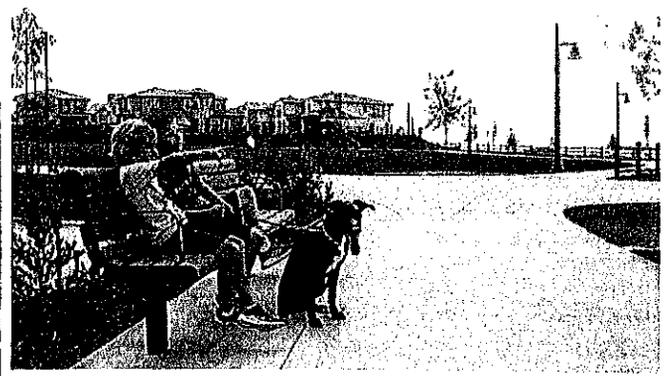
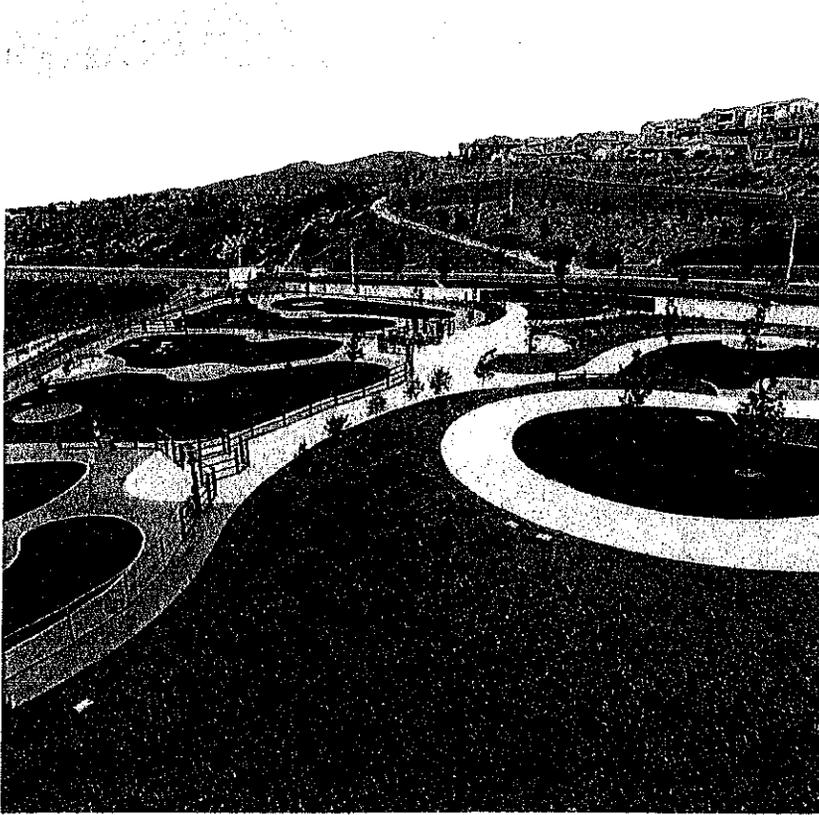
Dogs can run freely on the large, flat expanses of turf within each area or be led by their humans on the decomposed granite paths along the fences. The areas are divided by 4-rail lodgepole fencing, covered with steel mesh.

Seating areas and shade structures throughout the park offer venues for socialization and relaxation. The main entry plaza has an open, decomposed granite multi-use area for special events. A walking trail circles the perimeter of the dog park, offering views into the park as well as panoramic vistas of the mountains and naturally vegetated slopes and ravines.

### Project Team

Principal: Larry P. Ryan  
Project Manager: Pamela Burton





# Portola Dog Park

Lake Forest, CA

Completion Date: 2020  
Project Size: 1.4 acres  
Design Cost: \$312,500  
Construction Cost: \$1M

Client Reference  
Debra Rose, City Manager  
City of Lake Forest  
25550 Commercentre Drive, Suite 100  
Lake Forest, CA 92630  
(949) 461-3414  
drose@lakeforestca.gov

## Project Summary

The Portola Park Dog Park is an approximately 37,000 square foot dog recreation area, accessed via a meandering pathway from the larger Portola Park. The dog park is split into three separate areas for large, small, and single dog use. Decomposed granite paths circle the perimeter of the play areas for easy access and viewing opportunities for pets and owners alike.

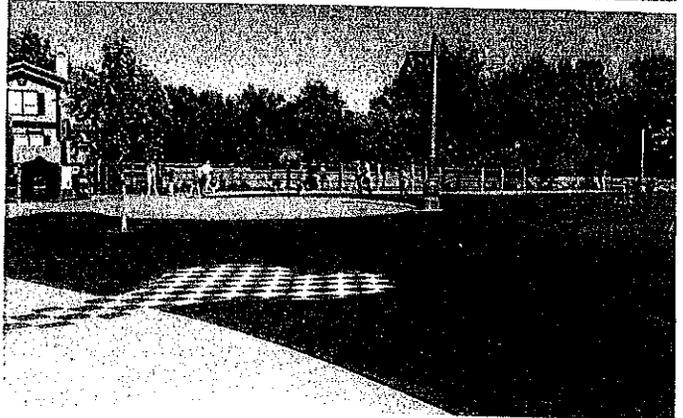
Each section of the dog park contains shaded bench seating centrally located for optimal viewing. A drinking fountain and waste receptacle is also provided in each area. The park includes large open play space with plenty of shaded rest spots along the perimeter. Agility equipment allows dog owners to exercise their dogs mentally as well as physically.

## Project Team

Principal: Larry P. Ryan  
Project Manager: Craig Sensenbach  
Andrew Steen



## Project Experience



# Maggie Houlihan Memorial Dog Park

Encinitas, CA

Completion Date: 2015  
Project Size: 2 Acres  
Design Cost: \$ 66,000  
Construction Cost: \$608,000

Client Reference  
Chris Hazeltine  
Director Currently at the City of Poway  
(858) 668-4501

## Project Summary

Maggie Houlihan Dog Park was named after Maggie who was a Mayor and Councilmember who was adamant about the dog park. It is located in the 44 acre Encinitas Community Park in San Diego County.

Several community workshops were held to develop this large park and having a dog park was essential to the community. During the design phase, RJM met with several members of P.A.W.S. to develop a list of criteria that was important to them. One item was a multi-functional 100' x 100' turf area that could be used for dog events. The dog park includes a water treatment area to cleanse the storm water before going down stream. Other amenities including wayfinding dog paws of different sizes that lead visitors to the dog's respective areas: large dogs, small dogs, and first timers. The three different areas provide dog owners with options that are best for their dogs.

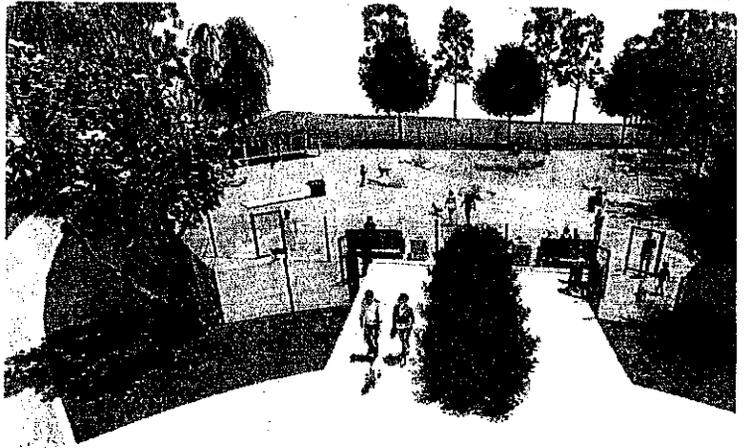
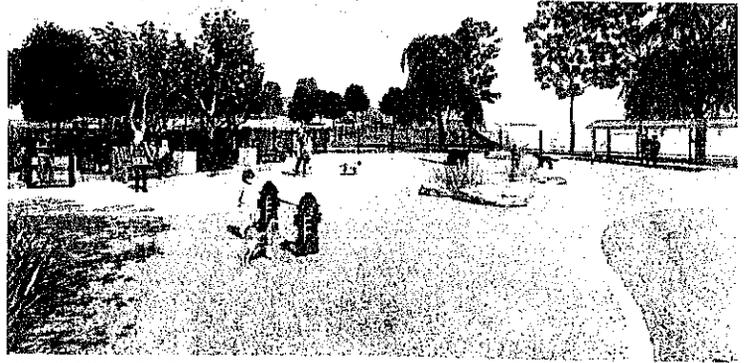
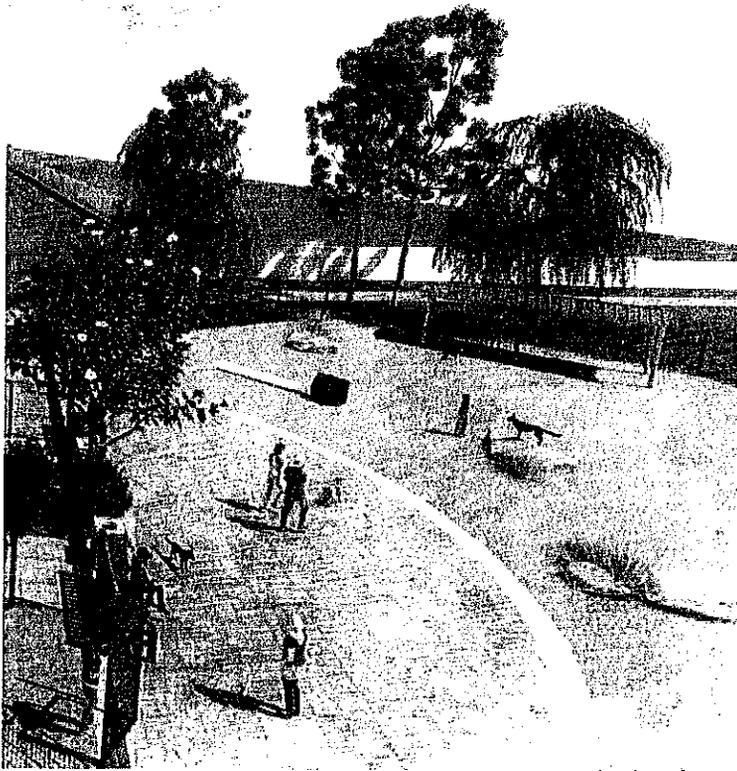
Entry vestibules made to look like dog houses help secure the leashing event, near these are drinking fountains, dog waste stations and rules for the dog park. There is an information kiosk just outside the entrance where news and information can be posted. Inside the big dogs area there is a looped walkway complete with a dog bone finish line, a dog playground, benches, and large gazebo type structure for social gathering.

## Project Team

Principal: Larry P. Ryan  
Project Manager: Eric Chastain

6 | City of Stanton • Dog Park Consulting Design Services





# Dali Dog Park at Schabarum Regional Park

Los Angeles, CA

Completion Date: 2021  
Project Size: 2 Acres  
Design Cost: \$148,000

Client Reference  
Diane Silva, Park Project Coordinator  
LA County Department of Parks and Recreation  
1000 S. Fremont Ave., Unit #40  
Alhambra, CA 91803  
(626) 588-5331 | [dsilva@parks.lacounty.gov](mailto:dsilva@parks.lacounty.gov)

## Project Summary

Out of all the overwhelming requests from the community of Rowland Heights, the Dog Park at L.A. County's Peter S. Schabarum Regional Park was put up front on the list of park improvements requested of the L.A. County Parks & Recreation Department. Through extensive planning, the dog park location was selected on the northwest side of the 575 acre park. Conceptual design was formulated during planning review with RJM Design Group. A 3-dimensional graphic of the dog park area was then presented to the community and was well-perceived. One request from the community was to name the park "Dali Dog Park".

Construction documents were prepared and expedited to meet a park opening date of December 2021. Construction began in June 2021 and is on schedule to be delivered by the end of the year.

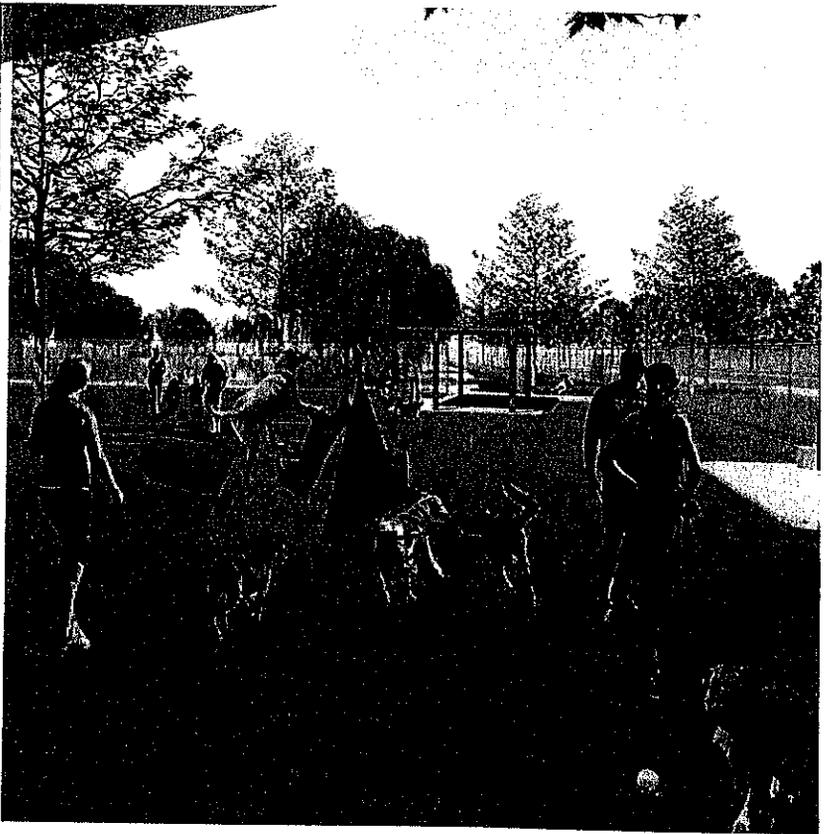
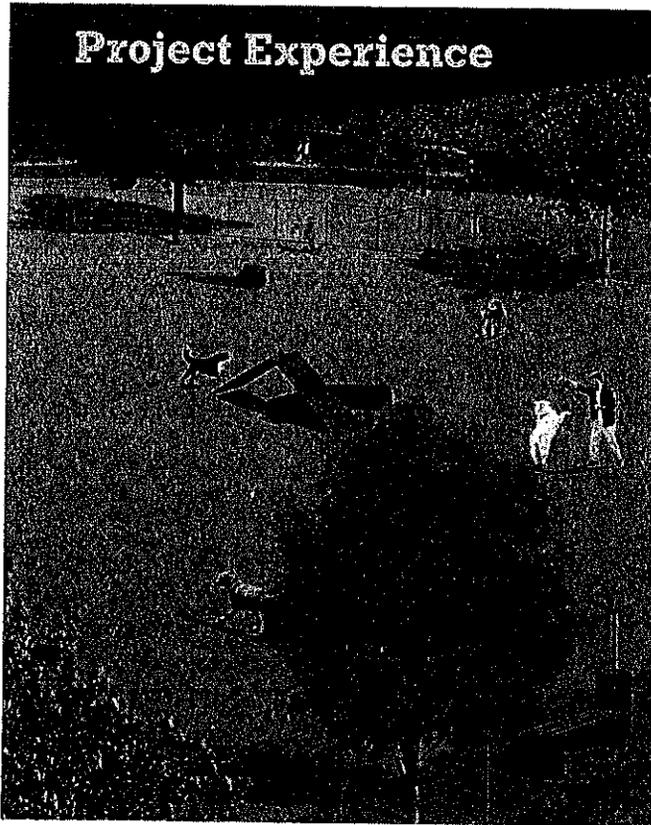
Design enhancements include a small and large dog park area with similar amenities in both such as: shade covers, seating areas, benches, dog agility equipment, large boulders for dog play, as well as drinking fountains (for both dogs and owners), waste stations, real grass, decomposed granite, play spaces, and separate vestibules for arriving and exiting the dog park areas.

## Project Team

Principal: Eric Chastain  
Project Manager: Tyler Page



## Project Experience



# Mira Mesa Community Park

San Diego, CA

Completion Date: January 2022 (tentatively)  
Project Size: 25.24 acres  
Design Cost: \$113,400  
Construction Cost: TBD

Client Reference  
Ryan Green  
VP of Land Acquisition  
Cal Atlantic Homes  
(858) 618-4933

## Project Summary

This large-scale community park project is located in the new planned-unit development community of Mira Mesa within the greater City of San Diego. This community park, once complete, will serve the entire Mira Mesa region, providing overlapped lighted fields for underserved local sports leagues.

The park is currently in the preliminary planning stages, and is intended to be constructed in phases, as funding allows. The comprehensive park will include multiple baseball and softball fields, multi-use fields for soccer, football, and lacrosse, basketball courts, multiple play areas, sectioned dog parks, comfort and concession stations, as well as a complete 20,000 square foot Recreation/Community Center with ample parking for visitors.

With limited space and an irregular shaped parcel, RJM masterfully weaved the much desired dog park into the overall design, separating large and small dogs, as well as providing a run for high energy, playful canines. The dog park amenity was planned with a plaza for small ceremonies and events, controlled access into each area, and dog agility features throughout.

## Project Team

Principal: Larry P. Ryan  
Project Manager: Andrew Steen



# Proposed Team

City of  
Stanton

Larry P. Ryan  
Principal  
RJM Design Group

Craig Sensenbach  
Principal  
Project Manager  
RJM Design Group

Andrew Steen  
Landscape Architect  
RJM Design Group

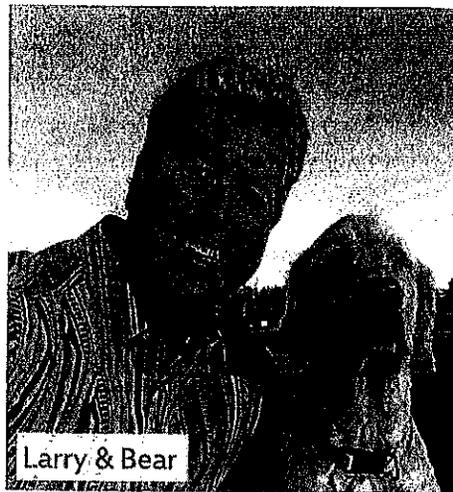
Tom Carcelli  
Civil Engineer  
civTEC

Bill Zavrnsnik  
Electrical  
Engineer  
FBA

Chris Curry  
Irrigation  
Glaser

Jerry Stock  
Traffic Engineer  
Hartzog & Crabill

Phil Martin  
Environmental  
Consultant  
Phil Martin Assoc.



Larry P. Ryan  
PLA, ASLA  
Principal-in-  
Charge  
RJM Design  
Group, Inc.  
Larry Ryan's  
passion for creating  
meaningful public  
spaces for people to  
enjoy led him to co-  
found RJM Design  
Group over 34 years  
ago. The long-

term relationships that he develops and maintains with clients, spans decades. He has worked with numerous communities throughout California and Nevada, where his project involvement encompasses all phases of development for our municipal clients.

## Licenses

- Landscape Architect / CA 2502 / AZ 25241 / NV 366 / OR 1072 / ID 16919

## Education

- Bachelor of Science, Landscape Architecture, CA Polytechnic State University, Pomona

## Dog Parks

- Dog Park at College Park Community Park, Oxnard, CA
- La Paws Dog Park, Mission Viejo CA
- Maggie Houlihan Memorial Dog Park, Encinitas, CA
- Orchard Park Dog Run, Irvine, CA
- Portola Dog Park, Lake Forest, CA
- Redhawk Dog Park, Temecula, CA

## Parks

- Alicia Park, Mission Viejo, CA
- Aurora Park, Mission Viejo, CA
- Bonita Creek Park Renovation, Newport Beach, CA
- Cesar E. Chavez Park, Long Beach, CA
- College Park, Oxnard, CA
- Florence Joyner Olympiad Park, Mission Viejo, CA
- Grant Howald Park, Newport Beach, CA
- Mariners Park Renovation, Newport Beach, CA
- Portola Park, Lake Forest, CA

## Proposed Team (continued)



Craig & Beau

Craig Sensenbach  
PLA, LEED AP  
(BD+C), ISA  
Principal Project  
Manager  
RJM Design Group,  
Inc.

Craig Sensenbach  
joined RJM Design  
Group, Inc. as a  
Project Manager in  
the Fall of 1993. As  
Project Landscape

Architect, his responsibilities include both planning and landscape architecture ranging from conceptual planning studies through schematic design, preliminary graphics, design development, production scheduling, preparation of construction documents, client/consultant coordination and on-site observation.

### Licenses

- Landscape Architect / CA 2547
- LEED Accredited Professional
- International Society of Arboriculture (ISA) Certified Arborist / WE-11716A

### Education

- Bachelor of Science, Landscape Architecture, California Polytechnic State University, San Luis Obispo, CA

### Dog Parks

- Margarita Recreation Center Dog Park, Temecula, CA
- Portola Dog Park, Lake Forest, CA
- Orchard Park Dog Run, Irvine, CA
- Redhawk Dog Park, Temecula, CA

### Parks

- Bonita Creek Park Renovation, Newport Beach, CA
- Chino Hills Community Park, Chino Hills, CA
- College Park, Oxnard, CA
- Colonel Bill Barber Marine Corps Memorial Park, Irvine, CA
- Grant Howald Park, Newport Beach, CA
- Mariners Park Renovation, Newport Beach, CA



Andy & Ashes

Andrew Steen  
LLA,  
Certified Arborist  
Project Manager  
RJM Design Group,  
Inc.

Andy Steen has  
been a part of  
RJM Design Group  
since 2014. He is a  
licensed landscape  
architect and certified  
arborist, with a  
strong background

in landscape materials, construction, and detailing. With over 18 years of experience designing parks and community facilities, Andy has a unique way of blending old techniques with modern design ideas. He has served as Project Manager on many park design projects. Andy offers organizational, communication, and team coordination skills that contribute to the success of any project large or small.

### Licenses

- Landscape Architect/ CA 5858
- Certified Arborist WE-9969A
- Tree Risk Assessment Qualification
- FAA Certified UAV

### Education

- Bachelor of Science, Environmental Planning & Design, Landscape Architecture, Rutgers University, State University of New Jersey

### Animal Facilities

- Big Bear Alpine Zoo, San Bernardino County, CA
- OC Animal Care Facility, Tustin, CA
- The Living Desert, Palm Desert, CA

### Parks

- Cherry Park, Lake Forest, CA
- Cordova Park, Mission Viejo, CA
- Mira Mesa Community Park, San Diego, CA
- Murdy Park, Huntington Beach, CA
- Nottoli Community Park, Sacramento, CA
- Pinehurst Park, Chino Hills, CA
- Portola Park, Lake Forest, CA
- Worthy Park, Huntington Beach, CA
- Yorba Linda Adventure Playground, Yorba Linda, CA

Tom Carcelli  
Civil Engineer  
civTEC



Tom Carcelli has over 25 years of experience in the civil engineering field with particular emphasis on parks and recreation, commercial/industrial, education and public works projects. His extensive design and management experience in all phases of civil engineering for land development projects throughout Southern California includes grading, water quality, hydrology, hydraulics, storm drain, water/sewer, survey/mapping and street design. Tom has been in charge as a project manager on over 100 projects from master planning to construction with RJM Design Group over the past 20 years.

Education

- BS, Civil Engineering, University of California, Irvine, 1988
- Masters in Architecture, California State Polytechnic University, Pomona, 1994

Licenses

- Registered Civil Engineer/CA #81640
- Qualified SWPPP Developer (QSD) – C-81640

Dog Parks

- Dali Dog Park, Rowland Heights, CA
- La Paws Dog Park, Mission Viejo CA
- Portola Dog Park, Lake Forest, CA

Parks

- Bommer Canyon Community Park, Irvine, CA
- Cordova Park, Mission Viejo, CA
- Esencia Sports Park, Rancho Mission Viejo, CA
- Grand Avenue Park, Chino Hills, CA
- Grant Howald Park, Newport Beach, CA
- Joe Balderrama Park, Oceanside, CA
- Los Serranos Park, Chino Hills, CA
- Multiple Park Improvements, Lake Forest, CA
- Murdy Park, Huntington Beach, CA
- Santa Clarita Central Park, Santa Clarita, CA
- Santa Monica Sports Field, Santa Monica, CA
- Veterans Memorial Park, Carlsbad, CA
- Yorba Linda Adventure Playground, Yorba Linda, CA

William Zavrnsnick LEED **FBA ENGINEERING**  
APLLA, ASLA  
Electrical Engineer  
FBA Engineering

William Zavrnsnick has 30 years of experience and has been active in the electrical engineering field since joining FBA in 1985. His experience includes the electrical design of Public Works, Parks and Recreation Facilities. He is particularly experienced in the design and development of electrical power distribution, general, specialized and event power systems, outdoor, security and sports field lighting systems, lighting photometric studies, phased construction projects and familiar with public bid type projects and construction.

Education

- BS Civil Engineering/Mount Hood College, Oregon

Certifications

- LEED Accredited Professional – LEED AP
- Illuminating Engineering Society – IES
- Institute of Electrical and Electronic Engineers – IEEE American Institute of Architects – AIA
- Electrical Engineering – Los Angeles County

Relevant Project Experience

- Adventure Play Area, Yorba Linda, CA
- Anthony Munoz Community Park, Ontario, CA
- Bommer Park Rehabilitation, Irvine, CA
- Esencia Sports Park and Aquatic Recreational Facility, Rancho Mission Viejo, CA
- Ford Park Aquatic Center, Bell Gardens, CA
- Fullerton Community Center, Fullerton, CA
- Laguna Hills City Parks, Laguna Hills, CA
- Los Serranos Park, Chino Hills, CA
- Portola Dog Park, Lake Forest, CA
- Rynerson Dog Park, Lakewood, CA
- Whittier Dog Park, Whittier, CA
- Worthy Park Renovation, Huntington Beach, CA

## Proposed Team (continued)

Chris Curry

Irrigation

Glasis Design

**GLASIR DESIGN**

Chris Curry has over 15 years experience in irrigation design, landscape architecture, and landscape construction. His focus is on the efficient use of water in the landscape. He has been rewarded for his efforts by being chosen by the United States Environmental Protection Agency as the WaterSense Irrigation Partner of the year for 2011. The fact that he is only the second irrigation design consultant chosen for this award is a testament to his commitment to the environment through sound water conservation practices. Mr. Curry is a leader in the irrigation industry; his expertise is called upon by manufactures, cities, and water districts. He has designed irrigation systems ranging from custom residential to multi-phase master planned communities containing over 2,200 homes. His designs have included low flow drip irrigation; high flow sports fields with pumps; slopes for Caltrans; and temporary irrigation systems for wetlands reclamation. Mr. Curry's experience also includes in-house irrigation design and construction oversight for a large design build contractor in Southern California.

### Education

- B.S. Landscape Irrigation Science / California Polytechnic University, Pomona, California

### Licenses

- US Environmental Protection Agency (EPA) WaterSense Irrigation Partner - Selected the 2011 EPA WaterSense Irrigation Partner of the year
- Professional Member of the American Society of Irrigation Consultants - 2011 Southern California Chapter President
- Irrigation Association (IA) Certified Irrigation Designer (CID) Landscape and Golf Sections
- IA Certified Landscape Irrigation Auditor (CLIA)

### Related Project Experience

- Fillmore Aquatics & Tennis Complex, Fillmore, CA
- Santa Clarita Sports Complex & Aquatic Center, Santa Clarita, CA
- Redhawk (Dog) Park Improvements, Temecula, CA
- Central Park Master Plan Revision, Rancho Cucamonga, CA
- Lake Forest Sports Park, Lake Forest, CA
- Willow Heights Residential in Diamond Bar, Lennar Homes
- Drake Soccer Field, Long Beach, CA
- Bonita Creek Field Renovation, Newport Beach, CA
- North Beach Improvements, Lake Mission Viejo Association, CA
- Central Park Tennis Complex, Santa Clarita, CA
- Worthy Park Renovation, Huntington Beach, CA
- Admiral Kidd and Seaside Park Field Renovations, Long Beach, CA
- Los Amigos Park, Rancho Cucamonga, CA
- Portola Park & Dog Park, Lake Forest, CA
- Santa Monica Civic Center Sports Fields, Santa Monica, CA

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Phil Martin

Environmental Consulting

Phil Martin & Associates, Inc.



Phil Martin is the President of an environmental consulting firm that specializes in the preparation of environmental impact reports (EIR's) and Negative Declarations for public and private projects in compliance with the California Environmental Quality Act (CEQA). Recent experience includes the preparation of EIR's and other CEQA documents for specific plans, large shopping centers, a research and technology park, commercial projects, mixed-use projects. Mr. Martin's experience also includes the preparation of CEQA documents for redevelopment agencies in conjunction with the adoption of redevelopment plans, redevelopment plan mergers, redevelopment plan amendments and the extension of the authority to use eminent domain to acquire property. Mr. Martin has also prepared environmental documents for water and wastewater districts and cities to prepare CEQA documents for the construction of water and sewer lines, treatment plant expansion, water tanks, sewer lift stations, reclaimed water lines, etc. Mr. Martin has extensive experience hiring and managing sub-consultants such as traffic engineers, air quality and noise consultants, biologists, archaeologists, geologists, hazardous waste consultants, and hydrology engineers. Daily duties include the preparation of proposals, budget preparation, public hearing presentations, research and obtain information from local, state and federal agencies, evaluate and critique redevelopment plans, report writing, inter-face with government officials and politicians, marketing, etc.

### Education

- Kansas State University - Bachelor of Science - Life Science
- University of California, Irvine - Certificate in Urban Planning
- University of California, Irvine - Certificate in Light Construction & Development

### Related Project Experience

- Newcastle Park - City of Arcadia - Categorical Exemption
- Mission Viejo Lower Curtis Park - Dirt Import - City of Mission Viejo - Mitigated Negative Declaration
- McFadden Park Upgrades and Improvements - City of Santa Ana - Categorical Exemption
- 17th Street Park Improvements - City of Santa Ana - Categorical Exemption
- Mission Viejo Dog Park - City of Mission Viejo - Mitigated Negative Declaration
- Hunt Park - City of Riverside - Mitigated Negative Declaration
- Marty Russo Youth Athletic Park - City of Mission Viejo - Installation of baseball field lights - Negative Declaration
- City of Calimesa - Realignment and infill of Calimesa creek - Mitigated Negative Declaration and Environmental Assessment/Finding of No Significant Impact.
- Orange Grove Park Restoration and new Community Center - S. Pasadena - Mitigated Negative Declaration

Gerald Stock  
Traffic Engineering  
Hartzog & Crabill, Inc.

Mr. Stock is Executive Vice President with the consulting firm of Hartzog & Crabill, Inc. (HCI) in charge of city and traffic engineering services. He provides consulting to public agencies from both a technical and organizational perspective. Mr. Stock's background includes a broad array of municipal projects from project conception through completion. He has directed city staffs in both long-term capital project planning as well as the day-to-day activities associated with managing a municipal engineering department.

Mr. Stock's experience includes over (30) years of project management, capital improvement planning, design, and contract administration. He is well-versed in both the technical and the political challenges of municipal engineering activities.

#### Education

- 1989 BSCE, Civil Engineering, University of Colorado, Denver
- 1978 BS, Geology, California State University, Long Beach

#### Related Project Experience

- City of Bellflower, City Engineer and City Traffic Engineer
- City of Hermosa Beach, on-call Traffic Engineer
- City of Norwalk, in-house City Engineer
- Bellflower Blvd. Widening
- City of Laguna Hills, Intersection Widening Plan
- City of Laguna Hills, Engineering and Traffic Surveys for Speed Limits
- City of Laguna Niguel, Engineering and Traffic Surveys for Speed Limits
- City of San Juan Capistrano, Engineering and Traffic Surveys for Speed Limits
- City of Yorba Linda, Engineering and Traffic Surveys for Speed Limits
- City of Bellflower, Needs Assessment Major Corridor Study

*RJM's project team and key personnel will be available to the extent proposed for the duration of the required services. We acknowledge that no person designated as "key" shall be removed or replaced without prior written concurrence of the City.*



Dog Park at College Park • Oxnard CA (RJM Project)

# Scope of Services

## PHASE I – PROJECT FAMILIARIZATION

Phase I provides for the research and inventory phase of the project and the development of the design alternatives from which community meetings and subsequent design decisions will be based.

- a. Conduct kick-off meeting with the City of Stanton to review project scope and objectives, and to refine time schedules. Discuss the project's unique site features, adjacent development, and community sensitivities.
- b. Prepare site base for the project area in the AutoCAD program, with an aerial survey, providing two-foot contour intervals, and identifying the existing conditions of the site.
- c. Conduct a visual field investigation to photo document existing conditions including public entry points, potential parking areas, use analysis and an overall site layout in relation to the proposed preliminary dog park plan.

Meetings: One (1) Kick-off Meeting with City Staff  
One (1) Site Visit/Field Investigation  
Deliverables: Site Base Plan

## PHASE II – COMMUNITY INPUT & CONCEPTUAL DESIGN

As part of our outreach with residents, RJM will conduct workshops using the information synthesized from our project familiarization phase and provide the community with the opportunity to select the features and design the layout of the park. During this public outreach, the Design Team will also begin both the environmental document review for the California Environmental Quality Act (CEQA), as well as the Anticipated Use Study in respect to Traffic Engineering services, parking related issues, and pedestrian safety evaluations. These documents will be completed during the Phase III, Design Development portion of the project.

- a. Assist the City of Stanton with the facilitation of a community meeting to solicit feedback and gain a consensus. We anticipate this meeting to be an opportunity to obtain community input regarding the desired facilities of the dog park, using a design charrette format. Attendees will be given the opportunity to "design" the dog park on a project site plan with their desired amenities in a layout that best serves their needs as community members.
- b. The design team will then produce two (2) conceptual design layouts based off the community comments we received from the meeting. To accomplish this, the design team will overlay the concept plans produced in the workshop to create a composite conceptual plan. This composite plan be used to identify common themes when it comes to the types of features and amenities to be included in the plan, as well as their location, and relationship to other spaces within the site and adjacent existing park features.
- c. After the completion of the two (2) conceptual design layouts, the design team will meet with City staff and a City Council appointed ad-hoc committee to review the plans to provide the opportunity to discuss further refinement and definitively select the preferred layout of the two conceptual layouts.
- d. Once the preferred layout is selected, we will incorporate final comments on the conceptual design, and prepare a preliminary cost estimate. Concurrently, the design team will begin the preparation of a PowerPoint slide show for public/community presentation to the City Council or the Parks, Recreation & Community Services Commission.

Meetings: One (1) Community Meeting  
One (1) Review Meeting with City Staff and Ad-Hoc Committee  
One (1) Presentation to City Council or PRCS Commission  
Deliverables: One (1) Composite Plan  
Two (2) Color Rendered Conceptual Designs  
One (1) Refined Schematic Plan  
One (1) Cost Estimate  
One (1) PowerPoint Presentation

### PHASE III - DESIGN DEVELOPMENT

After the review meeting with City staff, RJM will incorporate comments and revisions into the Finalized Colored Conceptual Design on the City selected layout. Following the approval of the Finalized Design, the design team will commence design development of the construction documents, specifications, and an itemized cost estimate.

- a. Initiate the creation of design development plans which will include the layout of all onsite amenities, signage, lighting locations, landscape areas, as well as the infrastructure and utility locations and routing. These plans will be treated as the progress set for the formulation of the finalized construction documents to be used for contractor bidding.
- b. Development of conceptual grading plans by the civil engineer on the design team. This will include all drainage infrastructure necessary to retain all stormwater within the park site.
- c. Begin the preparation of the technical specifications for the construction of all on-site elements to coincide with the finalized construction documents issued for bidding.

Meetings:        One (1) Review Meeting with City Staff at 60% progress of Design Development documents.  
                      One (1) Review Meeting with City Staff at 90% progress of Design Development documents.

Deliverables:    One (1) Design Development 60% Progress Set  
                      One (1) Design Development 90% Progress Set  
                      One (1) Anticipated Use Study  
                      One (1) CEQA Categorical Exemption

### PHASE IV - CONSTRUCTION DOCUMENTS

Following the complete review of the Design Development 90% Progress Set, the design team will incorporate all comments received to finalize the completion of the Construction Documents. A biddable set of documents will be presented to the City, including plans, technical specifications and an itemized cost estimate. RJM will provide the complete set of electronic native files and PDF versions, along with signed mylars with full approval from the City.

Deliverables:    One (1) 100% Complete Construction Document Set  
                      One (1) 100% Complete Technical Specifications  
                      One (1) Itemized Cost Estimate  
                      One (1) Set of Signed Mylar Sheets  
                      Complete Set of Electronic Files in PDF & Native Formats

### PHASE V - BIDDING SUPPORT & CONSTRUCTION ADMINISTRATION

Once the City is ready to take the project out to bid, RJM will assist the City in providing the required technical information within the scope of work prepared by the design team. In the bid package, a date will be set for all questions concerning the project from perspective bidders to be received, and the Design Team will prepare answers for questions related to the design to be distributed to bidders a minimum of 5 days before construction bids are due. If necessary, the design team will prepare project addendums during the bid period to clarify design issues for distribution to perspective bidders.

After the construction contract has been awarded to a general contractor, RJM will provide construction administration services to ensure the project is installed as designed. The design team will respond to requests for information (RFI's) and review the required project material submittals from the contractor for conformance to the project and City's requirements. Depending upon the schedule and frequency of construction meetings, RJM will attend on a regular basis to confirm the project is installed with the same design intent in order to protect the City's interests in the finished quality of their newest public amenity. These services will be provided on an hourly, as needed basis.

# Schedule

CITY of STANTON		PROJECT SCHEDULE																																					
STANTON DOG PARK		FEB				MAR				APR				MAY				JUN				JUL																	
		1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4										
<b>Phase I: Project Familiarization</b>																																							
A	Award of Contract																																						
B	Meet with City Staff to Review Scope, Schedule, etc.																																						
C	Site Base Plan Preparation																																						
D	Visual Field Investigation																																						
<b>Phase II: Community Input &amp; Conceptual Design</b>																																							
A	Community Meeting - Design Charette																																						
B	Preparation of Two (2) Color Conceptual Designs																																						
C	Review Meeting with City Staff and Ad-Hoc Committee																																						
D	Preparation of Refined Conceptual Design for City Selected Layout																																						
E	CEQA Document Preparation																																						
F	Anticipated Use Study																																						
<b>Phase III: Design Development</b>																																							
A	Preparation of Design Development 60% Progress Set																																						
B	60% Progress Set Review Meeting with City Staff																																						
C	Preparation of Design Development 90% Progress Set																																						
D	90% Progress Set Review Meeting with City Staff																																						
<b>Phase IV: Construction Documents</b>																																							
A	Completion of 100% Construction Document Set, Specifications & Estimate																																						
B	City Approval of Complete Project Plan Set																																						

 Community Meetings (Key Date)  
 Meetings with City of Stanton  
 Bidding & Construction Administration Omitted (Hourly as Needed)

## Contract Exceptions

RJM DESIGN GROUP, INC. has established a reputation of integrity and professionalism within our industry. Our due diligence in performing client services begins with our proposal preparation, contract review and negotiation, and carries through to project completion.

We have reviewed the Professional Services Agreement for the Dog Park Consulting Design Services project with the City of Stanton. As part of this review, we identify items which may not conform to the terms of our insurance coverage and/or to California Civil Code section 2782.8 which regulates contracts between public agencies and design professionals. Upon selection for this project, we would like to discuss the following requested changes pertaining to the Professional Services Agreement. All suggested additions and/or deletions to the contract language are in blue.

*Page 3 - 3. Terms, 3.2 Responsibilities of Consultant, 3.2.8. Standard of Care: Performance of Employees, (line 5):*

... necessary to perform the Services. Consultant warrants represents that all employees and subconsultants.....

*Page 10 - 3. Terms, 3.5 General Provisions, 3.5.6. Indemnification, (lines 1-2):*

To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify, and hold the City....

# Proposal Acknowledgement Form



## EXHIBIT B

### PROPOSAL ACKNOWLEDGEMENT FORM

The Proposer hereby acknowledges receipt of addenda number(s) 1, if any.

**By signing below, the Proposer agrees to all terms and conditions in this RFP, except where expressly described in the Proposer's Services Proposal.**

	<u>33-0254945</u>
Original Signature by Authorized Officer/Agent	Vendor's Tax ID Number (FEIN)
<u>Larry P. Ryan</u>	<u>RJM Design Group, Inc.</u>
Type/Print Name of Signatory	Company Name
<u>President</u>	<u>949-493-2600</u>
<u>Title</u>	<u>Phone Number</u>
<u>31591 Camino Capistrano</u> <u>San Juan Capistrano, CA 92675</u>	<u>949-493-2690</u>
<u>Consultant Mailing Address</u>	<u>Fax Number</u>
<u>Form of Business (mark one of the following):</u>	<u>www.RJMdesigngroup.com</u>
<input type="checkbox"/> Sole Proprietor/Individual	Website Address
<input type="checkbox"/> Partnership	<u>rjm@rjmdesigngroup.com</u>
<input checked="" type="checkbox"/> Corporation	E-mail Address
<input type="checkbox"/> Limited Liability Company (LLC)	
If a corporation, the State where it is incorporated: <u>CA</u>	



*Community Inspired Spaces*

RJM Design Group, Inc.  
31591 Camino Capistrano  
San Juan Capistrano, CA 92675  
rjm@rjmdesigngroup.com  
www.RJMdsgngrp.com  
[949] 493-2690 *fax*  
[949] 493-2600 *phone*

**Attachment: B**

*Click here to return to the agenda.*

# **Fee Proposal Dog Park Consulting Design Services**

City of Stanton

December 22, 2021



**RJM** DESIGN GROUP

# City of Stanton

## Stanton Dog Park

		LEAD CONSULTANT					
		RJM Design Group					
Task Description	Principal		Landscape Architect		CADD Technician		
	Hourly Rate						
	Hours	Amount	Hours	Amount	Hours	Amount	
<b>PHASE I - Project Familiarization</b>							
Task 1 - Kickoff Meeting	4	\$780	4	\$620		\$	
Task 2 - Preparation of Base / Survey		\$0	8	\$1,240		\$	
Task 3 - Site Visit	4	\$780	4	\$620		\$	
PHASE I - SUBTOTALS	8	\$1,560	16	\$2,480	0	\$	
PHASE I - TOTAL FEES				\$5,060			
<b>PHASE II - Community Input &amp; Conceptual Design</b>							
Task 1 - Prep for Community Meeting	8	\$1,560	16	\$2,480	24	\$3,00	
Task 2 - Community Meeting	6	\$1,170	6	\$930	6	\$75	
Task 3 - Composite Plan		\$0	8	\$1,240	8	\$1,00	
Task 4 - Two Colored Conceptual Plans	12	\$2,340	16	\$2,480	16	\$2,00	
Task 5 - Review Meeting with Staff and Ad-Hoc	8	\$1,560	8	\$1,240		\$	
Task 6 - Refine Colored Schematic Plan & Cost Estimate	4	\$780	16	\$2,480	16	\$2,00	
Task 7 - Preparation of Presentation	4	\$780	16	\$2,480		\$	
Task 8 - Prepare for and Attend Public Presentation	6	\$1,170	8	\$1,240		\$	
PHASE II - SUBTOTALS	48	\$9,360	94	\$14,570	70	\$8,75	
PHASE II - TOTAL FEES				\$32,680			
<b>PHASE III - Design Development</b>							
Task 1 - 60% Progress Set	4	\$780	30	\$4,650	50	\$6,25	
Task 2 - 60% Review Meeting	4	\$780	4	\$620		\$	
Task 3 - 90% Progress Set	4	\$780	60	\$9,300	50	\$6,25	
Task 4 - 90% Review Meeting	4	\$780	4	\$620		\$	
Task 5 - CEQA Environmental Review		\$0	2	\$310		\$	
Task 6 - Anticipated Use Study		\$0	2	\$310		\$	
PHASE III - SUBTOTALS	16	\$3,120	102	\$15,810	100	\$12,50	
PHASE III - TOTAL FEES				\$31,430			
<b>PHASE IV - Construction Documents</b>							
Task 1 - 100% Construction Set	4	\$780	24	\$3,720	32	\$4,00	
Task 2 - Specifications		\$0	24	\$3,720		\$	
Task 3 - Cost Estimate	4	\$780	12	\$1,860	8	\$1,00	
Task 4 - Mylar Production		\$0	8	\$1,240	8	\$1,00	
PHASE IV - SUBTOTALS	8	\$1,560	68	\$10,540	48	\$6,00	
PHASE IV - TOTAL FEES				\$19,120			
COMBINED PHASE FEE TOTAL				\$88,290			
FEE GRAND TOTAL							

The above hourly fee breakdown consists of ESTIMATES ONLY. Billings will be based

Phase V - Bidding Support & Construction Administration will



		SUB-CONSULTANTS					PHASE FEE TOTALS
		Phil Martin	Hartzog	CivTec	FBA	Glaser	
Admin.		Environ.	Traffic	Civil	Electrical	Irrigation	
\$85							
Hours	Amount	Fees	Fees	Fees	Fees	Fees	
12	\$1,020						
	\$0			\$10,925			
	\$0						
12	\$1,020	\$0	\$0	\$10,925	\$0	\$0	
		\$10,925					\$15,985
	\$0						
	\$0						
	\$0						
	\$0						
	\$0						
	\$0						
	\$0						
0	\$0	\$0	\$0	\$0	\$0	\$0	
		\$0					\$32,680
	\$0						
	\$0						
	\$0			\$31,625	\$5,175	\$1,771	
	\$0						
	\$0	\$11,816					
	\$0		\$23,920				
0	\$0	\$11,816	\$23,920	\$31,625	\$5,175	\$1,771	
		\$74,307					\$105,737
12	\$1,020					\$3,922	
	\$0						
	\$0						
	\$0					\$1,518	
12	\$1,020	\$0	\$0	\$0	\$0	\$5,440	
		\$5,440					\$24,560
	\$13,588	\$27,508	\$48,933	\$5,951	\$8,293	\$178,962	

**\$178,962**

actual percentage completion of each phase per contracted fixed fee.  
 completed on an Hourly as Requested basis.

# Fee Proposal

It is the objective of our Design Team to provide the most comprehensive, yet efficient, approach to the development of the Stanton Dog Park. This fee includes all costs to be incurred by RJM Design Group, Inc. Fees for the work are as follows:

PHASE / TASK	FEE
Phase 1 - Project Familiarization	\$15,985.00
Phase 2 - Community Input & Conceptual Design	\$32,680.00
Phase 3 - Design Development	\$105,737.00
Phase 4 - Construction Documents	\$24,560.00
Phase 5 - Bidding Support & Construction Administration	Hourly as Requested
<b>TOTAL FOR ALL PHASES</b>	<b>\$178,962.00</b>
<b>Total*:</b>	<b>\$178,962.00</b>

\*Note: This fee summary represents our current understanding of the project scope and complexity associated with an estimated construction budget of +/- \$1.7M. The scope of work and associated fees are anticipating a single phase of construction. The scope and fees are subject to refinement per City's request.

## REIMBURSABLE EXPENSES (Estimated Allowance \$15,000.00)

When incurred, the following project expenses will be billed at cost plus 15% administrative fee in addition to the above professional services fee:

- Printing, plotting, copying, scanning, photography, graphic expenses
- Delivery, shipping, and handling of documents
- Permits, plan check, and inspection fees
- City business license
- Soils testing

## PAYMENTS

Payments are due and payable on a monthly basis following the completion of any substantial phase of work. Carrying charges for overdue accounts beyond 30 days of billing date are charged at 1½% of the amount due, compounded monthly.

## ADDITIONAL SERVICES

Professional services not specifically identified in the scope of work will be considered additional services and may be performed at Client's request, reimbursable at Consultant's standard hourly rates. Additional services may include, but are not limited to:

- Additional meetings, presentations, or site visits beyond those identified in the scope of work.
- Exhibit preparation beyond that identified in the scope of work.
- Revisions to documents required as a result of changes in Client's direction; changes subsequent to Client's approval; or changes in governmental codes or regulations.

- Design of improvements beyond the designated project site, or due to changes in project phasing schedule.
- Specialized billing or accounting forms, invoices, spreadsheets.
- Engagement of other consultants not specifically identified below.

## CONSULTANTS' HOURLY RATES

Compensation for additional services will be billed hourly at our standard rates\* below:

<b>RJM DESIGN GROUP, INC.</b>	
Principal Landscape Architect	\$195 per hour
Associate Landscape Architect	\$175 per hour
Landscape Architect	\$155 per hour
Job Captain / Landscape Designer	\$140 per hour
CADD Technician / Graphics	\$125 per hour
Clerical	\$85 per hour
<b>CIVTEC (CIVIL ENGINEERING/SURVEY)</b>	
Principal	\$185 per hour
Project Manager	\$150 per hour
Project Engineer	\$125 per hour
Project Surveyor	\$120 per hour
Design Engineer	\$100 per hour
Draftperson	\$75 per hour
Project Assistant	\$60 per hour
2-Man Survey Crew	\$265 per hour
3-Man Survey Crew	\$345 per hour
<b>FBA ENGINEERING</b>	
Principal / Project Director	\$210 per hour
V.P. / Senior Associate	\$160 per hour
Associate / Project Manager	\$160 per hour
Construction Support	\$135 per hour
Electrical Designer	\$110 per hour
CAD / BIM Designer	\$90 per hour
Technical Typist	\$50 per hour
<b>GLASIR</b>	
On-Site Consulting	\$135 per hour
Irrigation Designer	\$110 per hour
Plan Check	\$110 per hour
<b>PHIL MARTIN ASSOCIATES</b>	
Environmental Consulting	\$175 per hour

<b>HARTZOG &amp; CRABILL</b>	
Expert Witness / Deposition	\$285 per hour
Litigation Consultation	\$255 per hour
Two-Person Survey Crew	\$255 per hour
Litigation Field Evaluation	\$230 per hour
Principal Consultant	\$175 per hour
Project Manager	\$165 per hour
Registered Land Surveyor	\$160 per hour
Senior Engineer	\$150 per hour
Storm Water Permit Compliance Engineer	\$150 per hour
Associate Engineer	\$145 per hour
Construction Manager	\$135 per hour
Traffic Signal System Supervisor	\$135 per hour
Mural Artist	\$135 per hour
Senior Designer	\$130 per hour
Traffic Signal Systems Specialist	\$125 per hour
Assistant Engineer	\$120 per hour
Draftsperson	\$100 per hour
Technician	\$85 per hour
Word Processor	\$70 per hour
Clerical	\$55 per hour

\*Charges for subconsultant services are billed at cost plus a 15% coordination fee.

Billings for all time and materials and contract extension work shall be in accordance with the level of work performed based on the categories listed above.

Hourly rates will be escalated each August 1st in accordance with any increase in the Consumer Price Index or other mutually agreed upon cost index, beginning with August 1, 2022. Provisions for fee escalation pertain to all contract extensions and additional work.



Group Planning & Design Spaces

**RJM** DESIGN GROUP



*Community Inspired Spaces*

RJM Design Group, Inc.  
31591 Camino Capistrano  
San Juan Capistrano, CA 92675  
rjm@rjmdesigngroup.com  
www.RJMdesigngroup.com  
[949] 493-2690 fax  
[949] 493-2600 phone

## CITY OF STANTON

### REPORT TO CITY COUNCIL

**TO:** Honorable Mayor and Members of the City Council

**DATE:** February 22, 2022

**SUBJECT: AWARD OF CONTRACT TO BOA ARCHITECTURE TO PROVIDE PROFESSIONAL BUILDING AND LANDSCAPE ARCHITECTURAL DESIGN SERVICES FOR RENOVATIONS TO THE CITY'S FAMILY RESOURCE CENTER**

#### **REPORT IN BRIEF:**

Earlier this year, the City's Community Services Department obtained a Community Development Block Grant from the County of Orange for renovations to the City's Family Resource Center. City staff released a "Request for Proposal" (RFP) soliciting proposals to provide building and landscape architectural design services. City staff believes that BOA Architecture is the best qualified to provide professional building and landscape architectural design services for renovations to the City's Family Resource Center and is recommending award of a design contract to that firm. City staff is also recommending BOA Architecture also provide construction support services.

#### **RECOMMENDED ACTIONS:**

1. City Council declare this project to be categorically exempt under the California Environmental Quality Act, Class 1, Section 15301(a); and
2. Award a contract to BOA Architecture to provide professional architectural design services and construction support services for a maximum contract amount of \$57,600; and
3. Authorize the City Manager to bind the City of Stanton and BOA Architecture in a contract to provide the services; and
4. Authorize the City Manager to approve contract change orders with BOA Architecture, as needed and determined by City Staff, for any contingencies up to \$20,000.

#### **BACKGROUND:**

Earlier this year, the City's Community Services Department obtained a Community Development Block Grant from the County of Orange for renovations to the City's Family Resource Center ("Property").

The grant agreement calls for Property renovations to include the following elements:

- Security mesh screens for outside gates
- New LED exterior lighting
- Improved gate access points
- New air conditioning units
- Replacement of indoor lighting
- New playground structure
- Evaluation and upgrades for ADA compliance
- New rubberized playground surface
- New playground shade structure
- Removal of the courtyard planter and construction of concrete walkway
- Replacement of outdoor basketball system
- Replacement of picnic benches
- Installation of outdoor storage shed
- Painting of the interior
- New flooring including vinyl and carpeting
- New facility identification signage facing Beach Boulevard and Santa Paula Avenue
- New quartz countertop at reception area
- Re-laminating of existing kitchen cabinet faces and doors
- New blinds/window tint
- New ceiling tiles

Because the County's grant agreement requires that the construction work be contracted out, the City is required to prepare plans and specifications for the work. Therefore, City staff released a "Request for Proposal" (RFP) soliciting proposals to provide professional building and landscape architectural design services for the renovation. The RFP was released in a two-envelope format in accordance with the City's Purchasing Policy and Procedures which requires that at least three design firms be solicited to provide proposals. City staff solicited proposals from multiple firms. The first envelope consists of a written proposal highlighting the firm's experience and qualifications, and a second separate, sealed envelope contains the fee proposal. The written proposal envelopes are opened, and the enclosed proposals are evaluated by City staff. Once a consensus is reached on the best written proposal, City staff will negotiate a fee with the best qualified consultant. In the event the City can not negotiate a fee with the best qualified consultant, the City will negotiate a fee with the second ranked consultant, and so on until an agreement is reached. In this way, contract award is based on best-qualified contractor rather than low-bid, which is appropriate for a design contract.

**ANALYSIS/JUSTIFICATION:**

A Request for Proposals was issued on November 29, 2021 with a proposal due date of January 11, 2022. Three firms provided proposals: YNG Architects, Crane Architectural Group, and BOA Architecture. The proposals were evaluated by the Public Works Department and the Community Services Department, and City Staff came to a consensus that BOA Architecture provided the best proposal.

City staff believes that BOA Architecture is qualified to provide building and landscape architectural design services for the renovation to the City’s Family Resource Center because BOA Architecture has successfully provided design services to other municipal facilities, such as the City of Hawaiian Gardens, Sierra Madre, Long Beach, and Pasadena. The total lump sum design fee is \$43,600 with an optional construction management fee of \$14,000. The optional construction management fee covers bidding assistance, pre-bid / pre-construction meetings, responding to RFI and technical assistance. City staff is also recommending that the optional construction management proposal be awarded.

**FISCAL IMPACT:**

The Fiscal Year 2021/2022 Adopted Budget includes \$425,000 for Family Resource Center Improvements (Project No. 2022-201).

**ENVIRONMENTAL IMPACT:**

The action requested in this report is categorically exempt under the California Environmental Quality Act, Class 1, Section 15301(a).

**LEGAL REVIEW:**

None.

**STRATEGIC PLAN OBJECTIVE ADDRESSED:**

3 – Provide a high quality infrastructure.

Prepared by:

Reviewed by:

/s/ Han Sol Yoo

/s/ Joe Ames

\_\_\_\_\_  
Han Sol Yoo  
Associate Engineer

\_\_\_\_\_  
Joe Ames, P.E., T.E.  
Director of Public Works/City Engineer

Concurred by:

/s/ Michelle Bannigan

---

Michelle Bannigan, CPA  
Finance Director

Approved by:

/s/ Jarad L. Hildenbrand

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Jarad L. Hildenbrand  
City Manager

**Attachments:**

- A) Draft Professional Services Agreement
- B) BOA Architecture's proposal and fee proposal

**CITY OF STANTON  
PROFESSIONAL SERVICES AGREEMENT  
FOR  
PROFESSIONAL BUILDING AND LANDSCAPE ARCHITECTURAL DESIGN**

**1. PARTIES AND DATE.**

This Agreement is made and entered into this 22nd day of February, 2022, by and between the City of Stanton, a municipal organization organized under the laws of the State of California with its principal place of business at 7800 Katella Avenue, Stanton, California 90680 (“City”) and **BLACK O’DOWD AND ASSOCIATES, INC. DBA BOA ARCHITECTURE**, a **CORPORATION**, with its principal place of business at **1511 COTA AVENUE, LONG BEACH, CA 90813** (“Consultant”). City and Consultant are sometimes individually referred to herein as “Party” and collectively as “Parties.”

**2. RECITALS.**

**2.1 Consultant.**

Consultant desires to perform and assume responsibility for the provision of professional **BUILDING AND LANDSCAPE ARCHITECTURAL DESIGN** consultant services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing professional **BUILDING AND LANDSCAPE ARCHITECTURAL DESIGN** consultant services to public clients, is licensed in the State of California, and is familiar with the plans of City.

**2.2 Project.**

City desires to engage Consultant to render such services for the **PROFESSIONAL BUILDING AND LANDSCAPE ARCHITECTURAL DESIGN SERVICES FOR RENOVATIONS TO THE CITY’S FAMILY RESOURCE CENTER** project (“Project”) as set forth in this Agreement.

**3. TERMS.**

**3.1 Scope of Services and Term.**

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional **BUILDING AND LANDSCAPE ARCHITECTURAL DESIGN** consultant services necessary for the Project (“Services”). The Services are more particularly described in Exhibit “A” attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from **February 22, 2022 to December 31, 2023**, unless earlier terminated as provided herein.

### 3.2 Responsibilities of Consultant.

3.2.1 Independent Contractors, Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee. Consultant shall complete, execute, and submit to City a Request for Taxpayer Identification Number and Certification (IRS Form W-9) prior to commencement of any Services under this Agreement. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City and shall at all times be under Consultant's exclusive direction and control. Neither City, nor any of its officials, officers, directors, employees or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, City shall respond to Consultant's submittals in a timely manner. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of City.

3.2.4 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the City. The key personnel for performance of this Agreement are as follows: **Edward Lok Ng**.

3.2.5 City's Representative. The City hereby designates the City Manager, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. The City Manager hereby designates **the Public Works Director**, or his or her designee, as the City's contact for the implementation of the Services hereunder.

Consultant shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.2.6 Consultant's Representative. Consultant hereby designates **Edward Lok Ng**, or his or her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Consultant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold City, its officials, directors, officers, employees, agents and volunteers free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.10 Insurance.

3.2.10.1 Time for Compliance. Consultant shall not commence Work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this section.

3.2.10.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder and without limiting the indemnity provisions of the Agreement, the Consultant in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement, the following policies of insurance. If the existing policies do not meet the Insurance Requirements set forth herein, Consultant agrees to amend, supplement or endorse the policies to do so.

- (a) **Commercial General Liability:** Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 0001, with minimum limits of at least \$1,000,000 per occurrence, and if written with an aggregate, the aggregate shall be double the per occurrence limit. Defense costs shall be paid in addition to the limits.

The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; or (3) contain any other exclusion contrary to the Agreement.

- (b) **Automobile Liability Insurance:** Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1) with minimum limits of \$1,000,000 each accident.
- (c) **Professional Liability:** Professional Liability insurance with minimum limits of \$1,000,000. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusions that may potentially affect the work to be performed (for example, any exclusions relating to lead, asbestos, pollution, testing, underground storage tanks, laboratory analysis, soil work, etc.).

If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least three (3) years from termination or expiration of this Agreement.

- (d) **Workers' Compensation:** Workers' Compensation Insurance, as required by the State of California and Employer's Liability

Insurance with a limit of not less than \$1,000,000 per accident for bodily injury and disease.

3.2.10.3 Endorsements. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval.

(a) The policy or policies of insurance required by Section 3.2.10.2 (a) Commercial General Liability and (c) Contractor's Pollution Liability shall be endorsed to provide the following:

(1) Additional Insured: The City, its officials, officers, employees, agents, and volunteers shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement.

Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Consultant; or (4) contain any other exclusions contrary to the Agreement.

(2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(b) The policy or policies of insurance required by Section 3.2.10.2 (b) Automobile Liability and (d) Professional Liability shall be endorsed to provide the following:

(1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(c) The policy or policies of insurance required by Section 3.2.10.2 (e) Workers' Compensation shall be endorsed to provide the following:

(1) Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the indemnified parties.

(2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City

except ten (10) days shall be allowed for non-payment of premium.

3.2.10.4 Primary and Non-Contributing Insurance. All insurance coverages shall be primary and any other insurance, deductible, or self-insurance maintained by the indemnified parties shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

3.2.10.5 Waiver of Subrogation. Required insurance coverages shall not prohibit Consultant from waiving the right of subrogation prior to a loss. Consultant shall waive all subrogation rights against the indemnified parties. Policies shall contain or be endorsed to contain such provisions.

3.2.10.6 Deductible. Any deductible or self-insured retention must be approved in writing by the City and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

3.2.10.7 Evidence of Insurance. The Consultant, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates and endorsements on forms approved by the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

3.2.10.8 Failure to Maintain Coverage. Consultant agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to the City. The City shall have the right to withhold any payment due Consultant until Consultant has fully complied with the insurance provisions of this Agreement.

In the event that the Consultant's operations are suspended for failure to maintain required insurance coverage, the Consultant shall not be entitled to an extension of time for completion of the Services because of production lost during suspension.

3.2.10.9 Acceptability of Insurers. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

3.2.10.10 Insurance for Subconsultants. All Subconsultants shall be included as additional insureds under the Consultant's policies, or the Consultant shall be responsible for causing Subconsultants to purchase the appropriate insurance in compliance with

the terms of these Insurance Requirements, including adding the City as an Additional Insured to the Subconsultant's policies.

3.2.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subconsultants, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

### 3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed **FIFTY-SEVEN THOUSAND SIX HUNDRED DOLLARS (\$57,600)** ("Total Compensation") without written approval of City's **Public Works Director**. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from the City.

3.3.5 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or

“maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant’s principal place of business and at the project site. It is the intent of the parties to effectuate the requirements of sections 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code within this Agreement, and Consultant shall therefore comply with such Labor Code sections to the fullest extent required by law. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees, agents and volunteers free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

### **3.4 Accounting Records.**

3.4.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

### **3.5 General Provisions.**

#### **3.5.1 Termination of Agreement.**

3.5.1.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

**Consultant:**

Black O'Dowd and Associates, Inc. dba BOA Architecture  
1511 Cota Avenue  
Long Beach, CA 90813  
Attn: **Edward Lok Ng, President**

**City:**

City of Stanton  
7800 Katella Avenue  
Stanton, CA 90680  
Attn: **Joe Ames, Department of Public Works**

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

**3.5.3 Ownership of Materials and Confidentiality.**

**3.5.3.1 Documents & Data; Licensing of Intellectual Property.** This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant shall require all subconsultants to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by the City. City shall not be limited in any way in its use of the Documents and Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

**3.5.3.2 Confidentiality.** All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of City, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

3.5.3.3 Confidential Information. The City shall refrain from releasing Consultant's proprietary information ("Proprietary Information") unless the City's legal counsel determines that the release of the Proprietary Information is required by the California Public Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case the City shall notify Consultant of its intention to release Proprietary Information. Consultant shall have five (5) working days after receipt of the Release Notice to give City written notice of Consultant's objection to the City's release of Proprietary Information. Consultant shall indemnify, defend and hold harmless the City, and its officers, directors, employees, and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. City shall not release the Proprietary Information after receipt of the Objection Notice unless either: (1) Consultant fails to fully indemnify, defend (with City's choice of legal counsel), and hold City harmless from any legal action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that City release such information.

3.5.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.5 Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.5.6 Indemnification.

To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorneys fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the Consultant or the City, its officials, officers, employees, agents or volunteers.

If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

The obligation to indemnify, as provided herein, shall survive the termination or expiration of this Agreement.

3.5.7 **Entire Agreement.** This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.5.8 **Governing Law.** This Agreement shall be governed by the laws of the State of California. Venue shall be in Orange County.

3.5.9 **Time of Essence.** Time is of the essence for each and every provision of this Agreement.

3.6 **City's Right to Employ Other Consultants.** City reserves right to employ other consultants in connection with this Project.

3.7 **Successors and Assigns.** This Agreement shall be binding on the successors and assigns of the parties.

3.8 **Assignment or Transfer.** Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.9 **Construction; References; Captions.** Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.10 **Amendment; Modification.** No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.11 **Waiver.** No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.12 **No Third Party Beneficiaries.** There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

**3.13 Invalidity; Severability.** If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

**3.14 Prohibited Interests.** Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

**3.15 Equal Opportunity Employment.** Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

**3.16 Labor Certification.** By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

**3.17 Authority to Enter Agreement.** Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

**3.18 Counterparts.** This Agreement may be signed in counterparts, each of which shall constitute an original.

**3.19 Declaration of Political Contributions.** Consultant shall, throughout the term of this Agreement, submit to City an annual statement in writing declaring any political contributions of money, in-kind services, or loan made to any member of the City Council within the previous twelve-month period by the Consultant and all of Consultant's employees, including any employee(s) that Consultant intends to assign to perform the Services described in this Agreement.

**3.20 Subcontracting.**

**3.20.1 Prior Approval Required.** Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written

approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

*[Signatures on following page.]*

IN WITNESS WHEREOF, the parties have executed this Professional Services Agreement on this \_\_\_\_ day of \_\_\_\_\_, 202\_.

CITY OF STANTON

BLACK O'DOWD AND ASSOCIATES, INC.  
DBA BOA ARCHITECTURE

By: \_\_\_\_\_  
Jarad Hildenbrand  
City Manager

By: \_\_\_\_\_  
Name: Edward Lok Ng  
Title: President

By: \_\_\_\_\_  
Name: Kyle Ng  
Title: Secretary

**ATTEST:**

By: \_\_\_\_\_  
Patricia Vazquez  
City Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Best Best & Krieger LLP  
City Attorney

## EXHIBIT "A"

### SCOPE OF SERVICES

The City desires to retain an experienced team for the final design and development of all necessary construction drawings and documents for bidding this work.

The Consultant is expected to establish and maintain a close working relationship with City Staff throughout each phase of the project.

Services and deliverables shall include, but are not limited to, the following:

#### Preliminary Design

- Project review meetings with City staff to verify needs, determine materials, and provide options for playground equipment;
- Provide "cut sheets" of materials and equipment to City staff for selection;
- Coordinate with playground manufacturer to produce a 3-D graphic of the selected playground equipment;
- Develop a preliminary estimate of probable construction cost to ensure the available budget and estimated construction costs are coordinated;
- Make adjustments to the scope of work and materials and equipment selections based on City staff direction.

#### Final Design

- Upon approval from City staff to move forward with final design, consultant will begin final design and preparation of construction drawings, specifications, and bid schedule sheet(s);
- Develop a comprehensive bid schedule sheet with units and quantities to be inserted in City staff produced project bid specifications;
- Develop technical rubberized surface specification to be inserted into City staff produced bid specifications;
- Provide complete set of construction plans and associated details. All plans shall be done at a scale of 1" = 20' and all plan sheets shall be 24" x 36". Plan sheets to include demolition, construction, mechanical, electrical sheets.
- Provide complete specifications and details for onsite renovations, playground equipment, signage, lighting, etc.;
- Provide an estimate of probably construction cost;
- Submit plans and specifications for City staff review and make changes as requested;
- Respond to bidder questions during the bid process, as requested by City staff; and
- Construction design support.
- Optionally: Construction management / contract administration (provide optional scope and fee with proposal).

The Consultant shall assemble a team to provide all key services related to the necessary architecture to produce a complete, biddable, and constructible design package. The City anticipates that such a design team may include, but is not limited to, specialists in the following fields:

- Playground Design/Landscape Architecture
- Mechanical, Electrical, and Plumbing Engineering
- Security (fencing and locks)
- Cost Estimating

The consultant's proposal and any promises made regarding deliverables is also incorporated herein by reference.



**EXHIBIT "C"**  
**COMPENSATION**

# FIXED FEE PROPOSAL

## City of Stanton, Renovation to Family Resource Center

date: Jan. 11, 2022

Construction Cost Estimate; \$330,000

prepared for: City of Stanton

prepared by: BOA Architecture, Edward Lok Ng

	HOURS	UNIT	HR RATE	COST	TOTAL
<b>PRE-DESIGN</b>					
kick-off meeting to verify scope of work, obtain as-built dwgs.	4	hrs	150	600	
project management, confirm cost/work plan & prep field work	2	hrs	150	300	
site assessment, confirm as-built measurements & photos	3	hrs	100	300	
CADD - 3D modelling	8	hrs	100	800	
					2,000
<b>ARCHITECTURAL PRELIMINARY DESIGN</b>					
floor plan design options, refine selected floor plan	10	hrs	150	1,500	
CADD - 3D modelling	16	hrs	100	1,600	
project management	4	hrs	150	600	
meeting or coordination with Client	4	hrs	150	600	
construction cost estimate	4	hrs	150	600	
					4,900
<b>SUB-CONSULTANTS and EXPENSES</b>					
structural engineering				0	
mechanical				4,000	
plumbing engineering;				0	
electrical; no new lights, use existing alarm system				6,000	
landscape architect				8,000	
civil engineering				500	
partial land survey				3,000	
misc. expenses: photocopies, large size prints, travel, delivery				100	
					21,600
<b>ARCHITECTURAL FINAL DESIGN (CONSTRUCTION DOCUMENTS)</b>					
CADD - 3D modeling	60	hrs	100	6,000	
project management	8	hrs	150	1,200	
meeting or coordination with Client	8	hrs	150	1,200	
specifications in CSI format	6	hrs	150	900	
construction cost estimate	4	hrs	150	600	
quality control	8	hrs	150	1,200	
client/bldg dept submittal and corrections to comments	10	hrs	100	1,000	
					12,100
<b>CONSTRUCTION SUPPORT (AS-NEEDED BASIS)</b>					
Bidding Assistance, pre-bid meeting	0	hrs	150	0	
pre-construction meeting	0	hrs	150	0	
construction meeting(s)	10	hrs	150	1,500	
Respond to RFI and technical assistance	10	hrs	150	1,500	
misc. expenses: photocopies, large size prints, travel, delivery				0	
					3,000
<b>TOTAL LUMP SUM DESIGN FEE:</b>					<b>\$43,600</b>
<b>NOTES AND RESTRICTIONS</b>					
1. Construction support is limited to amount of hours stated below.					
2. The Owner will provide accurate as-built dwgs. & locations of all utilities to extent possible.					
3. Client will be responsible for procurement of an asbestos/environmental report if needed.					
<b>OPTIONAL CONSTRUCTION MANAGEMENT FEE</b>					
Bidding Assistance, pre-bid meeting	6	hrs	150	900	
pre-construction meeting	8	hrs	150	900	
construction meeting(s)	40	hrs	150	6,000	
Respond to RFI and technical assistance	40	hrs	150	6,000	
misc. expenses: photocopies, large size prints, travel, delivery				200	
<b>OPTIONAL CONSTRUCTION MANAGEMENT FEE:</b>					<b>14,000</b>

Please see the following Fee Schedule for personnel assigned to projects for the City of Stanton. This document is only valid for 60 months, or the term of contract.

JOB TITLE	HOURLY (NOT TO EXCEED)
Principal Architect	\$160.00
Project Manager	\$150.00
Project Designer	\$125.00
Senior Designer	\$110.00
Senior Technical	\$100.00
Draftsman/AutoCAD Operator	\$95.00
Other Technical Staff	\$85.00
Structural Engineer	\$150.00
Mechanical Engineer	\$160.00
Electrical Engineer	\$160.00
"Other" Sub-Consultant	\$150.00
Clerical Staff	\$80.00
Prints	\$0.50/s.f.

- The above hourly rates are fully burdened or loaded, including full compensation for all overhead and profit. Billing rates shall include provision for normal office costs, including, but not limited to: office rental, utilities, insurance, cell phone or radio, equipment, normal supplies and materials, in-house reproduction services, and local travel costs.
- The proposed hourly rates are guaranteed for the duration of the contract.

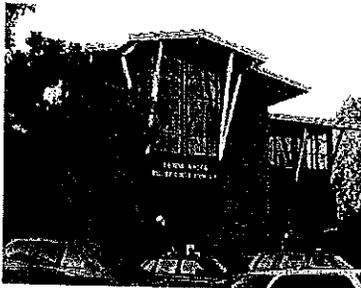
JANUARY 11, 2022



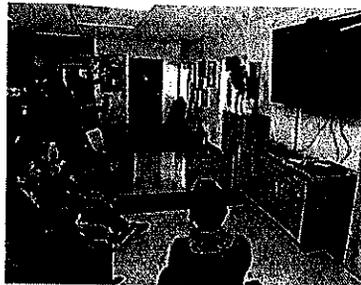
## CITY OF STANTON

**Professional Building and Landscape Architectural  
Design Services for Renovations to the City's Family  
Resource Center**

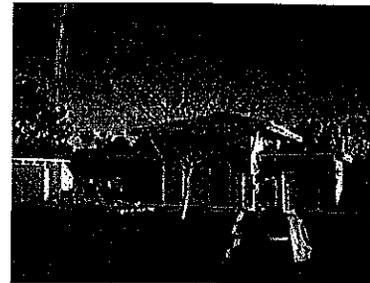
### SAMPLE PROJECTS DESIGNED BY BOA:



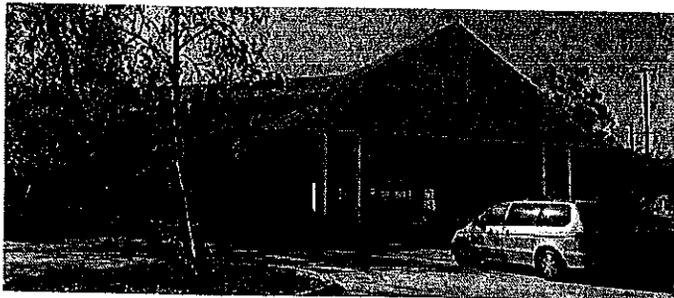
**YOUTH ACTIVITY TEEN CENTER  
CITY OF SIERRA MADRE**



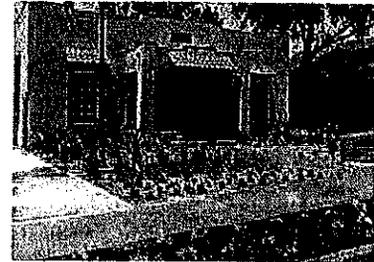
**HAWAIIAN GARDENS TEEN  
CENTER  
CITY OF HAWAIIAN GARDENS**



**COMMUNITY CTR.  
RENOVATION AND ADDITION  
CITY OF LONG BEACH**



**WILMINGTON SENIOR/MULTI-PURPOSE CENTER  
LOS ANGELES AREA-WILMINGTON**



**GARFIELD TEEN CENTER  
CITY OF POMONA**



**LEE WARE COMMUNITY  
SERVICE CENTER  
CITY OF HAWAIIAN GARDENS**



**BLACK O'DOWD AND ASSOCIATES, INC.  
DBA BOA ARCHITECTURE  
1511 COTA AVENUE  
LONG BEACH, CA 90813  
PH: 562-912-7900**

**POINT-OF-CONTACT:  
EDWARD LOK NG, PRESIDENT  
LOK.NG@BOAARCHITECTURE.COM**

RE:

January 11, 2022

To: Joe Ames P.E.:

After walking the project site and discussing the scope of work with your on-site staff, we think we are a very "good fit" for this project. Black O'Dowd and Associates, Inc. DBA BOA Architecture is pleased to submit its qualifications for your Request for Proposal for your Teen Center Project. BOA Architecture is a 7-person architectural firm with a competitive advantage in "smaller" municipal architectural projects and ADA Compliance Projects. If awarded this project your point of contact will be Edward Lok Ng, President of BOA Architecture. The company is a corporation and has been in continuous operation since 1961. We are well acquainted with Community Centers, such as yours, and facilities modernization for municipal facilities. We are currently assisting the following municipalities with almost exactly the same type of Community Center modernization to their facilities: City of Irvine, City of Long Beach, City of Placentia, the City of Banning, and the City of Pasadena.

For the past 60 years BOA Architecture has provided exceptional new and renovation building designs to the public sector with over 2000 projects encompassing LEED/Sustainability Designs, innovative solution to renovations and additions; tenant improvements projects; façade improvements projects, ADA compliance, and parks/recreation projects. We have worked for over 80 different Cities in the Southern California area. Our expertise encompasses a wide range of architectural projects that are categorized as "smaller" public works projects in the \$20,000 to \$2,000,000 construction range. Ninety percent (90%) of our current work load is for municipalities such as yours. In recent years, BOA Architecture has performed numerous renovations, parks, community centers, city halls, police departments, and fire stations for local public entities that are very similar to your project. Our staff expertise and production systems are geared for these types of "smaller" and often "messy" municipal projects. We can compete with just about any other firm on these public building types and have the confidence that you will find BOA Architecture to be the most competent and cost effective.

We have included numerous similar architectural Teen Center and Community Center renovation projects for your review. BOA is intimately aware of expediting these types of projects through Plan review and through Construction. Our efficient ways maximize productivity while minimizing unnecessary expense and eliminating wasted time. To enhance our Design Team, we have asked David Volz Design (DVD) to join our Team to spearhead the exterior site improvements on your project. DVD has delivered for you on 12 recently completed Parks and Recreation projects for the City of Stanton

Consistent with our policy of exceptional customer service, we will commit to a 1-hour response time. Meaning a licensed architect can be at your office to respond to your architectural needs within 1 hour. Our office is within 20 minute drive time to your City Hall or Family Resource Center. Furthermore, BOA has provided exemplary past architectural service on the following building types.

- ADA Compliance
- Commercial Façade Improvements
- Community/ Civic Facilities
- Educational Facilities
- HealthCare
- Hotels/ Resort Facilities
- Industrial/ Utility Facilities
- Libraries
- Maintenance Improvement/ Repair
- Parking Structures
- Parks and Recreation Facilities
- Residential, Single Family/ Multi-Family
- Retail/ Office Facilities
- Transportation Facilities
- U.S. Postal Service
- Military Facilities

CITY OF STANTON  
PROFESSIONAL BUILDING AND LANDSCAPE  
ARCHITECTURAL DESIGN SERVICES FOR RENOVATIONS  
TO THE CITY'S  
"FAMILY RESOURCE CENTER"

BOA is an S-Corporation architectural firm, and a certified Minority Business Enterprise (MBE) by the federal SBA (Small Business Administration). The company's corporate officer and principal is Edward Lok Ng (licensed architect in the State of California). BOA has been in continuous business since 1961. In addition to architecture and ADA Compliance services, BOA also provides in-house interior design services.

#### DECLARATIONS AND CRITICAL INFORMATION

1. Legal Name & Address: Black O'Dowd & Associates DBA: BOA Architecture, 1511 Cota Avenue Long Beach, CA 90813 Tel: 562-912-7900 Tel: 310-832-2681
2. Structure of Organization: S CORPORATION
3. BOA's Officers:
  - --President/Senior Project manager and Designer- Edward Lok Ng, Architect, LEED AP
  - --Secretary/Project Manager - Kyle Ng
4. BOA's Shareholders: Edward Lok Ng
5. CREDITORS: BOA does not have any creditors or potential creditors who are owed or may be owed debt that is more than 5% of the firm's total assets
6. Year Established: 1961 – Operating for 60 years
7. MISCELLANEOUS CRITICAL INFORMATION:
  - Current Annual Dollar Volume of Work: \$1,000,000
  - Level of Professional Liability Insurance: \$2,000,000 Professional Liability; \$2,000,000 General Liability

Thank you for the opportunity to submit this request for proposal. We hope that our proposal communicates our enthusiastic interest and the strengths of our firm, project team, and approach. If BOA is successful in being awarded this project, we can begin work immediately and do everything within our resources to meet your schedule and construction budget. The following are statements that you have requested

- BOA has thoroughly examined and become familiar with the work required in this RFP and is capable of performing quality work to achieve the objectives of the City.
- BOA is in receipt of all addenda.
- Our proposal shall remain valid for a period of not less than ninety (90) days from the date of submittal.
- Signature of the official authorized to bind Consultant to the terms of the proposal's signed by Edward Lok Ng, President of BOA.
- We are attesting that all information submitted with the proposal is true and correct.

BOA Architecture's mission statement is to be a recognized leader in architecture and to consistently exceed our commitments to, and expectations of our clients, employees and design partners. We thank you for your time and consideration.

#### BOA ARCHITECTURE



Edward Lok Ng, Architect/ LEED AP

E-mail: lok.ng@boaarchitecture.com

Direct: (310) 480-7730

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- 5. Exceptions and Deviations
- 6. Schedule
- 7. Proposal Acknowledgment Form
- 8. Separate Fee Proposal



The main entry Historic Banning House  
Los Angeles Area- Wilmington



New toddlers Play Area with Fence and Landscaping  
City of Long Beach



Street Into entry Courtyard  
Barlett Senior Center



Eddle Heredia Boxing Club, East LA, CA

## 1. QUALIFICATIONS, RELEVANT EXPERIENCE & REFERENCES

### TEEN CENTER AND COMMUNITY CENTER EXPERIENCE

BOA has extensive experience in the design of both new and renovation of Community Center projects for municipalities. To date, the current staff at BOA has designed renovation for 5 dedicated Teen Centers, 11 dedicated Senior Centers and over 50 Community Centers and numerous other parks/recreation projects within the past 10 years. We just completed the construction phase to renovate and modernize the County of L.A. Eastside Boxing Club in East L.A. this project is very similar to your project. Construction cost was \$1,000,000. BOA has renovated many community centers very similar to your project, where extensive modernization, ADA compliance and cost analysis were required to determine the most appropriate building design options. Three projects completed by BOA, the Long Beach MacArthur Park Community Center, County of L.A. Sorensen Park Recreation Center and Sierra Madre Youth Center are three prime examples of similar project experience, where large parts of the existing Community Center were modernized lighting, HVAC, sitework, and restrooms were completely renovated. Our expertise in similar projects will be a great asset in the development of floor plans and repair/remodel design options that will be compatible with, enhance the existing architecture, and tailored to the needs of your community. The following list of projects, with their construction costs, exemplify our architectural design experience. We have also included photos and detailed project descriptions of some of these projects.

### TEEN CENTER AND COMMUNITY CENTERS:

- Garvey Park Teen Center, Client: City of Pomona, \$200,000
- Sierra Madre Youth Activity Center, Teen Center- Client: City of Sierra Madre, \$1,400,000
- Perry Park Community Center Addition/Renovation - Client: City of Redondo Beach, \$400,000
- Miller Community Center Renovation/Modernization - Client: City of Torrance, \$600,000
- Memorial Park Community Center Renovation - Client: City of Hawthorne, \$400,000
- Rosemead Community Addition/Renovation - Client: City of Rosemead, \$600,000
- Harbor Hills Public Housing Community Center - Client: L. A. County CDC, \$2,400,000
- El Dorado Regional Park Community Center Renovation - Client: City of Long Beach, \$800,000
- Green Meadows Recreation Center/Gym - Client: City of Los Angeles, \$400,000
- Garvey Park Senior/Community Center Addition/Renovation - Client: City of Rosemead, \$1,000,000
- Hawaiian Gardens Community/Recreation Center/Gym - Client: City of Hawaiian Gardens, \$2,400,000
- Torrance Airport, General Aviation Center and Community Center - Client: City of Torrance, \$1,500,000
- Lee Ware Park-Head Start Youth Center - Client: City of Hawaiian Gardens, \$700,000
- Sierra Vista Park Recreation Center Renovation & ADA -Client: City of Sierra Madre, \$200,000
- Drake Park and Community Center ADA Renovation - Client: City of Long Beach, \$400,000.
- MacArthur Park and Community Center ADA Renovation - Client: City of Long Beach, \$300,000.
- Whaley Park and Community Center, Renovation - Client: City of Long Beach, \$590,000.
- El Dorado Park Teen Center New Restrooms & ADA Compliance - Client: City of Long Beach, \$230,000
- La Puente Community Center/Gym Renovation - Client: City of La Puente, \$400,000.
- Jim Thorpe Park & Community Center Renovation - Client: City of Hawthorne, \$300,000
- Eucalyptus Park & Community Center Renovation - Client: City of Hawthorne, \$200,000
- California Recreation Center/Senior Center Renovation - Client: City of Long Beach, \$300,000.
- Billie Jean King Tennis Center, Teen After-School Program - Client: City of Long Beach, \$300,000.
- Colorado Lagoon, Playgroup Addition/ Renovation - Client: City of Long Beach, \$250,000.

**SENIOR CENTERS:**

- Bartlett Senior Citizen Center - Client: City of Torrance, \$1,500,000
- Bartlett Annex Senior Social Services Center - Client: City Torrance, \$300,000
- Hawaiian Gardens Senior Center Expansion & Renovation - Client: City of Hawaiian Gardens, \$1,600,000
- Veterans Park Senior Center Addition and Renovation - Client: City of Redondo Beach, \$1,600,000
- Rancho Carlsbad Senior Center - Client: City of Carlsbad, \$900,000
- Long Beach Senior Center Renovation - Client: City of Long Beach, \$600,000
- Wilmington Multi-Purpose Senior Center, at Banning Park - Client: City of Los Angeles, \$2,700,000
- La Puente Senior Center ADA Compliance Renovation - Client: City of La Puente, \$100,000.
- El Dorado Park West Senior & Community Center Renovation-Client: City of Long Beach, \$650,000
- Memorial Park Senior Center Renovation - Client: City of Hawthorne, \$500,000

**TEEN CENTER AND COMMUNITY CENTER EXPERIENCE**

BOA's architectural design approach to resolve the repair/modernization issues at your Teen Center and Community Center improvement project derives from over 50 completed recent community center projects. We have developed checklists to quickly identify repair/modernization issues. We have in-house staff with an over-abundance of Community Center project experience. We have very accurate Community Center cost estimating. BOA also has an in-house Quality Control program to ensure project thoroughness. BOA will utilize our expertise to your benefit, to resolve your functional, flooring, lighting, HVAC, playground, sitework, restroom, and ADA compliance issues.

**IN-HOUSE EXPERTISE**

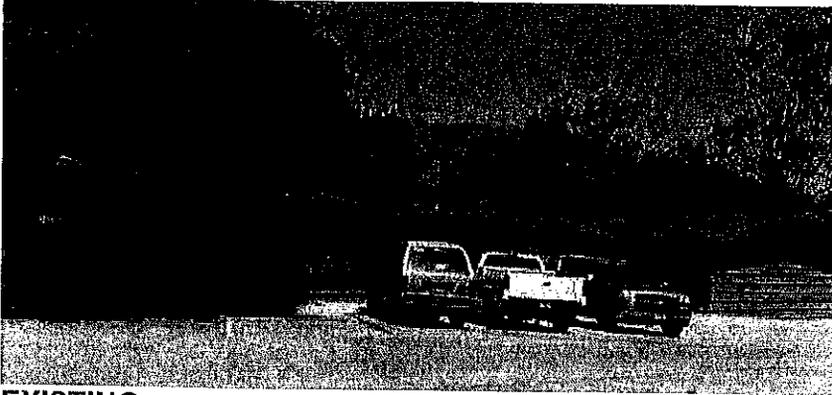
The assigned personnel, staff that will work directly on your projects, are well qualified. Particularly, Edward Lok Ng, Principal, has been the Project Manager and Designer for most of the municipal, Teen Center and Community Center projects listed and for all of our recent Parks/ Recreation projects. His extensive municipal and community center experience has led to his appointments to the City of Long Beach Disabled Appeals Board and the City of Downey Design Review Board which reviews numerous commercial and Public Works design projects. He has personally designed over 40 new or addition/renovation municipal Community Center projects. His knowledge of Community Center functionality, repair/modernization type constructions cost use of maintenance-free building materials will aid in the development of accurate cost assessment. In addition, the entire staff that designed and administered the construction of more than 50 recent Community Center retrofit projects are still employed by BOA.

**ACCURATE COST ESTIMATE**

Our public works construction cost database gleaned from our recent Community Center and municipal parks and recreation projects have been very accurate and up-to-date. We have "line item" cost for just about all Community Center facilities components, e.g., reception counter cabinetry, multi-purpose flooring, restrooms, roofing, lineal feet of handrail, kitchen counters, ramps, restrooms, book shelves, plumbing fixtures, HVAC, doors, etc. We also have a close relationship with many local area general contractors who have extensive Public Works modernization/repair experience. As a result, our in-house construction costs estimate for Public Works projects, when compared to actual contractor bid price have been 93% accurately.

## BOA Architecture

## Relevant Experience



EXISTING



NEW 1<sup>ST</sup> FLOOR ENTRY & 2<sup>ND</sup> FLOOR ADDITION

## AERIAL OF NEW AND RENOVATED FACILITIES



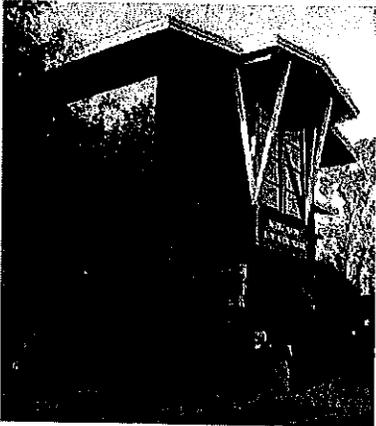
**Project:** Youth Activity-Teen Center,  
**Construction Cost:** \$1,400,000  
**Owner:** City of Sierra Madre, CA

**Project Description:** A new "state of the art" facility dedicated to teenagers of Sierra Madre, it will meet their recreational and social needs, and also provide after-school "intervention" programs. It was designed specifically for teens, to give them "their own place, their "clubhouse" on the second floor over an existing community center. In outreach meetings with the teens, the teens decided that it should be a "tree house" just for teenagers. This second floor addition was nestled among oak trees, incorporated articulated knee braces (representing tree branches) and fiber cement siding & generous roof eave overhangs into a contemporary expression of craftsman motif to achieve the

"tree house" appearance. The architecture was also sensitive to the surrounding residential craftsman style and the architecture of the existing building on the first floor, by matching the existing horizontal red brick and low pitched wood gable roof. This facility included a large multi-purpose game room, other rooms for homework, computer labs, teen counseling, staff office, skateboard storage, arts and crafts, kitchen for cooking crafts and snacks, and outdoor gardening and gathering areas. Playful colors and shapes dominate the interior. Large corner windows provided panoramic views of the City park grounds. The new second floor addition was built independent of the roof structure below to allow current City programs to remain operational during construction, and to save money on needless demolition and rework of the existing first floor. The first floor was also renovated for ADA compliance that included retrofit restrooms, new ramps, reception counter, and new doors.



New 2<sup>nd</sup> floor Teen Center with a "tree house" theme is built over existing 1<sup>st</sup> floor Community Center



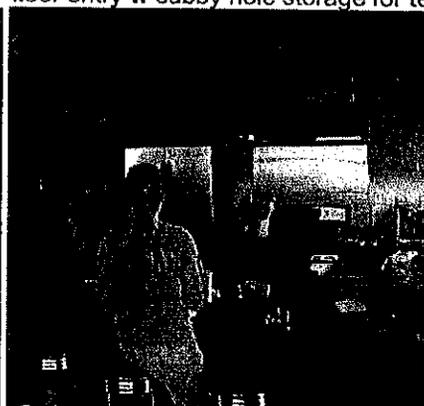
Main entry from parking lot.



Colorful 2<sup>nd</sup> floor entry w cubby hole storage for teens. Soundproof rm. for music & homework



Multi-Purpose Rm. for large activities.



Kitchen for snacks & cooking craft.

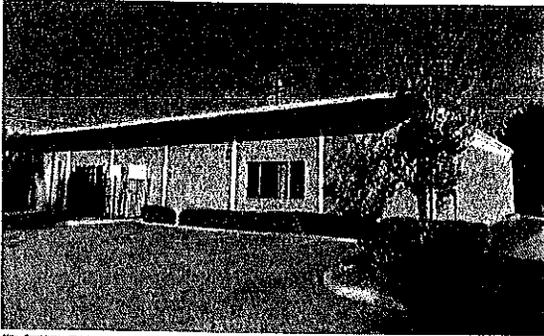


Large arts & crafts room

**Project:** Sierra Madre Youth Activity Center (Teen Center)  
**Construction Cost:** \$1,400,000

**Year Built:** 2005

**Location:** 611 E. Sierra Madre Blvd., Sierra Madre, CA 91024  
**Client:** City of Sierra Madre, Dept. of Public Works



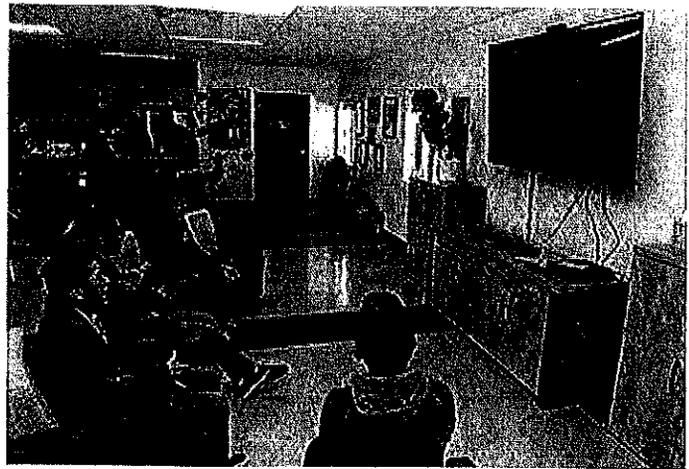
BEFORE



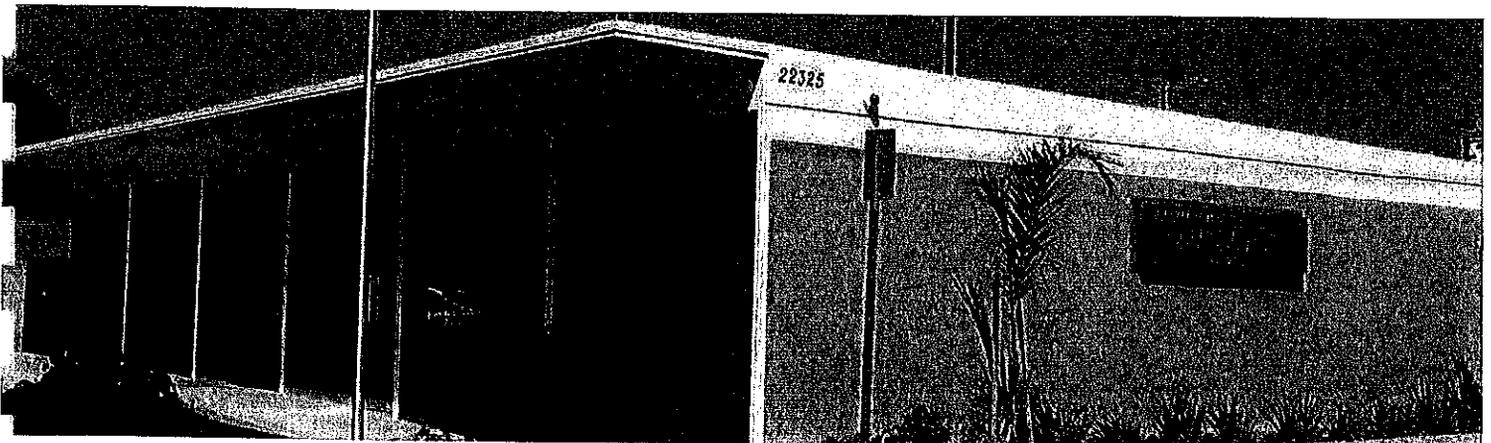
New Computer Room

# Hawaiian Gardens Teen Center

**Construction Cost:** \$500,000 **Owner:** City of Hawaiian Garden **Architect Team:** Edward Lok Ng, Leo Arteaga  
**Completed:** 2019 **Project Description:** BOA was commissioned to completely renovate and convert an existing 3000 sf. old pre-manufactured building that was used as a childcare facility to a new facility dedicated to teenagers of Hawaiian Gardens. It was designed to meet their recreational and social needs, and also provide after-school and weekend "intervention" programs. It was designed specifically for teens, to give them "their own place". A place that is safe, with programs catering specifically to teens, and a place to receive guidance, supervision and help with their homework. The entire existing interior was gutted while the exterior shell was left in-tack. The interior improvements included; a large multi-purpose game room for computer gaming, table games, and social activities, a large computer room for homework and training, another room for homework and internet access, teen counseling is available in the staff office, arts and crafts, kitchen for cooking crafts and snacks are accommodated in the large multi-purpose room. Large expanses of interior glass windows allow separation and easy visual access for one staff member to visually survey all the rooms from the staff office. Other interior improvements include; new LED lighting throughout, ADA restrooms, warming kitchen. Outdoor improvements include; new landscape-hardscape, large outdoor multi-purpose gathering area with basketball court and volleyball court stripping, and shaded picnic-BBQ area. ADA compliance improvements include; retrofit ADA restrooms, new ramp at front and rear entrances, accessible parking stall, and new doors. The exterior was painted in a playful multi-color scheme to accentuate the modules of the premanufactured building and give the appearance of a place that is fun and full of life. Multi-color interior accent walls recall the exterior color scheme.



AFTER



## LA COUNTY ISD, Deferred Maintenance Program

In 2018 BOA Architecture was selected to provide Architectural On-Call Services on behalf of the County of Los Angeles –Internal Services Department (ISD) for their Deferred Maintenance Program for their existing buildings. To date, we have completed the design of 10 renovation/modernization projects in the cost range of \$50,000 to \$1,500,000 in construction cost. The design of the following projects has been completed or currently in the construction phase. Construction will be completed in December 2021.

**Roy Campanella Park Recreation Center, 4000 sf Renovation, Construction Cost: \$800,000** Located in the City of Compton. Currently in construction, the project scope comprised of the replacement and modernizing of the HVAC & electrical systems, new fire alarm, new exterior lighting, renovate restrooms for ADA Compliance, add R-30 roof insulation, replace the roof & rain gutters, repair rotted wood beams, provide positive stormwater drainage in the courtyard, provide new flooring, and paint interior/exterior.



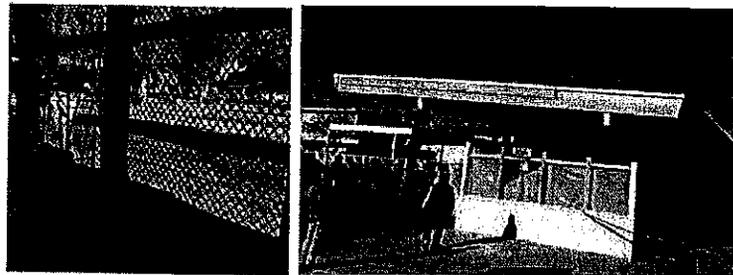
Roy Campanella Rec Ctr, Compton CA,



Saybrook Rec Ctr, East LA, CA,

**Saybrook Recreation Center, 3000 sf Renovation, Construction Cost: \$700,000** Located in East LA Currently in construction, the project scope comprised of the replacement and modernizing of the plumbing, replace electrical service, new fire alarm, new interior & exterior lighting, renovate restrooms new fixtures/finishes, add R-30 roof insulation, replace the roof, replace HVAC ducts, provide positive stormwater drainage in the courtyard, provide new flooring, and paint interior/exterior, remove wood siding & invasive vines, install new plaster finish on entire building exterior.

**Sorensen Recreation Building, 3000 sf Renovation, Construction Cost: \$600,000** Located in the City of Whittier. Currently in construction, the project scope comprised of the replacement and modernizing of the HVAC & electrical systems, new fire alarm, new exterior/interior lighting, renovate restrooms for ADA Compliance, replace windows & doors, replace the eave fascia, repair rotted wood trims, provide new flooring, and paint interior/exterior.

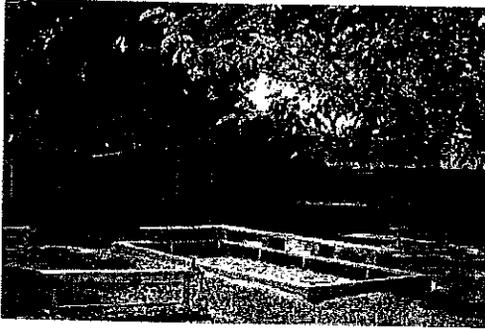


Sorensen Rec Building, Whittier, CA, In-Construction; Replace Windows/Trims, Fascia

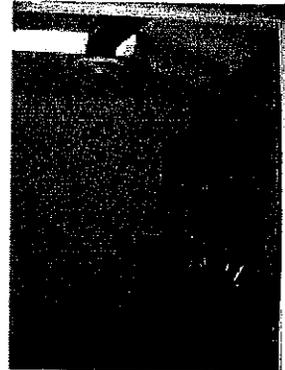
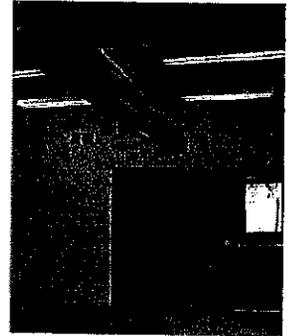
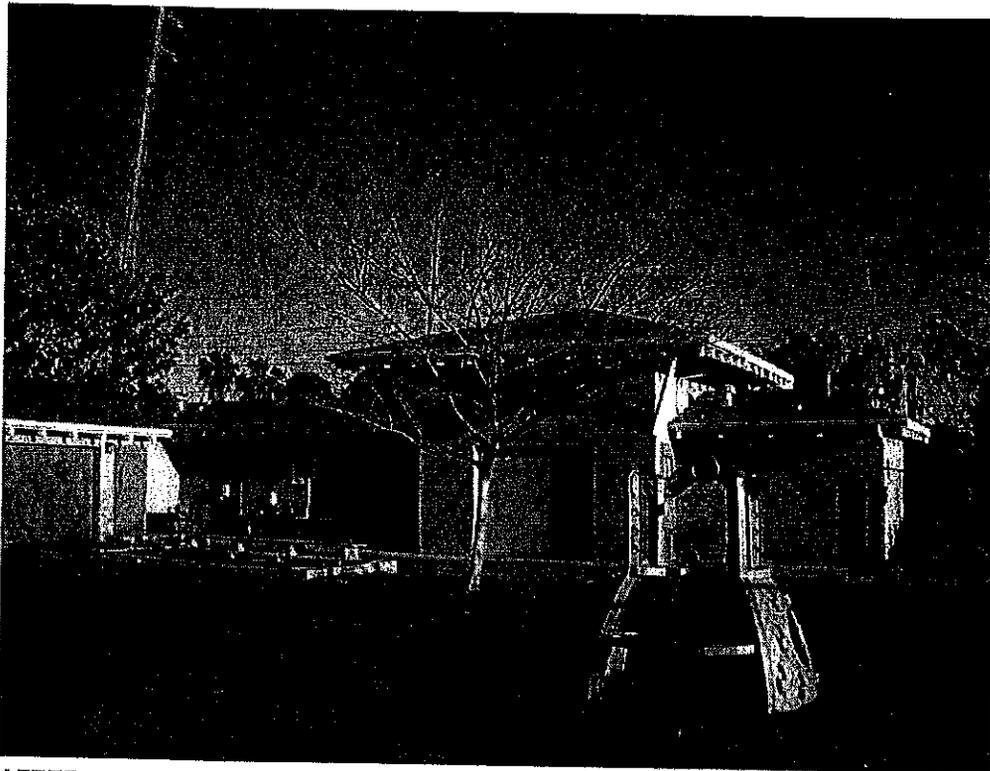
**Eddie Heredia Boxing Club, 5000 sf Renovation, Construction Cost: \$1,100,000** Located in East LA. Currently beginning construction. This renovation project totally transforms a 1960's mid-century fire station into recreational community boxing gym. The project scope comprised of the replacement and modernizing of the HVAC, plumbing & electrical systems, new fire alarm, new interior/exterior lighting, new restrooms with lockers, add R-30 roof insulation, replace the roof & rain gutters, repair rotted wood beams and fascia, new ADA parking stall, new trash enclosure, new flooring, paint interior/exterior, new entry ramp/stairs, remove walls to create larger rooms, and new sectional garage doors that will allow both natural ventilation and air conditioning for boxing events and training. The new garage doors will also maintain the historic character of the original fire station.



Eddie Heredia Boxing Club, East LA, CA,



BEFORE



AFTER

**Project:** Colorado Lagoon Playground, Community Ctr. Renovation and Addition

**Client:** City of Long Beach, Parks, Recreation & Marine Dept., CA

**Architect Team:** Edward Lok Ng      **Construction Completed:** 2011

**Project Description:** Located at the beach of Colorado Lagoon near the Marine Stadium, BOA designed a new Day Care/Kitchen/Restroom building addition that was architecturally compatible with the existing ranch style architecture of the park. The project included new Day Care facilities and a new staff kitchen for the community's day care and after-school programs, and for the city's Model Boats program. BOA's Design Team also made ADA modifications to existing amenities so that the entire existing park facilities, both the interiors and grounds would be accessible to the disabled. Other site amenities modified included the children's playground equipment, site parking, ramps, and picnic areas. Ease of maintenance and Crime Prevention Through Environmental Design were important considerations in this project. Liquefaction and a high water table were geotechnical issues that needed attention as the building addition and renovation was only 100' from the Beach Colorado Lagoon, just off Marine Stadium. This was mitigated with a floating mat structural concrete slab that supports the new building. Over-excavation & mat concrete slab were used to mitigate differential settlement and soil instability.

# Pasadena Villa Parke Community Center Remodel

**Project:** Pasadena Villa Parke Community Pool Deck & Equipment Replacement **Construction Cost:** \$800,000

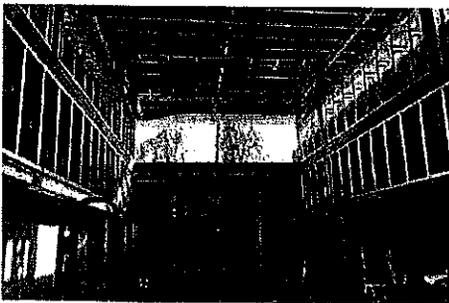
**Location:** Villa Parke, Pasadena, CA **Architect Team:** Edward Lok Ng, Leo Arteaga, Miguel Andrade

**Client:** City of Pasadena Dept. of Public Works, contact: Tiffany Chen PE (626) 744-6771 **Year Built:** July 2021

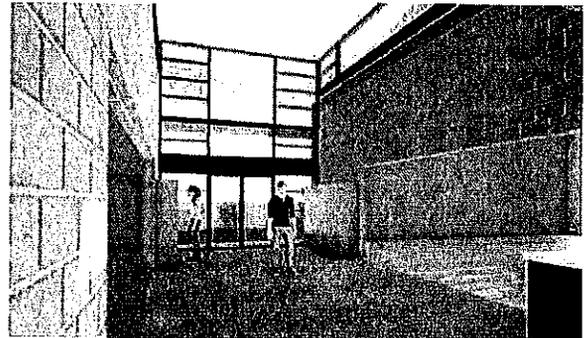
**Project Description:** BOA Architecture just completed the design phase with construction to start Dec. 2020. BOA Architecture was commissioned to modernize this old municipal community center and pool facility at the Villa Parke Community Center. The improvements to this expansive 2-story community center includes; bulletproof protective glass at the front public reception counter, new polish concrete flooring in the hallways, replace the roof leak damaged flooring and ceiling in the senior center community room, repair window leaks in multiple locations, and replaces the entire roofing (20,000 sf) with new PVC-TPO roofing. Most of the old pool equipment room will be replaced; pool filters, circulation pumps, pit submersible pump at backwash pit, boiler, and along with their associated plumbing pipes. On the pool deck, everything on the deck will be replaced; including; pool strainers, deck drains, lifeguard stands, diving board, lockers, light poles, gates, pool depth markers, and bleachers. A new feature that pool patrons will enjoy year-round is the new shade canopy structure that will protect the bleachers from the sun. New electrical power and lighting will allow for extended night-time activities such as; night swimming and movie-night at the pool with a big screen. The "gem" of this renovation project, is the addition of a new entry lobby for the existing Boxing Gym and Weight Room. The existing courtyard that is situated between the Boxing Gym and Weight Room will be demolished to make way for a new indoor lobby will have direct access to, not only the Boxing gym and weight rooms, but the basketball gym and the pool deck through the Weight Room.



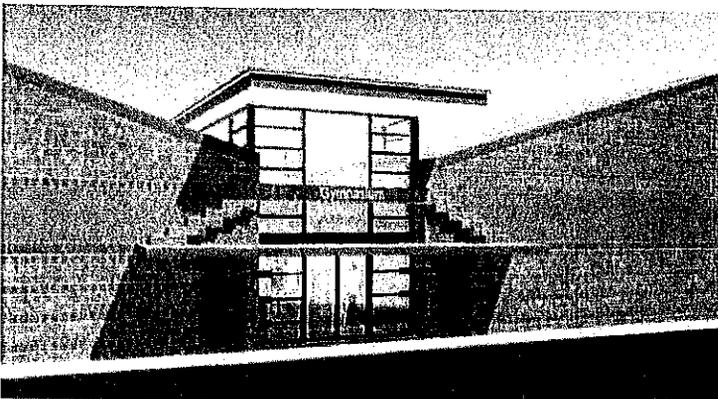
Front entry to Villa Parke Community Center



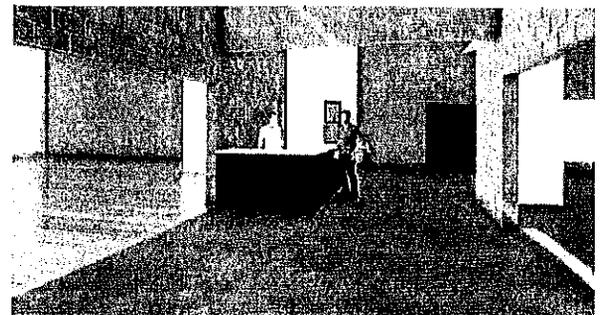
Dec. 2021 Construction at New Entry Lobby



Proposed Interior of New Entry Lobby

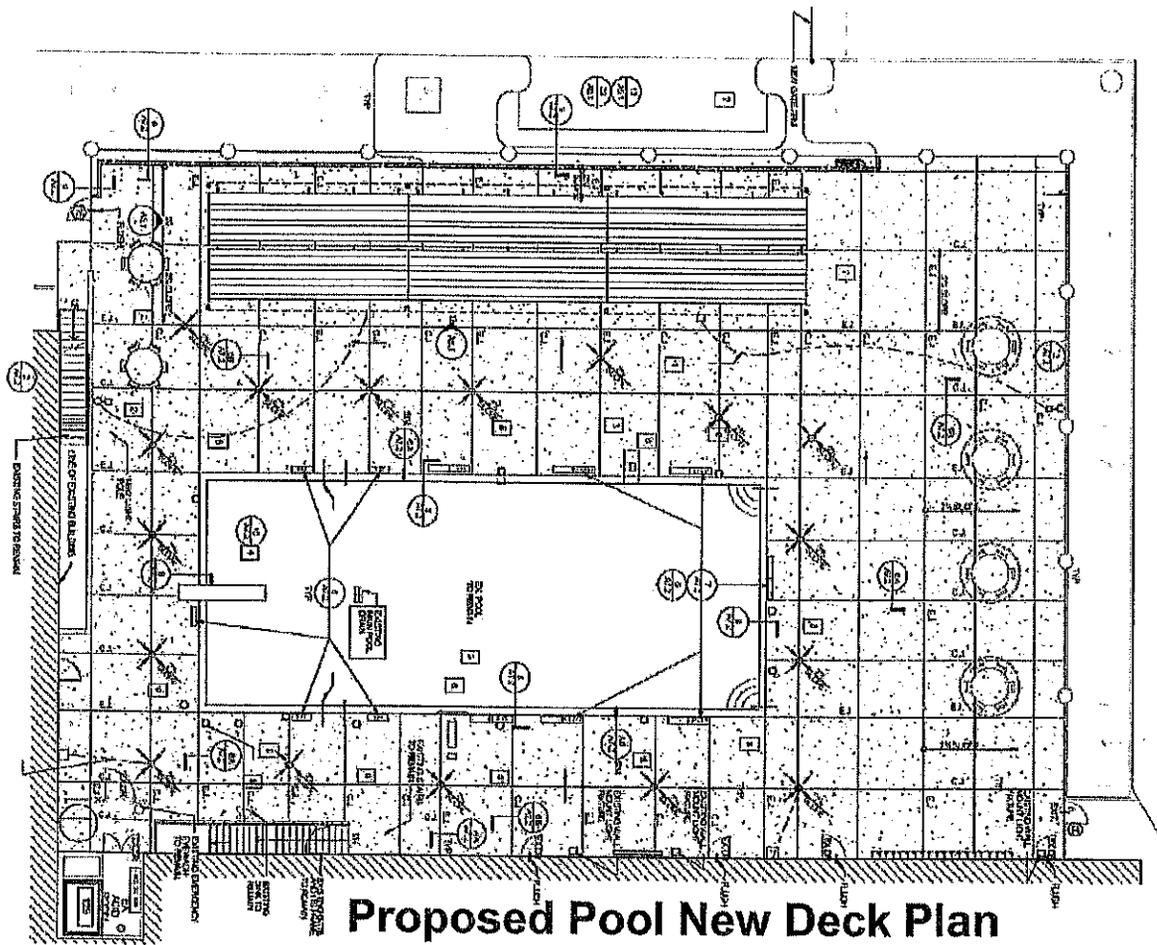


Proposed Exterior of New Entry Lobby

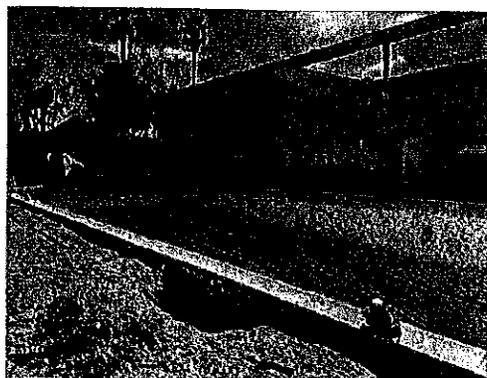


Proposed Interior of New Entry Lobby

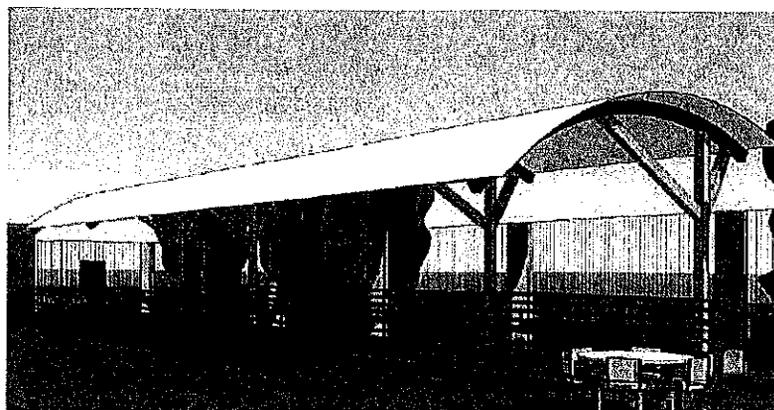
# Pasadena Villa Parke Pool Deck & Equipment Replacement



**BEFORE**



**Dec. 2021 Construction at Pool Deck**



**Proposed New Shade Structure and Bleachers**



BEFORE

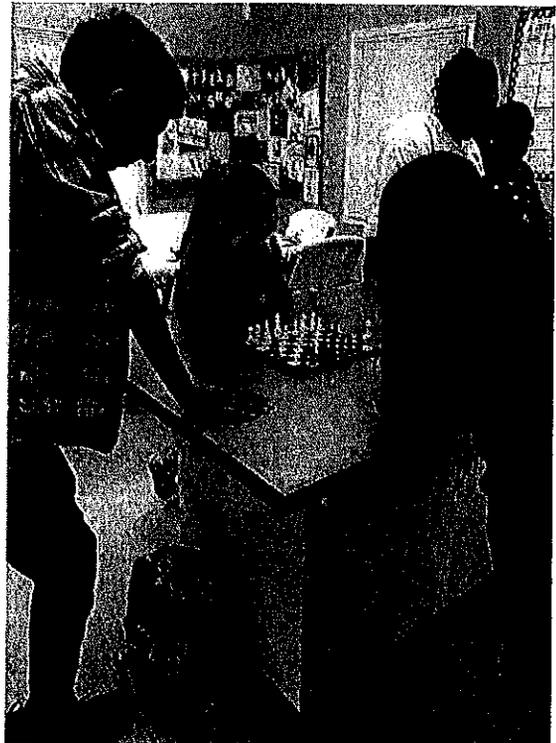


AFTER

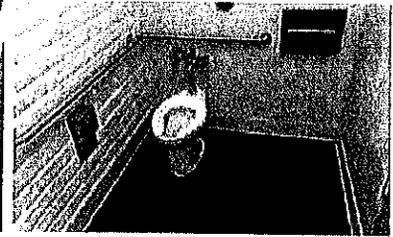
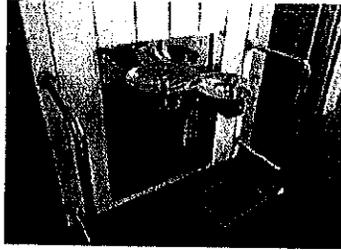
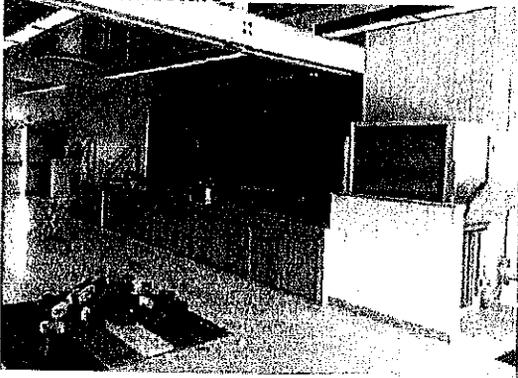
## Garfield Teen Center

**Construction Cost:** \$250,000 **Owner:** City of Pomona, CA **Architect Team:** Edward Lok Ng, Miguel Andrade

**Project Description:** In a Design-Build team with New Creation Builders, general contractor, BOA was commissioned to convert an existing 1500 sf. Old 1930's house to a new facility dedicated to teenagers of Pomona. It was designed to meet their recreational and social needs, and also provide after-school "intervention" programs. It was designed specifically for teens, to give them "their own place". A place that is safe, with programs catering specifically to teens, and a place to receive guidance, supervision and help with their homework. The entire existing house interior was gutted while the exterior shell was left in-tack. The interior facilities improvements included; a large multi-purpose game room, a quiet room for homework, another room for computer gaming and internet access, teen counseling is available in the staff office, arts and crafts, kitchen for cooking crafts and snacks are accommodated in the large multi-purpose room. Other interior improvements include; new LED lighting throughout, ADA restrooms. Outdoor improvements include; new landscape-hardscape, outdoor gathering area, and basketball court in the parking lot. ADA compliance improvements include; retrofit restrooms, new ramp at rear entrance, accessible parking stall, reception sign-in counter, handrails at stairs, and new doors. Sustainability features include drought-tolerant plants/trees, decomposed granite walkways and catch basin areas to allow rainwater infiltration, LED lighting, and a new white color reflective roof.



BOA Architecture



New access lift and accessible stair retrofit

New drinking fountain

New accessible restroom

Heritage Park Community Center

Harvard Park Community CTR

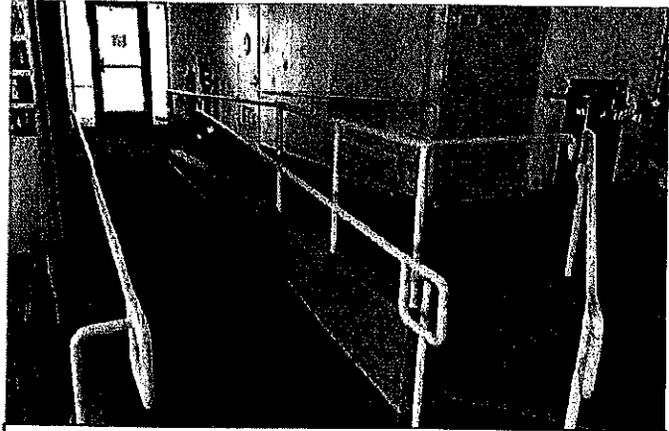
## CITY OF IRVINE ADA COMPLIANCE AT 4 COMMUNITY CENTERS

Client: City of Irvine, Public Works Dept.

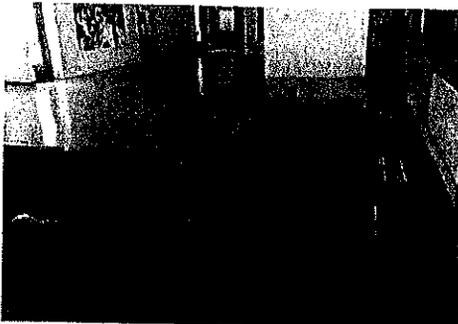
Architect Team: Edward Lok Ng, Leo Arteaga Construction Completed: 2017; Construction Cost: \$400,000

**Project Description:** BOA designed ADA Compliance improvements and interior renovations for modernization and accessibility to 4 community centers at; Fine Arts Center, Heritage Park Community Center, Harvard Park Community Center, and Deerfield Park Community Center. Every effort was made to isolate construction areas and to minimize construction cost, and to be architecturally compatible with the existing architecture at each separate community center. In all locations, the renovations enhanced the function and aesthetic value of each Community Center.

The project scope of work at these 4 community centers included renovation work to create entirely new accessible restrooms, new indoor ramps and stair handrails, access lift, signage, new doors and door hardware drinking fountains. Site elements included concrete accessible ramps, stair handrails drinking fountains. The greatest challenge for this project was in the construction support phase. Because this was a "smaller" construction project, a "smaller" contractor without much experience on public works projects was the low bidder and awarded the project. Though not covered in our design fee, BOA made numerous site visits to each Community Centers to identify installation deficiencies and provide an on-site sketch design solution to expedite the construction process. We provided constant construction coordination to assist the contractor and his sub-contractor on this difficult and "messy" remodel project.



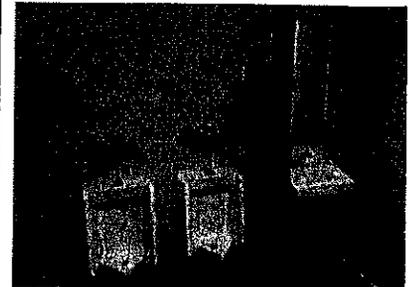
New accessible restroom  
Harvard Community Center



new ramp to lower level seating



new outdoor ramp

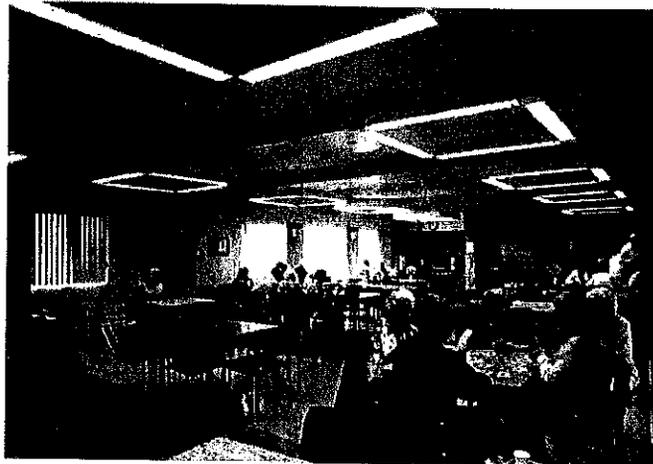


new accessible restroom

### AT FINE ARTS CENTER



Street into entry courtyard



Multi-purpose Rm. for dining/dancing/card playing

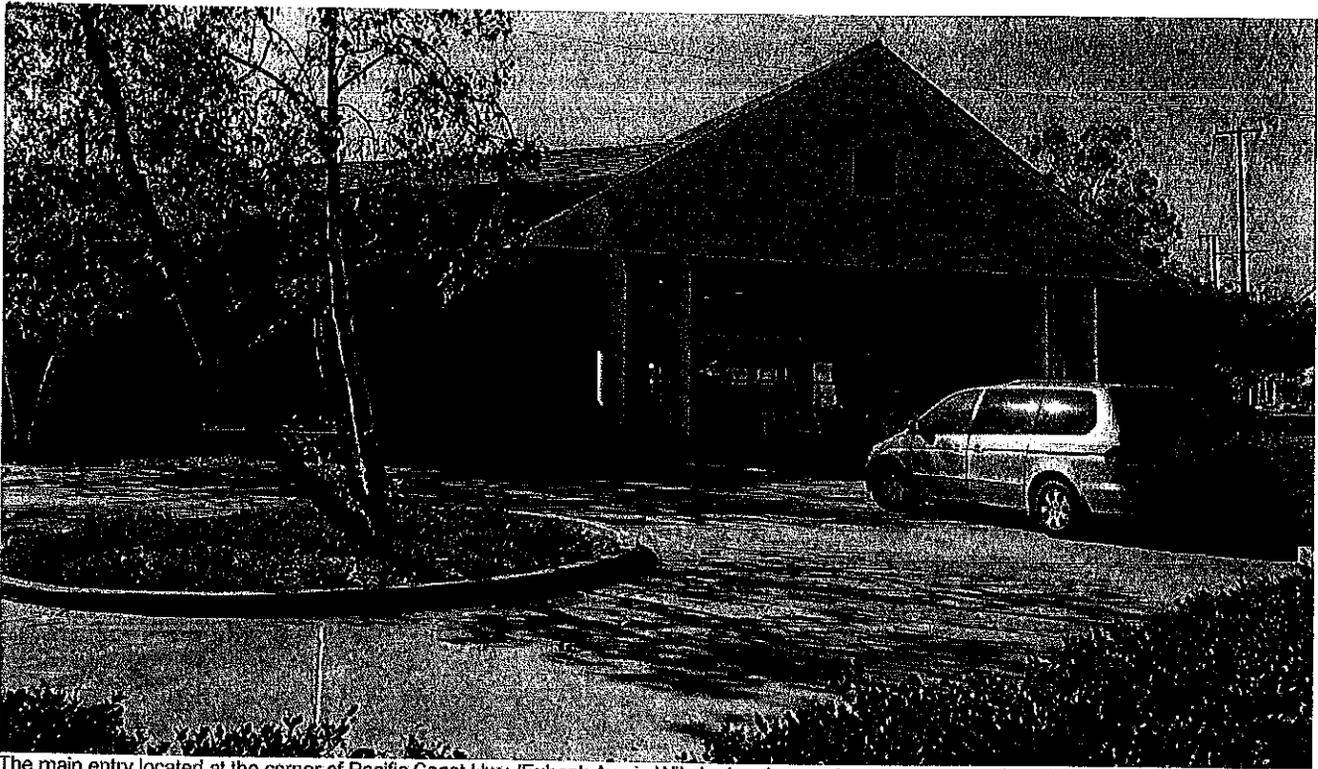


Courtyard entry

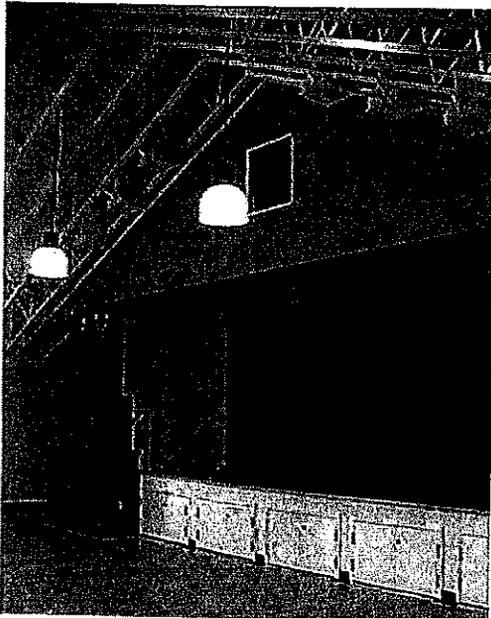
**Project:** Bartlett Senior Center, Torrance, CA **Client:** City of Torrance, 3031 Torrance Blvd., Torrance, CA 90509

**Architect Team:** Edward Lok Ng; project manager/project designer

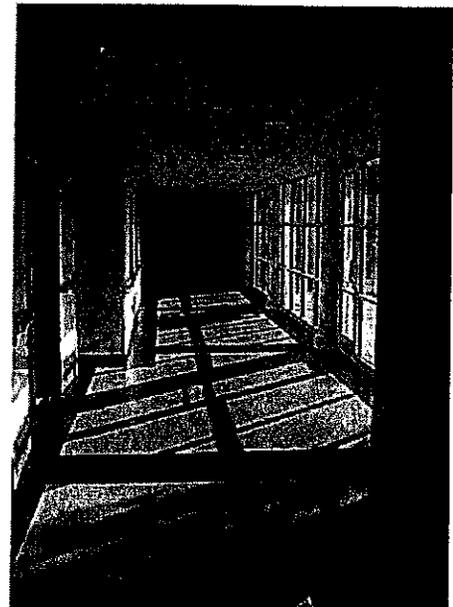
**Project Description:** This new two-story, 13,000 square foot facility provides both recreational and social needs of senior citizens in Old Downtown Torrance. It was designed specifically for seniors with limited mobility, and exceeds ADA code requirements. Accessibility features included; an elevator, automatic opening doors, liberal use of handrails/grab bars, and an open plan to facilitate accessibility. An entry courtyard shaded by trees welcomes visitors and seniors. A full commercial kitchen serves over 300 hot meals per day. To bring the project within a tight budget, the 5000 sf multi-purpose room was constructed over 6 existing championship quality shuffleboard courts. Great effort was made to preserve the shuffleboard courts in both the design and construction phases. CPTED (Crime Prevention Through Environmental Design) features include, CCTV, access controls, and natural courtyard surveillance. The building exterior was designed to be architecturally compatible with the adjacent "Art Deco" style museum. A Senior Advisory Committee was organized to formulate security and accessibility goals, and provide user input in the design process. The courtyard allowed seniors to participate in recreational activities or "people watching" in a secured lush/shaded outdoor space.



The main entry located at the corner of Pacific Coast Hwy./Eubank Ave in Wilmington, is a contemporary expression of the historic Banning House



Playful colors define the stage at the Multi-Purpose Rm.



Spacious interior hallways overlook courtyard.

**Project:** Wilmington Senior/Multi-Purpose Center at Banning Park, Los Angeles Area-Wilmington, CA

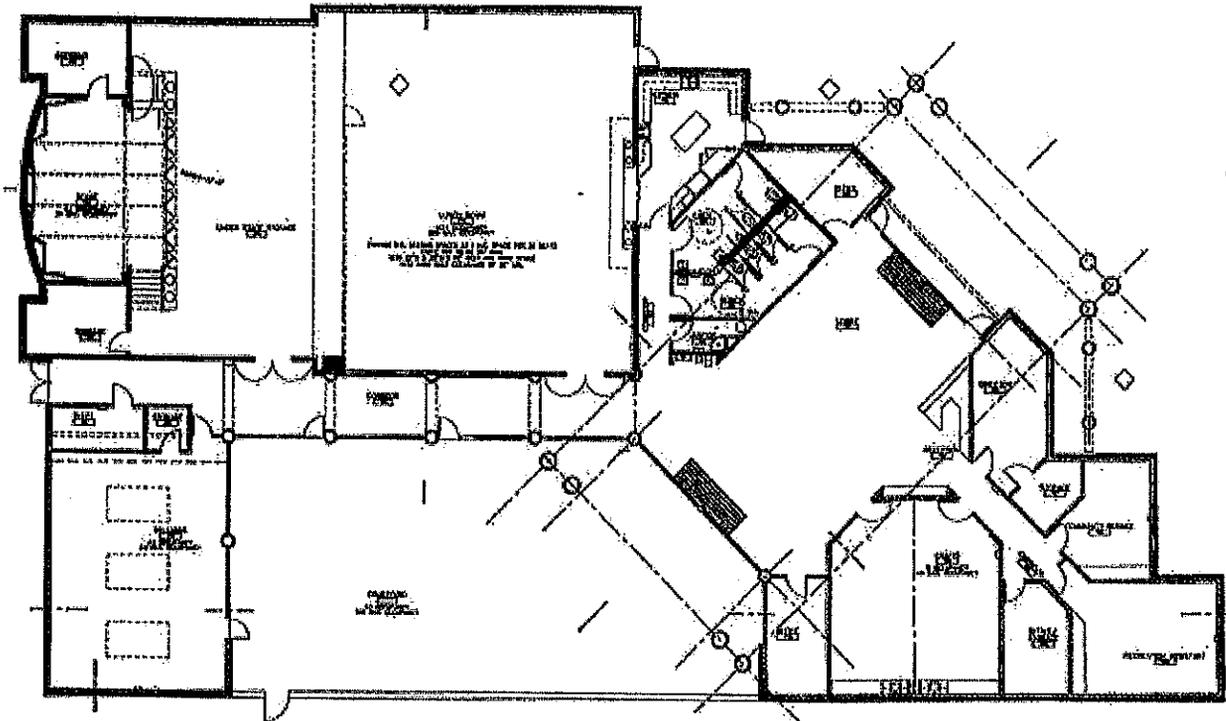
**Client:** City of Los Angeles, Recreation & Parks Dept. contact Paul Tseng ph: 213-847-9435

**Construction Cost:** \$2,400,000

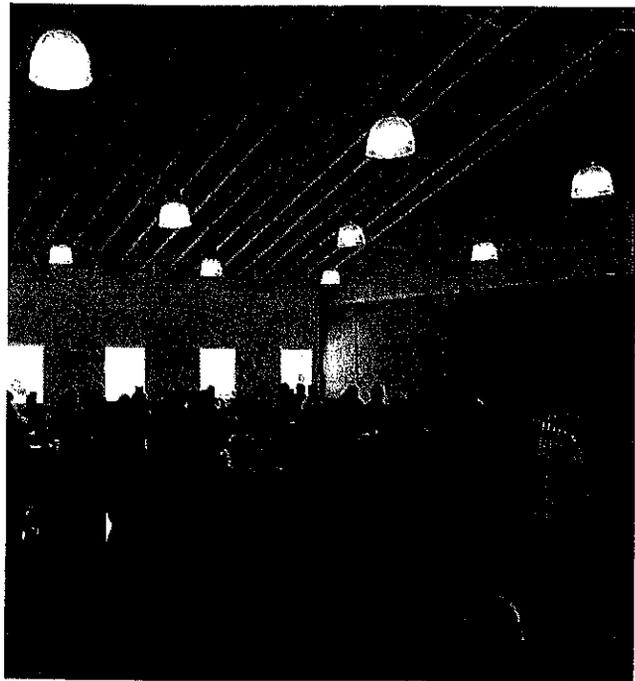
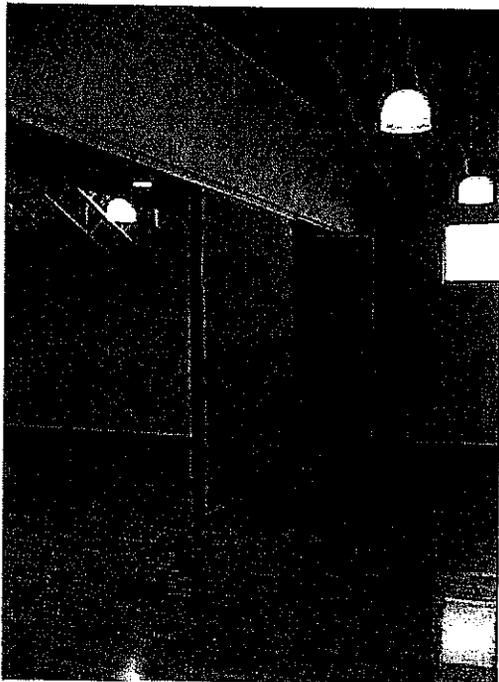
**Completed:** 2003

**Architect Team:** Edward Lok Ng,

**Project Description:** A new "state of the art" facility dedicated to senior citizens. It will meet recreational/social needs of seniors, and provide a "home away from home." This 12,000 sf facility is located on the grounds of National Historic Banning House. BOA worked closely with a Historic Consultant to locate & design a new building that was compatible but not mimic the Banning House. BOA also coordinated with the Councilman's Office, User Groups, City Cultural affairs, and Park Preservation to resolve design conflicts. This U-shape building with a courtyard focus, offered natural lighting within a secured environment, and provided a pleasant setting for seniors to meet and outdoor recreation. It was designed specifically for seniors with limited mobility and varying disabilities. This facility exceeds ADA accessibility code requirements, featuring, access lift to the stage, automatic opening doors, liberal use of handrails/grab bars in the hallways, and an open plan to facilitate visual accessibility. Crime prevention features included, access controls, selective use of windows at ground level, and natural surveillance at courtyard and front entry. BOA coordinated workshops with senior & park user groups to formulate security, programmatic, and accessibility goals and provided a forum for User input.



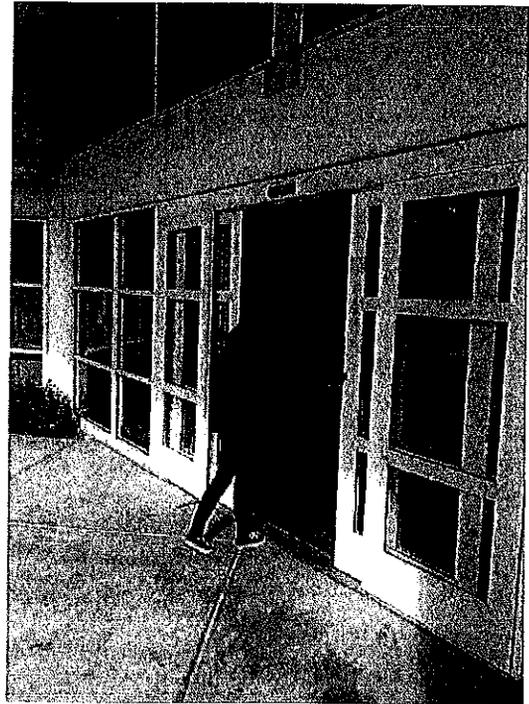
FLOOR PLAN



Folding acoustic partition divides the large multi-purpose room into 2 assembly rooms for concurrent use



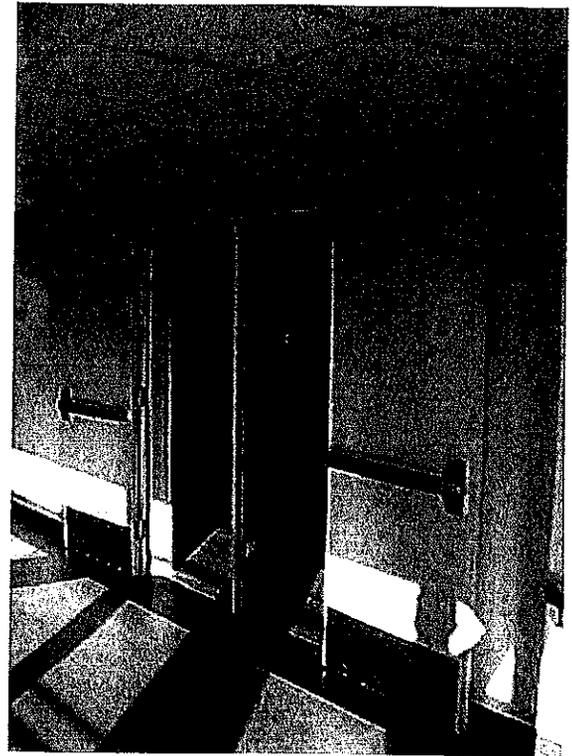
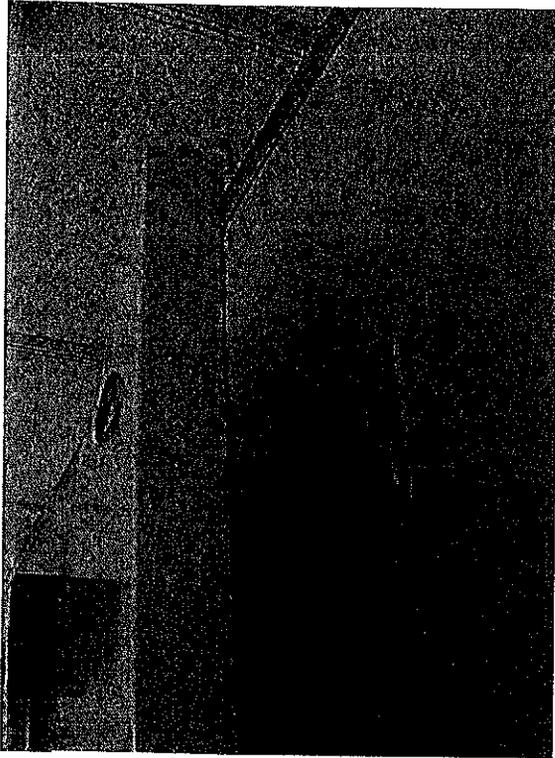
Spacious interior corridors with handrails enhance accessibility for seniors



Automatic opening doors provide easy Access into Lobby and courtyard



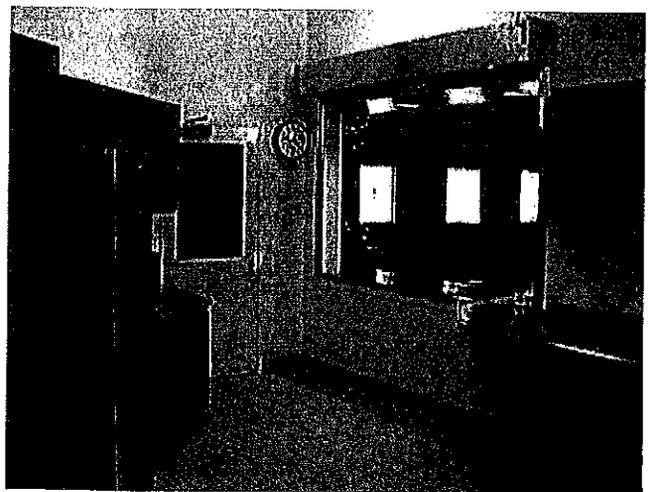
Natural light from large clerestory windows fill the entry Lobby



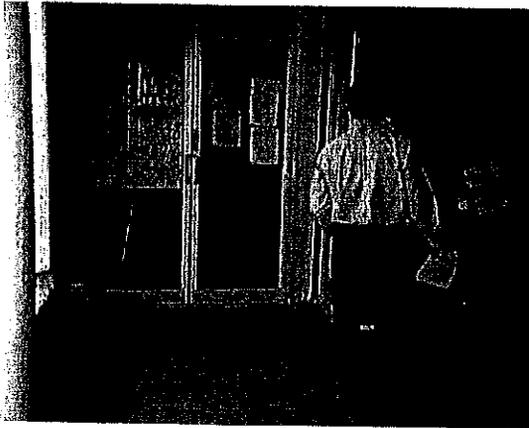
Magnetic hold-open doors provide "openness" and emergency fire safety to the large multi-purpose room



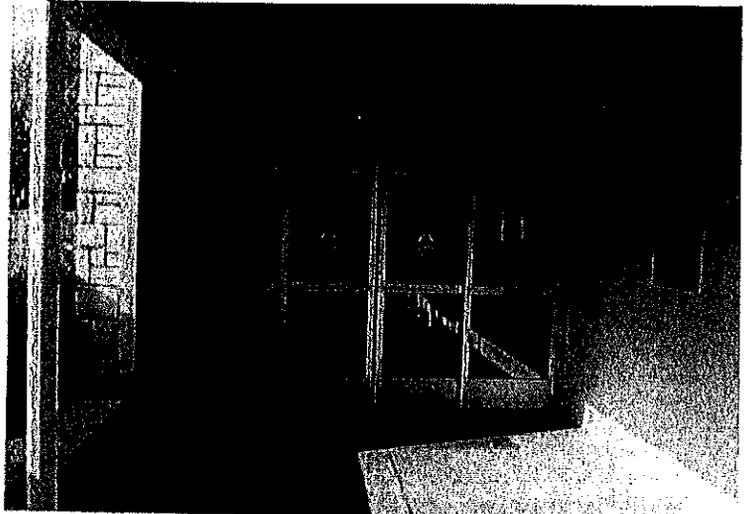
The Community Center's 4 largest rooms have direct access to this secure courtyard



A commercial type warming kitchen services over 300 lunches per day to seniors



**BEFORE**



**AFTER**  
**NEW AUTOMATIC SLIDING DOOR FOR EASY ACCESS TO COMMUNITY CENTER**

**Project:** El Dorado Park West, ADA Compliance

**Client:** City of Long Beach, CA **Construction Cost:** \$800,000 CDBG funds

**Project Description:** BOA was responsible for ADA compliance and maintenance repair to a 30 acres park and 25,000 sq.ft of buildings comprising of two community centers, Nature/Interpretive Center, and Recreation and Parks headquarter offices. Work included, accessible ramps, stairs, disabled parking stalls, ADA signage, new guardrails/handrails, and rest room renovation, entry/exit door and hardware replacement/modification, sitework/parking lot/landscape improvements, accessible picnic tables and seating, and new drinking fountains. We provided new automatic sliding doors to the community Center where there is a vibrant senior citizens program. Design priority was given to ensure on-going city operations in this heavily used park facility during the construction phase. All areas of the park grounds, public restrooms, and community centers were retrofitted to be completely accessible to the Disabled. Three (3) new children playground with play equipment were also a part of the project. One of the new playgrounds featured "custom" designed and built play structures specifically for the disabled.



**NEW TODDLERS PLAY AREA WITH FENCE AND LANDSCAPING**

## REFERENCES

City of Placentia  
401 E. Chapman Ave. Placentia, CA 92870

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Cypress, CA 90630

Nick Manjkaraklri  
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Montebello, CA 90640

Danilo Batson  
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dbatson@cityofmontebello.com

City of Long Beach, CA  
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Long Beach, CA 90802

Marilyn Surakas, Project Manager  
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Marilyn.Surakus@longbeach.gov

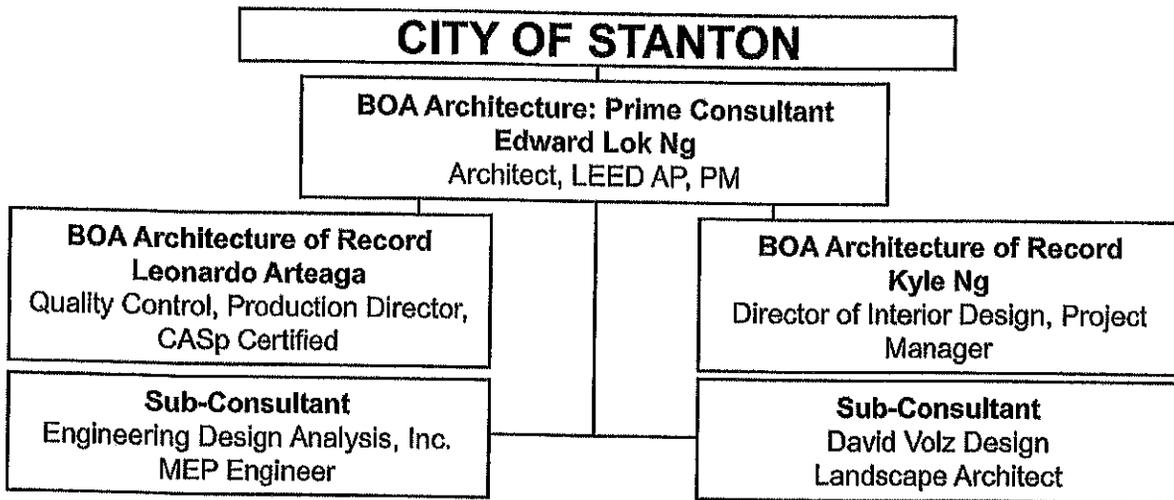
City of Bellflower  
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Bellflower, CA 90706

Bernie Iniguez, Project Manager  
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biniguez@bellflower.org

City of Irvine  
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Irvine, CA 92618

Alex Salazar, Public Works OSF Director  
(949) 724-7408  
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## 2. PROPOSED TEAM



Above is our Organization Chart and proposed Design Team. Please note that BOA Architecture, as the prime-consultant, will be responsible for all aspects of your project, including architecture and engineering. Our sub-consultants that are listed above are all State of California licensed professionals in their respective disciplines and have teamed with BOA on numerous Public Works Architecture Projects. Please note that we have asked David Volz Design (DVD) to join our Team to spearhead the exterior site improvements on this project. DVD has delivered on 12 recently completed City of Stanton Parks and Recreation Projects. Their full qualifications are available upon request.

**Mechanical Electrical Engineering:** Engineering- Design-Analysis 10231 Slater Ave., Suite 203, Fountain Valley, CA 92708 Kevin Friedman, P.E. CA State License# 27267- holds a BSME from Purdue University. Mr. Friedman has over 30 years' experience in Public Works projects in facilities planning and design, interiors design, special building systems planning and design, laboratory design, controls, energy conservation, and computerized building modeling and simulation for commercial and public works projects.

**Landscape Architect:** Has been in continuous business since 1997, and has completed 12 recent Parks and Recreation projects for the City of Stanton. 99% of their workload are for municipalities and public agencies. David Volz and Eric Sterling will be you contact for this project.

In the following pages, you will find BOA's staff resumes. These are highly qualified team members who will work directly on your project. Also attached is a brief description of DVD's qualifications.

## STAFF RESUMES



**EDWARD LOK NG, ARCHITECT, LEED AP**  
**PROJECT RESPONSIBILITY**

- Maintain Client communication, lead overall design effort in form and function, compile client and user group input and day-to-day contact with Client.

**EDUCATION**

- Bachelor of Architecture, University of Hawaii, 1981

**PROFESSIONAL REGISTRATION**

- Licensed Architect, C-16840, State of California, 1986
- LEED Accredited Professional 2009
- Completed Accessibility Surveyor Training for State Leased Buildings and Facilities, State of California, since 2003

**EXPERIENCE:** Edward Lok Ng has been a member of BOA since 1982. Principal and Director of Design, Mr. Ng has over 38 years of experience in all phases of the design process. He has personally designed and managed over 500 municipal facility projects and over 300 parks and recreation projects, and over 200 civic center renovation projects. He leads a talented team of designers and consultants to ensure that design solutions effectively meet the clients' and users' needs while adhering to client schedules and budget constraints. He is proficient in computer aided design (CADD). He has been the Project Manager Designer for numerous City Hall facilities, civic/public buildings, parks and recreation, educational facilities, and ADA retrofit/transition plan projects. This experience coupled with Mr. Ng's dedication and commitment to design excellence has led to numerous honors and commendations for BOA. Currently, Mr. Ng is the Project Manager for all "On-Call" projects for the Cities of Irvine, San Bernardino, Cypress and Placentia as well as the firms current on-call projects with LA County ISD, City of San Bernardino, and Fire Station remodel for LA County Eastside Box Club facilities in East L.A. A certified plan review consultant to California's Division of the State Architect, Mr. Lok Ng has completed DSA-sponsored training as an Access Compliance Plan Reviewer and Accessibility Surveyor. As a member of the City of Long Beach Disabled Access Appeals Board since 1994 and the Design Review Board for the City of Downey since 1989, he has reviewed applications and appeals for a broad range of commercial and municipal designed projects. He is also LEED, AP Certified and has design several LEED Certified projects. His expertise on sustainability design will be a definite asset towards your sustainability goals.



**LEONARDO ARTEAGA PROJECT MANAGER, CASP  
PROJECT RESPONSIBILITY**

- Apply and interpret technical requirements of the Americans with Disabilities Act and access provisions of the California Building Code.

**EDUCATION**

- Bachelor of Architecture, California State Polytechnic University at Pomona, 2002

**PROFESSIONAL REGISTRATION**

- California Certified Access Specialist, 2009 - CASp #55
- ICC-Certified Accessibility Inspector and Plan Examiner - #8088179

**EXPERIENCE:** Leonardo Arteaga is a Project Manager with expertise in applying and interpreting technical requirements of the Americans with Disabilities Act (ADA) and access provisions of the California Building Code (CBC). Mr. Arteaga is a California Certified Access Specialist. He graduated from California State Polytechnic University, Pomona, in 2002 with a Bachelor of Architecture degree and has been at BOA Architecture since 1997. In 2009, he successfully fulfilled the experience and testing requirements set forth by the Division of the State Architect (DSA) and became a California Certified Access Specialist. His experience ADA Compliance experience includes accessibility plan check services on behalf of the DSA- Los Angeles Basin Regional Office and the County of San Bernardino-Department of Risk Management, ADA Transition Plan and accessibility inspections, compiling inspection information into accurate and concise accessibility reports, cost feasibility reports, and code analysis roles covering all phases of barrier removal. His relevant experience and expertise includes all types of municipal facilities (City Halls, Theaters, Auditorium, Community Centers) for ADA Compliance for the Cities of Long Beach, Placentia, Irvine, Huntington Beach, and for the State of California DMV at Oxnard. Other experience include DSA- LA Basin Region Office – Consultant Access Compliance Plan Reviewer (2008-2011), County of San Bernardino, CA – Inspection, Review and Analysis, and ADA Title III Private Entity Accessibility Surveys – multiple facilities. Please note that Mr. Arteaga completed the modernization of 4 community Centers for City of Irvine.



**KYLE NG**  
**PROJECT MANAGER, DIRECTOR OF INTERIOR DESIGN**

**PROJECT RESPONSIBILITY**

Equipped with a BFA in Interior Architecture (from CSU Long Beach) and Masters of Architecture (Cal Poly Pomona), Kyle is BOA's Director of Interior Design. Kyle offers valuable design insight and is in-charge of interior design directions, and is responsible for our extensive interior materials library and resources. He works to spearheads the production of interior design construction documents; drawings, specifications and 3-dimensional modeling. He also coordinates with Clients and our sub-consultants/engineers to resolves critical interior design issues.

**EDUCATION**

Masters of Architecture  
 Cal Poly Pomona University, 2017  
 BFA, Interior Architecture from CSU Long Beach  
 Licensure in Progress

**YEARS OF EXPERIENCE**

Employed by BOA since 2010

**EXPERIENCE**

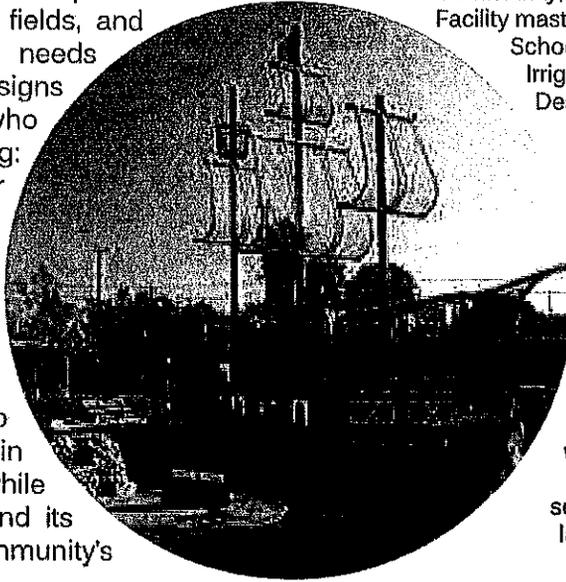
Kyle has been a member of BOA since 2010, with over 10 years of architectural experience in all phases of a project, from conception, through construction, and project close-out. He has experience in both private commercial and especially public works interior renovation projects for numerous public clients; understanding the goals of the Client and that open communications are the keys to a successful project. He leads the interior design and production effort to ensure that design solutions effectively meet the clients' and users' needs and goals while adhering to client schedules and budget constraints. He is advance-proficient in both Computer Aided Design (CADD) and in BIM Revit 3D 2020. He has been the Project Manager for interior design projects for numerous public agencies; Cities of Irvine, Costa Mesa, Laguna Beach, Laguna Niguel, Pasadena, and for LA County ISD, and Orange County Fire Authority. Kyle's wide variety of interior Public Works design work experience includes:

- Root Vision Dental Office, interior renovation & exterior façade Improvement
- Historic Long Beach Restaurant restoration and re-creation, 4251 Long Beach Blvd.
- OC Fire Authority, Fire Station #41 Air Operations interior addition-renovation
- City of Laguna Beach City Hall interior renovation, various locations
- City of Costa Mesa Finance Dept. interior renovation
- City of Laguna Niguel Senior Center interior renovation
- LA County ISD, interior & exterior renovation at 4 Social Services locations
- City of Pasadena Police Dept. renovation to 3 floors, and at 3 fire stations
- City of Laguna Niguel Senior Center renovation

**FIRM PROFILE**

**DAVID VOLZ DESIGN**

David Volz Design (DVD) is committed to the creative design of outstanding public spaces. We develop landscapes, parks, sports fields, and streetscapes to meet the specific needs of their communities. DVD designs special environments for those who seek recreation in a beautiful setting; wonderful natural environments for those who are simply looking for respite, and for those who pursue recreation and competitive athletic endeavors on the playing field. Our firm capitalizes on what the site and nature has to offer. For all of our commissions, we work to enhance the site's use, working within environmentally sound parameters while taking full advantage of the site and its surroundings to best service the community's needs.



- PLANNING AND DESIGNING**  
 Demonstration gardens, mitigation + restoration  
 Nature parks, interpretive gardens + wilderness camps  
 Streetscape development + redevelopment  
 Community, neighborhood + mini-parks  
 Facility master plans + feasibility studies  
 School fields + campus planning  
 Irrigation renovation + redesign  
 Design guidelines + standards  
 Sports parks + stadiums  
 Grant applications

"DVD continues to build its reputation on creativity and service in the design of outstanding public spaces. We create high quality public spaces for our clients' communities and neighborhoods. We work with public agencies and the people they serve to develop innovative landscapes of outstanding beauty."

David Volz, President, RLA, LEED AP, QSD/QSP

Ever mindful of our role as stewards of the land, DVD's design philosophy includes careful consideration for realistic maintenance requirements and construction cost parameters. We also embrace any opportunity to interact with the public to create environments that meet their needs. DVD's proven outreach approach has often been the catalyst for our most successful projects. Our proven approach and input we receive provides the inspiration that leads to creative and innovative solutions.

Our company understands the importance of protecting the environment, protecting our resources and the health of future generations. DVD is proud to be a LEED Accredited and a Qualified Stormwater Designer QSD company. We understand the commitment we have to the public to deliver quality projects that offer a high return for the public funds invested; projects that can be maintained and deliver a lifetime of service to the communities they are built for.

Parks and greenspaces designed by our firm have received awards and accolades from community groups, civic organizations, the American Public Works Association, the California Parks & Recreation Society, and the National Recreation & Park's Society.

**DAVID VOLZ DESIGN LANDSCAPE ARCHITECTS, INC.**

Designing landscapes that create community  
[www.dvolzdesign.com](http://www.dvolzdesign.com)

Founded in 1997  
 24 years in business  
 S-Corporation-CA  
 Never filed for bankruptcy  
 Wholly-owned Business

8 employees  
 David Volz RLA#2375  
 Gary Vasquez RLA #3883  
 LEED Accredited  
 SBE

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 Suite 300  
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 669.444.0461

Like us on Facebook!  
 Follow us on Instagram  
 @davidvolzdesign



**STATEMENT OF QUALIFICATIONS**

**ERIC STERLING**  
SENIOR LANDSCAPE ARCHITECT

Mr. Sterling is returning to DVD from a 9-year absence to explore worldly projects. He has 25 years of experience in landscape architecture working on projects for public agencies. His design expertise ranges from recreational parks to streetscapes, school sites, as well as city design guidelines, various Disney parks, including many award-winning projects. A benefit to Mr. Sterling's design ability is his attention to detail and his knowledge of playground design, the latest construction practices and materials, ADA accessibility concerns. He is a key figure at DVD in coordinating design development plans and carrying them through construction drawings. He is known for his ability to collaborate with a variety of clients, architects, engineers and designers and to successfully manage projects from beginning to end. He is typically responsible for plan checking to ensure the successful completion and delivery of projects.



**DUANE TUT**  
PROJECT MANAGER

Has more than 20 years of experience in landscape architecture designing environments in both the public and private sector across California and Asia. His design expertise ranges from recreational parks to schools, airports, resorts, and thematic design. Mr. Tut has been a key figure at DVD in managing projects and carrying them through construction drawings. He ensures adherence to established project schedules and cost agreements, and monitors production for delivery of the highest quality products to clients. He cooperates well with staff, clients, and agencies to create successful products and works closely with contractors during construction.



**ANGELA LEE**  
PROJECT DESIGNER

Has experience in many aspects of the public landscapes design process including conceptual planning, planting design, irrigation design, and community presentation techniques. Angela is extremely knowledgeable in drafting construction documents and understands exactly what information contractors will need. Her abilities include her computer graphic skills, writing and composition, and an aptitude for tackling challenging tasks with timely completion of duties. Not only does she understand and work on the design and construction process but she is excellent at analyzing data from our community input charrette process to help form a common goal of what the community desires.



### 3. PROJECT UNDERSTANDING

This section contains a description of our project management approach and methodology, highlighting the services we are providing to complete your project as contained in the Scope of Work of the RFP. We have visited the site and we totally understand what needs to be done. Note that BOA has in the past completed over 60 Community Center projects and numerous playground and site work renovation projects throughout Southern California.

BOA has over 60 years of continuous architectural experience in managing and designing similar public facilities from project conception to project close-out. Our staff also has an abundance of architectural Public Works facilities experience and successful past performance for the following areas of an architectural project that will be included in your project:

- Program Development
- Feasibility Studies/Project Definition
- Conceptual Design
- Project Design-Construction Documents
- Specifications
- Design Reviews
- Cost Estimating
- Value Engineering
- Constructability Reviews
- Building Evaluations
- Troubleshooting
- Construction Support Services
- CADD/Drafting Work (BIM/3D)

BOA's project management approach is based upon our extensive past experience in preparing comprehensive architectural construction documents for architectural Community Center renovation projects using a Multi-Discipline Design Team. Your project will need not only architectural expertise, but also other design disciplines, such as ADA Compliance (in-house expertise) electrical, Engineering design, and landscape architecture. BOA will provide leadership and direction to the Design Team. BOA's management approach incorporates 6 components used successfully on facilities design projects:

1. Project Management
2. Project Documentation
3. Consultant Coordination
4. Construction Administration
5. Quality Control
6. Work Plan

#### 1. PROJECT MANAGEMENT

BOA, throughout an extensive history of municipal Teen Center and Community Center design, and facilities addition/renovation continues to develop and refine its management philosophy to better address its future projects. BOA will implement our most advanced management techniques in the undertaking of this project. The goal of our management philosophy is to accomplish a well-designed project that exceeds client expectations, meets its budget, is deliverable on time, and meets all functional needs and City, State and County building code requirements. Our techniques of management encompass the ideals by which these goals are achieved. Our project management approach is characterized by the following considerations:

**Design/Management Integration:** Successful projects require the fusion of the design disciplines with those of management. They must have common goals and an integrated process. This is best achieved by appointing leaders with mutual respect and extensive facilities modernization and public works design experience on similar projects.

BOA will have Edward Lok Ng, Principal, as the Project Manager on your project. An examination of Mr. Ng's qualifications reveals that he has personally designed and successfully managed and designed over 4 Teen Center's and 40 Community Center's architectural renovation projects for nearby cities and over 200 other Municipal facilities modernization projects and he has been the project Designer in all BOA's recent projects involving Community Centers. It is the Project Manager's task to help establish the appropriate design vision and see it through its successful realization.

**Client Participation:** Client participation will be critical. Design goals cannot be realized without the thorough understanding of the client's needs and sensitivity to patrons and city staff that use your facilities. The early involvement of the client and the users will be continued throughout the design process. The Project Manager will ensure that the efforts of the team are always addressed to the specific client user group. The understanding and involvement of the client will extend to City appointed representatives, i.e., maintenance managers, engineering staff, and City inspectors and engineers in a mutually productive partnership.

BOA is intimately familiar with both modernization and renovation to community center facilities. Team-work and close coordination among staff, consultants, and the Clients are essential to a successful project. Timely participation and response of the Client is absolutely critical if the project is to be successful and "on time". BOA will be responsible for ensuring that a high degree of coordination occurs and that project milestones are met. BOA's biggest assets are its attention to construction details, thoroughness in drawing documentation and ease of constructability. A major priority of BOA will be to establish continuing dialogue with your staff, Building/Safety plan check, and representatives of interested parties so that our products reflect community goal, City policy, and conformance with your Design/Manual Standards.

**Continuity:** The understanding of the project needs and the resultant design goals must be maintained throughout the project's duration. In construction phases, it is as necessary as in the design phases, to make certain that the original intent, of the client and designer are realized in the final built product. This will be very important in the construction phasing of your project. The key members of the team, under the leadership of the Project Manager will be responsible for the direction of the project throughout all phases to ensure continuity of design intent.

## 2. PROJECT DOCUMENTATION

Project Documentation is a result of systems set up in BOA's Project Management Manual. This guide on how to run a project effectively and efficiently, developed more than 60 years of architectural practice, is firm, but flexible; responsive to the specific dynamics of specific projects, but unyielding in its insistence on full documentation, responsiveness, and performance. Keys elements include: Project Checklist: This is initiated at the beginning of each project and services as a guide of all elements of the project to be completed, and as a central index for all project related material. It is continually updated and reviewed during regular project audits.

**Product File and Technical Project Checklist:** Initiated at the commencement of design, this checklist serves to record all considerations and decisions regarding building materials and methods to be used in construction. It also becomes a comprehensive guide for preparation of the Construction Documents.

## 3. CONSULTANT COORDINATION

The engineering consultants play a very critical and active role in all phases of the work. The Project Manager leads in coordinating the efforts of consultants with the help of:

- Frequent coordination meetings.
- Consultant orientation packets which are distributed at project commencement and periodically through the project.
- Clearly defined scopes of work which define separation of responsibilities and eliminate grey areas.
- Milestone Outline, prepared specifically for each project which clearly defines consultant performance expectations for each phase.
- Project Schedule coordinated with a milestone outline, reviewed and signed off by all consultants.
- Drawing Status Log which is updated every two weeks which track's consultant's performance.
- CADD (AutoCAD 2020 and Revit 2020) procedures involving background and overlay methodologies that insure up-to-date and coordinated design effort. Your project drawings will be completed using BIM/3D/Revit 2017 (3 dimensional modeling).

## 4. CONSTRUCTION ADMINISTRATION

BOA understands the importance of efficient construction administration. To ensure that the design and technical intent are conveyed to the contractor and that the project knowledge is available throughout this phase, the construction administration is led by the project manager. The Project Manager, Edward Lok Ng will personally review shop drawings as well as attend all job site meetings to resolve technical design issues. A Senior Project Manager from each of our engineering consultants will be assigned to assist the Project Manager and ensure that the highest standard, procedures and methods of construction are employed. BOA has a Construction Administration Manual to assist the Project Manager with an established system to track shop drawings, RFI, change orders, and documentation of construction site meetings, so that keys decisions are tracked and managed for the benefit of the Client.

If there will be on-going operations and services, BOA will assist in the development of a Construction Phasing Plan to ensure that on-going operations and services will have minimum disruptions. BOA is well aware of the need for City facilities and services to remain operational during construction. We have had good results recently assisting the Cities of Long Beach, Torrance, City of Irvine and Huntington Beach on renovation and addition projects that require facilities to remain open during construction.

## 5. QUALITY CONTROL

Quality assurance begins with the commitment, experience and abilities of the team members. All of the firm's personnel contain many design specialists versed in the complexities of the individual phases of the design process. The quality assurance program for the project will draw on these skills to assist the team in obtaining its goals for a design of vision that delivers the maximum functional and accessibility solution to the user that addresses the needs of the client and does so with the most efficient construction process. BOA has an established Quality Control program that is based on three mechanisms:

**The Quality Control Manual:** The Quality Control Manual documents, activities, tasks, and deliverables are to be achieved in each phase of work. Checklists are included and, at the completion of each phase, are signed off by the Project Manager. The manual also includes exemplary forecasts for meetings, programs, schedules and agendas. We have a quality control checklist that is customized especially for Public Works facilities renovation projects. Checklist items range from electrical and plumbing fixture standards, to City/County department clearances, to record drawing procedures, to amount to copies needed for review submittals, and much more.

**Quality Control Review:** Quality Control Reviews occur prior to review Submittals and at key points in the project schedule. During these reviews, the entire sets of documents are checked by an experienced, a licensed architect who has had major experience in the design of similar projects to ensure a "questioning character" in this process. Major emphasis is placed on Constructability and on satisfying the operational

requirements of the user and thoroughness of documentation. As a part of this project, BOA will commit Mr. Leo Arteaga, CASP./Quality Review Officer. Mr. Arteaga will be ideal for this role because of his extensive municipal and Public Works experience and familiarity with working on municipal facilities and ADA Compliance. Mr. Arteaga will review all deliverables at, 50%, and 95% completion. This involvement is formalized and part of the quality control manual procedures. We are committed to providing quality design services and trust that our past work with the City of Irvine, Anaheim, Placentia, and with other local cities is indicative of that commitment.

**Project Standards:** From our experience of over 2000 architectural Public Works projects, BOA has developed its own Project Standard that can be customized to the Client that enhances quality control of bid documents and the construction process. Project Standards include:

1. Construction document detail drawings: With the input of past governmental clients, BOA has developed, refined, and field tested over 300 Standard construction details that are geared for public works renovation/addition projects. We have Standard, field tested, construction document details for just about every field condition possible; accessible lavatory counters, transitions of existing to new addition, restrooms upgrade, signage, railings, entry doors, stairs, ramps, site work, parking lot, window/door replacement, roof repair, building expansion joints, new flooring, new addition to existing, HVAC replacement, and lighting replacement, etc.
2. BOA has developed a standard facilities modernization equipment list e.g., types of flooring, new handrails, access lifts, lighting fixtures, plumbing fixtures, drinking fountains, furniture, restroom accessories, public counter retrofit, ramp equipment, roof materials, etc., complete with manufacturer Model # and their acceptable approved equal. The Standard equipment list have been field tested and proven to be of high quality, durability, parts availability, and acceptable to the many past municipal clients.
3. BOA has developed a standard keynoting system with over 150 items that addresses virtually every facility field condition and ADA Compliance conditions and many specialize retrofit/repair conditions. These standard keynotes have been field tested and refined, and have proven to be clear and concise to construction contractors.

## WORK PLAN

To Implement your scope of work we will provide you with a Work Plan upon request. An integral part of our management approach is to develop a written Work Plan and Project Schedule during the project's Pre-Design phase, so that the Design Team and Client have clear written directions and instructions for each phase of the project. We will create a written Work Plan for your project before we start design work so that the Design Team will know their roles and task before the project starts. A sample Work Plan is outlined below summarizing our understanding for every phase of a project that you may assign BOA.

### INITIAL PLANNING PHASE- PRE-DESIGN

#### Initial Meeting with Client

- Establish protocol and lines of communication
- Statements of Goals and Objectives
- Review schedule & establish significant milestone dates
- Develop a formal project schedule
- Develop a formal written Work Plan

#### Program Appraisal

- Verify functional relationships with Users
- Confirm area allowances
- Review functional program
- Prepare a written report for facilities program
- Update program changes

#### Site Appraisal

- Review site information
- Walk site and document observations
- Photograph site and adjacent areas
- Establish need for destructive testing, topographic survey, soil/geology reports, as-built drawings,
- Study planning/context constraints
- Document zoning and parking requirements
- Appraise and document connections/access
- Document expansion requirements

- Establish location of existing utility lines

#### Cost Plan

- Assessment of non-programmed needs
- Budget review and analysis
- Resolution of scope in relation to budget
- Develop cost plan

#### Work Plan

- Review sub-consultant selection with Client
- Establish management plan
- Develop project directory
- LEED design approach, if any necessary
- Establish quality control procedures
- Establish project numbers and accounts
- Review legal and agency requirements
- Develop a written Work Plan

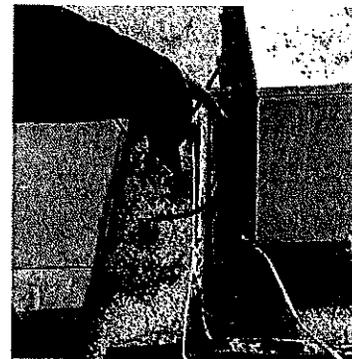
#### Contract Negotiation and Approval

- Ascertain Owner's requirements
- Determine form of contract and review
- Review possible modification to clients standard contract form.

- Define architects' scope of work

#### Client Meetings

- Establish frequency and pattern of attendance



LA County ISD - Sorensen  
Recreation Center Maintenance  
and Repair: Initial Site  
Assessment at Roof and  
Windows

**SCHEMATIC PLAN PHASE****Issue Project Documents**

- Program
- Budget & Cost Model
- Schedule
- Project Directory
- Protocol
- Work Plan

**Initial Meeting with Consultant Team**

- Review project documents
- Establish consultants' goals
- Establish CADD/3D format and files

**Initial Meeting with Client**

- Review Schematic Design Schedule
- Establish "Key" dates and participants
- Establish design goals
- Review scope of work

**Concept Studies**

- Schematic Design, provide 3 floor plan options
- Expansion options (if any)
- Study connections/access
- Review construction methods
- Check concepts against cost plan

**Complete Phase Documentation**

- Preliminary Quality Control (QC) review
- Coordinate all disciplines

**Cost Analysis**

- Review options with client

**Preliminary Agency Review**

- Obtain schedule commitment from Bldg. Dept., fire dept., planning dept.
- Review areas of concern

**Quality Control Review**

- Final review by Quality Control Officer
- Sign off by Project Manager
- Review pre-fabricated building options
- Review options with client

**Inter-Team Interviews**

- Establish space planning goals
- Refine selected options

**Phase Development & Documentation**

- Establish building plans
- Proceed with Internal and Inter-team QC review
- Establish building sections, elevations, 3D views
- Establish building systems; structural, electrical, natural vent
- Develop overall site design
- Address "special" issues, e.g., ADA code & design, for crime prevention/security, LEED, energy savings options.

- Develop preliminary room/space criteria

- Develop preliminary equipment layouts

- Outline Specifications

**Issues Backgrounds to Consultants**

- Provide translations where necessary

**Formal Acceptance by Client**

- Notice to proceed with Design Development

**Value Engineering**

- Review all options with client

- Issue agreed changes to all consultants

**Client Meetings**

- Scheduled as needed -- Involve Client Maintenance/Repair Service Director & User Programs Director

**DESIGN DEVELOPMENT PHASE****Review Schematic Design**

- Reconcile budget vs. scope
- Incorporate value engineering and LEED/NetZero review changes
- Issue any new directives

**Initial Client Meeting**

- Review Design Development schedule
- Establish "key" dates and participants
- Confirm work plan
- Review consultant performance and coordination

**Develop Design**

- Final detail planning
- Develop building systems
- Select key materials and products
- Develop typical construction methods and details
- Research materials and specifications
- Finalize site, utilities, and structural engineering
- Finalize pre-fabricated building system.

**Phase Documentation**

- Establish building plans
- Internal and inter-team QC review
- Establish building sections and elevations
- Develop room plans at 1/4" scale
- Establish building systems
- Address "special" issues

- Coordinate room/space criteria and equipment

**Issue Backgrounds to Consultants**

- Provide translations where necessary

**Complete Phase Documentation**

- Preliminary QC review
- Coordinate all disciplines

**Cost Analysis**

- Review options with Client

**Agency Review**

- Planning Department
- Building Department

**Quality Control Review**

- Final review by Quality Control Officer
- Sign off by Project Architect
- Review that energy saving features has been implemented in Drawings and Specifications.

**Formal Acceptance by Client**

- Obtain Notice to Proceed with Construction Documents Phase

**Constructibility Review**

- Inter-team review
- Project Manager sign-off

**Value Engineering**

- Review all options with Client
- Issue agreed changes to all consultants

**Client Meetings**

- Scheduled as per scope of work

**CONSTRUCTION CONTRACT DOCUMENT PHASE****Review Design Development**

- Reconcile budget vs. scope
- Incorporate value engineering changes
- Issue any new directives

**Initial Team Meeting**

- Review Construction Documents schedule
- Establish review dates and participants
- Confirm work plan
- Review consultant performance & coordination **Work Plan**

- Confirm critical path of the schedule
- Review consultant issues and coordination
- Determine deliverables
- Cartoon all drawings
- Confirm construction contract type and procedures
- Research specific issues and materials
- Confirm CADD and Revit 3D files and sequence
- Establish coordination procedures

**Phases Documentation**

- Check final drawing list against QC manual
- Review final drawing list
- Schedule final CADD effort with CADD coordinator
- Coordinate room/space criteria and equipment

**Issue Backgrounds to Consultants**

- Check all translations before proceeding with consultant work

**Cost Analysis**

- Review options with Client
- Estimates at 50% and 85%

**Agency Reviews**

- Over the counter at 50%
- Resolve any outstanding issues

**Submit to Agency**

- Schedule for plan check corrections

**Quality Control Review**

- Final review by Quality Control Officer
- Sign off by Project Manager
- Review that LEED/NetZero Features have been implemented in Drawings and Specs.

**Final Coordination**

- Check completeness of all discipline documents
- Consultant coordination
- Code compliance
- Check all equipment requirements

**Value Engineering**

- Review all options with Client
- Pick up changes on all documents

**Client Review and Acceptance**

- Scope and budget
- Value engineering items
- Drawings/Specifications Submittal 50%, 85%, 100%

Client Meetings --Scheduled as needed

## **BID PHASE**

### **Pre-Bid Conference**

- Present goals and objectives of project
- Review schedule
- Review procedures
- Call attention to special conditions
- Document all questions

### **Bidding**

- Assist Client to agree and issue addenda
- Provide Clarification when to bid documents
- Assist Client to agree on bid alternates
- Assist client in reviewing bids

## **CONSTRUCTION/AS-BUILT/WARRANTY PHASE**

### **Pre-construction Meeting**

- Establish protocol
- Review procedure
- Review general contractor schedule
- Assist in testing and inspection appointment
- Establish submittal schedule and procedures
- Establish observation procedures
- Schedule meetings and site visits
- Confirm procedures regarding field orders, clarifications, instruction bulletins, change directions, and change orders.
- Prepare sketches and cost for change order
- Substitutions
- Legal procedures
- Bonds, Insurance, etc.
- Drawing updates record documents
- Payment requests and certification
- Construction schedule and update

- Quality and standards
- Samples
- Delays and defects
- Agency procedures

### **Site Meetings**

- Action list
- Meetings as scheduled

### **Punch List**

- Preliminary and ongoing
- Final

### **As-Built Drawings**

### **Beneficial Occupancy**

### **Final Completion and Inspection**

### **Manuals, Warranties and Record Drawings**

### **Maintenance and Operational Instructions**

## 4. SCOPE OF SERVICES

### SCOPE OF WORK

We have walked the building and site of this project and our goal for this project is to renovate your 2,900 sq.ft. Family Resource Center Project as described in the RFP. The Scope of Work is the following:

For the scope of work as described in the RFP and stated below, BOA will provide all needed PSE (plans, specs, estimate) for public bidding documents to general contractors.

- Security mesh screens for outside gates
- New LED exterior lighting for the interior and exterior
- Improved gate access points
- New air conditioning units
- Replacement of indoor lighting
- New playground structure
- Evaluation and upgrades for ADA compliance
- New rubberized playground surface
- New playground shade structure
- Removal of the courtyard planter and construction of concrete walkway
- Replacement of outdoor basketball system
- Replacement of picnic benches
- Installation of outdoor storage shed
- Painting of the interior
- New flooring including vinyl and carpeting
- New facility identification signage facing Beach Boulevard and Santa Paula Avenue
- New quartz countertop at reception area
- Relaminating of existing kitchen cabinet faces and doors
- New blinds/window tint
- new ceiling tiles

The construction budget is approximately \$330,000. Please see attached EXHIBIT A.

BOA will complete final plans and specifications to be completed within four (4) months of the contract award. Due to grant funding requirements, time is of the essence. BOA will compile all the necessary information together for the creation of a biddable project that complies with the grant agreement.

We will establish and maintain a close working relationship with City Staff throughout each phase of the project.

Services and deliverables shall include, but are not limited to, the following:

#### **Preliminary Design**

- Project review meetings with City staff to verify needs, determine materials, and provide options for playground equipment;
- Provide "cut sheets" of materials and equipment to City staff for selection;
- Coordinate with playground manufacturer to produce a 3-D graphic of the selected playground equipment;
- Develop a preliminary estimated construction cost to ensure the available budget and estimated construction costs are coordinated;
- Make adjustments to the scope of work and materials and equipment selections based on City staff direction.

**Final Design**

- Upon approval from City staff to move forward with final design, consultant will begin final design and preparation of construction drawings, specifications, and bid schedule sheet(s);
- Develop a comprehensive bid schedule sheet with units and quantities to be inserted in City staff produced project bid specifications;
- Develop Technical rubberized surface specification to be inserted into City staff produced bid specifications;
- Provide complete set of construction plans and associated details. All plans shall be done at a scale of 1"=20' and all plan sheets shall be 24" x36". Plan sheets to include demolition, construction, mechanical, electrical sheets.
- Provide complete specifications and details for onsite renovations, playground equipment, signage, lighting, etc.;
- Provide an estimate of probably construction cost;
- Submit plans and specifications for City staff review and make changes as requested;
- Respond to bidder questions during the bid process, as requested by City staff; and
- Construction design support.
- Optionally: Construction management / contract administration (provide optional scope and fee with proposal).

BOA has assembled a team to provide all key services related to the necessary architecture to produce a complete, biddable and constructible design package. We will include, but is not limited to, specialists in the following fields:

- Playground Design/Landscape Architecture
- Mechanical, Electrical, and Plumbing Engineering
- Security (fencing and locks)
- Cost Estimating
- ADA Compliance
- Architecture

We will make sure that your facilities meet your commitment to aesthetic, patron safety, ease of maintenance use-ability, provide a safe and supervised environment for families, and meet your future needs. We also understand that your budget has a limit for construction. We will make sure your dollars are spent wisely and our product is "value added".

We also understand the uniqueness of the younger age of your patrons. We understand the Community Center design and how it should function. Please note that BOA has designed over 60 Community centers for other municipalities throughout LA County and Orange County.

## Exhibit A

### Proposed Construction Budget

Item	Cost
Security mesh screens for outside gate(s)	\$ 5,000.00
New LED exterior lighting, improved access points	\$ 7,500.00
Storage cover - outside	\$ 5,000.00
New air conditioning units	\$ 35,000.00
Replace indoor lighting with LED lights	\$ 7,500.00
Purchase and install new playground structure with ADA compliance	\$ 112,000.00
Prep and install new rubber playground surface and shade structure	\$ 40,000.00
Remove courtyard planter, fill-in with concrete to create walkway	\$ 5,000.00
Replace outdoor basketball system	\$ 3,500.00
Install new picnic benches	\$ 5,000.00
Purchase pre-fab outdoor storage container and install	\$ 7,500.00
Replace interior doors (10) and exterior doors (5) and jams	\$ 20,000.00
Prep and paint interior	\$ 10,000.00
Prep and install new vinyl flooring, move furniture	\$ 23,000.00
Prep and install new carpeting in offices, move furniture	\$ 3,000.00
New signage facing Beach Boulevard	\$ 5,000.00
New signage facing Santa Paula	\$ 5,000.00
Demo existing, fabricate and install countertop at reception desk	\$ 10,000.00
Relaminate kitchen cabinets	\$ 10,000.00
New window blinds and window tint	\$ 7,500.00
New ceiling tiles	\$ 3,500.00
<b>Total</b>	<b>\$ 330,000.00</b>

## 5. EXCEPTIONS AND DEVIATIONS

BOA doesn't have any exceptions or deviations from the requirements of the RFP, segregating "technical" exceptions from "contractual" exceptions.

## 6. SCHEDULE

Please refer to the following page for the Time Schedule. As requested, BOA will complete this project within 4-months of contract award.

# Time Schedule

## City of Stanton, Renovation to Family Resource Center

for: City of Stanton  
dated: Jan. 11, 2022

	March	April	May	June	July	August	September	October	November	
<b>PRE-DESIGN</b>	NTP Mid-February, 2022									
partial land survey	Complete partial land survey mid-March, 2022									
Verify existing conditions, meet w Users	Initial site investigation Mid-March, 2021									
<b>PRELIMINARY DESIGN</b>										
Submit Schematic Design plans to City										
City Review										
<b>FINAL DESIGN, CONSTRUCTION DOCUMENTS</b>										
Submit 50% construction documents to City										
City Review										
Submit 90% construction documents to Client, Bldg-Safety										
City & Bldg-Safety Dept. plan review										
Submit 100% construction documents to City & Bldg-Safety Dept.	Submit 100% final construction documents Mid-June, 2022									
City & Bldg -Safety approval										

## 7. PROPOSAL ACKNOWLEDGMENT

Please see to the signed Exhibit-C form in the following page

**CITY OF STANTON**  
 Joe Ames, P.E., T.E.  
 Department of Public Works and Engineering  
 7800 Katella Avenue  
 Stanton, CA 90680-3162



**BLACK O'DOWD AND ASSOCIATES, INC.**  
 DBA BOA ARCHITECTURE  
 1511 COTA AVENUE  
 LONG BEACH, CA 90813  
 PH: 562-912-7900

**POINT-OF-CONTACT:**  
 EDWARD LOK NG, PRESIDENT  
 LOK.NG@BOAARCHITECTURE.COM

Please see the following Fee Schedule for personnel assigned to projects for the City of Stanton. This document is only valid for 60 months, or the term of contract.

<b>JOB TITLE</b>	<b>HOURLY (NOT TO EXCEED)</b>
Principal Architect	\$160.00
Project Manager	\$150.00
Project Designer	\$125.00
Senior Designer	\$110.00
Senior Technical	\$100.00
Draftsman/AutoCAD Operator	\$95.00
Other Technical Staff	\$85.00
Structural Engineer	\$150.00
Mechanical Engineer	\$160.00
Electrical Engineer	\$160.00
"Other" Sub-Consultant	\$150.00
Clerical Staff	\$80.00
Prints	\$0.50/s.f.

- The above hourly rates are fully burdened or loaded, including full compensation for all overhead and profit. Billing rates shall include provision for normal office costs, including, but not limited to: office rental, utilities, insurance, cell phone or radio, equipment, normal supplies and materials, in-house reproduction services, and local travel costs.
- The proposed hourly rates are guaranteed for the duration of the contract.



EXHIBIT C

PROPOSAL ACKNOWLEDGEMENT FORM

The Proposer hereby acknowledges receipt of addenda number(s) \_\_\_\_\_, if any.

By signing below, the Proposer agrees to all terms and conditions in this RFP, except where expressly described in the Proposer's Services Proposal.

Edward Lok Ng  
Original Signature by Authorized  
Officer/Agent

Edward Lok Ng

Type/Print Name of Signatory  
President

Title  
1511 Cota Ave  
Long Beach, CA 90813

Consultant Mailing Address

Form of Business (mark one of the following):

- Sole Proprietor/Individual
- Partnership
- Corporation
- Limited Liability Company (LLC)

If a corporation, the State where it is incorporated: CA

95-2632309  
Vendor's Tax ID Number (FEIN)

Black O'Dowd and Associates DBA BOA Architecture

Company Name  
(562) 912-7900

Phone Number

Fax Number  
boaarchitecture.com

Website Address  
lok.ng@boaarchitecture.com

E-mail Address

## 8. SEPARATE FEE PROPOSAL

Please refer to the following page for the Fee Proposal

# FIXED FEE PROPOSAL

## City of Stanton, Renovation to Family Resource Center

date: Jan. 11, 2022  
 prepared for: City of Stanton

Construction Cost Estimate; \$330,000  
 prepared by: BOA Architecture, Edward Lok Ng

	HOURS	UNIT	HR RATE	COST	TOTAL
<b>PRE-DESIGN</b>					
kick-off meeting to verify scope of work, obtain as-built dwgs.	4	hrs	150	600	
project management, confirm cost/work plan & prep field work	2	hrs	150	300	
site assessment, confirm as-built measurements & photos	3	hrs	100	300	
CADD - 3D modelling	8	hrs	100	800	
					<b>2,000</b>
<b>ARCHITECTURAL PRELIMINARY DESIGN</b>					
floor plan design options, refine selected floor plan	10	hrs	150	1,500	
CADD - 3D modeling	16	hrs	100	1,600	
project management	4	hrs	150	600	
meeting or coordination with Client	4	hrs	150	600	
construction cost estimate	4	hrs	150	600	
					<b>4,900</b>
<b>SUB-CONSULTANTS and EXPENSES</b>					
structural engineering				0	
mechanical				4,000	
plumbing engineering;				0	
electrical; no new lights, use existing alarm system				6,000	
landscape architect				8,000	
civil engineering				500	
partial land survey				3,000	
misc. expenses: photocopies, large size prints, travel, delivery				100	
					<b>21,600</b>
<b>ARCHITECTURAL FINAL DESIGN (CONSTRUCTION DOCUMENTS)</b>					
CADD - 3D modeling	60	hrs	100	6,000	
project management	8	hrs	150	1,200	
meeting or coordination with Client	8	hrs	150	1,200	
specifications in CSI format	6	hrs	150	900	
construction cost estimate	4	hrs	150	600	
quality control	8	hrs	150	1,200	
client/bldg dept submittal and corrections to comments	10	hrs	100	1,000	
					<b>12,100</b>
<b>CONSTRUCTION SUPPORT (AS-NEEDED BASIS)</b>					
Bidding Assistance, pre-bid meeting	0	hrs	150	0	
pre-construction meeting	0	hrs	150	0	
construction meeting(s)	10	hrs	150	1,500	
Respond to RFI and technical assistance	10	hrs	150	1,500	
misc. expenses: photocopies, large size prints, travel, delivery				0	
					<b>3,000</b>
				<b>TOTAL LUMP SUM DESIGN FEE:</b>	<b>\$43,600</b>
<b>NOTES AND RESTRICTIONS</b>					
1. Construction support is limited to amount of hours stated below.					
2. The Owner will provide accurate as-built dwgs. & locations of all utilities to extent possible.					
3. Client will be responsible for procurement of an asbestos/environmental report if needed.					
<b>OPTIONAL CONSTRUCTION MANAGEMENT FEE</b>					
Bidding Assistance, pre-bid meeting	6	hrs	150	900	
pre-construction meeting	6	hrs	150	900	
construction meeting(s)	40	hrs	150	6,000	
Respond to RFI and technical assistance	40	hrs	150	6,000	
misc. expenses: photocopies, large size prints, travel, delivery				200	
				<b>OPTIONAL CONSTRUCTION MANAGEMENT FEE:</b>	<b>14,000</b>

## CITY OF STANTON

### REPORT TO CITY COUNCIL

**TO:** Honorable Mayor and Members of the City Council

**DATE:** February 22, 2022

**SUBJECT: AWARD OF CONSTRUCTION CONTRACT TO PRO INSTALLATIONS INC. DBA PROSPECTRA CONTRACT FLOORING FOR SHERIFF'S SUBSTATION FLOORING REPLACEMENT PROJECT AND APPROPRIATION OF FUNDS**

#### **REPORT IN BRIEF:**

The City of Stanton solicited bids for the services of a qualified professional to replace the flooring at the Sheriff's Substation located at 11100 Cedar Street. Normal wear and tear throughout the years has necessitated replacement. A total of five (5) bids were submitted and opened on February 7, 2022. Based on review of the bids and contractual documents submitted, City Staff recommends the lowest responsible and responsive bidder, Pro Installations Inc. dba ProSpectra Contract Flooring, be awarded the construction contract. In addition, staff is requesting City Council approve an appropriation of \$60,000 from the Capital Projects Fund's (#305) available balance to fund the amount of the contract and contingency.

#### **RECOMMENDED ACTIONS:**

1. City Council declare that the project is exempt from the California Environmental Quality Act ("CEQA"), Class 1, Section 15301(a); and
2. Award a construction contract to the lowest responsible and responsive bidder, Pro Installations Inc. dba ProSpectra Contract Flooring, to provide professional flooring replacement services for the amount of \$50,001.60; and
3. Authorize the City Manager to bind the City of Stanton and Pro Installations Inc. dba ProSpectra Contract Flooring in a contract to provide the services; and
4. Authorize the City Manager to approve contract change orders with Pro Installations Inc. dba ProSpectra Contract Flooring, as needed and determined by City staff, for any contingencies up to \$10,000; and
5. Appropriate \$60,000 from the Capital Projects Fund (#305) for the Sheriff's Substation Flooring Replacement Project (Task Code 2022-605).

**BACKGROUND:**

The City of Stanton requires the services of a qualified professional to replace the flooring at the Sheriff's Substation located at 11100 Cedar Street in Stanton. Normal wear and tear throughout the years have necessitated replacement.

The Project consists of carpet and vinyl commercial plank installation, which requires the removal and replacement of carpet, preparation of subfloor, installation of new carpet tile and new rubber cove base, and the preparation of existing sheet vinyl, application of adhesive, installation of new plank vinyl commercial flooring and installation of new rubber cove base and flooring transition products, and the removal, relocation, and reinstallation of furniture needed to install flooring.

City staff released a Bid Package soliciting bids to perform the flooring replacement on November 10, 2021 with a mandatory pre-bid meeting on November 30, 2021. Bid opening was on December 14, 2021 and two (2) bids were submitted and opened; however, both bids were rejected for not complying with the bid package requirements and contract documents.

Following the rejection of the submitted bids, City Staff released the bid package for a second time on January 13, 2022 for re-bidding. The mandatory pre-bid meeting was set on January 25, 2022, and bid opening was on February 7, 2022.

Five (5) contractors submitted bids for this project and bids were opened on February 7, 2022. Typically, construction contract award is based on the lowest responsive, responsible Bidder as determined by the City from the Total Base Bid.

**ANALYSIS/JUSTIFICATION:**

Bid opening for this project was on February 7, 2022, and any contractor who attended one of the mandatory pre-bid conferences was eligible to submit a bid. Five (5) contractors submitted bids for the project, and the lowest bid was for \$50,001.60.

The five (5) following bids were received and opened with Total Bid Price, submitted by the contractor, and the calculated total using the contractors' unit prices:

<b>Rank</b>	<b>Company</b>	<b>Submitted Total Base Bid</b>	<b>Calculated Total Base Bid</b>
1	ProSpectra Contract Flooring	\$50,000.00	\$50,001.60
2	Bob Mardigan Floor Covering	\$56,264.00	\$56,264.60
3	JJJ Floor Covering, Inc.	\$65,312.42	\$65,322.77
4	Cornejo Construction Co.	\$70,217.29	\$70,217.29
5	SCS Flooring System	\$73,736.00	\$73,736.00

While ProSpectra Contract Flooring submitted a total bid of \$50,000.00, awards are done on the basis of unit prices. Therefore, the actual bid is \$50,001.60 and the contract amount is reflective of this corrected bid. City Staff has reviewed the submitted documents and found that Pro Installations Inc. dba ProSpectra Contract Flooring has submitted the lowest bid and is compliant with the contract documents. Upon successful execution of the contract documents, the project is expected to begin construction in March.

**FISCAL IMPACT:**

This project is not included in the City’s current Fiscal Year 2021/22 budget. The Capital Projects Fund (#305) has an available balance of approximately \$120,000 due to accumulated budget savings from previous years’ capital projects that were funded with discretionary funds. After approving the \$60,000 appropriation requested by staff, the Capital Projects Fund’s available balance will be reduced to approximately \$60,000 by June 30, 2022.

**ENVIRONMENTAL IMPACT:**

The action requested in this report is categorically exempt under the California Environmental Quality Act, Class 1, Section 15301(a).

**LEGAL REVIEW:**

None.

**STRATEGIC PLAN OBJECTIVE ADDRESSED:**

3 – Provide a high-quality infrastructure.

Prepared by:

Reviewed by:

/s/ Han Sol Yoo

/s/ Joe Ames

\_\_\_\_\_  
Han Sol Yoo  
Associate Engineer

\_\_\_\_\_  
Joe Ames, P.E., T.E.  
Director of Public Works/City Engineer

Concurred by:

Approved by:

/s/ Michelle Bannigan

/s/ Jarad L. Hildenbrand

\_\_\_\_\_  
Michelle Bannigan, CPA  
Finance Director

\_\_\_\_\_  
Jarad L. Hildenbrand  
City Manager

**Attachments:**

- A. Draft Short Form Construction Contract
- B. Pro Installation Inc. dba ProSpectra Contract Flooring's Bid
- C. Bid Recap Sheet

**CITY OF STANTON  
SHORT FORM CONSTRUCTION CONTRACT  
SHERIFF'S SUBSTATION FLOORING REPLACEMENT PROJECT**

**1. PARTIES AND DATE.**

This Contract is made and entered into this 22<sup>nd</sup> day of February, 2022 by and between the City of Stanton, a municipal corporation organized under the laws of the State of California with its principal place of business at 7800 Katella Avenue, Stanton, CA 90680 ("City") and **Pro Installations Inc. dba ProSpectra Contract Flooring**, a **CORPORATION** with its principal place of business at **13250 GREGG STREET, STE. F, POWAY, CA 92064** ("Contractor"). City and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Contract.

**2. RECITALS.**

**2.1 City.** City is a public agency organized under the laws of the State of California, with power to contract for services necessary to achieve its purpose.

**2.2 Contractor.** Contractor desires to perform and assume responsibility for the provision of certain construction services required by the City on the terms and conditions set forth in this Contract. Contractor represents that it is duly licensed and experienced in providing **SHERIFF'S SUBSTATION FLOORING REPLACEMENT** related construction services to public clients, that it and its employees or subcontractors have all necessary licenses and permits to perform the services in the State of California, and that it is familiar with the plans of City. The following license classifications are required for this Project: **Class B** or **Class C-15**.

**2.3 Project.** City desires to engage Contractor to render such services for the **SHERIFF'S SUBSTATION FLOORING REPLACEMENT PROJECT** ("Project") as set forth in this Contract.

**2.4 Project Documents & Certifications.** Contractor has obtained, and delivers concurrently herewith, **PERFORMANCE BOND, PAYMENT BOND, INSURANCE DOCUMENTS AND OTHER CERTIFICATIONS** as required by the Contract.

**3. TERMS**

**3.1 Compensation and Payment.**

**3.1.1 Amount of Compensation.** As consideration for performance of the Work required herein, City agrees to pay Contractor the Total Contract Price of **FIFTY THOUSAND, ONE DOLLAR AND 60 CENTS (\$50,001.60)** ("Total Contract Price") provided that such amount shall be subject to adjustment pursuant to the applicable terms of this Contract or written change orders approved and signed in advance by the City.

**3.1.2 Payment of Compensation.** If the Work is scheduled for completion in thirty (30) or less calendar days, City will arrange for payment of the Total Contract Price upon completion and approval by City of the Work. If the Work is scheduled for completion in more than thirty (30) calendar days, City will pay Contractor on a monthly basis as provided for herein. On or before the fifth (5th) day of each month, Contractor shall submit to the City an itemized

application for payment in the format supplied by the City indicating the amount of Work completed since commencement of the Work or since the last progress payment. These applications shall be supported by evidence which is required by this Contract and such other documentation as the City may require. The Contractor shall certify that the Work for which payment is requested has been done and that the materials listed are stored where indicated. Contractor may be required to furnish a detailed schedule of values upon request of the City and in such detail and form as the City shall request, showing the quantities, unit prices, overhead, profit, and all other expenses involved in order to provide a basis for determining the amount of progress payments.

3.1.3 Prompt Payment. City shall review and pay all progress payment requests in accordance with the provisions set forth in Section 20104.50 of the California Public Contract Code. However, no progress payments will be made for Work not completed in accordance with this Contract. Contractor shall comply with all applicable laws, rules and regulations relating to the proper payment of its employees, subcontractors, suppliers or others.

3.1.4 Contract Retentions. If this Contract is greater than Five Thousand dollars (\$5,000), from each approved progress estimate, five percent (5%) will be deducted and retained by the City, and the remainder will be paid to Contractor. All Contract retention shall be released and paid to Contractor and subcontractors pursuant to California Public Contract Code Section 7107.

3.1.5 Other Retentions. In addition to Contract retentions, the City may deduct from each progress payment an amount necessary to protect City from loss because of: (1) liquidated damages which have accrued as of the date of the application for payment; (2) any sums expended by the City in performing any of Contractor's obligations under the Contract which Contractor has failed to perform or has performed inadequately; (3) defective Work not remedied; (4) stop notices as allowed by state law; (5) reasonable doubt that the Work can be completed for the unpaid balance of the Total Contract Price or within the scheduled completion date; (6) unsatisfactory prosecution of the Work by Contractor; (7) unauthorized deviations from the Contract; (8) failure of Contractor to maintain or submit on a timely basis proper and sufficient documentation as required by the Contract or by City during the prosecution of the Work; (9) erroneous or false estimates by Contractor of the value of the Work performed; (10) any sums representing expenses, losses, or damages as determined by the City, incurred by the City for which Contractor is liable under the Contract; and (11) any other sums which the City is entitled to recover from Contractor under the terms of the Contract or pursuant to state law, including Section 1727 of the California Labor Code. The failure by the City to deduct any of these sums from a progress payment shall not constitute a waiver of the City's right to such sums.

3.1.6 Substitutions for Contract Retentions. Pursuant to California Public Contract Code section 22300, Contractor may substitute securities for any money withheld by the City to ensure the performance under the Contract. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with the City, with the State or a federally chartered bank as the escrow agent, who shall return such securities to Contractor upon satisfactory completion of the Contract. Deposit of securities with an escrow agent shall be subject to a written agreement between the escrow agent and the City, which provides that no portion of the securities shall be paid to Contractor until the City has certified to the escrow agent, in writing, that the Contract has been satisfactorily completed. The City shall certify that the Contract has been satisfactorily completed within sixty (60) days of work "completion" as defined in Section 7107(c) of the California Public Contract Code. Securities eligible for investment under this section shall be limited to those listed in Section 16430 of the Government Code, bank or

savings & loan certificates of deposit, interest-bearing demand deposit accounts, stand-by letters of credit, or any other security mutually agreed to by Contractor.

3.1.7 Payment to Subcontractors. Contractor shall pay all subcontractors for and on account of work performed by such subcontractors in accordance with the terms of their respective subcontracts and as provided for in Section 7108.5 of the California Business and Professions Code. Such payments to subcontractors shall be based on the measurements and estimates made and progress payments provided to Contractor pursuant to this Contract.

3.1.8 Title to Work. As security for partial, progress, or other payments, title to Work for which such payments are made shall pass to the City at the time of payment. To the extent that title has not previously been vested in the City by reason of payments, full title shall pass to the City at delivery of the Work at the destination and time specified in this Contract. Such transferred title shall in each case be good, free and clear from any and all security interests, liens, or other encumbrances. Contractor promises and agrees that it will not pledge, hypothecate, or otherwise encumber the items in any manner that would result in any lien, security interest, charge, or claim upon or against said items. Such transfer of title shall not imply acceptance by the City, nor relieve Contractor from the responsibility to strictly comply with the Contract, and shall not relieve Contractor of responsibility for any loss of or damage to items.

3.1.9 Labor and Material Releases. Contractor shall furnish City with labor and material releases from all subcontractors performing work on, or furnishing materials for, the Work governed by this Contract prior to final payment by City.

**3.2 Incorporation of Documents.** This Contract includes and hereby incorporates in full by reference the following documents, including all exhibits, drawings, specifications and documents therein, and attachments and addenda thereto:

- Services/Schedule (Exhibit "A")
- Plans and Specifications (Exhibit "B")
- Special Conditions (Exhibit "C")
- Contractor's Certificate Regarding Workers' Compensation (Exhibit "D")
- Payment and Performance Bonds (Exhibit "E")
- Addenda
- Change Orders executed by the City
- Latest Edition of the Standard Specifications for Public Works Construction (The Greenbook), Excluding Sections 1-9
- Notice Inviting Bids, if any
- Instructions to Bidders, if any
- Contractor's Bid

To the extent there is a conflict between any portions of this Contract, the order of precedence shall be as follows: change orders, special conditions, technical specifications, plans/construction drawings, general contract terms, scope of work, standard plans, advertisements for bid/proposals, bids/proposals or other documents submitted by Contractor.

### **3.3 Contractor's Basic Obligation; Scope of Work.**

3.3.1 Scope of Work. Contractor promises and agrees, at its own cost and expense, to furnish to the City all labor, materials, tools, equipment, services, and incidental and

customary work necessary to fully and adequately complete the Project, including all structures and facilities necessary for the Project or described in the Contract (hereinafter sometimes referred to as the "Work"), for a Total Contract Price as specified pursuant to this Contract. All Work shall be subject to, and performed in accordance with the above referenced documents, as well as the exhibits attached hereto and incorporated herein by reference. The plans and specifications for the Work are further described in Exhibit "B" attached hereto and incorporated herein by this reference. Special Conditions, if any, relating to the Work are described in Exhibit "C" attached hereto and incorporated herein by this reference.

3.3.2 Change in Scope of Work. Any change in the scope of the Work, method of performance, nature of materials or price thereof, or any other matter materially affecting the performance or nature of the Work shall not be paid for or accepted unless such change, addition or deletion is approved in advance and in writing by a valid change order executed by the City.

3.3.3 Change Orders. Changes to the Contract Time (as defined in Section 3.3) or Total Contract Price shall be in the form of a written Change Order, either signed by both parties or issued unilaterally by the City. No adjustment shall be made to the Contract Time unless the delay impacts the critical path to completion and the delay was not caused in whole or in part by the Contractor. The City's liability to Contractor for delays for which the City is responsible shall be limited to only an extension of time unless such delays were unreasonable under the circumstances. Failure to timely request a Change Order shall constitute a waiver of any right to adjust the Contract Time or the Total Contract Price. All requests for Change Orders shall be accompanied by detailed supporting documentation, including but not limited to payroll records, invoices, schedules, and any other documentation requested by the City for the purpose of determining the additional costs or the impact of any delay. If the change involves Work bid at a unit price, then the Total Contract Price shall be increased at the unit price. If there is no unit price, then the Total Contract Price shall be adjusted to account for costs actually incurred plus an allowed mark-up of fifteen percent (15%), which shall constitute the entire amount of profit, mark-ups, field or home office overhead costs, including personnel, equipment or office space, any materials, or any costs of equipment idle time for such work. Regardless of ownership, equipment rates shall not exceed the listed prevailing rates at local equipment rental agencies, or distributors, at the time the work is performed. Nothing herein shall prevent the Parties from agreeing to a lump sum cost.

3.3.4 Changes Ordered By City. City may at any time issue a written directive ordering additions, deletions, or changes to the Work. Contractor shall proceed with the work in accordance with the directive. To the extent the directive results in extra work or requires additional Contract Time, Contractor shall request a Change Order within seven (7) days of receiving the Work Directive. If any costs are not capable of being determined within seven (7) days, then Contractor shall request a Change Order within seven (7) days of when the costs are capable of being determined.

3.3.5 Changes Requested By Contractor. With respect to any matter that may involve or require an adjustment to the Contract Time or the Contract Price, Contractor shall provide written notice of the underlying facts and circumstances that gave rise to the potential change within seven (7) days or prior to the alteration of conditions, whichever is earlier. Failure to give notice shall constitute a waiver of Contractor's right to a change order. If any costs are not capable of being determined within seven (7) days, then Contractor shall request a Change Order within seven (7) days of when the costs are capable of being determined.

**3.4 Substitutions/"Or Equal".** Pursuant to Public Contract Code Section 3400(b), the City may make a finding that designates certain products, things, or services by specific brand or trade name. Unless specifically designated in this Contract, whenever any material, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such Specifications shall be deemed to be used for the purpose of facilitating the description of the material, process or article desired and shall be deemed to be followed by the words "or equal."

Contractor may, unless otherwise stated, offer for substitution any material, process or article which shall be substantially equal or better in every respect to that so indicated or specified in this Contract. However, the City may have adopted certain uniform standards for certain materials, processes and articles. Contractor shall submit requests, together with substantiating data, for substitution of any "or equal" material, process or article no later than thirty-five (35) days after award of the Contract. To facilitate the construction schedule and sequencing, some requests may need to be submitted before thirty-five (35) days after award of Contract. Provisions regarding submission of "or equal" requests shall not in any way authorize an extension of time for performance of this Contract. If a proposed "or equal" substitution request is rejected, Contractor shall be responsible for providing the specified material, process or article. The burden of proof as to the equality of any material, process or article shall rest with Contractor.

The City has the complete and sole discretion to determine if a material, process or article is an "or equal" material, process or article that may be substituted. Data required to substantiate requests for substitutions of an "or equal" material, process or article shall include a signed affidavit from Contractor stating that, and describing how, the substituted "or equal" material, process or article is equivalent to that specified in every way except as listed on the affidavit. Substantiating data shall include any and all illustrations, specifications, and other relevant data including catalog information which describes the requested substituted "or equal" material, process or article, and substantiates that it is an "or equal" to the material, process or article. The substantiating data must also include information regarding the durability and lifecycle cost of the requested substituted "or equal" material, process or article. Failure to submit all the required substantiating data, including the signed affidavit, to the City in a timely fashion will result in the rejection of the proposed substitution.

Contractor shall bear all of the City's costs associated with the review of substitution requests. Contractor shall be responsible for all costs related to a substituted "or equal" material, process or article. Contractor is directed to the Special Conditions (if any) to review any findings made pursuant to Public Contract Code section 3400.

### **3.5 Period of Performance and Liquidated Damages.**

3.5.1 Contractor shall perform and complete all Work under this Contract within 45 working days, beginning the effective date of the Notice to Proceed ("Contract Time"). Contractor shall perform its Work in strict accordance with any completion schedule, construction schedule or project milestones developed by the City. Such schedules or milestones may be included as part of Exhibits "A" or "B" attached hereto, or may be provided separately in writing to Contractor. Contractor agrees that if such Work is not completed within the aforementioned Contract Time and/or pursuant to any such completion schedule, construction schedule or project milestones developed pursuant to provisions of the Contract, it is understood, acknowledged and agreed that the City will suffer damage. Pursuant to Government Code Section 53069.85, Contractor shall pay to the City as fixed and liquidated damages the sum of TWO HUNDRED FIFTY DOLLARS (\$250.00) per day for each and every calendar day of delay beyond the Contract

Time or beyond any completion schedule, construction schedule or Project milestones established pursuant to the Contract.

3.5.2 If Contractor is delayed in the performance or progress of the Work by a Force Majeure Event (as defined herein), then the Contractor shall be entitled to a time extension, as provided herein, when the Work stopped is on the critical path and shall not be charged liquidated damages. Such a non-compensable adjustment shall be Contractor's sole and exclusive remedy for such delays and the Contractor will not receive an adjustment to the Total Contract Price or any other compensation. Contractor must submit a timely request in accordance with the requirements of the Contract.

3.5.3 A Force Majeure Event shall mean an event that materially affects a party's performance and is one or more of the following: (1) Acts of God or other natural disasters occurring at the project site; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the work); (4) pandemics, epidemics or quarantine restrictions; and (5) strikes and other organized labor action occurring at the project site and the effects thereof on the work, only to the extent such strikes and other organized labor action are beyond the control of Contractor and its subcontractors, of every tier, and to the extent the effects thereof cannot be avoided by use of replacement workers. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of the City in its capacity as a municipal authority.

**3.6 Standard of Performance; Performance of Employees.** Contractor shall perform all Work under this Contract in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Work. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Work assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Work, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Contract. As provided for in the indemnification provisions of this Contract, Contractor shall perform, at its own cost and expense and without reimbursement from the City, any work necessary to correct errors or omissions which are caused by Contractor's failure to comply with the standard of care provided for herein. Any employee who is determined by the City to be uncooperative, incompetent, a threat to the safety of persons or the Work, or any employee who fails or refuses to perform the Work in a manner acceptable to the City, shall be promptly removed from the Project by Contractor and shall not be re-employed on the Work.

**3.7 Control and Payment of Subordinates; Contractual Relationship.** City retains Contractor on an independent contractor basis and Contractor is not an employee of City. Any additional personnel performing the work governed by this Contract on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance under this Contract and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, and workers' compensation insurance.

**3.8 City's Basic Obligation.** City agrees to engage and does hereby engage Contractor as an independent contractor to furnish all materials and to perform all Work according to the terms and conditions herein contained for the sum set forth above. Except as otherwise provided in the Contract, the City shall pay to Contractor, as full consideration for the satisfactory performance by Contractor of the services and obligations required by this Contract, the below-referenced compensation in accordance with compensation provisions set forth in the Contract.

**3.9 Labor.**

**3.9.1 Prevailing Wages.** Contractor is aware of the requirements of California Labor Code Section 1720 et seq., and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. Since the Work is being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. City shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Contract. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. Contractor and any subcontractor shall forfeit a penalty of up to \$200 per calendar day or portion thereof for each worker paid less than the prevailing wage rates.

**3.9.2 Apprenticeable Crafts.** When Contractor employs workmen in an apprenticeable craft or trade, Contractor shall comply with the provisions of Section 1777.5 of the California Labor Code with respect to the employment of properly registered apprentices upon public works. The primary responsibility for compliance with said section for all apprenticeable occupations shall be with Contractor. The Contractor or any subcontractor that is determined by the Labor Commissioner to have knowingly violated Section 1777.5 shall forfeit as a civil penalty an amount not exceeding \$100 for each full calendar day of noncompliance, or such greater amount as provided by law.

**3.9.3 Hours of Work.** Contractor is advised that eight (8) hours labor constitutes a legal day's work. Pursuant to Section 1813 of the California Labor Code, Contractor shall forfeit a penalty of \$25.00 per worker for each day that each worker is permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week, except when payment for overtime is made at not less than one and one-half (1-1/2) times the basic rate for that worker.

**3.9.4 Payroll Records.** Contractor and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. The payroll records shall be certified and shall be available for inspection at all reasonable hours at the principal office of Contractor in the manner provided in Labor Code section 1776. In the event of noncompliance with the requirements of this section, Contractor shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects such Contractor must comply with this section. Should noncompliance still be evident

after such 10-day period, Contractor shall, as a penalty to City, forfeit not more than \$100.00 for each calendar day or portion thereof, for each worker, until strict compliance is effectuated. The amount of the forfeiture is to be determined by the Labor Commissioner. A contractor who is found to have violated the provisions of law regarding wages on Public Works with the intent to defraud shall be ineligible to bid on Public Works contracts for a period of one to three years as determined by the Labor Commissioner. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due. The responsibility for compliance with this section is on Contractor. In accordance with Labor Code section 1771.4, the Contractor and each subcontractor shall furnish the certified payroll records directly to the Department of Industrial Relations ("DIR") on a weekly basis and in the format prescribed by the DIR, which may include electronic submission. The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

3.9.5 Contractor and Subcontractor Registration. Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the DIR. No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the DIR to perform public work. Contractor is directed to review, fill out and execute the Public Works Contractor Registration Certification attached hereto as Exhibit "E" prior to contract execution. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

3.9.6 Labor Compliance; Stop Orders. This Project is subject to compliance monitoring and enforcement by the DIR. It shall be the Contractor's sole responsibility to evaluate and pay the cost of complying with all labor compliance requirements under this Contract and applicable law. Any stop orders issued by the DIR against Contractor or any subcontractor that affect Contractor's performance of Work, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay subject to any applicable liquidated damages and shall not be compensable by the City. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the DIR against Contractor or any subcontractor.

### **3.10 Performance of Work; Jobsite Obligations.**

#### **3.10.1 Water Quality Management and Compliance.**

3.10.1.1 Water Quality Management and Compliance. Contractor shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Work including, without limitation, all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §§ 1300); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); local ordinances regulating discharges of storm water; and any and all regulations, policies, or permits issued pursuant to any such authority regulating the discharge of pollutants, as that term is used in the Porter-Cologne Water Quality Control Act, to any ground or surface water in the State.

3.10.1.2 Compliance with the Statewide Construction General Permit.

Contractor shall comply with all conditions of the most recent iteration of the National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity, issued by the California State Water Resources Control Board ("Permit"). It shall be Contractor's sole responsibility to file a Notice of Intent and procure coverage under the Permit for all construction activity which results in the disturbance of more than one acre of total land area or which is part of a larger common area of development or sale. Prior to initiating work, Contractor shall be solely responsible for preparing and implementing a Storm Water Pollution Prevention Plan (SWPPP) as required by the Permit. Contractor shall be responsible for procuring, implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, and monitoring and reporting requirements as required by the Permit. The Permit requires the SWPPP to be a "living document" that changes as necessary to meet the conditions and requirements of the job site as it progresses through different phases of construction and is subject to different weather conditions. It shall be Contractor's sole responsibility to update the SWPPP as necessary to address conditions at the project site.

3.10.1.3 Other Water Quality Rules Regulations and Policies.

Contractor shall comply with the lawful requirements of any applicable municipality, drainage City, or local agency regarding discharges of storm water to separate storm drain systems or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.

3.10.1.4 Cost of Compliance.

Storm, surface, nuisance, or other waters may be encountered at various times during construction of the Work. Therefore, the Contractor, hereby acknowledges that it has investigated the risk arising from such waters and assumes any and all risks and liabilities arising therefrom.

3.10.1.5 Liability for Non-Compliance.

Failure to comply with laws, regulations, standards, ordinances, and permits listed in Sections 3.10.1.1, 3.10.1.2, 3.10.1.3, and 3.10.1.4 of the Contract is a violation of federal and state law. Pursuant to the indemnification provisions of this Contract, Contractor hereby agrees to defend, indemnify and hold harmless the City and its directors, officials, officers, employees, volunteers and agents for any alleged violations. In addition, City may seek damages from Contractor for any delay in completing the Work in accordance with the Contract, if such delay is caused by or related to Contractor's failure to comply with the Permit.

3.10.1.6 Reservation of Right to Defend.

City reserves the right to defend any enforcement action brought against the City for Contractor's failure to comply with the Permit or any other relevant water quality law, regulation, or policy. Pursuant to the indemnification provisions of this Contract, Contractor hereby agrees to be bound by, and to reimburse the City for the costs (including the City's attorney's fees) associated with, any settlement reached between the City and the relevant enforcement entity.

3.10.1.7 Training.

In addition to the standard of performance requirements set forth in this Contract, Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the work assigned to them without impacting water quality in violation of the laws, regulations and policies described in paragraph 3.10.1. Contractor further warrants that it, its employees and subcontractors will receive adequate training, as determined by City, regarding the requirements of the laws, regulations and policies described in paragraph 3.10.1 as they may relate to the Work provided under this Contract. Upon

request, City will provide the Contractor with a list of training programs that meet the requirements of this paragraph.

3.10.2 Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. Contractor shall comply with the requirements of the specifications relating to safety measures applicable in particular operations or kinds of work. In carrying out its Work, Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the Work and the conditions under which the Work is to be performed. Safety precautions as applicable shall include, but shall not be limited to, adequate life protection and lifesaving equipment; adequate illumination for underground and night operations; instructions in accident prevention for all employees, such as machinery guards, safe walkways, scaffolds, ladders, bridges, gang planks, confined space procedures, trenching and shoring, fall protection and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and adequate facilities for the proper inspection and maintenance of all safety measures. Furthermore, Contractor shall prominently display the names and telephone numbers of at least two medical doctors practicing in the vicinity of the Project, as well as the telephone number of the local ambulance service, adjacent to all telephones at the Project site.

3.10.3 Laws and Regulations. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Contract or the Work, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with the Work. If Contractor observes that the drawings or specifications are at variance with any law, rule or regulation, it shall promptly notify the City in writing. Any necessary changes shall be made by written change order. If Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Contractor shall be solely responsible for all costs arising therefrom. City is a public entity of the State of California subject to certain provisions of the Health & Safety Code, Government Code, Public Contract Code, and Labor Code of the State. It is stipulated and agreed that all provisions of the law applicable to the public contracts of a municipality are a part of this Contract to the same extent as though set forth herein and will be complied with. Contractor shall defend, indemnify and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Contract, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.10.4 Permits and Licenses. Contractor shall be responsible for securing City permits and licenses necessary to perform the Work described herein, including, but not limited to, a City Business License. While Contractor will not be charged a fee for any City permits, Contractor shall pay the City's applicable business license fee. Any ineligible contractor or subcontractor pursuant to Labor Code Sections 1777.1 and 1777.7 may not perform work on this Project.

3.10.5 Trenching Work. If the Total Contract Price exceeds \$25,000 and if the Work governed by this Contract entails excavation of any trench or trenches five (5) feet or more in depth, Contractor shall comply with all applicable provisions of the California Labor Code, including Section 6705. To this end, Contractor shall submit for City's review and approval a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or

trenches. If such plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.

3.10.6 Hazardous Materials and Differing Conditions. As required by California Public Contract Code Section 7104, if this Contract involves digging trenches or other excavations that extend deeper than four (4) feet below the surface, Contractor shall promptly, and prior to disturbance of any conditions, notify City of: (1) any material discovered in excavation that Contractor believes to be a hazardous waste that is required to be removed to a Class I, Class II or Class III disposal site; (2) subsurface or latent physical conditions at the site differing from those indicated by City; and (3) unknown physical conditions of an unusual nature at the site, significantly different from those ordinarily encountered in such contract work. Upon notification, City shall promptly investigate the conditions to determine whether a change order is appropriate. In the event of a dispute, Contractor shall not be excused from any scheduled completion date and shall proceed with all Work to be performed under the Contract, but shall retain all rights provided by the Contract or by law for making protests and resolving the dispute.

3.10.7 Underground Utility Facilities. To the extent required by Section 4215 of the California Government Code, City shall compensate Contractor for the costs of: (1) locating and repairing damage to underground utility facilities not caused by the failure of Contractor to exercise reasonable care; (2) removing or relocating underground utility facilities not indicated in the construction drawings; and (3) equipment necessarily idled during such work. Contractor shall not be assessed liquidated damages for delay caused by failure of City to provide for removal or relocation of such utility facilities.

3.10.8 Air Quality. Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the California Air Resources Board (CARB). Although CARB limits and requirements are more broad, Contractor shall specifically be aware of their application to "portable equipment", which definition is considered by CARB to include any item of equipment with a fuel-powered engine. Contractor shall indemnify City against any fines or penalties imposed by CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Contractor, its subcontractors, or others for whom Contractor is responsible under its indemnity obligations provided for in this Contract.

3.10.9 State Recycling Mandates. Contractor shall comply with State Recycling Mandates. Any recyclable materials/debris collected by the contractor that can be feasibly diverted via reuse or recycling must be hauled by the appropriate handler for reuse or recycling.

3.10.10 Inspection Of Site. Contractor has visited sites where Work is to be performed and has become acquainted with all conditions affecting the Work. Contractor warrants that it has made such examinations as it deems necessary to determine the condition of the Work sites, its accessibility to materials, workmen and equipment, and to determine the Contractor's ability to protect existing surface and subsurface improvements. No claim for allowances—time or money—will be allowed as to such matters.

3.10.11 Field Measurements. Contractor shall make field measurements, verify field conditions and shall carefully compare such field measurements and conditions and other information known to Contractor with the Contract Documents before commencing activities.

Errors, inconsistencies or omissions discovered shall be reported to the City immediately and prior to performing any work or altering the condition.

**3.11 Completion of Work.** When Contractor determines that it has completed the Work required herein, Contractor shall so notify City in writing and shall furnish all labor and material releases required by this Contract. City shall thereupon inspect the Work. If the Work is not acceptable to the City, the City shall indicate to Contractor in writing the specific portions or items of Work which are unsatisfactory or incomplete. Once Contractor determines that it has completed the incomplete or unsatisfactory Work, Contractor may request a re-inspection by the City. Once the Work is acceptable to City, City shall pay to Contractor the Total Contract Price remaining to be paid, less any amount which City may be authorized or directed by law to retain. Payment of retention proceeds due to Contractor shall be made in accordance with Section 7107 of the California Public Contract Code.

**3.12 Claims; Government Code Claim Compliance.**

3.12.1 Intent. Effective January 1, 1991, Section 20104 et seq., of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Section is to implement Sections 20104 et seq. and Section 9204 of the California Public Contract Code. This Section shall be construed to be consistent with said statutes.

3.12.2 Claims. For purposes of this Section, "Claim" means a separate demand by the Contractor, after a change order duly requested in accordance with the terms of this Contract has been denied by the City, for (A) a time extension, (B) payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract, or (C) an amount the payment of which is disputed by the City. A "Claim" does not include any demand for payment for which the Contractor has failed to provide notice, request a change order, or otherwise failed to follow any procedures contained in the Contract Documents.

3.12.3 Filing Claims. Claims governed by this Section may not be filed unless and until the Contractor completes all procedures for giving notice of delay or change and for the requesting of a time extension or change order, including but not necessarily limited to the change order procedures contained herein, and Contractor's request for a change has been denied in whole or in part. Claims governed by this Section must be filed no later than fourteen (14) days after a request for change has been denied in whole or in part or after any other event giving rise to the Claim. The Claim shall be submitted in writing to the City and shall include on its first page the following in 16 point capital font: "THIS IS A CLAIM." Furthermore, the claim shall include the documents necessary to substantiate the claim. Nothing in this Section is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims, including all requirements pertaining to compensation or payment for extra Work, disputed Work, and/or changed conditions. Failure to follow such contractual requirements shall bar any claims or subsequent lawsuits for compensation or payment thereon.

3.12.4 Supporting Documentation. The Contractor shall submit all claims in the following format:

3.12.4.1 Summary of claim merit and price, reference Contract Document provisions pursuant to which the claim is made

3.12.4.2 List of documents relating to claim:

- (A) Specifications
- (B) Drawings
- (C) Clarifications (Requests for Information)
- (D) Schedules
- (E) Other

3.12.4.3 Chronology of events and correspondence

3.12.4.4 Analysis of claim merit

3.12.4.5 Analysis of claim cost, including calculations and supporting documents

3.12.4.6 Time impact analysis in CPM format

3.12.5 City's Response. Upon receipt of a Claim pursuant to this Section, City shall conduct a reasonable review of the Claim and, within a period not to exceed 45 days of receipt of the Claim, or as extended by mutual agreement, shall provide the Contractor a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the Claim will be processed and made within 60 days after the City issues its written statement.

3.12.5.1 If City needs approval from its governing body to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the Claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a Claim sent by registered mail or certified mail, return receipt requested, City shall have up to three (3) days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

3.12.5.2 Within 30 days of receipt of a Claim, City may request in writing additional documentation supporting the Claim or relating to defenses or claims City may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of City and the Contractor. City's written response to the Claim, shall be submitted to the Contractor within 30 Days (if the Claim is less than \$50,000, within 15 Days) after receipt of the additional documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.

3.12.6 Meet and Confer. If the Contractor disputes City's written response, or City fails to respond within the time prescribed, the Contractor may so notify City, in writing, within 15 Days of receipt of City's response or the City's failure to respond, and demand an informal

conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, City shall schedule a meet and confer conference within 30 Days for settlement of the dispute.

3.12.7 Mediation. Within 10 business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, City shall provide the Contractor a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall be processed and made within 60 Days after City issues its written statement. Any disputed portion of the Claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with City and the Contractor sharing the associated costs equally. City and Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the Claim has been identified in writing, unless the Parties agree to select a mediator at a later time.

3.12.7.1 If the Parties cannot agree upon a mediator, each Party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each Party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

3.12.7.2 For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the Parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

3.12.7.3 Unless otherwise agreed to by City and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

3.12.7.4 The mediation shall be held no earlier than the date the Contractor completes the Work or the date that the Contractor last performs Work, whichever is earlier. All unresolved Claims shall be considered jointly in a single mediation, unless a new unrelated Claim arises after mediation is completed.

3.12.8 Procedures After Mediation. If following the mediation, the Claim or any portion remains in dispute, the Contractor must file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the Contractor submits his or her written Claim pursuant to subdivision (a) until the time the Claim is denied, including any period of time utilized by the meet and confer conference or mediation.

3.12.9 Civil Actions. The following procedures are established for all civil actions filed to resolve Claims of \$375,000 or less:

3.12.9.1 Within 60 Days, but no earlier than 30 Days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both Parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the terms of these procedures. The mediation process shall provide for the selection within 15 Days by both Parties of a disinterested third person as mediator, shall be commenced within 30 Days of the submittal, and

shall be concluded within 15 Days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.

3.12.9.2 If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

3.12.9.3 In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

### 3.12.10 Government Code Claim Procedures.

3.12.10.1 This section does not apply to tort claims and nothing in this section is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.5 of Title 1 of the Government Code.

3.12.10.2 In addition to any and all Contract requirements pertaining to notices of and requests for adjustments to the Contract Time, Contract Price, or compensation or payment for extra work, disputed work, claims and/or changed conditions, Contractor must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City.

3.12.10.3 Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to adjustment of the Contract Time, Contract Price, or compensation or payment for extra work, disputed work, claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor may not file any action against the City.

**3.12.10.4 A Government Code claim must be filed no earlier than the date the work is completed or the date the Contractor last performs work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved Claims known to the Contractor excepting only new unrelated Claims that arise after the Government Code claim is submitted.**

3.12.11 Non-Waiver. City's failure to respond to a Claim from the Contractor within the time periods described in this section or to otherwise meet the time requirements of this section shall result in the Claim being deemed rejected in its entirety and shall not constitute a waiver of any rights under this section.

**3.13 Loss and Damage.** Except as may otherwise be limited by law, Contractor shall be responsible for all loss and damage which may arise out of the nature of the Work agreed to herein, or from the action of the elements, or from any unforeseen difficulties which may arise or

be encountered in the prosecution of the Work until the same is fully completed and accepted by City. In the event of damage proximately caused by an Act of God, as defined by Section 7105 of the Public Contract Code, the City may terminate this Contract pursuant to the termination provisions in this Contract; provided, however, that the City needs to provide Contractor with only one (1) day advanced written notice.

### **3.14 Indemnification.**

3.14.1 Scope of Indemnity. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold the City, its officials, employees, agents and volunteers free and harmless from any and all claims, demands, causes of action, suits, actions, proceedings, costs, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity, regardless of whether the allegations are false, fraudulent, or groundless, to property or persons, including wrongful death, (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Contractor, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Contractor's services, the Project or this Contract, including without limitation the payment of all expert witness fees, attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent required by Civil Code section 2782, Contractor's indemnity obligation shall not apply to such loss or damage which is caused by the sole or active negligence or willful misconduct of the City.

3.14.2 Additional Indemnity Obligations. Contractor shall defend, with counsel of City's choosing and at Contractor's own cost, expense and risk, any and all Claims covered by this section that may be brought or instituted against City or its officials, employees, agents and authorized volunteers. In addition, Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its officials, employees, agents and authorized volunteers as part of any such claim, suit, action or other proceeding. Contractor shall also reimburse City for the cost of any settlement paid by City or its officials, employees, agents and authorized volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorney's fees and costs, including expert witness fees. Contractor shall reimburse City and its officials, employees, agents and authorized volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall survive expiration or termination of this Contract, and shall not be restricted to insurance proceeds, if any, received by the City, its officials, employees, agents and authorized volunteers.

### **3.15 Insurance.**

3.15.1 Time for Compliance. Contractor shall not commence Work under this Contract until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Contract for cause.

3.15.2 Minimum Requirements. Contractor shall, at its expense, procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work hereunder by Contractor, its agents, representatives, employees or subcontractors. Contractor shall also require all of its subcontractors to procure and maintain the same insurance for the

duration of the Contract. Such insurance shall meet at least the following minimum levels of coverage:

3.15.2.1 Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability:* Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01) OR Insurance Services Office Owners and Contractors Protective Liability Coverage Form (CG 00 09 11 88) (coverage for operations of designated contractor); (2) *Automobile Liability:* Insurance Services Office Business Auto Coverage form number CA 00 01, code 1 (any auto); (3) *Workers' Compensation and Employer's Liability:* Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance; and (4) *Builders'/All Risk:* Builders'/All Risk insurance covering for all risks of loss, including explosion, collapse, underground excavation and removal of lateral support (and including earthquakes and floods if requested by the City). Policies shall not contain exclusions contrary to this Contract.

3.15.2.2 Minimum Limits of Insurance. Contractor shall maintain limits no less than: (1) *General Liability:* \$2,000,000 per occurrence and \$4,000,000 general aggregate for bodily injury, personal injury and property damage; (2) *Automobile Liability:* \$1,000,000 per accident for bodily injury and property damage; (3) *Workers' Compensation and Employer's Liability:* Workers' compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 each accident, policy limit bodily injury or disease, and each employee bodily injury or disease; and (4) *Builders'/All Risk:* Completed value of the project. Defense costs shall be available in addition to the limits. Notwithstanding the minimum limits specified herein, any available coverage shall be provided to the parties required to be named as additional insureds pursuant to this Contract.

3.15.2.3 Notices; Cancellation or Reduction of Coverage. At least fifteen (15) days prior to the expiration of any such policy, evidence showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or materially reduced, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. In the event any policy of insurance required under this Contract does not comply with these specifications or is canceled and not replaced, the City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by the City will be promptly reimbursed by Contractor or the City may withhold amounts sufficient to pay premium from Contractor payments. In the alternative, the City may suspend or terminate this Contract.

3.15.3 Insurance Endorsements. The insurance policies shall contain the following provisions, or Contractor shall provide endorsements (amendments) on forms supplied or approved by the City to add the following provisions to the insurance policies:

3.15.3.1 General Liability. (1) Such policy shall give the City, its officials, employees, agents and volunteers additional insured status using ISO endorsements CG20 10 10 01 plus CG20 37 10 01, or endorsements providing the exact same coverage, with respect to the Work or operations performed by or on behalf of Contractor, including materials, parts or equipment furnished in connection with such work; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; and (3) the insurance coverage shall be primary insurance as respects the City, its

officials, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it.

3.15.3.2 Automobile Liability. (1) Such policy shall give the City, its officials, employees, agents and volunteers additional insured status with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by Contractor or for which Contractor is responsible; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; and (3) the insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it in any way.

3.15.3.3 Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its officials, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by Contractor.

3.15.3.4 All Coverages. Each insurance policy required by this Contract shall be endorsed to state that: (1) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its officials, employees, agents and volunteers.

3.15.4 Builders'/All Risk Policy Requirements. The builders'/all risk insurance shall provide that the City be named as loss payee. In addition, the insurer shall waive all rights of subrogation against the City.

3.15.5 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its officials, employees, agents and volunteers.

3.15.6 Professional Liability Insurance. All architects, engineers, consultants or design professionals retained by Contractor shall also procure and maintain, for a period of five (5) years following completion of the Contract, errors and omissions liability insurance with a limit of not less than \$1,000,000 per occurrence. This insurance shall name the City, its directors, officials, officers, employees, agents and volunteers as additional and insureds with respect to Work performed, and shall otherwise comply with all requirements of this Section. Defense costs shall be paid in addition to the limits.

3.15.7 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Contractor shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, agents and authorized volunteers;

or (2) the Contractor shall procure a bond or other financial guarantee acceptable to the City guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

3.15.8 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VII, licensed to do business in California, and satisfactory to the City. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

3.15.9 Verification of Coverage. Contractor shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Contract on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms supplied or approved by the City. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.15.10 Subcontractors. All subcontractors shall meet the requirements of this Section before commencing Work. Contractor shall furnish separate certificates and endorsements for each subcontractor. Subcontractor policies of General Liability insurance shall name the City, its officials, employees, agents and authorized volunteers as additional insureds using form ISO 20 38 04 13 or endorsements providing the exact same coverage. All coverages for subcontractors shall be subject to all of the requirements stated herein except as otherwise agreed to by the City in writing.

3.15.11 Reporting of Claims. Contractor shall report to the City, in addition to Contractor's insurer, any and all insurance claims submitted by Contractor in connection with the Work under this Contract.

### **3.16 Bond Requirements.**

3.16.1 Payment Bond. If required by law or otherwise specifically requested by City in Exhibit "C" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Contract a Payment Bond in an amount required by the City and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until the bond has been received and approved by the City.

3.16.2 Performance Bond. If specifically requested by City in Exhibit "C" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Contract a Performance Bond in an amount required by the City and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until the bond has been received and approved by the City.

3.16.3 Bond Provisions. Should, in City's sole opinion, any bond become insufficient or any surety be found to be unsatisfactory, Contractor shall renew or replace the effected bond within (ten) 10 days of receiving notice from City. In the event the surety or Contractor intends to reduce or cancel any required bond, at least thirty (30) days prior written notice shall be given to the City, and Contractor shall post acceptable replacement bonds at least ten (10) days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Contract until any replacement bonds required by this Section are accepted by the City. To the extent, if any, that the Total Contract Price is increased in accordance

with the Contract, Contractor shall, upon request of the City, cause the amount of the bond to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the City. If Contractor fails to furnish any required bond, the City may terminate the Contract for cause.

3.16.4 Surety Qualifications. Only bonds executed by an admitted surety insurer, as defined in California Code of Civil Procedure Section 995.120, shall be accepted. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with Section 995.660 of the California Code of Civil Procedure, and proof of such is provided to the City.

**3.17 Warranty.** Contractor warrants all Work under the Contract (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Contract or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the City of any defect in the Work or non-conformance of the Work to the Contract, commence and prosecute with due diligence all Work necessary to fulfill the terms of the warranty at its sole cost and expense. Contractor shall act sooner as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the Work (or work of other contractors) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected Work. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Contract. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstatement of equipment and materials necessary to gain access, shall be the sole responsibility of Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Contract, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand.

### **3.18 Employee/Labor Certifications.**

3.18.1 Contractor's Labor Certification. By its signature hereunder, Contractor certifies that he is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Work. A certification form for this purpose, which is attached to this Contract as Exhibit "D" and incorporated herein by reference, shall be executed simultaneously with this Contract.

3.18.2 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

3.18.3 Verification of Employment Eligibility. By executing this Contract, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subcontractors and sub-subcontractors to comply with the same.

**3.19 Termination.** This Contract may be terminated by City at any time, either with our without cause, by giving Contractor three (3) days advance written notice. In the event of termination by City for any reason other than the fault of Contractor, City shall pay Contractor for all Work performed up to that time as provided herein. In the event of breach of the Contract by Contractor, City may terminate the Contract immediately without notice, may reduce payment to Contractor in the amount necessary to offset City's resulting damages, and may pursue any other available recourse against Contractor. Contractor may not terminate this Contract except for cause. In the event this Contract is terminated in whole or in part as provided, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated. Further, if this Contract is terminated as provided, City may require Contractor to provide all finished or unfinished documents, data, diagrams, drawings, materials or other matter prepared or built by Contractor in connection with its performance of this Contract. Contractor shall be required to provide such document and other information within fifteen (15) days of the request.

### **3.20 General Provisions.**

3.20.1 City's Representative. The City hereby designates the **Joe Ames**, or his or her designee, to act as its representative for the performance of this Contract ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.20.2 Contractor's Representative. Before starting the Work, Contractor shall submit in writing the name, qualifications and experience of its proposed representative who shall be subject to the review and approval of the City ("Contractor's Representative"). Following approval by the City, Contractor's Representative shall have full authority to represent and act on behalf of Contractor for all purposes under this Contract. Contractor's Representative shall supervise and direct the Work, using his best skill and attention, and shall be responsible for all construction means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Work under this Contract. Contractor's Representative shall devote full time to the Project and either he or his designee, who shall be acceptable to the City, shall be present at the Work site at all times that any Work is in progress and at any time that any employee or subcontractor of Contractor is present at the Work site. Arrangements for responsible supervision, acceptable to the City, shall be made for emergency Work which may be required. Should Contractor desire to change its Contractor's Representative, Contractor shall provide the information specified above and obtain the City's written approval.

3.20.3 Contract Interpretation. Should any question arise regarding the meaning or import of any of the provisions of this Contract or written or oral instructions from City, the matter shall be referred to City's Representative, whose decision shall be binding upon Contractor.

3.20.4 Anti-Trust Claims. This provision shall be operative if this Contract is applicable to California Public Contract Code Section 7103.5. In entering into this Contract to supply goods, services or materials, Contractor hereby offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code) arising from purchases of goods, services, or materials pursuant to the Contract. This assignment shall be made and become effective at the time the City tender final payment to Contractor, without further acknowledgment by the Parties.

3.20.5 Notices. All notices hereunder and communications regarding interpretation of the terms of the Contract or changes thereto shall be provided by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

**CONTRACTOR:**

PRO INSTALLATIONS INC., DBA PROSPECTRA CONTRACT FLOORING  
13250 GREGG STREET, SUITE F  
POWAY, CA 92604  
ATTN: ADAM KATZ, ACCOUNT EXECUTIVE

**CITY:**

CITY OF STANTON  
7800 KATELLA AVENUE  
STANTON, CA 90680  
ATTN: JOE AMES, DIRECTOR OF PUBLIC WORKS

Any notice so given shall be considered received by the other Party three (3) days after deposit in the U.S. Mail as stated above and addressed to the Party at the above address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.20.6 Time of Essence. Time is of the essence in the performance of this Contract.

3.20.7 Assignment Forbidden. Contractor shall not, either voluntarily or by action of law, assign or transfer this Contract or any obligation, right, title or interest assumed by Contractor herein without the prior written consent of City. If Contractor attempts an assignment or transfer of this Contract or any obligation, right, title or interest herein, City may, at its option, terminate and revoke the Contract and shall thereupon be relieved from any and all obligations to Contractor or its assignee or transferee.

3.20.8 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.20.9 Laws; Venue. This Contract shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Contract, the action shall be brought in a state or federal court situated in the County of Orange, State of California.

3.20.10 Attorneys' Fees. If either Party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and all other costs of such action.

3.20.11 Counterparts. This Contract may be executed in counterparts, each of which shall constitute an original.

3.20.12 Successors. The Parties do for themselves, their heirs, executors, administrators, successors, and assigns agree to the full performance of all of the provisions contained in this Contract.

3.20.13 Solicitation. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, City shall have the right to terminate this Contract without liability.

3.20.14 Conflict of Interest. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, City shall have the right to rescind this Contract without liability. For the term of this Contract, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Contract, or obtain any present or anticipated material benefit arising therefrom. In addition, Contractor agrees to file, or to cause its employees or subcontractors to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Work.

3.20.15 Certification of License.

3.20.15.1 Contractor certifies that as of the date of execution of this Contract, Contractor has a current contractor's license of the classification indicated below under Contractor's signature.

3.20.15.2 Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

3.20.16 Authority to Enter Contract. Each Party warrants that the individuals who have signed this Contract have the legal power, right and authority to make this Contract and bind each respective Party.

3.20.17 Entire Contract; Modification. This Contract contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Contract may only be modified by a writing signed by both Parties.

3.20.18 Non-Waiver. None of the provisions of this Contract shall be considered waived by either party, unless such waiver is specifically specified in writing.

3.20.19 City's Right to Employ Other Contractors. City reserves right to employ other contractors in connection with this Project or other projects.

**[Signatures on Next Page]**

**SIGNATURE PAGE FOR CONSTRUCTION CONTRACT  
BETWEEN THE CITY OF STANTON  
AND PRO INSTALLATIONS INC. DBA PROSPECTRA CONTRACT FLOORING**

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

**CITY OF STANTON**

**Pro Installations Inc. dba ProSpectra  
Contract Flooring**

Approved:

By: \_\_\_\_\_

By: \_\_\_\_\_  
JARAD HILDENBRAND  
City Manager

Its: \_\_\_\_\_

Printed Name: \_\_\_\_\_

ATTESTED:

By: \_\_\_\_\_

By: \_\_\_\_\_  
City Clerk

Its: \_\_\_\_\_

Printed Name: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Contractor's License Number and  
Classification

\_\_\_\_\_  
Best Best & Krieger LLP  
City Attorney

\_\_\_\_\_  
DIR Registration Number

## EXHIBIT "A"

### SERVICES / SCHEDULE

- Contractor obtainment of a City business license prior to work. Costs to obtain and fees paid shall be included in the contractor's bid.
- Carpet and vinyl commercial plank installation, which requires:
  - removal and replacement of carpet
  - preparation of subfloor
  - installation of new carpet tile and new rubber cove base
  - preparation of existing sheet vinyl
  - application of adhesive
  - installation of new plank vinyl commercial flooring
  - installation of new rubber cove base and flooring transition products,
  - removal, relocation, and reinstallation of furniture needed to install flooring.
- Areas excluded from scope of work: Electrical Room, Communication Room, and all tiled areas (showers, bathrooms, kitchen, etc.)
- The built-in lockers within the men's locker room are not to be removed and replaced as part of the scope of work. However, six (6) lockers within the men's locker room are not built-in, and need to be removed in order to install flooring under these lockers. Contractor shall reinstall these lockers after installation of flooring.
- The storage closets in the lobby area are included in the scope of work for new vinyl plank flooring.
- The Administrative Deputy Office and Report Writing Room has existing carpet, and shall be replaced with new carpet.

Additional requirements listed in the bid specifications dated January 13, 2022 and in the Addendum No. 1 dated February 1, 2022 are incorporated herein by reference.

Contractor shall propose a schedule for review and approval by the City that balances the needs of the Contractor and the Sheriff's Department. The Contractor should expect a phased approach will be necessary.

## EXHIBIT "B"

### PLANS AND SPECIFICATIONS

#### PLANS

An Emergency Evacuation Plan with a layout of the Sheriff Substation was attached to Addendum No. 1 issued on February 1, 2022.

#### SPECIFICATIONS

Specifications consist of "Contractor's Responsibilities" below and installation instructions provided by the manufacturer, attached.

#### CONTRACTOR'S RESPONSIBILITIES:

- **MEASUREMENTS** – Before ordering material or doing any work, Contractor shall verify, at the building, all dimensions which may affect their work. Contractor assumes full responsibility for the accuracy of their figures. No allowance for additional compensation will be considered for minor discrepancies between dimensions on drawings and actual field dimensions.
- **SUBMITTALS** – All samples required by the Specifications shall be submitted to the Public Works Department. Each sample shall be clearly labeled on a tag attached, showing the name of project, name of contractor, manufacturer (and supplier if same is not the manufacturer), the brand name or number identification, pattern, color, or finish designation and the location of the work in the facility.

Each submittal shall be covered by a transmittal letter, properly identified with the project title and number and a brief description of the item being submitted. Contractor shall be responsible for all costs of packing, shipping, and incidental expenses connected with delivery of samples to Public Works Department.

If initial sample is not approved, prepare and submit additional sets until approval is obtained. Materials supplied or installed which do not conform to the appearance, quality, profile, texture or other determinant of the approval samples will be rejected, and shall be replaced with satisfactory materials at the Contractor's expense.

- **STORAGE OF MATERIALS** – Upon commencement of the project all materials shall be placed and stored outside of our building in a secure, weatherproof temporary storage container in parking lot areas designated by Public Works Department.
- **CLEAN-UP** – The Contractor shall at all time keep the Sheriff's Substation premises and adjoining premises, driveways, parking lots, and streets clean of rubbish caused by Contractor's operations and at the completion of the work shall remove all the rubbish, tools, equipment, temporary work and surplus materials, from and about the premises, and shall leave the work clean and ready for use.
- **DISPOSAL OF EXISTING CARPET/FLOORING** - All replaced carpet/flooring, rubbish and debris shall be removed from City Hall premises and disposed up in a disposal facility authorized and/or licensed to accept said material. Contractor shall provide Public Works

Department with a Certificate of Disposal from the facility documenting the disposal of all materials removed under this contract.

- INTERFERENCE WITH SHERIFF'S OPERATIONS – Sheriff's Department staff will be utilizing the building for normal operations during the project, but will coordinate with Contractor on scheduling work. The Contractor shall schedule performance of work necessary to complete the project in a way as to minimize interference with operations during construction.

- o Work which will interfere with Sheriff's Substation occupancy, including interruptions to hallways, adjoining areas, entrances/exits and essentially noisy operations shall be scheduled in advance and outside of normal hours of the facility. The demolition/installation schedule shall be coordinated and approved by the Public Works Department.

- GENERAL SAFETY AND BUILDING PRECAUTIONS – Provide and maintain in good repair barricades, railings, etc. as required by OSHA, and any local laws for the protection of the Public, employees and visitors to premises.

- o Isolate Sheriff's Substation occupied areas from areas where demolition and installation work will be done, with temporary, dustproof, weatherproof, enclosures as conditions may require and as directed by the Public Works Manager.

- o Protect furniture, equipment and fixtures to remain free from soiling, dust, dirt, or damage when demolition work is performed in rooms or areas from which portable or fixed items have not been removed.

- o Repair any damage done to existing structures caused by the construction and removal of temporary partitions, coverings and barricades.

- o Contractor is responsible for all breakage or damage from the time work has started until final completion and all debris is removed.

- o Provide protection for existing building interior and exterior, finishes, walls, drives, landscaping, lawns, etc. All damages shall be restored to match existing.

## INSTALLATION INSTRUCTIONS

See attached installation instructions from Patcraft and Kolay.

**EXHIBIT "C"**  
**SPECIAL CONDITIONS**

**ARTICLE 1. BONDS**

Concurrently with this Contract, the Contractor shall deliver to the City four identical counterparts of the Performance Bond and Payment Bond on the forms supplied by the City and included as Exhibit "E" to the Contract. The surety supplying the bond must be an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, authorized to do business as such in the State of California and satisfactory to the City. The Performance Bond and the Payment Bond shall be for one hundred percent (100%) of the Total Contract Price.

**EXHIBIT "D"**  
**CERTIFICATION**  
**LABOR CODE - SECTION 1861**

I, the undersigned Contractor, am aware of the provisions of Section 3700, et seq., of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I, the undersigned Contractor, agree to and will comply with such provisions before commencing the performance of the Work on this Contract.

**PRO INSTALLATIONS INC. DBA PROSPECTRA CONTRACT FLOORING**

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Title (Print)

**EXHIBIT "E"**  
**PAYMENT AND PERFORMANCE BONDS**

BOND REQUIREMENTS ARE REQUIRED.

**PERFORMANCE BOND**

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the City of Stanton (hereinafter referred to as "City") has awarded to \_\_\_\_\_, (hereinafter referred to as the "Contractor") \_\_\_\_\_ an agreement for \_\_\_\_\_ (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated \_\_\_\_\_, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, \_\_\_\_\_, the undersigned Contractor and \_\_\_\_\_ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the City in the sum of \_\_\_\_\_ DOLLARS, (\$ \_\_\_\_\_), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one-year guarantee of all materials and workmanship; and shall indemnify and save harmless the City, its officers and agents, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by City, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the City from loss or damage resulting from or caused by defective materials or faulty workmanship, Surety shall undertake and faithfully fulfill all such obligations. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the City's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

Whenever Contractor shall be, and is declared by the City to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the City's option:

- (1) Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or
- (2) Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and the City, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.
- (3) Permit the City to complete the Project in any manner consistent with local, California and federal law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the City may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if the City, when declaring the Contractor in default, notifies Surety of the City's objection to Contractor's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project, including but not limited to the provisions of sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_).

(Corporate Seal)

\_\_\_\_\_  
Contractor/ Principal

By \_\_\_\_\_

Title \_\_\_\_\_

(Corporate Seal)

\_\_\_\_\_  
Surety

By \_\_\_\_\_  
Attorney-in-Fact

Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached.

(Attach Attorney-in-Fact Certificate) Title \_\_\_\_\_

The rate of premium on this bond is \_\_\_\_\_ per thousand. The total amount of premium charges, \$ \_\_\_\_\_.

(The above must be filled in by corporate attorney.)

**THIS IS A REQUIRED FORM**

Any claims under this bond may be addressed to:

(Name and Address of Surety) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Name and Address of Agent or Representative for service of process in California, if different from above) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Telephone number of Surety and Agent or Representative for service of process in California) \_\_\_\_\_  
\_\_\_\_\_

NOTE: A copy of the Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.



**PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS That

THAT WHEREAS, the City of Stanton (hereinafter referred to as "City") has awarded to \_\_\_\_\_, (hereinafter referred to as the "Contractor") \_\_\_\_\_ an agreement for \_\_\_\_\_ (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated \_\_\_\_\_, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, said Principal is required to furnish a bond in connection with said contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and \_\_\_\_\_ as Surety, are held and firmly bound unto the City in the penal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 9100 of the Civil Code, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Section 18663 of the Revenue and Taxation Code, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by City in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Section 9100 of the Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining

or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or City and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 9100 of the Civil Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned and the provisions of sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Corporate Seal) \_\_\_\_\_

Contractor/ Principal

By \_\_\_\_\_

Title \_\_\_\_\_

(Corporate Seal)

\_\_\_\_\_  
Surety

By \_\_\_\_\_

Attorney-in-Fact

Title \_\_\_\_\_

Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached. A Power-of-Attorney authorizing the person signing on behalf of the Surety to do so much be attached hereto.

NOTE: A copy of the Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

**Notary Acknowledgment**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally

appeared \_\_\_\_\_, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public \_\_\_\_\_

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document*

*and could prevent fraudulent removal and reattachment of this form to another document.*

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_

Title(s)

- Partner(s)
  - Limited
  - General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other:

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_

\_\_\_\_\_

Title or Type of Document

\_\_\_\_\_

Number of Pages

\_\_\_\_\_

Date of Document

\_\_\_\_\_

Signer(s) Other Than Named Above

**BID FORMS**

**BID ACKNOWLEDGEMENT**

**NAME OF BIDDER:** Pro Installations Inc. dba ProSpectra Contract Flooring

The undersigned hereby declare that we have carefully examined the location of the proposed Work, and have read and examined the Contract, including all plans, specifications, and all addenda, if any, for the following Project:

**SHERIFF'S SUBSTATION FLOORING REPLACEMENT PROJECT**

To the City of Stanton, with its principal place of business at 7800 Katella Avenue, Stanton, CA 90680:

In response to the Notice Inviting Bids dated January 13, 2022 and in accordance with the accompanying Instructions to Bidders, the undersigned hereby proposes to the City to furnish all labor, technical and professional services, supervision, materials and equipment, other than materials and equipment specified as furnished by the City, and to perform all operations necessary and required to construct the Project in accordance with the provisions of the Contract Documents, including all plans, specifications, and all addenda, and at the prices stated opposite the respective items set forth in the Bid Schedule.

This Bid constitutes a firm offer to the City which cannot be withdrawn for 90 days after the date set for opening of Bids, or until a Contract is executed by the City and a third party, whichever is earlier.

The undersigned certifies that it has examined and is fully familiar with all of the provisions of the Contract Documents and any addenda thereto; that it has carefully checked all of figures shown in its Bid Schedule; that it has carefully reviewed the accuracy of all statements in this Bid and attachments hereto; and that it understands and agrees that the City will not be responsible for any errors or omissions on the part of the undersigned in preparing this Bid.

If awarded a Contract, the undersigned agrees to execute and deliver to the City within ten (10) calendar days after date of receipt of Notice of Award, a signed Contract and the necessary Performance Bond, Payment Bond, and Certificates of Insurance and Endorsements.

**A complete bid consists of the following Bid Forms, which have been completed and executed by the undersigned Bidder, are incorporated by this reference and made a part of this Bid:**

1. Completed Bid Schedule form.
2. Bid Guarantee in the amount of not less than 10% of the Total Bid Price.
3. Completed Designation of Subcontractors form.
4. Completed Bidder Information and Experience form.

5. Fully executed Non-Collusion Declaration form.
6. Completed Public Works Contractor DIR Registration Certification form.

Bidder certifies that it is now licensed in accordance with the provisions of the Contractor's License Law of the State of California:

License number 740392

Expiration date 09/30/2023

License classification C15, C54, C61/D12 C61/D06

If the Bidder is a joint venture, each member of the joint venture must include the above information.

The undersigned acknowledges receipt, understanding, and full consideration of the following addenda to the Contract Documents:

Addenda No. 1

**[SIGNATURES NEXT PAGE]**

I hereby certify under penalty of perjury under the laws of the State of California that all of the information submitted in connection with this Bid and all of the representations made herein are true and correct.

BIDDER:

ProSpectra Contract Flooring  
(Company Name)

Bidder's Business Address:

13250 Gregg St., Ste F  
Poway, Ca. 92064

By   
(Signature)

Steve Landfeth  
(Type or print name)

President  
(Title)

Poway, California  
(Where signed) (City, State)

Dated: 2-3, 2022  
State of Incorporation: California

(corporate seal)

*(If the Contractor is a corporation, two signatures of corporate officers are required.)*

Names and addresses of all partners or joint venturers:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Statement of the authority of signatory to bind Bidder:

See attached  
\_\_\_\_\_  
\_\_\_\_\_

I hereby certify under penalty of perjury under the laws of the State of California that all of the information submitted in connection with this Bid and all of the representations made herein are true and correct.

BIDDER:

Bidder's Business Address:

ProSpectra Contract Flooring  
(Company Name)

13250 Gregg St., Ste F  
Poway, Ca. 92064

By  

Steve Lappreth James L Kirkpatrick  
(Type or print name)  
President Vice President  
(Title)

Poway, California Dalton GA  
(Where signed) (City, State)

Dated: 2-3, 2022  
State of Incorporation: California



*(If the Contractor is a corporation, two signatures of corporate officers are required.)*

Names and addresses of all partners or joint venturers:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Statement of the authority of signatory to bind Bidder:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**PRO INSTALLATIONS, INC.**

**JOINT UNANIMOUS WRITTEN CONSENT OF  
THE BOARD OF DIRECTORS  
AND THE SOLE SHAREHOLDER IN LIEU OF ANNUAL MEETING**

The undersigned, constituting all of the members of the Board of Directors and the Sole Shareholder of **PRO INSTALLATIONS, INC.**, a California corporation (the "Corporation"), by affixing their signatures hereto pursuant to Sections 307 and 603(a) of the California General Corporation Law, do hereby consent to and take the following actions and adopt unanimously the following resolutions as if the same had been done at a meeting of the shareholders and Board of Directors of the Corporation duly called and held, and waive any required notice in connection therewith:

**WHEREAS**, the Sole Shareholder and the Directors of the Corporation have determined that it is in the best interests of the Corporation to elect new Directors and Officers;

**RESOLVED**, by the Sole Shareholder, that each of the following named individuals is hereby elected to serve, in accordance with the Bylaws of the Corporation, as a Director of the Corporation until the next annual meeting of the Shareholders and until his successor is duly elected and qualified, or until his earlier death, resignation or removal from office:

Vance D. Bell  
Kenneth G. Jackson

**RESOLVED FURTHER**, by the Directors, that each of the following named individuals is hereby elected to serve, in accordance with the Bylaws of the Corporation, in the office set forth opposite his respective name, until the next annual meeting of the Directors and until his successor is duly elected and qualified, or until his earlier death, resignation or removal from office:

Steven C. Landreth	President
James L. Kirkpatrick	Treasurer
Karen S. Tallon	Vice President and Secretary
Frederick L. Hooper III	Vice President and Assistant Secretary

**RESOLVED FURTHER**, by the Directors, that the Officers, the individual location Presidents, and the Vice Presidents of Sales of the Corporation, are authorized to take and do such further acts and deeds, and to execute and deliver, for and in the name of the Corporation, such other documents, papers, certificates and instruments as they deem to be necessary, appropriate, advisable or required in order to effectuate the usual course of business, including, but not limited to, the execution and delivery of documents, papers, or instruments.

**WHEREAS**, the Sole Shareholder and the Directors of the Corporation wish to ratify and confirm certain actions of the Directors and officers taken since the last annual meeting of the Sole Shareholder and the Directors;

**RESOLVED**, that the Sole Shareholder and the Directors hereby adopt, ratify, approve, and confirm all lawful actions taken and things done by the Directors, Officers, individual location Presidents, and Vice Presidents of Sales of the Corporation, on behalf of the Corporation, in their

capacities as such, as the same appear of record or in the usual course of business, including, but not limited to the execution and delivery of documents, papers, or instruments;

**RESOLVED FURTHER**, that this Consent Action may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same Consent Action;

**RESOLVED FURTHER**, that the Secretary or any Assistant Secretary of the Company is further authorized and empowered to certify to the passage of the foregoing resolutions; and

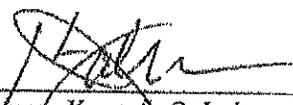
**RESOLVED FURTHER**, that the undersigned hereby direct that a fully executed counterpart hereof be filed with the minute records of the Corporation.

Dated effective as of March 26, 2019.

**SOLE SHAREHOLDER:**

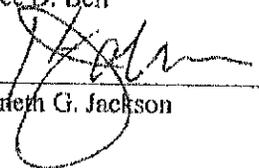
**SHAW INDUSTRIES GROUP, INC.**

By: \_\_\_\_\_

  
Name: Kenneth G. Jackson  
Title: Executive Vice President  
& Chief Financial Officer

**DIRECTORS:**

\_\_\_\_\_  
Vance D. Bell

  
\_\_\_\_\_  
Kenneth G. Jackson

**BID SCHEDULE (PAGE 1)**

NO.	ITEM DESCRIPTION	UNIT OF MEASURE	EST. QTY.	UNIT PRICE	ITEM COST
1.	Provide and install carpet tile in specified areas reviewed at Mandatory Pre-Bid Conference, including removal and disposal of existing carpet, preparation of existing subfloor, installation of new carpet tile, and vacuuming. <i>Carpet: Patcraft Orbital in color 00590 Atomic</i>	SQUARE YARDS	326	\$148.60	\$15,795
2.	Provide and install 4" rubber cove base in carpeted areas. Color to be determined.	LINEAR FEET	680	\$2.06	\$1,400
3.	Provide and install vinyl plank flooring products in specified areas reviewed at Mandatory Pre-Bid Conference, including preparation over existing sheet vinyl to prevent reflection of underlying flooring, and installation of new vinyl plank flooring with manufacturer's recommended adhesive according to instructions and according to industry standards, and installation of any flooring transition products for a clean, safe, and neat appearance. <i>Vinyl Plank: Kolay Rough Sawn Collection 620 Series, KRS 13-12 Rustic Olive, Glue Down KAI, 9" x 48", 5 mm thickness with 22 mil wear layer. Contact Jim Post at Kolay: 714/323-3267 or jim@kolayflooring.com</i>	SQUARE FEET	4,080	\$7.05	\$28,764
4.	Provide and install 4" rubber cover base in vinyl plank areas. Color to be determined.	LINEAR FEET	1,130	\$2.06	\$2,327
5.	Provide temporary furniture alteration, relocation, removal and/or reinstallation as necessary to facilitate carpet and vinyl plank flooring installation, including all necessary materials, labor, and equipment to complete the scope of the project.	LUMP SUM	1	\$1,714	\$1,714
<b>BID TOTAL</b>					<b>\$50,000</b>

**THE BASIS FOR AWARD OF CONTRACT SHALL BE THE CONTRACTOR'S BASE BID ONLY.**

TOTAL BID PRICE BASED ON BID SCHEDULE	
\$	50,000.00
Total Base Bid in Numbers	

**BID SCHEDULE (PAGE 2)**

The costs for any work shown or required in the Contract Documents, but not specifically identified as a bid line item are to be included in the related bid line items and no additional compensation shall be due to Contractor for the performance of the work.

All blank spaces appearing above must be filled in. Failure to fill in any blank spaces may render the Bid non-responsive. In case of discrepancy between the Unit Price and Item Cost set forth for a unit basis item, the Unit Price shall prevail and be utilized as the basis for determining the lowest responsive, responsible Bidder. However, if the amount set forth as a Unit Price is ambiguous, unintelligible or uncertain for any cause, or is omitted, or is the same amount as the entry in the Item Cost column, then the amount set forth in the Item Cost column for the item shall prevail and shall be divided by the estimated quantity for the item and the price thus obtained shall be the Unit Price.

For purposes of evaluating Bids, the City will correct any apparent errors in the extension of unit prices and any apparent errors in the addition of lump sum and extended prices.

The estimated quantities for Unit Price items are for purposes of comparing Bids only and the City makes no representation that the actual quantities of work performed will not vary from the estimates. Final payment shall be determined by the City from measured quantities of work performed based upon the Unit Price.

The undersigned agrees that this Bid Schedule constitutes a firm offer to the City which cannot be withdrawn for the number of calendar days indicated in the Notice Inviting Bids from and after the bid opening, or until a Contract for the work is fully executed by the City and a third party, whichever is earlier.

If the Contract Documents specify alternate bid items, the City can choose to include any, all, or none of the alternate bid items in the Work. If the City selects any of the alternate bid items, the corresponding alternate bid prices shall be added to or deducted from Base Bid Price for the work. The City can award/select alternate bid items at any time(s).

Name of Bidder Pro Installations Inc. dba ProSpectra Contract Flooring  
Signature   
Name and Title Steve Landreth - President  
Dated 2-3-22

**BID GUARANTEE**

**BID BOND**

[Note: Not required when other form of Bidder's Security, e.g. cash, certified check or cashier's check, accompanies Bid.]

The makers of this bond are, Pro Installations, Inc. dba ProSpectra Contract Flooring, as Principal, and Berkshire Hathaway Specialty Insurance Company, as Surety and are held and firmly bound unto the City of Stanton, hereinafter called the City, in the penal sum of TEN PERCENT (10%) OF THE TOTAL BID PRICE of the Principal submitted to City for the work described below, for the payment of which sum in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal has submitted the accompanying bid dated February 7, 2022, for SHERIFF'S SUBSTATION FLOORING INSTALLATION PROJECT.

If the Principal does not withdraw its Bid within the time specified in the Contract; and if the Principal is awarded the Contract and provides all documents to the City as required by the Contract; then this obligation shall be null and void. Otherwise, this bond will remain in full force and effect.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract shall affect its obligation under this bond, and Surety does hereby waive notice of any such changes.

In the event a lawsuit is brought upon this bond by the City and judgment is recovered, the Surety shall pay all litigation expenses incurred by the City in such suit, including reasonable attorneys' fees, court costs, expert witness fees and expenses.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their several seals this 7th day of February, 2022, the name and corporate seal of each corporation.

(Corporate Seal)

Pro Installations, Inc. dba ProSpectra Contract Flooring  
Contractor/ Principal

By [Signature] Steve Landreth

Title President

(Corporate Seal)

Berkshire Hathaway Specialty Insurance Company  
Surety

By [Signature]  
Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title D-Ann Kleidosly; Attorney-in-Fact

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of San Diego )

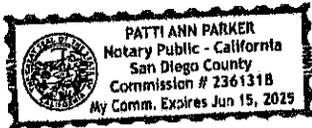
On 02-03-2022 before me, Patti Parker Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Steve Landreth  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal:



Signature [Signature]  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_  
Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_  
 Corporate Officer -- Title(s): \_\_\_\_\_  
 Partner --  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_  
 Corporate Officer -- Title(s): \_\_\_\_\_  
 Partner --  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_

## Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF ~~CALIFORNIA~~ GEORGIA  
 COUNTY OF \_\_\_\_\_

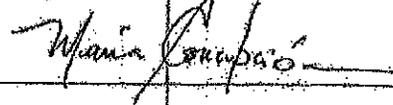
On February 7, 2022, before me, Maria Concepcion, Notary Public, personally appeared D-Ann Kleidasty, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Maria Concepcion  
 NOTARY PUBLIC  
 Fulton County, GEORGIA  
 My Commission Expires 08/01/2025

WITNESS my hand and official seal.



Signature of Notary Public

### OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

#### CAPACITY CLAIMED BY SIGNER

#### DESCRIPTION OF ATTACHED DOCUMENT

- Individual
- Corporate Officer

<input type="checkbox"/> Partner(s) <input type="checkbox"/> Limited <input type="checkbox"/> General  <input type="checkbox"/> Attorney-in-Fact <input type="checkbox"/> Trustee(s) <input type="checkbox"/> Guardian/Conservator <input type="checkbox"/> Other: Signer is representing: Name Of Person(s) Or Entity(ies)	Title(s)           Title or Type of Document           Number of Pages           Date of Document           Signer(s) Other Than Named Above
---	--

**NOTE:** This acknowledgment is to be completed for Contractor/Principal



Power Of Attorney

BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY NATIONAL INDEMNITY COMPANY / NATIONAL LIABILITY & FIRE INSURANCE COMPANY

Know all men by these presents, that BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY, a corporation existing under and by virtue of the laws of the State of Nebraska and having an office at One Lincoln Street, 23rd Floor, Boston, Massachusetts 02111, NATIONAL INDEMNITY COMPANY, a corporation existing under and by virtue of the laws of the State of Nebraska and having an office at 3024 Harney Street, Omaha, Nebraska 68131 and NATIONAL LIABILITY & FIRE INSURANCE COMPANY, a corporation existing under and by virtue of the laws of the State of Connecticut and having an office at 100 First Stamford Place, Stamford, Connecticut 06902 (hereinafter collectively the "Companies"), pursuant to and by the authority granted as set forth herein, do hereby name, constitute and appoint: D. Ann Kleidosky, Sharon J. Potts, Gary D. Eklund, Maria Concepcion, Hyung So, 3550 Lenox Road of the city of Atlanta, State of Georgia, their true and lawful attorney(s)-in-fact to make, execute, seal, acknowledge, and deliver, for and on their behalf as surety and as their act and deed, any and all undertakings, bonds, or other such writings obligatory in the nature thereof, in pursuance of those presents, the execution of which shall be as binding upon the Companies, as if it has been duly signed and executed by their regularly elected officers in their own proper persons. This authority for the Attorney-in-Fact shall be limited to the execution of the attached bond(s) or other such writings obligatory in the nature thereof.

In witness whereof, this Power of Attorney has been subscribed by an authorized officer of the Companies; and the corporate seals of the Companies have been affixed hereto, this date of December 20, 2018. This Power of Attorney is made and executed pursuant to and by authority of the Bylaws, Resolutions of the Board of Directors, and other Authorizations of BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY, NATIONAL INDEMNITY COMPANY and NATIONAL LIABILITY & FIRE INSURANCE COMPANY, which are in full force and effect, each reading as appears on the back page of this Power of Attorney, respectively. The following signature by an authorized officer of the Company may be a facsimile, which shall be deemed the equivalent of and constitute the written signature of such officer of the Company for all purposes regarding this Power of Attorney, including satisfaction of any signature requirements on any and all undertakings, bonds, or other such writings obligatory in the nature thereof, to which this Power of Attorney applies.

BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY

NATIONAL INDEMNITY COMPANY, NATIONAL LIABILITY & FIRE INSURANCE COMPANY

[Signature of David Fields]

[Signature of David Fields]

By: David Fields, Executive Vice President

By: David Fields, Vice President

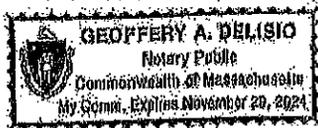


NOTARY

State of Massachusetts, County of Suffolk ss:

On this 20th day of December, 2018, before me appeared David Fields, Executive Vice President of BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY and Vice President of NATIONAL INDEMNITY COMPANY and NATIONAL LIABILITY & FIRE INSURANCE COMPANY, who, being duly sworn, says that his capacity is as designated above for such Companies; that he knows the corporate seals of the Companies; that the seals affixed to the foregoing instrument are such corporate seals; that they were affixed by order of the board of directors or other governing body of said Companies pursuant to its Bylaws, Resolutions and other Authorizations, and that he signed said instrument in that capacity of said Companies.

[Notary Seal]



[Signature of Notary Public]

Notary Public

I, Ralph Tortorella, the undersigned, Officer of BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY, NATIONAL INDEMNITY COMPANY and NATIONAL LIABILITY & FIRE INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies which is in full force and effect and has not been revoked. IN TESTIMONY WHEREOF, see hereunto affixed the seals of said Companies this February 7, 2019.



Officer

To verify the authenticity of this Power of Attorney please contact us at BHSI's Safety Department, Berkshire Hathaway Specialty Insurance Company, One Lincoln Street, 23rd Floor, Boston, MA 02111 (781) 525-2516 or by email at:jeremie.peters@berkshirehathaway.com THIS POWER OF ATTORNEY IS VOID IF ALTERED.

To verify us or obtain please contact us on our 24-hour toll free number at (855) 433-9675, via email at: dal@insurancespecialty.com, via fax to (617) 567-8059, or via mail.

BERKSHIRE HATHAWAY SPECIALTY INSURANCE COMPANY (BYLAWS)

ARTICLE V.

CORPORATE ACTIONS

....

EXECUTION OF DOCUMENTS:

....

Section 6.(b) The President, any Vice President or the Secretary, shall have the power and authority:

- (1) To appoint Attorneys-in-fact, and to authorize them to execute on behalf of the Company bonds and other undertakings, and
- (2) To remove at any time any such Attorney-in-fact and revoke the authority given him.

NATIONAL INDEMNITY COMPANY (BY-LAWS)

Section 4. Officers, Agents, and Employees:

A. The officers shall be a President, one or more Vice Presidents, a Secretary, one or more Assistant Secretaries, a Treasurer, and one or more Assistant Treasurers none of whom shall be required to be shareholders or Directors and each of whom shall be elected annually by the Board of Directors at each annual meeting to serve a term of office of one year or until a successor has been elected and qualified, may serve successive terms of office, may be removed from office at any time for or without cause by a vote of a majority of the Board of Directors, and shall have such powers and rights and be charged with such duties and obligations as usually are vested in and pertain to such office or as may be directed from time to time by the Board of Directors; and the Board of Directors or the officers may from time to time appoint, discharge, engage, or remove such agents and employees as may be appropriate, convenient, or necessary to the affairs and business of the corporation.

NATIONAL INDEMNITY COMPANY (BOARD RESOLUTION ADOPTED AUGUST 6, 2014)

RESOLVED, That the President, any Vice President or the Secretary, shall have the power and authority to (1) appoint Attorneys-in-fact, and to authorize them to execute on behalf of this Company bonds and other undertakings and (2) remove at any time any such Attorney-in-fact and revoke the authority given.

NATIONAL LIABILITY & FIRE INSURANCE COMPANY (BY-LAWS)

ARTICLE IV

Officers

Section 1. Officers, Agents and Employees:

A. The officers shall be a president, one or more vice presidents, one or more assistant vice presidents, a secretary, one or more assistant secretaries, a treasurer, and one or more assistant treasurers, none of whom shall be required to be shareholders or directors, and each of whom shall be elected annually by the board of directors at each annual meeting to serve a term of office of one year or until a successor has been elected and qualified, may serve successive terms of office, may be removed from office at any time for or without cause by a vote of a majority of the board of directors. The president and secretary shall be different individuals. Election or appointment of an officer or agent shall not create contract rights. The officers of the Corporation shall have such powers and rights and be charged with such duties and obligations as usually are vested in and pertain to such office or as may be directed from time to time by the board of directors; and the board of directors or the officers may from time to time appoint, discharge, engage, or remove such agents and employees as may be appropriate, convenient, or necessary to the affairs and business of the Corporation.

NATIONAL LIABILITY & FIRE INSURANCE COMPANY (BOARD RESOLUTION ADOPTED AUGUST 6, 2014)

RESOLVED, That the President, any Vice President or the Secretary, shall have the power and authority to (1) appoint Attorneys-in-fact, and to authorize them to execute on behalf of this Company bonds and other undertakings and (2) remove at any time any such Attorney-in-fact and revoke the authority given.

### DESIGNATION OF SUBCONTRACTORS

The subcontractor listed below will perform work or labor or render service to the successful Bidder in or about the construction of the work or improvement, or are subcontractors licensed by the State of California who will, under subcontract to the successful Bidder, specially fabricate and install a portion of the work or improvement according to detailed drawings contained in the Contract Documents, in an amount in excess of one-half of one percent (1/2 of 1%) of the Bidder's total bid. Notwithstanding the foregoing, if the work involves the construction of streets and highways, then the Bidder shall list each subcontractor who will perform work or labor or render service to the Bidder in or about the work in an amount in excess of one-half of one percent (0.5%) of the Bidder's Total Bid Price or \$10,000, whichever is greater. No additional time shall be granted to provide the below requested information.

In compliance with the Subletting and Subcontracting Fair Practices Act Chapter 4 (commencing at Section 4100), Part 1, Division 2 of the California Public Contract Code, the Bidder shall set forth below:

- (a) The portion of the work to be done by the subcontractor;
- (b) The name and the location of the place of business;
- (c) The California contractor license number; and
- (d) The DIR public works contractor registration number.

If a Bidder fails to specify a subcontractor or if a Bidder specifies more than one subcontractor for the same portion of work, then the Bidder shall be deemed to have agreed that it is fully qualified to perform that portion of work and that it shall perform that portion itself.

Portion of Work to be done by Subcontractor	Name of Subcontractor	Location of Business	CSLB Contractor License No.	DIR Registration Number
FLOORING	ELITE PERFORMANCE	WALNUT, CA 91789	#999363	#1000 21588

Portion of Work to be done by Subcontractor	Name of Subcontractor	Location of Business	CSLE Contractor License No.	DIR Registration Number

**BIDDER INFORMATION AND EXPERIENCE FORM**

**INFORMATION ABOUT BIDDER**

(Indicate not applicable ("N/A") where appropriate.)

**NOTE:** Where Bidder is a joint venture, pages shall be duplicated and information provided for all parties to the joint venture.

- 1.0 Name of Bidder: Pro Installations Inc. dba ProSpectra Contract Flooring
- 2.0 Type, if Entity: Corporation
- 3.0 Bidder Address: 13250 Gregg St., Ste F, Poway, CA. 92064
- 
- 858-642-7691 858-642-7429  
Facsimile Number Telephone Number  
steve.landreth@spectracf.com  
Email Address
- 4.0 How many years has Bidder's organization been in business as a Contractor?  
25 years
- 5.0 How many years has Bidder's organization been in business under its present name? 17 years
- 5.1 Under what other or former names has Bidder's organization operated? Shaw Contract Flooring, Spectra Contract Flooring, Pro Installations Inc.
- 6.0 If Bidder's organization is a corporation, answer the following:
- 6.1 Date of Incorporation: 2/07/1997
- 6.2 State of Incorporation: California
- 6.3 President's Name: Steve Landreth
- 6.4 Vice-President's Name(s): Karen S Tallon  
N/A
- 6.5 Secretary's Name: Karen S Tallon
- 6.6 Treasurer's Name: James L Kirkpatrick

7.0 If an individual or a partnership, answer the following:

7.1 Date of Organization: N/A

7.2 Name and address of all partners (state whether general or limited partnership):

N/A

8.0 If other than a corporation or partnership, describe organization and name principals:

N/A

9.0 List other states in which Bidder's organization is legally qualified to do business.

Las Vegas, Hawaii

10.0 What type of work does the Bidder normally perform with its own forces?

Carpet Tile, LVT, Carpet, Base, Ceramic Tile, Synthetic Flooring

11.0 Has Bidder ever failed to complete any work awarded to it? If so, note when, where, and why:

No

12.0 Within the last five years, has any officer or partner of Bidder's organization ever been an officer or partner of another organization when it failed to complete a contract? If so, attach a separate sheet of explanation:

No

13.0 List Trade References:

See Attached

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14.0 List Bank References (Bank and Branch Address):

See Attached

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15.0 Name of Bonding Company and Name and Address of Agent:

Marsh USA, Inc. - 3560 Lenox Road, Suite 2400, Atlanta, GA. 30326

D-Ann Kleldosty

---

---

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**



### General Contractor References

Rudolph & Sletten Inc.  
Garrett Bailey  
[garrett.bailey@rsconst.com](mailto:garrett.bailey@rsconst.com)  
925-337-7047

Austin Webcor JV  
Matthew Watley  
[mwatley@webcor.com](mailto:mwatley@webcor.com)  
510-205-5804

Sundt Construction  
Sean Falvey  
[skfalvey@sundt.com](mailto:skfalvey@sundt.com)  
916-530-0001

McCarthy Building Company  
Ashleen Vargas  
[dvargas@mccarthy.com](mailto:dvargas@mccarthy.com)  
951-751-3116

PCL Construction Services  
Sofan Mohammad  
[msofan@pcl.com](mailto:msofan@pcl.com)  
201-635-3600

Clark Construction Group  
Leon Hung  
[Leon.hung@clarkconstruction.com](mailto:Leon.hung@clarkconstruction.com)  
415-599-6829

Bernards Brothers Construction  
Brian Sharp  
[bsharp@bernards.com](mailto:bsharp@bernards.com)  
661-416-1968





Andrew Carline  
90 South, 7<sup>th</sup> Street  
Minneapolis, MN 55402  
Phone: 612-667-9150

May 11th, 2021

Re: Pro Installations, Inc., d.b.a ProSpectra Contract Flooring

To whom it may concern:

This letter serves as verification that Wells Fargo Bank account number 2000182557699 is an active demand deposit account in good standing. We also confirm there are no present liens or charges over this account. Please see the account details below.

Account Name: Shaw Industries Group Inc.  
Account Number: 2000182557699  
Routing Number: 121000248  
Date opened: 1966  
Current balance: Mid Seven figure range.  
Six month average balance: Mid Seven figure range.

If you need additional information, feel free to contact me directly at 612-667-9150.

Sincerely,

Andrew Carline  
Relationship Associate  
Corporate Banking Financial Institutions Group





**LIST OF COMPLETED PROJECTS -- LAST THREE YEARS**

[\*\*Duplicate Page if needed for listing additional completed projects.\*\*]

Please include only those projects which are similar enough to demonstrate Bidder's ability to perform the required Work.

Project	Client Reference (agency name/contact info)	Description of Bidder's Work	Completion Date	Cost of Bidder's Work
Carson Sheriff's Station	Monet Const Jenny Monet	Carpet Tile & Base	10-09-2021	128,459.00
Mickey Cafagna Community Center	EC Const. Lucia Guzman	Carpet Tile & Base	09/18/2021	65,635.00
SD Conv Cntr	SDCCD Shayne Young	Carpet Tile & Base	04/25/2020	68,679.66
Linda Rhodes Rec Center	Vista USD Barbara Goya	Sheet Vinyl	08/03/19	65,797.00
McGrath Elem. School	Newhall School Dist. Kevin Vensko	Carpet Tile & Base	11-09-2019	75,400.00

EXPERIENCE AND TECHNICAL QUALIFICATIONS QUESTIONNAIRE

**Personnel:**

The Bidder shall identify the key personnel to be assigned to this project in a management, construction supervision or engineering capacity.

1. List each person's job title, name and percent of time to be allocated to this project:

ADAM KATZ - ACCOUNT MANAGER  
ARTURO OSUNA - LABOR MANAGER  
DIANA FONTES - PROJECT COORDINATOR

2. Summarize each person's specialized education:

ADAM KATZ - UNION TRAINING, SHAW LABOR & COMPLIANCE  
ARTURO OSUNA - UNION TRAINING, CPR, FIRST-AID, OSHA-30  
DIANA FONTES - SHAW ETHICS & COMPLIANCE,

3. List each person's years of construction experience relevant to the project:

ADAM KATZ - 10 yrs  
ARTURO OSUNA - 32 yrs  
DIANA FONTES - 10 yrs

4. Summarize such experience:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Bidder agrees that personnel named in this Bid will remain on this Project until completion of all relevant Work, unless substituted by personnel of equivalent experience and qualifications approved in advance by the City.

**Additional Bidder's Statements:**

If the Bidder feels that there is additional information which has not been included in the questionnaire above, and which would contribute to the qualification review, it may add that information in a statement here or on an attached sheet, appropriately marked:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**NON-COLLUSION DECLARATION**

The undersigned declares:

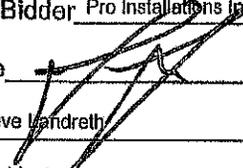
I am the President of Pro Installations Inc. dba ProSpectra Contract Flooring, the party making the foregoing Bid.

The Bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The Bid is genuine and not collusive or sham. The Bidder has not directly or indirectly induced or solicited any other Bidder to put in a false or sham bid. The Bidder has not directly or indirectly colluded, conspired, connived, or agreed with any Bidder or anyone else to put in a sham bid, or to refrain from bidding. The Bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the Bid Price of the Bidder or any other Bidder, or to fix any overhead, profit, or cost element of the Bid Price, or of that of any other Bidder. All statements contained in the Bid are true. The Bidder has not, directly or indirectly, submitted his or her Bid Price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a Bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the Bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on 2-3-22 [date], at Poway [city], California [state].

Name of Bidder Pro Installations Inc. dba ProSpectra Contract Flooring

Signature 

Name Steve Landreth

Title President

**PUBLIC WORKS CONTRACTOR DIR REGISTRATION CERTIFICATION**

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. See <http://www.dir.ca.gov/Public-Works/PublicWorks.html> for additional information.

No Bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work.

Bidder hereby certifies that it is aware of the registration requirements set forth in Labor Code sections 1725.5 and 1771.1 and is currently registered as a contractor with the Department of Industrial Relations.<sup>1</sup>

Name of Bidder: Pro Installations Inc. dba ProSpectra Contract Flooring

DIR Registration Number: 1000002810

DIR Registration Expiration: 06/30/2022

Small Project Exemption:  Yes or  No

Unless Bidder is exempt pursuant to the small project exemption, Bidder further acknowledges:

1. Bidder shall maintain a current DIR registration for the duration of the Project.
2. Bidder shall include the requirements of Labor Code sections 1725.5 and 1771.1 in its contract with subcontractors and ensure that all subcontractors are registered at the time of bid opening and maintain registration status for the duration of the Project.
3. Failure to submit this form or comply with any of the above requirements may result in a finding that the Bid is non-responsive.

Name of Bidder Pro Installations Inc. dba ProSpectra Contract Flooring

Signature 

Name and Title Steve Landreth - President

Dated 2-3-22

<sup>1</sup> If the Project is exempt from the contractor registration requirements pursuant to the small project exemption under Labor Code Sections 1725.5 and 1771.1, please mark "Yes" in response to "Small Project Exemption."



7800 Katella Avenue  
Stanton, California 90680 • (714) 379-9222

**BID RECAP SHEET**

Project /Equipment SHERIFF'S SUBSTATION FLOORING REPLACEMENT PROJECT

Date of Bid Opening February 7, 2022 Time 3:30pm

VENDOR	AMOUNT OF BID
1. <u>CORNEJO CONSTRUCTION CO.</u>	<u>\$ 70,217.29</u>
2. <u>JJJ FLOOR COVERING, INC.</u>	<u>\$ 65,312.42</u>
3. <u>SCS FLOORING SYSTEM</u>	<u>\$ 73,736.00</u>
4. <u>PRO SPECTRA CONTRACT FLOORING</u>	<u>\$ 50,000.00</u>
5. <u>BOB MARDIGIAN FLOOR COVERING</u>	<u>\$ 56,264.60</u>
6. _____	_____
7. _____	_____
8. _____	_____
9. _____	_____
10. _____	_____

The above bids were received and opened by Han Sol Yoo, Associate Engineer.

Han Sol Yoo, Associate Engineer, City of Stanton

## CITY OF STANTON

### REPORT TO CITY COUNCIL

**TO:** Honorable Mayor and Members of the City Council

**DATE:** February 22, 2022

**SUBJECT: AWARD OF CONTRACT TO G2 CONSTRUCTION TO INSTALL CATCH BASIN AUTOMATED RETRACTABLE SCREENS AND CONNECTOR PIPE SCREENS**

#### **REPORT IN BRIEF:**

In 2021, City staff applied for competitive grant funding from the Measure M2 Environmental Cleanup Program administered by the Orange County Transportation Authority (OCTA) for the installation of proprietary G2 Construction, Inc. automated retractable screens and connector pipe screens in 109 catch basins to prevent trash from entering local waterways. The OCTA Environmental Cleanup Program Allocation Committee awarded the requested grant funding to the City for these screens, and as such, the City must now proceed with installations.

#### **RECOMMENDED ACTIONS:**

1. City Council declare this project to be categorically exempt under the California Environmental Quality Act, Class 1, Section 15301c; and
2. Accept the Measure M2 Environmental Cleanup Program grant funding in the maximum amount of \$101,780; and
3. Waive competitive bidding requirement in the City's purchasing policy by using the County of Orange Master Agreement with G2 Construction, Inc. to purchase and install the devices; and
4. Approve an appropriation of \$127,225 for the City's Capital Projects Fund (#305) for the Catch Basin Full Trash Capture Installations Project (Task Code # 2022-103), to be funded by a Measure M2 competitive grant and the City's Gas Tax Fund (#211); and
5. Approve an appropriation of \$25,445 from the City's Gas Tax Fund (#211) to fund to fund the City's matching requirement; and
6. Authorize the City Manager to make minor changes, if needed, to the City's construction contract documents with approval of the City Attorney; and

7. Authorize the City Manager to bind the City of Stanton and G2 Construction, Inc. in a contract; and
8. Authorize the City Manager to approve contract change orders with G2 Construction, Inc., as needed and determined by City staff, up to a total contract amount of \$127,225.

**BACKGROUND:**

The Measure M2 Environmental Cleanup Program (ECP), also known as Project X, administered by the Orange County Transportation Authority provides competitive grant funding for water quality best management practices (structural devices) that will remove pollutants from runoff originating from roadways.

ECP Tier 1 is designed to mitigate the more visible forms of pollutants, such as litter and debris that collects on the roadways and in the catch basins prior to being deposited in waterways and the ocean. It consists of funding for the equipment purchase and installation of screens, filters, inserts, and other “street scale” low flow diversion devices for existing catch basin structures. Automated retractable screens and connector pipe screens are recognized by the ECP as one method to prevent trash from entering the storm drain system. Under a prior round of ECP grant funding, the City installed 62 full capture devices (Bio-Clean Round Curb Inlet Filters).

Since the start of the ECP, the State Water Resources Control Board promulgated the “Trash Amendments” rule which mandates that cities, as the operator of Municipal Separate Storm Sewer Systems (MS4s), retrofit storm drain catch basins to capture and prevent trash originating from industrial, commercial, high-density residential and transit-oriented areas from being transported into catch basins and reaching local waterways. The State gave jurisdictions ten (10) years to comply with this requirement. John L. Hunter & Associates, the City’s water quality consultant, identified the 109 catch basins listed in the G2 Construction, Inc. proposal as needing to be retrofitted to comply with the Trash Amendments. Consequently, City staff applied for this competitive grant funding to help comply with the Trash Amendments and to further the City’s efforts at preventing trash from entering local waterways.

**ANALYSIS/JUSTIFICATION:**

The ECP grant funds 80% of the installation and project oversight labor costs and requires a 20% cash match. Of the proposed project’s \$127,225 budget, the anticipated construction budget with G2 Construction, Inc. is \$114,500 with the remaining \$12,725 allocated for staff oversight.

Because the ECP grant application requires each applicant to identify the specific BMP and product or design that will be used to improve water quality and because the County of Orange has a “master agreement” with G2 Construction, Inc. whereby unit pricing has already been predetermined, the competitive bidding requirement in the City’s purchasing policy can be waived.

G2 Construction screens have been widely used for many years by several cities in Orange County, including Mission Viejo and Laguna Hills, and current City staff has first-hand knowledge of the operation, maintenance, and reliability of these devices. The screens are made with stainless steel and are warranted for 10 years.

Consequently, City staff believes that G2 Construction, Inc. is well qualified to install these devices. These devices have also been certified by the State of California as meeting the requirements of the Trash Amendments. Prior BMP certification by the State is required to obtain credit for meeting this State mandate.

While this installation of these catch basin screens was intended to make the City 100% compliant with the Trash Amendments, after further analysis some additional catch basin locations may need to be retrofitted in the future.

**FISCAL IMPACT:**

The total cost of the Catch Basin Full Trash Capture Installation Project (Task Code # 2022-103) is estimated to be \$127,225. The City was awarded a Measure M2 competitive grant (under Project X) from OCTA for approximately \$101,780, which will fund 80% of the project costs. The City is required to fund the remaining 20% of the cost. This project is not included in the City’s Fiscal Year 2021/22 Budget. Therefore, staff is requesting that the City Council approve an appropriation of \$127,225 to add this project to the City’s Fiscal Year 2021/22 Capital Budget. In addition, staff is requesting that the City Council approve an appropriation of \$25,445 from the City’s Gas Tax Fund (#211) to fund the 20% matching requirement. According to the Fiscal Year 2021/22 Adopted Budget, the available balance in the City’s Gas Tax Fund is approximately \$1.1 million.

**ENVIRONMENTAL IMPACT:**

The action requested in this report is categorically exempt under the California Environmental Quality Act, Class 1, Section 15301c, and therefore, categorically exempt under the California Environmental Quality Act.

**LEGAL REVIEW:**

None.

**STRATEGIC PLAN OBJECTIVE ADDRESSED:**

3 – Provide a high-quality infrastructure.

Prepared by:

/s/ Joe Ames

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Joe Ames, P.E.  
Director of Public Works/City Engineer

Concurred by:

/s/ Michelle Bannigan

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Michelle Bannigan  
Finance Director, CPA

Approved by:

/s/ Jarad L. Hildenbrand

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Jarad L. Hildenbrand  
City Manager

**Attachments:**

- A. Draft Contract
- B. G2 Construction, Inc. Cost Proposal

**CITY OF STANTON  
SHORT FORM CONSTRUCTION CONTRACT  
2022 CATCH BASIN SCREEN INSTALLATION PROJECT**

**1. PARTIES AND DATE.**

This Contract is made and entered into this **\*\*\*INSERT DAY\*\*\*** day of **\*\*\*INSERT MONTH\*\*\***, **\*\*\*INSERT YEAR\*\*\*** by and between the City of Stanton, a municipal corporation organized under the laws of the State of California with its principal place of business at 7800 Katella Avenue, Stanton, CA 90680 (“City”) and **\*\*\*INSERT NAME\*\*\***, a **\*\*\*INSERT TYPE OF ENTITY - CORPORATION, PARTNERSHIP, SOLE PROPRIETORSHIP OR OTHER LEGAL ENTITY\*\*\*** with its principal place of business at **\*\*\*INSERT ADDRESS\*\*\*** (“Contractor”). City and Contractor are sometimes individually referred to as “Party” and collectively as “Parties” in this Contract.

**2. RECITALS.**

**2.1 City.** City is a public agency organized under the laws of the State of California, with power to contract for services necessary to achieve its purpose.

**2.2 Contractor.** Contractor desires to perform and assume responsibility for the provision of certain construction services required by the City on the terms and conditions set forth in this Contract. Contractor represents that it is duly licensed and experienced in providing catch basin screen installations related construction services to public clients, that it and its employees or subcontractors have all necessary licenses and permits to perform the services in the State of California, and that it is familiar with the plans of City. The following license classifications are required for this Project: A

**2.3 Project.** City desires to engage Contractor to render such services for the 2022 Catch Basin Screen Installation Project (“Project”) as set forth in this Contract.

**2.4 Project Documents & Certifications.** Contractor has obtained, and delivers concurrently herewith, **PERFORMANCE BOND, PAYMENT BOND, AND INSURANCE DOCUMENTS** as required by the Contract.

**3. TERMS**

**3.1 Compensation and Payment.**

**3.1.1 Amount of Compensation.** As consideration for performance of the Work required herein, City agrees to pay Contractor the Total Contract Price of **ONE HUNDRED FOURTEEN THOUSAND FIVE HUNDRED Dollars (\$114,500.00)** (“Total Contract Price”) provided that such amount shall be subject to adjustment pursuant to the applicable terms of this Contract or written change orders approved and signed in advance by the City.

**3.1.2 Payment of Compensation.** If the Work is scheduled for completion in thirty (30) or less calendar days, City will arrange for payment of the Total Contract Price upon completion and approval by City of the Work. If the Work is scheduled for completion in more than thirty (30) calendar days, City will pay Contractor on a monthly basis as provided for herein. On or before the fifth (5th) day of each month, Contractor shall submit to the City an itemized

application for payment in the format supplied by the City indicating the amount of Work completed since commencement of the Work or since the last progress payment. These applications shall be supported by evidence which is required by this Contract and such other documentation as the City may require. The Contractor shall certify that the Work for which payment is requested has been done and that the materials listed are stored where indicated. Contractor may be required to furnish a detailed schedule of values upon request of the City and in such detail and form as the City shall request, showing the quantities, unit prices, overhead, profit, and all other expenses involved in order to provide a basis for determining the amount of progress payments.

3.1.3 Prompt Payment. City shall review and pay all progress payment requests in accordance with the provisions set forth in Section 20104.50 of the California Public Contract Code. However, no progress payments will be made for Work not completed in accordance with this Contract. Contractor shall comply with all applicable laws, rules and regulations relating to the proper payment of its employees, subcontractors, suppliers or others.

3.1.4 Contract Retentions. If this Contract is greater than Five Thousand dollars (\$5,000), from each approved progress estimate, five percent (5%) will be deducted and retained by the City, and the remainder will be paid to Contractor. All Contract retention shall be released and paid to Contractor and subcontractors pursuant to California Public Contract Code Section 7107.

3.1.5 Other Retentions. In addition to Contract retentions, the City may deduct from each progress payment an amount necessary to protect City from loss because of: (1) liquidated damages which have accrued as of the date of the application for payment; (2) any sums expended by the City in performing any of Contractor's obligations under the Contract which Contractor has failed to perform or has performed inadequately; (3) defective Work not remedied; (4) stop notices as allowed by state law; (5) reasonable doubt that the Work can be completed for the unpaid balance of the Total Contract Price or within the scheduled completion date; (6) unsatisfactory prosecution of the Work by Contractor; (7) unauthorized deviations from the Contract; (8) failure of Contractor to maintain or submit on a timely basis proper and sufficient documentation as required by the Contract or by City during the prosecution of the Work; (9) erroneous or false estimates by Contractor of the value of the Work performed; (10) any sums representing expenses, losses, or damages as determined by the City, incurred by the City for which Contractor is liable under the Contract; and (11) any other sums which the City is entitled to recover from Contractor under the terms of the Contract or pursuant to state law, including Section 1727 of the California Labor Code. The failure by the City to deduct any of these sums from a progress payment shall not constitute a waiver of the City's right to such sums.

3.1.6 Substitutions for Contract Retentions. Pursuant to California Public Contract Code section 22300, Contractor may substitute securities for any money withheld by the City to ensure the performance under the Contract. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with the City, with the State or a federally chartered bank as the escrow agent, who shall return such securities to Contractor upon satisfactory completion of the Contract. Deposit of securities with an escrow agent shall be subject to a written agreement between the escrow agent and the City, which provides that no portion of the securities shall be paid to Contractor until the City has certified to the escrow agent, in writing, that the Contract has been satisfactorily completed. The City shall certify that the Contract has been satisfactorily completed within sixty (60) days of work "completion" as defined in Section 7107(c) of the California Public Contract Code. Securities eligible for investment under this section shall be limited to those listed in Section 16430 of the Government Code, bank or

savings & loan certificates of deposit, interest-bearing demand deposit accounts, stand-by letters of credit, or any other security mutually agreed to by Contractor.

3.1.7 Payment to Subcontractors. Contractor shall pay all subcontractors for and on account of work performed by such subcontractors in accordance with the terms of their respective subcontracts and as provided for in Section 7108.5 of the California Business and Professions Code. Such payments to subcontractors shall be based on the measurements and estimates made and progress payments provided to Contractor pursuant to this Contract.

3.1.8 Title to Work. As security for partial, progress, or other payments, title to Work for which such payments are made shall pass to the City at the time of payment. To the extent that title has not previously been vested in the City by reason of payments, full title shall pass to the City at delivery of the Work at the destination and time specified in this Contract. Such transferred title shall in each case be good, free and clear from any and all security interests, liens, or other encumbrances. Contractor promises and agrees that it will not pledge, hypothecate, or otherwise encumber the items in any manner that would result in any lien, security interest, charge, or claim upon or against said items. Such transfer of title shall not imply acceptance by the City, nor relieve Contractor from the responsibility to strictly comply with the Contract, and shall not relieve Contractor of responsibility for any loss of or damage to items.

3.1.9 Labor and Material Releases. Contractor shall furnish City with labor and material releases from all subcontractors performing work on, or furnishing materials for, the Work governed by this Contract prior to final payment by City.

**3.2 Incorporation of Documents.** This Contract includes and hereby incorporates in full by reference the following documents, including all exhibits, drawings, specifications and documents therein, and attachments and addenda thereto:

- Services/Schedule (Exhibit "A")
- Plans and Specifications (Exhibit "B")
- Special Conditions (Exhibit "C")
- Contractor's Certificate Regarding Workers' Compensation (Exhibit "D")
- Payment and Performance Bonds (Exhibit "E")
- Addenda
- Change Orders executed by the City
- Latest Edition of the Standard Specifications for Public Works Construction (The Greenbook), Excluding Sections 1-9
- Notice Inviting Bids, if any
- Instructions to Bidders, if any
- Contractor's Bid

To the extent there is a conflict between any portions of this Contract, the order of precedence shall be as follows: change orders, special conditions, technical specifications, plans/construction drawings, general contract terms, scope of work, standard plans, advertisements for bid/proposals, bids/proposals or other documents submitted by Contractor.

### **3.3 Contractor's Basic Obligation; Scope of Work.**

3.3.1 Scope of Work. Contractor promises and agrees, at its own cost and expense, to furnish to the City all labor, materials, tools, equipment, services, and incidental and

customary work necessary to fully and adequately complete the Project, including all structures and facilities necessary for the Project or described in the Contract (hereinafter sometimes referred to as the "Work"), for a Total Contract Price as specified pursuant to this Contract. All Work shall be subject to, and performed in accordance with the above referenced documents, as well as the exhibits attached hereto and incorporated herein by reference. The plans and specifications for the Work are further described in Exhibit "B" attached hereto and incorporated herein by this reference. Special Conditions, if any, relating to the Work are described in Exhibit "C" attached hereto and incorporated herein by this reference.

3.3.2 Change in Scope of Work. Any change in the scope of the Work, method of performance, nature of materials or price thereof, or any other matter materially affecting the performance or nature of the Work shall not be paid for or accepted unless such change, addition or deletion is approved in advance and in writing by a valid change order executed by the City.

3.3.3 Change Orders. Changes to the Contract Time (as defined in Section 3.3) or Total Contract Price shall be in the form of a written Change Order, either signed by both parties or issued unilaterally by the City. No adjustment shall be made to the Contract Time unless the delay impacts the critical path to completion and the delay was not caused in whole or in part by the Contractor. The City's liability to Contractor for delays for which the City is responsible shall be limited to only an extension of time unless such delays were unreasonable under the circumstances. Failure to timely request a Change Order shall constitute a waiver of any right to adjust the Contract Time or the Total Contract Price. All requests for Change Orders shall be accompanied by detailed supporting documentation, including but not limited to payroll records, invoices, schedules, and any other documentation requested by the City for the purpose of determining the additional costs or the impact of any delay. If the change involves Work bid at a unit price, then the Total Contract Price shall be increased at the unit price. If there is no unit price, then the Total Contract Price shall be adjusted to account for costs actually incurred plus an allowed mark-up of fifteen percent (15%), which shall constitute the entire amount of profit, mark-ups, field or home office overhead costs, including personnel, equipment or office space, any materials, or any costs of equipment idle time for such work. Regardless of ownership, equipment rates shall not exceed the listed prevailing rates at local equipment rental agencies, or distributors, at the time the work is performed. Nothing herein shall prevent the Parties from agreeing to a lump sum cost.

3.3.4 Changes Ordered By City. City may at any time issue a written directive ordering additions, deletions, or changes to the Work. Contractor shall proceed with the work in accordance with the directive. To the extent the directive results in extra work or requires additional Contract Time, Contractor shall request a Change Order within seven (7) days of receiving the Work Directive. If any costs are not capable of being determined within seven (7) days, then Contractor shall request a Change Order within seven (7) days of when the costs are capable of being determined.

3.3.5 Changes Requested By Contractor. With respect to any matter that may involve or require an adjustment to the Contract Time or the Contract Price, Contractor shall provide written notice of the underlying facts and circumstances that gave rise to the potential change within seven (7) days or prior to the alteration of conditions, whichever is earlier. Failure to give notice shall constitute a waiver of Contractor's right to a change order. If any costs are not capable of being determined within seven (7) days, then Contractor shall request a Change Order within seven (7) days of when the costs are capable of being determined.

**3.4 Substitutions/"Or Equal".** Pursuant to Public Contract Code Section 3400(b), the City may make a finding that designates certain products, things, or services by specific brand or trade name. Unless specifically designated in this Contract, whenever any material, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such Specifications shall be deemed to be used for the purpose of facilitating the description of the material, process or article desired and shall be deemed to be followed by the words "or equal."

Contractor may, unless otherwise stated, offer for substitution any material, process or article which shall be substantially equal or better in every respect to that so indicated or specified in this Contract. However, the City may have adopted certain uniform standards for certain materials, processes and articles. Contractor shall submit requests, together with substantiating data, for substitution of any "or equal" material, process or article no later than thirty-five (35) days after award of the Contract. To facilitate the construction schedule and sequencing, some requests may need to be submitted before thirty-five (35) days after award of Contract. Provisions regarding submission of "or equal" requests shall not in any way authorize an extension of time for performance of this Contract. If a proposed "or equal" substitution request is rejected, Contractor shall be responsible for providing the specified material, process or article. The burden of proof as to the equality of any material, process or article shall rest with Contractor.

The City has the complete and sole discretion to determine if a material, process or article is an "or equal" material, process or article that may be substituted. Data required to substantiate requests for substitutions of an "or equal" material, process or article data shall include a signed affidavit from Contractor stating that, and describing how, the substituted "or equal" material, process or article is equivalent to that specified in every way except as listed on the affidavit. Substantiating data shall include any and all illustrations, specifications, and other relevant data including catalog information which describes the requested substituted "or equal" material, process or article, and substantiates that it is an "or equal" to the material, process or article. The substantiating data must also include information regarding the durability and lifecycle cost of the requested substituted "or equal" material, process or article. Failure to submit all the required substantiating data, including the signed affidavit, to the City in a timely fashion will result in the rejection of the proposed substitution.

Contractor shall bear all of the City's costs associated with the review of substitution requests. Contractor shall be responsible for all costs related to a substituted "or equal" material, process or article. Contractor is directed to the Special Conditions (if any) to review any findings made pursuant to Public Contract Code section 3400.

### **3.5 Period of Performance and Liquidated Damages.**

3.5.1 Contractor shall perform and complete all Work under this Contract within **30 working days**, beginning the effective date of the Notice to Proceed ("Contract Time"). Contractor shall perform its Work in strict accordance with any completion schedule, construction schedule or project milestones developed by the City. Such schedules or milestones may be included as part of Exhibits "A" or "B" attached hereto, or may be provided separately in writing to Contractor. Contractor agrees that if such Work is not completed within the aforementioned Contract Time and/or pursuant to any such completion schedule, construction schedule or project milestones developed pursuant to provisions of the Contract, it is understood, acknowledged and agreed that the City will suffer damage. Pursuant to Government Code Section 53069.85, Contractor shall pay to the City as fixed and liquidated damages the sum of **\$100** per day for each

and every calendar day of delay beyond the Contract Time or beyond any completion schedule, construction schedule or Project milestones established pursuant to the Contract.

3.5.2 If Contractor is delayed in the performance or progress of the Work by a Force Majeure Event (as defined herein), then the Contractor shall be entitled to a time extension, as provided herein, when the Work stopped is on the critical path and shall not be charged liquidated damages. Such a non-compensable adjustment shall be Contractor's sole and exclusive remedy for such delays and the Contractor will not receive an adjustment to the Total Contract Price or any other compensation. Contractor must submit a timely request in accordance with the requirements of the Contract.

3.5.3 A Force Majeure Event shall mean an event that materially affects a party's performance and is one or more of the following: (1) Acts of God or other natural disasters occurring at the project site; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the work); (4) pandemics, epidemics or quarantine restrictions; and (5) strikes and other organized labor action occurring at the project site and the effects thereof on the work, only to the extent such strikes and other organized labor action are beyond the control of Contractor and its subcontractors, of every tier, and to the extent the effects thereof cannot be avoided by use of replacement workers. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of the City in its capacity as a municipal authority.

**3.6 Standard of Performance; Performance of Employees.** Contractor shall perform all Work under this Contract in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Work. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Work assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Work, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Contract. As provided for in the indemnification provisions of this Contract, Contractor shall perform, at its own cost and expense and without reimbursement from the City, any work necessary to correct errors or omissions which are caused by Contractor's failure to comply with the standard of care provided for herein. Any employee who is determined by the City to be uncooperative, incompetent, a threat to the safety of persons or the Work, or any employee who fails or refuses to perform the Work in a manner acceptable to the City, shall be promptly removed from the Project by Contractor and shall not be re-employed on the Work.

**3.7 Control and Payment of Subordinates; Contractual Relationship.** City retains Contractor on an independent contractor basis and Contractor is not an employee of City. Any additional personnel performing the work governed by this Contract on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance under this Contract and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, and workers' compensation insurance.

**3.8 City's Basic Obligation.** City agrees to engage and does hereby engage Contractor as an independent contractor to furnish all materials and to perform all Work according to the terms and conditions herein contained for the sum set forth above. Except as otherwise provided in the Contract, the City shall pay to Contractor, as full consideration for the satisfactory performance by Contractor of the services and obligations required by this Contract, the below-referenced compensation in accordance with compensation provisions set forth in the Contract.

**3.9 Labor.**

3.9.1 Prevailing Wages. Contractor is aware of the requirements of California Labor Code Section 1720 et seq., and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. Since the Work is being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. City shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Contract. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. Contractor and any subcontractor shall forfeit a penalty of up to \$200 per calendar day or portion thereof for each worker paid less than the prevailing wage rates.

3.9.2 Apprenticeable Crafts. When Contractor employs workmen in an apprenticeable craft or trade, Contractor shall comply with the provisions of Section 1777.5 of the California Labor Code with respect to the employment of properly registered apprentices upon public works. The primary responsibility for compliance with said section for all apprenticeable occupations shall be with Contractor. The Contractor or any subcontractor that is determined by the Labor Commissioner to have knowingly violated Section 1777.5 shall forfeit as a civil penalty an amount not exceeding \$100 for each full calendar day of noncompliance, or such greater amount as provided by law.

3.9.3 Hours of Work. Contractor is advised that eight (8) hours labor constitutes a legal day's work. Pursuant to Section 1813 of the California Labor Code, Contractor shall forfeit a penalty of \$25.00 per worker for each day that each worker is permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week, except when payment for overtime is made at not less than one and one-half (1-1/2) times the basic rate for that worker.

3.9.4 Payroll Records. Contractor and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. The payroll records shall be certified and shall be available for inspection at all reasonable hours at the principal office of Contractor in the manner provided in Labor Code section 1776. In the event of noncompliance with the requirements of this section, Contractor shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects such Contractor must comply with this section. Should noncompliance still be evident

after such 10-day period, Contractor shall, as a penalty to City, forfeit not more than \$100.00 for each calendar day or portion thereof, for each worker, until strict compliance is effectuated. The amount of the forfeiture is to be determined by the Labor Commissioner. A contractor who is found to have violated the provisions of law regarding wages on Public Works with the intent to defraud shall be ineligible to bid on Public Works contracts for a period of one to three years as determined by the Labor Commissioner. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due. The responsibility for compliance with this section is on Contractor. In accordance with Labor Code section 1771.4, the Contractor and each subcontractor shall furnish the certified payroll records directly to the Department of Industrial Relations ("DIR") on a weekly basis and in the format prescribed by the DIR, which may include electronic submission. The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

3.9.5 Contractor and Subcontractor Registration. Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the DIR. No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the DIR to perform public work. Contractor is directed to review, fill out and execute the Public Works Contractor Registration Certification attached hereto as Exhibit "E" prior to contract execution. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

3.9.6 Labor Compliance; Stop Orders. This Project is subject to compliance monitoring and enforcement by the DIR. It shall be the Contractor's sole responsibility to evaluate and pay the cost of complying with all labor compliance requirements under this Contract and applicable law. Any stop orders issued by the DIR against Contractor or any subcontractor that affect Contractor's performance of Work, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay subject to any applicable liquidated damages and shall not be compensable by the City. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the DIR against Contractor or any subcontractor.

### **3.10 Performance of Work; Jobsite Obligations.**

#### **3.10.1 Water Quality Management and Compliance.**

3.10.1.1 Water Quality Management and Compliance. Contractor shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Work including, without limitation, all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §§ 1300); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); local ordinances regulating discharges of storm water; and any and all regulations, policies, or permits issued pursuant to any such authority regulating the discharge of pollutants, as that term is used in the Porter-Cologne Water Quality Control Act, to any ground or surface water in the State.

3.10.1.2 Compliance with the Statewide Construction General Permit.

Contractor shall comply with all conditions of the most recent iteration of the National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity, issued by the California State Water Resources Control Board ("Permit"). It shall be Contractor's sole responsibility to file a Notice of Intent and procure coverage under the Permit for all construction activity which results in the disturbance of more than one acre of total land area or which is part of a larger common area of development or sale. Prior to initiating work, Contractor shall be solely responsible for preparing and implementing a Storm Water Pollution Prevention Plan (SWPPP) as required by the Permit. Contractor shall be responsible for procuring, implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, and monitoring and reporting requirements as required by the Permit. The Permit requires the SWPPP to be a "living document" that changes as necessary to meet the conditions and requirements of the job site as it progresses through different phases of construction and is subject to different weather conditions. It shall be Contractor's sole responsibility to update the SWPPP as necessary to address conditions at the project site.

3.10.1.3 Other Water Quality Rules Regulations and Policies.

Contractor shall comply with the lawful requirements of any applicable municipality, drainage City, or local agency regarding discharges of storm water to separate storm drain systems or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.

3.10.1.4 Cost of Compliance.

Storm, surface, nuisance, or other waters may be encountered at various times during construction of the Work. Therefore, the Contractor, hereby acknowledges that it has investigated the risk arising from such waters and assumes any and all risks and liabilities arising therefrom.

3.10.1.5 Liability for Non-Compliance.

Failure to comply with laws, regulations, standards, ordinances, and permits listed in Sections 3.10.1.1, 3.10.1.2, 3.10.1.3, and 3.10.1.4 of the Contract is a violation of federal and state law. Pursuant to the indemnification provisions of this Contract, Contractor hereby agrees to defend, indemnify and hold harmless the City and its directors, officials, officers, employees, volunteers and agents for any alleged violations. In addition, City may seek damages from Contractor for any delay in completing the Work in accordance with the Contract, if such delay is caused by or related to Contractor's failure to comply with the Permit.

3.10.1.6 Reservation of Right to Defend.

City reserves the right to defend any enforcement action brought against the City for Contractor's failure to comply with the Permit or any other relevant water quality law, regulation, or policy. Pursuant to the indemnification provisions of this Contract, Contractor hereby agrees to be bound by, and to reimburse the City for the costs (including the City's attorney's fees) associated with, any settlement reached between the City and the relevant enforcement entity.

3.10.1.7 Training.

In addition to the standard of performance requirements set forth in this Contract, Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the work assigned to them without impacting water quality in violation of the laws, regulations and policies described in paragraph 3.10.1. Contractor further warrants that it, its employees and subcontractors will receive adequate training, as determined by City, regarding the requirements of the laws, regulations and policies described in paragraph 3.10.1 as they may relate to the Work provided under this Contract. Upon

request, City will provide the Contractor with a list of training programs that meet the requirements of this paragraph.

3.10.2 Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. Contractor shall comply with the requirements of the specifications relating to safety measures applicable in particular operations or kinds of work. In carrying out its Work, Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the Work and the conditions under which the Work is to be performed. Safety precautions as applicable shall include, but shall not be limited to, adequate life protection and lifesaving equipment; adequate illumination for underground and night operations; instructions in accident prevention for all employees, such as machinery guards, safe walkways, scaffolds, ladders, bridges, gang planks, confined space procedures, trenching and shoring, fall protection and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and adequate facilities for the proper inspection and maintenance of all safety measures. Furthermore, Contractor shall prominently display the names and telephone numbers of at least two medical doctors practicing in the vicinity of the Project, as well as the telephone number of the local ambulance service, adjacent to all telephones at the Project site.

3.10.3 Laws and Regulations. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Contract or the Work, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with the Work. If Contractor observes that the drawings or specifications are at variance with any law, rule or regulation, it shall promptly notify the City in writing. Any necessary changes shall be made by written change order. If Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Contractor shall be solely responsible for all costs arising therefrom. City is a public entity of the State of California subject to certain provisions of the Health & Safety Code, Government Code, Public Contract Code, and Labor Code of the State. It is stipulated and agreed that all provisions of the law applicable to the public contracts of a municipality are a part of this Contract to the same extent as though set forth herein and will be complied with. Contractor shall defend, indemnify and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Contract, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.10.4 Permits and Licenses. Contractor shall be responsible for securing City permits and licenses necessary to perform the Work described herein, including, but not limited to, a City Business License. While Contractor will not be charged a fee for any City permits, Contractor shall pay the City's applicable business license fee. Any ineligible contractor or subcontractor pursuant to Labor Code Sections 1777.1 and 1777.7 may not perform work on this Project.

3.10.5 Trenching Work. If the Total Contract Price exceeds \$25,000 and if the Work governed by this Contract entails excavation of any trench or trenches five (5) feet or more in depth, Contractor shall comply with all applicable provisions of the California Labor Code, including Section 6705. To this end, Contractor shall submit for City's review and approval a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or

trenches. If such plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.

3.10.6 Hazardous Materials and Differing Conditions. As required by California Public Contract Code Section 7104, if this Contract involves digging trenches or other excavations that extend deeper than four (4) feet below the surface, Contractor shall promptly, and prior to disturbance of any conditions, notify City of: (1) any material discovered in excavation that Contractor believes to be a hazardous waste that is required to be removed to a Class I, Class II or Class III disposal site; (2) subsurface or latent physical conditions at the site differing from those indicated by City; and (3) unknown physical conditions of an unusual nature at the site, significantly different from those ordinarily encountered in such contract work. Upon notification, City shall promptly investigate the conditions to determine whether a change order is appropriate. In the event of a dispute, Contractor shall not be excused from any scheduled completion date and shall proceed with all Work to be performed under the Contract, but shall retain all rights provided by the Contract or by law for making protests and resolving the dispute.

3.10.7 Underground Utility Facilities. To the extent required by Section 4215 of the California Government Code, City shall compensate Contractor for the costs of: (1) locating and repairing damage to underground utility facilities not caused by the failure of Contractor to exercise reasonable care; (2) removing or relocating underground utility facilities not indicated in the construction drawings; and (3) equipment necessarily idled during such work. Contractor shall not be assessed liquidated damages for delay caused by failure of City to provide for removal or relocation of such utility facilities.

3.10.8 Air Quality. Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the California Air Resources Board (CARB). Although CARB limits and requirements are more broad, Contractor shall specifically be aware of their application to "portable equipment", which definition is considered by CARB to include any item of equipment with a fuel-powered engine. Contractor shall indemnify City against any fines or penalties imposed by CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Contractor, its subcontractors, or others for whom Contractor is responsible under its indemnity obligations provided for in this Contract.

3.10.9 State Recycling Mandates. Contractor shall comply with State Recycling Mandates. Any recyclable materials/debris collected by the contractor that can be feasibly diverted via reuse or recycling must be hauled by the appropriate handler for reuse or recycling.

3.10.10 Inspection Of Site. Contractor has visited sites where Work is to be performed and has become acquainted with all conditions affecting the Work. Contractor warrants that it has made such examinations as it deems necessary to determine the condition of the Work sites, its accessibility to materials, workmen and equipment, and to determine the Contractor's ability to protect existing surface and subsurface improvements. No claim for allowances—time or money—will be allowed as to such matters.

3.10.11 Field Measurements. Contractor shall make field measurements, verify field conditions and shall carefully compare such field measurements and conditions and other information known to Contractor with the Contract Documents before commencing activities.

Errors, inconsistencies or omissions discovered shall be reported to the City immediately and prior to performing any work or altering the condition.

**3.11 Completion of Work.** When Contractor determines that it has completed the Work required herein, Contractor shall so notify City in writing and shall furnish all labor and material releases required by this Contract. City shall thereupon inspect the Work. If the Work is not acceptable to the City, the City shall indicate to Contractor in writing the specific portions or items of Work which are unsatisfactory or incomplete. Once Contractor determines that it has completed the incomplete or unsatisfactory Work, Contractor may request a re-inspection by the City. Once the Work is acceptable to City, City shall pay to Contractor the Total Contract Price remaining to be paid, less any amount which City may be authorized or directed by law to retain. Payment of retention proceeds due to Contractor shall be made in accordance with Section 7107 of the California Public Contract Code.

**3.12 Claims; Government Code Claim Compliance.**

3.12.1 Intent. Effective January 1, 1991, Section 20104 et seq., of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Section is to implement Sections 20104 et seq. and Section 9204 of the California Public Contract Code. This Section shall be construed to be consistent with said statutes.

3.12.2 Claims. For purposes of this Section, "Claim" means a separate demand by the Contractor, after a change order duly requested in accordance with the terms of this Contract has been denied by the City, for (A) a time extension, (B) payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract, or (C) an amount the payment of which is disputed by the City. A "Claim" does not include any demand for payment for which the Contractor has failed to provide notice, request a change order, or otherwise failed to follow any procedures contained in the Contract Documents.

3.12.3 Filing Claims. Claims governed by this Section may not be filed unless and until the Contractor completes all procedures for giving notice of delay or change and for the requesting of a time extension or change order, including but not necessarily limited to the change order procedures contained herein, and Contractor's request for a change has been denied in whole or in part. Claims governed by this Section must be filed no later than fourteen (14) days after a request for change has been denied in whole or in part or after any other event giving rise to the Claim. The Claim shall be submitted in writing to the City and shall include on its first page the following in 16 point capital font: "THIS IS A CLAIM." Furthermore, the claim shall include the documents necessary to substantiate the claim. Nothing in this Section is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims, including all requirements pertaining to compensation or payment for extra Work, disputed Work, and/or changed conditions. Failure to follow such contractual requirements shall bar any claims or subsequent lawsuits for compensation or payment thereon.

3.12.4 Supporting Documentation. The Contractor shall submit all claims in the following format:

3.12.4.1 Summary of claim merit and price, reference Contract Document provisions pursuant to which the claim is made

3.12.4.2 List of documents relating to claim:

- (A) Specifications
- (B) Drawings
- (C) Clarifications (Requests for Information)
- (D) Schedules
- (E) Other

3.12.4.3 Chronology of events and correspondence

3.12.4.4 Analysis of claim merit

3.12.4.5 Analysis of claim cost, including calculations and supporting documents

3.12.4.6 Time impact analysis in CPM format

3.12.5 City's Response. Upon receipt of a Claim pursuant to this Section, City shall conduct a reasonable review of the Claim and, within a period not to exceed 45 days of receipt of the Claim, or as extended by mutual agreement, shall provide the Contractor a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the Claim will be processed and made within 60 days after the City issues its written statement.

3.12.5.1 If City needs approval from its governing body to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the Claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a Claim sent by registered mail or certified mail, return receipt requested, City shall have up to three (3) days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

3.12.5.2 Within 30 days of receipt of a Claim, City may request in writing additional documentation supporting the Claim or relating to defenses or claims City may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of City and the Contractor. City's written response to the Claim, shall be submitted to the Contractor within 30 Days (if the Claim is less than \$50,000, within 15 Days) after receipt of the additional documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.

3.12.6 Meet and Confer. If the Contractor disputes City's written response, or City fails to respond within the time prescribed, the Contractor may so notify City, in writing, within 15 Days of receipt of City's response or the City's failure to respond, and demand an informal

conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, City shall schedule a meet and confer conference within 30 Days for settlement of the dispute.

3.12.7 Mediation. Within 10 business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, City shall provide the Contractor a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall be processed and made within 60 Days after City issues its written statement. Any disputed portion of the Claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with City and the Contractor sharing the associated costs equally. City and Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the Claim has been identified in writing, unless the Parties agree to select a mediator at a later time.

3.12.7.1 If the Parties cannot agree upon a mediator, each Party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each Party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

3.12.7.2 For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the Parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

3.12.7.3 Unless otherwise agreed to by City and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

3.12.7.4 The mediation shall be held no earlier than the date the Contractor completes the Work or the date that the Contractor last performs Work, whichever is earlier. All unresolved Claims shall be considered jointly in a single mediation, unless a new unrelated Claim arises after mediation is completed.

3.12.8 Procedures After Mediation. If following the mediation, the Claim or any portion remains in dispute, the Contractor must file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the Contractor submits his or her written Claim pursuant to subdivision (a) until the time the Claim is denied, including any period of time utilized by the meet and confer conference or mediation.

3.12.9 Civil Actions. The following procedures are established for all civil actions filed to resolve Claims of \$375,000 or less:

3.12.9.1 Within 60 Days, but no earlier than 30 Days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both Parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the terms of these procedures. The mediation process shall provide for the selection within 15 Days by both Parties of a disinterested third person as mediator, shall be commenced within 30 Days of the submittal, and

shall be concluded within 15 Days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.

3.12.9.2 If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

3.12.9.3 In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

### 3.12.10 Government Code Claim Procedures.

3.12.10.1 This section does not apply to tort claims and nothing in this section is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.5 of Title 1 of the Government Code.

3.12.10.2 In addition to any and all Contract requirements pertaining to notices of and requests for adjustments to the Contract Time, Contract Price, or compensation or payment for extra work, disputed work, claims and/or changed conditions, Contractor must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City.

3.12.10.3 Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to adjustment of the Contract Time, Contract Price, or compensation or payment for extra work, disputed work, claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor may not file any action against the City.

**3.12.10.4 A Government Code claim must be filed no earlier than the date the work is completed or the date the Contractor last performs work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved Claims known to the Contractor excepting only new unrelated Claims that arise after the Government Code claim is submitted.**

3.12.11 Non-Waiver. City's failure to respond to a Claim from the Contractor within the time periods described in this section or to otherwise meet the time requirements of this section shall result in the Claim being deemed rejected in its entirety and shall not constitute a waiver of any rights under this section.

**3.13 Loss and Damage.** Except as may otherwise be limited by law, Contractor shall be responsible for all loss and damage which may arise out of the nature of the Work agreed to herein, or from the action of the elements, or from any unforeseen difficulties which may arise or

be encountered in the prosecution of the Work until the same is fully completed and accepted by City. In the event of damage proximately caused by an Act of God, as defined by Section 7105 of the Public Contract Code, the City may terminate this Contract pursuant to the termination provisions in this Contract; provided, however, that the City needs to provide Contractor with only one (1) day advanced written notice.

### **3.14 Indemnification.**

3.14.1 Scope of Indemnity. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold the City, its officials, employees, agents and volunteers free and harmless from any and all claims, demands, causes of action, suits, actions, proceedings, costs, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity, regardless of whether the allegations are false, fraudulent, or groundless, to property or persons, including wrongful death, (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Contractor, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Contractor's services, the Project or this Contract, including without limitation the payment of all expert witness fees, attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent required by Civil Code section 2782, Contractor's indemnity obligation shall not apply to such loss or damage which is caused by the sole or active negligence or willful misconduct of the City.

3.14.2 Additional Indemnity Obligations. Contractor shall defend, with counsel of City's choosing and at Contractor's own cost, expense and risk, any and all Claims covered by this section that may be brought or instituted against City or its officials, employees, agents and authorized volunteers. In addition, Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its officials, employees, agents and authorized volunteers as part of any such claim, suit, action or other proceeding. Contractor shall also reimburse City for the cost of any settlement paid by City or its officials, employees, agents and authorized volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorney's fees and costs, including expert witness fees. Contractor shall reimburse City and its officials, employees, agents and authorized volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall survive expiration or termination of this Contract, and shall not be restricted to insurance proceeds, if any, received by the City, its officials, employees, agents and authorized volunteers.

### **3.15 Insurance. [\*\*\*CITY RISK MANAGER TO REVIEW TO DETERMINE WHETHER REQUIREMENTS AND LIMITS ARE ACCEPTABLE\*\*\*]**

3.15.1 Time for Compliance. Contractor shall not commence Work under this Contract until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Contract for cause.

3.15.2 Minimum Requirements. Contractor shall, at its expense, procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work hereunder by Contractor, its agents, representatives, employees or subcontractors. Contractor

shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Contract. Such insurance shall meet at least the following minimum levels of coverage:

3.15.2.1 Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01) OR Insurance Services Office Owners and Contractors Protective Liability Coverage Form (CG 00 09 11 88) (coverage for operations of designated contractor); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 00 01, code 1 (any auto); (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance; and (4) *Builders'/All Risk*: Builders'/All Risk insurance covering for all risks of loss, including explosion, collapse, underground excavation and removal of lateral support (and including earthquakes and floods if requested by the City). Policies shall not contain exclusions contrary to this Contract.

3.15.2.2 Minimum Limits of Insurance. Contractor shall maintain limits no less than: (1) *General Liability*: \$2,000,000 per occurrence and \$4,000,000 general aggregate for bodily injury, personal injury and property damage; (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; (3) *Workers' Compensation and Employer's Liability*: Workers' compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 each accident, policy limit bodily injury or disease, and each employee bodily injury or disease; and (4) *Builders'/All Risk*: Completed value of the project. Defense costs shall be available in addition to the limits. Notwithstanding the minimum limits specified herein, any available coverage shall be provided to the parties required to be named as additional insureds pursuant to this Contract.

3.15.2.3 Notices; Cancellation or Reduction of Coverage. At least fifteen (15) days prior to the expiration of any such policy, evidence showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or materially reduced, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. In the event any policy of insurance required under this Contract does not comply with these specifications or is canceled and not replaced, the City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by the City will be promptly reimbursed by Contractor or the City may withhold amounts sufficient to pay premium from Contractor payments. In the alternative, the City may suspend or terminate this Contract.

3.15.3 Insurance Endorsements. The insurance policies shall contain the following provisions, or Contractor shall provide endorsements (amendments) on forms supplied or approved by the City to add the following provisions to the insurance policies:

3.15.3.1 General Liability. (1) Such policy shall give the City, its officials, employees, agents and volunteers additional insured status using ISO endorsements CG20 10 10 01 plus CG20 37 10 01, or endorsements providing the exact same coverage, with respect to the Work or operations performed by or on behalf of Contractor, including materials, parts or equipment furnished in connection with such work; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of

subrogation; and (3) the insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it.

3.15.3.2 Automobile Liability. (1) Such policy shall give the City, its officials, employees, agents and volunteers additional insured status with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by Contractor or for which Contractor is responsible; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; and (3) the insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it in any way.

3.15.3.3 Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its officials, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by Contractor.

3.15.3.4 All Coverages. Each insurance policy required by this Contract shall be endorsed to state that: (1) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its officials, employees, agents and volunteers.

3.15.4 Builders'/All Risk Policy Requirements. The builders'/all risk insurance shall provide that the City be named as loss payee. In addition, the insurer shall waive all rights of subrogation against the City.

3.15.5 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its officials, employees, agents and volunteers.

3.15.6 Professional Liability Insurance. All architects, engineers, consultants or design professionals retained by Contractor shall also procure and maintain, for a period of five (5) years following completion of the Contract, errors and omissions liability insurance with a limit of not less than \$1,000,000 per occurrence. This insurance shall name the City, its directors, officials, officers, employees, agents and volunteers as additional and insureds with respect to Work performed, and shall otherwise comply with all requirements of this Section. Defense costs shall be paid in addition to the limits.

3.15.7 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Contractor shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-

insured retentions as respects the City, its officials, employees, agents and authorized volunteers; or (2) the Contractor shall procure a bond or other financial guarantee acceptable to the City guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

3.15.8 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VII, licensed to do business in California, and satisfactory to the City. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

3.15.9 Verification of Coverage. Contractor shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Contract on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms supplied or approved by the City. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.15.10 Subcontractors. All subcontractors shall meet the requirements of this Section before commencing Work. Contractor shall furnish separate certificates and endorsements for each subcontractor. Subcontractor policies of General Liability insurance shall name the City, its officials, employees, agents and authorized volunteers as additional insureds using form ISO 20 38 04 13 or endorsements providing the exact same coverage. All coverages for subcontractors shall be subject to all of the requirements stated herein except as otherwise agreed to by the City in writing.

3.15.11 Reporting of Claims. Contractor shall report to the City, in addition to Contractor's insurer, any and all insurance claims submitted by Contractor in connection with the Work under this Contract.

### **3.16 Bond Requirements.**

3.16.1 Payment Bond. If required by law or otherwise specifically requested by City in Exhibit "C" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Contract a Payment Bond in an amount required by the City and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until the bond has been received and approved by the City.

3.16.2 Performance Bond. If specifically requested by City in Exhibit "C" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Contract a Performance Bond in an amount required by the City and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until the bond has been received and approved by the City.

3.16.3 Bond Provisions. Should, in City's sole opinion, any bond become insufficient or any surety be found to be unsatisfactory, Contractor shall renew or replace the effected bond within (ten) 10 days of receiving notice from City. In the event the surety or Contractor intends to reduce or cancel any required bond, at least thirty (30) days prior written notice shall be given to the City, and Contractor shall post acceptable replacement bonds at least ten (10) days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Contract until any replacement bonds required by this Section are

accepted by the City. To the extent, if any, that the Total Contract Price is increased in accordance with the Contract, Contractor shall, upon request of the City, cause the amount of the bond to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the City. If Contractor fails to furnish any required bond, the City may terminate the Contract for cause.

3.16.4 Surety Qualifications. Only bonds executed by an admitted surety insurer, as defined in California Code of Civil Procedure Section 995.120, shall be accepted. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with Section 995.660 of the California Code of Civil Procedure, and proof of such is provided to the City.

**3.17 Warranty.** Contractor warrants all Work under the Contract (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Contract or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the City of any defect in the Work or non-conformance of the Work to the Contract, commence and prosecute with due diligence all Work necessary to fulfill the terms of the warranty at its sole cost and expense. Contractor shall act sooner as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the Work (or work of other contractors) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected Work. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Contract. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstatement of equipment and materials necessary to gain access, shall be the sole responsibility of Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Contract, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand.

### **3.18 Employee/Labor Certifications.**

3.18.1 Contractor's Labor Certification. By its signature hereunder, Contractor certifies that he is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Work. A certification form for this purpose,

which is attached to this Contract as Exhibit "D" and incorporated herein by reference, shall be executed simultaneously with this Contract.

3.18.2 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

3.18.3 Verification of Employment Eligibility. By executing this Contract, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subcontractors and sub-subcontractors to comply with the same.

**3.19 Termination.** This Contract may be terminated by City at any time, either with or without cause, by giving Contractor three (3) days advance written notice. In the event of termination by City for any reason other than the fault of Contractor, City shall pay Contractor for all Work performed up to that time as provided herein. In the event of breach of the Contract by Contractor, City may terminate the Contract immediately without notice, may reduce payment to Contractor in the amount necessary to offset City's resulting damages, and may pursue any other available recourse against Contractor. Contractor may not terminate this Contract except for cause. In the event this Contract is terminated in whole or in part as provided, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated. Further, if this Contract is terminated as provided, City may require Contractor to provide all finished or unfinished documents, data, diagrams, drawings, materials or other matter prepared or built by Contractor in connection with its performance of this Contract. Contractor shall be required to provide such document and other information within fifteen (15) days of the request.

### **3.20 General Provisions.**

3.20.1 City's Representative. The City hereby designates the **Public Works Director**, or his or her designee, to act as its representative for the performance of this Contract ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.20.2 Contractor's Representative. Before starting the Work, Contractor shall submit in writing the name, qualifications and experience of its proposed representative who shall be subject to the review and approval of the City ("Contractor's Representative"). Following approval by the City, Contractor's Representative shall have full authority to represent and act on behalf of Contractor for all purposes under this Contract. Contractor's Representative shall supervise and direct the Work, using his best skill and attention, and shall be responsible for all construction means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Work under this Contract. Contractor's Representative shall devote full time to the Project and either he or his designee, who shall be acceptable to the City, shall be present at the Work site at all times that any Work is in progress and at any time that any employee or subcontractor of Contractor is present at the Work site. Arrangements for responsible supervision, acceptable to the City, shall be made for emergency Work which may

be required. Should Contractor desire to change its Contractor's Representative, Contractor shall provide the information specified above and obtain the City's written approval.

3.20.3 Contract Interpretation. Should any question arise regarding the meaning or import of any of the provisions of this Contract or written or oral instructions from City, the matter shall be referred to City's Representative, whose decision shall be binding upon Contractor.

3.20.4 Anti-Trust Claims. This provision shall be operative if this Contract is applicable to California Public Contract Code Section 7103.5. In entering into this Contract to supply goods, services or materials, Contractor hereby offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code) arising from purchases of goods, services, or materials pursuant to the Contract. This assignment shall be made and become effective at the time the City tender final payment to Contractor, without further acknowledgment by the Parties.

3.20.5 Notices. All notices hereunder and communications regarding interpretation of the terms of the Contract or changes thereto shall be provided by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

**CONTRACTOR:**

G2 CONSTRUCTION, INC.  
1352 E. BORCHARD AVE.  
SANTA ANA, CA 92705  
ATTN: ERIC TAYLOR, VICE PRESIDENT

**CITY:**

CITY OF STANTON  
7800 KATELLA AVENUE  
STANTON, CA 90680  
ATTN: PUBLIC WORKS DIRECTOR

Any notice so given shall be considered received by the other Party three (3) days after deposit in the U.S. Mail as stated above and addressed to the Party at the above address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.20.6 Time of Essence. Time is of the essence in the performance of this Contract.

3.20.7 Assignment Forbidden. Contractor shall not, either voluntarily or by action of law, assign or transfer this Contract or any obligation, right, title or interest assumed by Contractor herein without the prior written consent of City. If Contractor attempts an assignment or transfer of this Contract or any obligation, right, title or interest herein, City may, at its option, terminate and revoke the Contract and shall thereupon be relieved from any and all obligations to Contractor or its assignee or transferee.

3.20.8 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.20.9 Laws; Venue. This Contract shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Contract, the action shall be brought in a state or federal court situated in the County of Orange, State of California.

3.20.10 Attorneys' Fees. If either Party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and all other costs of such action.

3.20.11 Counterparts. This Contract may be executed in counterparts, each of which shall constitute an original.

3.20.12 Successors. The Parties do for themselves, their heirs, executors, administrators, successors, and assigns agree to the full performance of all of the provisions contained in this Contract.

3.20.13 Solicitation. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, City shall have the right to terminate this Contract without liability.

3.20.14 Conflict of Interest. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, City shall have the right to rescind this Contract without liability. For the term of this Contract, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Contract, or obtain any present or anticipated material benefit arising therefrom. In addition, Contractor agrees to file, or to cause its employees or subcontractors to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Work.

3.20.15 Certification of License.

3.20.15.1 Contractor certifies that as of the date of execution of this Contract, Contractor has a current contractor's license of the classification indicated below under Contractor's signature.

3.20.15.2 Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural

defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

3.20.16 Authority to Enter Contract. Each Party warrants that the individuals who have signed this Contract have the legal power, right and authority to make this Contract and bind each respective Party.

3.20.17 Entire Contract; Modification. This Contract contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Contract may only be modified by a writing signed by both Parties.

3.20.18 Non-Waiver. None of the provisions of this Contract shall be considered waived by either party, unless such waiver is specifically specified in writing.

3.20.19 City's Right to Employ Other Contractors. City reserves right to employ other contractors in connection with this Project or other projects.

**[Signatures on Next Page]**

**SIGNATURE PAGE FOR CONSTRUCTION CONTRACT  
BETWEEN THE CITY OF STANTON  
AND G2 CONSTRUCTION, INC.**

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

**CITY OF STANTON**

**[INSERT NAME OF CONTRACTOR]**

Approved:

**[If Corporation, TWO SIGNATURES,  
President OR Vice President AND  
Secretary OR Treasurer REQUIRED]**

By: \_\_\_\_\_  
JARAD L. HILDENBRAND  
CITY MANAGER

By: \_\_\_\_\_

Its: \_\_\_\_\_

ATTESTED:

Printed Name: \_\_\_\_\_

By: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_

Its: \_\_\_\_\_

APPROVED AS TO FORM:

Printed Name: \_\_\_\_\_

\_\_\_\_\_  
Best Best & Krieger LLP  
City Attorney

\_\_\_\_\_  
Contractor's License Number and  
Classification

\_\_\_\_\_  
DIR Registration Number

**EXHIBIT "A"**  
**SERVICES / SCHEDULE**

**[INSERT SCOPE OF SERVICES]**

**EXHIBIT "B"**

**PLANS AND SPECIFICATIONS**

**[INSERT ALL PLANS AND SPECS]**

**EXHIBIT "C"**  
**SPECIAL CONDITIONS**

**\*\*\*[READ AND DELETE THIS BLOCK BEFORE USING MODEL): PUBLIC WORKS PROJECTS OF MORE THAN \$25,000 WILL REQUIRE PAYMENT BONDS BY LAW. WHERE A PAYMENT BOND IS REQUIRED, WE RECOMMEND REQUIRING A PERFORMANCE BOND AS WELL - INSERT FOLLOWING IF PAYMENT AND/OR PERFORMANCE BONDS REQUIRED – OTHERWISE DELETE AND RENUMBER\*\*\*]**

**ARTICLE 1. BONDS**

Concurrently with this Contract, the Contractor shall deliver to the City four identical counterparts of the Performance Bond and Payment Bond on the forms supplied by the City and included as Exhibit "E" to the Contract. The surety supplying the bond must be an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, authorized to do business as such in the State of California and satisfactory to the City. The Performance Bond and the Payment Bond shall be for one hundred percent (100%) of the Total Contract Price.

**\*\*\*[INSERT ADDITIONAL SPECIAL CONDITIONS USING ABOVE FORMAT\*\*\*]**

**EXHIBIT "D"**  
**CERTIFICATION**  
**LABOR CODE - SECTION 1861**

I, the undersigned Contractor, am aware of the provisions of Section 3700, et seq., of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I, the undersigned Contractor, agree to and will comply with such provisions before commencing the performance of the Work on this Contract.

**\*\*\*INSERT CONTRACTOR NAME\*\*\***

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Title (Print)

**EXHIBIT "E"**  
**PAYMENT AND PERFORMANCE BONDS**

**[\*\*\*IF NO BOND REQUIREMENTS ARE REQUIRED, REMOVE BONDS AND INSERT "NOT APPLICABLE"]**

**PERFORMANCE BOND**

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the City of Stanton (hereinafter referred to as "City") has awarded to \_\_\_\_\_, (hereinafter referred to as the "Contractor") \_\_\_\_\_ an agreement for \_\_\_\_\_ (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated \_\_\_\_\_, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, \_\_\_\_\_, the undersigned Contractor and \_\_\_\_\_ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the City in the sum of \_\_\_\_\_ DOLLARS, (\$\_\_\_\_\_), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one-year guarantee of all materials and workmanship; and shall indemnify and save harmless the City, its officers and agents, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by City, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the City from loss or damage resulting from or caused by defective materials or faulty workmanship, Surety shall undertake and faithfully fulfill all such obligations. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the City's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

Whenever Contractor shall be, and is declared by the City to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the City's option:

- (1) Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or
- (2) Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and the City, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.
- (3) Permit the City to complete the Project in any manner consistent with local, California and federal law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the City may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if the City, when declaring the Contractor in default, notifies Surety of the City's objection to Contractor's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project, including but not limited to the provisions of sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_).

(Corporate Seal)

\_\_\_\_\_  
Contractor/ Principal

By \_\_\_\_\_

Title \_\_\_\_\_

(Corporate Seal)

\_\_\_\_\_  
Surety

By \_\_\_\_\_  
Attorney-in-Fact

Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached.

(Attach Attorney-in-Fact Certificate) Title \_\_\_\_\_

The rate of premium on this bond is \_\_\_\_\_ per thousand. The total amount of premium charges, \$\_\_\_\_\_.

(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Name and Address of Agent or Representative for service of process in California, if different from above) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Telephone number of Surety and Agent or Representative for service of process in California) \_\_\_\_\_  
\_\_\_\_\_

NOTE: A copy of the Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.



**PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS That

THAT WHEREAS, the City of Stanton (hereinafter referred to as "City") has awarded to \_\_\_\_\_, (hereinafter referred to as the "Contractor") \_\_\_\_\_ an agreement for \_\_\_\_\_ (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated \_\_\_\_\_, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, said Principal is required to furnish a bond in connection with said contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and \_\_\_\_\_ as Surety, are held and firmly bound unto the City in the penal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 9100 of the Civil Code, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Section 18663 of the Revenue and Taxation Code, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by City in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Section 9100 of the Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining

or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or City and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 9100 of the Civil Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned and the provisions of sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Corporate Seal)\_\_\_\_\_

Contractor/ Principal

By\_\_\_\_\_

Title\_\_\_\_\_

(Corporate Seal)

\_\_\_\_\_  
Surety

By\_\_\_\_\_

Attorney-in-Fact

Title\_\_\_\_\_

Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached. A Power-of-Attorney authorizing the person signing on behalf of the Surety to do so much be attached hereto.

NOTE: A copy of the Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

**Notary Acknowledgment**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally

appeared \_\_\_\_\_, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

\_\_\_\_\_

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document*

*and could prevent fraudulent removal and reattachment of this form to another document.*

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
Title(s)

\_\_\_\_\_  
Title or Type of Document

- Partner(s)       Limited
- General

\_\_\_\_\_  
Number of Pages

- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other:

\_\_\_\_\_  
Date of Document

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signer(s) Other Than Named Above





# Attachment: B

[Click here to return to the agenda.](#)

DBE, MBE, & SBE Certified

Lic. #801253 - A, C8, C60  
 1352 E. Borchard Ave.  
 Santa Ana, CA 92705  
 714.748.4242

## PROPOSAL CITY OF STANTON

### OCTA ECP Tier 1 Grant Application '21-22

OCPW, MA-080-20011478 for Trash and Debris Capture Devices

### G2 CPS-Mod™ in 109 Catch Basins

(Good thru 3/1/2022)

Customer: **City of Stanton**  
 7800 Katella Ave, Stanton, CA 90680

Date: 2/3/2022  
 Quote No: 220203-R

Project: **Stanton Catch Basin Full Trash Capture System Installations**

Contacts: Joe Ames, P.E.  
 Public Works Director / City Engineer  
 714.890.4203

By: Eric H. Taylor  
 VP Bus. Dev., G2 Construction, Inc.  
 etaylor@G2Constructor 714.679.2550

*Eric H Taylor*

## DESCRIPTION

G2 Construction (G2) proposes to custom fabricate and install CPS-Mod™ full-capture storm water protection screens in the City's 109 catch basins (CBs) listed below. G2's CPS-Mod™ devices are patented and certified **FULL CAPTURE SYSTEMS** by the California Water Board.

This proposal utilizes G2's master purchase agreement with OCPW, MA-080-20011478 for Trash and Debris Capture Devices for the City of Stanton OCTA ECP grant application for 2021-22. The City is eligible for this piggyback contract like all Orange County cities, which guarantees the best product, service, and pricing.

This estimate is based on review of each catch basin's location and exterior appearance without internal measurements. Final CPS-Mod design will depend on the internal configuration of each catch basin.

G2 will install 109 CPS-Mod™ screens, or to the City's maximum budget, whichever is preferred. Costs for required traffic control and catch basin cleaning are included.

Products: **G2 CPS-Mod™** patented connector pipe screen, 304 stainless steel, custom fab & install

Count	FID	CB_ID	Street	Cross Street	Lat.	Long.	G2 CPS-Mod™ Model	Metal Plate Access	CPS-Mod™ Cost
1	0	CB #2	Cerritos	Dale	33.8104	-117.9828	CPS-Mod Full Capture	Yes	\$993
2	1	CB #5	Cerritos	Yana	33.8102	-117.9802	CPS-Mod Full Capture		\$993
3	2	CB #6	Pacific	Sherill	33.8077	-117.9786	CPS-Mod Full Capture		\$993
4	3	CB #3	Cerritos	Dale	33.8103	-117.9843	CPS-Mod Full Capture		\$993
5	4	CB #4	Cerritos	Dale	33.8102	-117.9843	CPS-Mod Full Capture		\$993
6	11	CB #18	Dale	Monroe	33.8058	-117.9844	CPS-Mod Full Capture		\$993
7	12	CB #20	Dale	Cerritos	33.8104	-117.9846	CPS-Mod Full Capture		\$993
8	18	CB #30	Chestnut	Pacific	33.8068	-117.9921	CPS-Mod Full Capture		\$993
9	20	CB #34	Chestnut	Katella	33.8030	-117.9922	CPS-Mod Full Capture		\$993
10	22	CB #37	Boatman	Katella	33.8044	-117.9872	CPS-Mod Full Capture		\$993
11	25	CB #40	Cerritos	Western	33.8100	-118.0018	CPS-Mod Full Capture		\$993
12	26	CB #41	Western	Cerritos	33.8103	-118.0019	CPS-Mod Full Capture		\$993
13	27	CB #42	Cerritos	Western	33.8102	-118.0022	CPS-Mod Full Capture		\$993

Count	FID	CB_ID	Street	Cross Street	Lat.	Long.	G2 CPS-Mod™ Model	Metal Plate Access	CPS-Mod™ Cost
14	28	CB #44	Ramblewood	Western	33.8102	-118.0034	CPS-Mod Full Capture		\$993
15	29	CB #46	Cerritos	Courson	33.8102	-118.0041	CPS-Mod Full Capture		\$993
16	30	CB #48	Cerritos	Lexington	33.8101	-118.0080	CPS-Mod Full Capture		\$993
17	35	CB #54	Cerritos	Lexington	33.8100	-118.0076	CPS-Mod Full Capture		\$993
18	36	CB #55	Cerritos	Bell	33.8099	-118.0087	CPS-Mod Full Capture		\$993
19	37	CB #58	Syracuse	Western	33.8049	-118.0016	CPS-Mod Full Capture	Yes	\$993
20	38	CB #62	Syracuse	Knott	33.8041	-118.0106	CPS-Mod Full Capture		\$993
21	40	CB #68	Court Street	Garden Grove	33.7747	-117.9904	CPS-Mod Full Capture	Yes	\$993
22	41	CB #69	Court Street	Garden Grove	33.7746	-117.9906	CPS-Mod Full Capture		\$993
23	42	CB #76	Lampson	Beach Blvd.	33.7812	-117.9903	CPS-Mod Full Capture		\$993
24	43	CB #77	Lampson	Beach Blvd.	33.7812	-117.9908	CPS-Mod Full Capture		\$993
25	45	CB #83	Samura	Lampson	33.7799	-117.9967	CPS-Mod Full Capture	Yes	\$993
26	46	CB #89	Lampson	Santa Rosalia	33.7810	-117.9973	CPS-Mod Full Capture		\$993
27	47	CB #90	Lampson	Santa Rosalia	33.7812	-117.9970	CPS-Mod Full Capture		\$993
28	48	CB #92	Georgian	Santa Rosalia	33.7819	-117.9980	CPS-Mod Full Capture	Yes	\$993
29	49	CB #93	Santa Rosalia	Georgian	33.7818	-117.9983	CPS-Mod Full Capture	Yes	\$993
30	50	CB #94	Santa Rosalia	Devonwood	33.7838	-117.9983	CPS-Mod Full Capture	Yes	\$993
31	51	CB #97	Bently	Santa Rosalia	33.7846	-117.9981	CPS-Mod Full Capture	Yes	\$993
32	52	CB #98	Bently	Santa Rosalia	33.7847	-117.9981	CPS-Mod Full Capture	Yes	\$993
33	53	CB #99	Santa Rosalia	Bently	33.7846	-117.9983	CPS-Mod Full Capture	Yes	\$993
34	54	CB #100	Laurelton	Santa Rosalia	33.7862	-117.9981	CPS-Mod Full Capture	Yes	\$993
35	55	CB #101	Laurelton	Santa Rosalia	33.7860	-117.9981	CPS-Mod Full Capture	Yes	\$993
36	56	CB #102	Santa Rosalia	Laurelton	33.7862	-117.9983	CPS-Mod Full Capture	Yes	\$993
37	57	CB #103	Vanguard	Santa Rosalia	33.7875	-117.9981	CPS-Mod Full Capture	Yes	\$993
38	58	CB #104	Vanguard	Santa Rosalia	33.7876	-117.9981	CPS-Mod Full Capture	Yes	\$993
39	59	CB #105	Santa Rosalia	Vanguard	33.7874	-117.9984	CPS-Mod Full Capture	Yes	\$993
40	60	CB #108	Irana	Via Jacara	33.8060	-118.0139	CPS-Mod Full Capture		\$993
41	61	CB #110	Via Kannela	Via Jacara	33.8055	-118.0139	CPS-Mod Full Capture		\$993
42	62	CB #111	Western	Industrial	33.7989	-118.0015	CPS-Mod Full Capture		\$993
43	63	CB #114	Western	Industrial	33.8016	-118.0016	CPS-Mod Full Capture		\$993
44	64	CB #113	Western	Industrial	33.8010	-118.0016	CPS-Mod Full Capture		\$993
45	65	CB #112	Western	Industrial	33.8003	-118.0016	CPS-Mod Full Capture	Yes	\$993
46	68	CB #122	Beach Blvd	Katella	33.8006	-117.9933	CPS-Mod Full Capture	Yes	\$993
47	69	CB #123	Beach Blvd	Katella	33.8026	-117.9929	CPS-Mod Full Capture	Yes	\$993
48	73	CB #127	Date	Katella	33.8031	-117.9987	CPS-Mod Full Capture	Yes	\$993
49	79	CB #128	Pacific	Flower	33.8070	-117.9946	CPS-Mod Full Capture		\$993
50	80	CB #129	Rose	Main	33.8082	-117.9954	CPS-Mod Full Capture		\$993
51	82	CB #132	Shadow	Briarwood	33.7851	-117.9910	CPS-Mod Full Capture		\$993
52	83	CB #133	Briarwood	Capistrano	33.7846	-117.9904	CPS-Mod Full Capture	Yes	\$993
53	84	CB #135	Chapman	Beach Blvd.	33.7888	-117.9985	CPS-Mod Full Capture		\$993
54	86	CB #139	Beach Blvd	Catherine	33.7837	-117.9931	CPS-Mod Full Capture		\$993
55	87	CB #140	Beach Blvd	Chapman	33.7894	-117.9932	CPS-Mod Full Capture	Yes	\$993
56	88	CB #141	Beach Blvd	Starr	33.8133	-117.9930	CPS-Mod Full Capture		\$993
57	89	CB #142	Beach Blvd	Starr	33.8139	-117.9930	CPS-Mod Full Capture		\$993
58	91	CB #8	Yana	Cerritos	33.8104	-117.9830	CPS-Mod Full Capture		\$993
59	92	CB #7	Yana	Cerritos	33.8104	-117.9829	CPS-Mod Full Capture		\$993
60	95	CB #146	Cerritos		33.8104	-117.9802	CPS-Mod Full Capture		\$993
61	99	CB #151	Thunderbird	Western	33.8067	-118.0021	CPS-Mod Full Capture		\$993
62	100	CB #152	Western		33.7928	-118.0015	CPS-Mod Full Capture		\$993
63	101	CB #153	Western		33.8068	-118.0018	CPS-Mod Full Capture		\$993
64	102	CB #154	Western		33.8124	-118.0019	CPS-Mod Full Capture		\$993
65	104	CB #156	Knott	Syracuse	33.8044	-118.0110	CPS-Mod Full Capture		\$993
66	105	CB #158	Knott		33.8069	-118.0105	CPS-Mod Full Capture		\$993

Count	FID	CB_ID	Street	Cross Street	Lat.	Long.	G2 CPS-Mod™ Model	Metal Plate Access	CPS-Mod™ Cost
67	110	CB #164	Dale		33.7874	-117.9842	CPS-Mod Full Capture		\$993
68	111	CB #165	Chapman		33.7883	-117.9838	CPS-Mod Full Capture		\$993
69	112	CB #166	Garden Grove		33.7739	-117.9892	CPS-Mod Full Capture		\$993
70	113	CB #167	Garden Grove		33.7739	-117.9907	CPS-Mod Full Capture		\$993
71	114	CB #168	Hickcock		33.8120	-117.9984	CPS-Mod Full Capture		\$993
72	115	CB #169	Cody		33.8122	-118.0015	CPS-Mod Full Capture		\$993
73	116	CB #170	Cody	Garrett	33.8123	-118.0015	CPS-Mod Full Capture		\$993
74	117	CB #171	Cody		33.8122	-118.0001	CPS-Mod Full Capture		\$993
75	118	CB #175	Western		33.8119	-118.0021	CPS-Mod Full Capture		\$993
76	122	CB #56	Cerritos	Lowden	33.8099	-118.0062	CPS-Mod Full Capture		\$993
77	124	CB #35	Chestnut	Katella	33.8032	-117.9920	CPS-Mod Full Capture		\$993
78	125	CB #57	Katella	Western	33.8032	-118.0018	CPS-Mod Full Capture	Yes	\$993
79	126	CB #64	Knott	Katella	33.8057	-118.0105	CPS-Mod Full Capture		\$993
80	127	CB #65	Western	Katella	33.8032	-118.0020	CPS-Mod Full Capture		\$993
81	129	CB #109	Irana	Via Jacara	33.8058	-118.0139	CPS-Mod Full Capture		\$993
82	130	CB #60	Syracuse	Western	33.8051	-118.0016	CPS-Mod Full Capture	Yes	\$993
83	131	CB #61	Syracuse	Knott	33.8042	-118.0104	CPS-Mod Full Capture		\$993
84	132	CB #63	Knott	Syracuse	33.8044	-118.0106	CPS-Mod Full Capture		\$993
85	135	CB #96	Devonwood	Santa Rosalia	33.7839	-117.9980	CPS-Mod Full Capture	Yes	\$993
86	136	CB #95	Devonwood	Santa Rosalia	33.7838	-117.9980	CPS-Mod Full Capture	Yes	\$993
87	137	CB #84	Camus	Lampson	33.7800	-117.9965	CPS-Mod Full Capture	Yes	\$993
88	138	CB #86	Village Ctr. Dr.	Garden Grove	33.7749	-117.9952	CPS-Mod Full Capture		\$993
89	139	CB #87	Village Ctr. Dr.	Garden Grove	33.7749	-117.9950	CPS-Mod Full Capture		\$993
90	140	CB #72	Stanford	Beach Blvd	33.7775	-117.9925	CPS-Mod Full Capture		\$993
91	141	CB #73	Stanford	Beach Blvd	33.7774	-117.9925	CPS-Mod Full Capture		\$993
92	144	CB #19	Dale	Standustrial	33.8074	-117.9844	CPS-Mod Full Capture	Yes	\$993
93	147	CB #43	Cerritos	Western	33.8102	-118.0017	CPS-Mod Full Capture		\$993
94	148	CB #45	Westchester		33.8102	-118.0051	CPS-Mod Full Capture		\$993
95	149	CB #47	Cerritos	Oakhaven	33.8101	-118.0061	CPS-Mod Full Capture		\$993
96	152	CB #80	Lampson	Beach Blvd	33.7812	-117.9940	CPS-Mod Full Capture		\$993
97	153	CB #88	Lampson	Santa Rosalia	33.7810	-117.9983	CPS-Mod Full Capture	Yes	\$993
98	157	CB #79	Kermore Ln	Knott	33.8055	-118.0102	CPS-Mod Full Capture		\$993
99	158	CB #85	Village Ctr. Dr.		33.7769	-117.9948	CPS-Mod Full Capture		\$993
100	159	CB #91	Georgian	Santa Rosalia	33.7817	-117.9980	CPS-Mod Full Capture	Yes	\$993
101	160	CB #107	Chapman	Santa Rosalia	33.7884	-117.9982	CPS-Mod Full Capture		\$993
102	161	CB #106	Chapman	Santa Paula	33.7885	-117.9941	CPS-Mod Full Capture		\$993
103	162	CB #134	Chapman	Dale	33.7883	-117.9866	CPS-Mod Full Capture	Yes	\$993
104	163	CB #136	Chapman		33.7883	-117.9925	CPS-Mod Full Capture		\$993
105	164	CB #150	Cerritos		33.8100	-117.9954	CPS-Mod Full Capture		\$993
106	165	CB #172	Cody	Courtright	33.8123	-118.0001	CPS-Mod Full Capture		\$993
107	166	CB #173	Cody		33.8126	-117.9981	CPS-Mod Full Capture		\$993
108	167	CB #174	Cody	Wyatt	33.8127	-117.9982	CPS-Mod Full Capture		\$993
109	168	CB #176	Western		33.8119	-118.0019	CPS-Mod Full Capture		\$993

Sub-Total: \$108,237.00

Traffic Control: \$3,400.50

Project Bonds: \$2,862.50

**PROJECT TOTAL: \$114,500.00**

Terms & Conditions:

Pricing based on OCPW/ OCTA Master Pricing with Volume Discounts.

Pricing does not include City required licences or business fees.

**Thank You. We Appreciate Your Business!**

## CITY OF STANTON

### REPORT TO CITY COUNCIL

**TO:** Honorable Mayor and Members of the City Council

**DATE:** February 22, 2022

**SUBJECT: AWARD OF CONTRACT TO BGB DESIGN GROUP TO PROVIDE PROFESSIONAL DESIGN CONSULTING SERVICES FOR ORANGEWOOD PARKETTE AND APPROPRIATION OF FUNDS**

#### **REPORT IN BRIEF:**

Earlier this year, a conceptual drawing to develop a 9,450±square-foot vacant, underutilized property located at the end of Orangewood Avenue into a parkette was completed. City staff released a “Request for Proposal” (RFP) soliciting proposals to provide professional design consulting services for the final design and all necessary construction documents for the development of a parkette. City staff believes that BGB Design Group is the best qualified to provide professional design consulting services for the Orangewood Parkette design and is recommending award of a design contract to that firm. This project is not included in the City’s Fiscal Year 2021/22 budget. Therefore, staff is requesting an appropriation of \$109,100 from the City’s Park In Lieu Fees Fund.

#### **RECOMMENDED ACTIONS:**

1. City Council declare this project to be categorically exempt under the California Environmental Quality Act, Class 1, Section 15301; and
2. Award a contract to BGB Design Group to provide professional design consulting services for a maximum contract amount of \$89,060; and
3. Authorize the City Manager to bind the City of Stanton and BGB Design Group in a contract to provide the services; and
4. Authorize the City Manager to approve contract change orders with BGB Design Group, as needed and determined by City Staff, for any contingencies up to \$20,000; and
5. Appropriate \$109,100 from the Park in Lieu Fees Fund (#310) to add the Orangewood Parkette project (Task Code 2022-203) to the City’s Fiscal Year 2021/22 budget.

## **BACKGROUND:**

The City of Stanton owns the right-of-way along Orangewood Avenue, and the street ends just before the railroad after Santa Rosalia Street. The 9,450±square-foot, vacant, underutilized property is located to the west of Santa Rosalia Street. Conceptual drawings to develop this underutilized property into a parkette was completed by David Volz Design.

The conceptual design for the parkette includes the following elements:

- Three playground sites with a rubber play surface
- Benches
- Sidewalk
- Lighting
- Bollards at entry points
- Variety of tree and shrubs
- Shade structures

Since the conceptual drawings for the parkette were completed, City staff released a “Request for Proposal” (RFP) soliciting proposals to provide professional design consulting services for the final design and development of all necessary construction drawings and documents for the development of the parkette. The RFP was released in a two-envelope format in accordance with the City’s Purchasing Policy and Procedures which requires that at least three design firms be solicited to provide proposals. City staff solicited proposals from multiple firms. The first envelope consists of a written proposal highlighting the firm’s experience and qualifications, and a second separate, sealed envelope contains the fee proposal. The written proposal envelopes are opened, and the enclosed proposals are evaluated by City staff. Once a consensus is reached on the best written proposal, City staff will negotiate a fee with the best qualified consultant. In the event the City cannot negotiate a fee with the best qualified consultant, the City will negotiate a fee with the second ranked consultant, and so on until an agreement is reached. In this way, contract award is based on best-qualified contractor rather than low-bid, which is appropriate for a design contract.

## **ANALYSIS/JUSTIFICATION:**

A Request for Proposals was issued on December 16, 2021 with a proposal due date of January 27, 2022. Four firms provided proposals: RJM Design Group, David Volz Design, CDPC, and BGB Design Group. The proposals were evaluated by the City Manager, the Public Works Department and the Community Services Department, and City Staff came to a consensus that BGB Design Group provided the best proposal.

City staff believes that BGB Design Group is qualified to provide professional design consulting services for the design of a new parkette because BGB Design Group has successfully provided design services for other municipal parks, such as the City of La Mirada, Fullerton, and Corona Del Mar. The total lump sum design fee is \$89,060.

**FISCAL IMPACT:**

The Orangewood Parkette project (Task Code 2022-203) is not included in the City’s Fiscal Year 2021/2022 budget because staff was anticipating federal grant funding to be secured for total project costs estimated at \$850,000. The federal government has not approved its Fiscal Year 2021/22 budget. Staff would like to proceed with beginning work on the project because it is a City Council priority. Therefore, staff is requesting City Council approval to appropriate \$109,100 from the Park In Lieu Fees Fund to add the Orangewood Parkette project to the City’s Fiscal Year 2021/22 budget. The Park in Lieu Fees Fund (#310) has an available balance of approximately \$2.9 million.

**ENVIRONMENTAL IMPACT:**

The action requested in this report is categorically exempt under the California Environmental Quality Act, Class 1, Section 15301.

**LEGAL REVIEW:**

None.

**STRATEGIC PLAN OBJECTIVE ADDRESSED:**

3 – Provide a high-quality infrastructure.

Prepared by:

Reviewed by:

/s/ Han Sol Yoo

/s/ Joe Ames

\_\_\_\_\_  
Han Sol Yoo  
Associate Engineer

\_\_\_\_\_  
Joe Ames, P.E., T.E.  
Director of Public Works/City Engineer

Concurred by:

Approved by:

/s/ Michelle Bannigan

/s/ Jarad L. Hildenbrand

\_\_\_\_\_  
Michelle Bannigan, CPA  
Finance Director

\_\_\_\_\_  
Jarad L. Hildenbrand  
City Manager

**Attachments:**

- A) Draft Professional Services Agreement
- B) BGB Design Group’s proposal and fee proposal

**CITY OF STANTON  
PROFESSIONAL SERVICES AGREEMENT  
FOR  
LANDSCAPE ARCHITECTURAL DESIGN SERVICES**

**1. PARTIES AND DATE.**

This Agreement is made and entered into this 22<sup>nd</sup> day of February , 2022, by and between the City of Stanton, a municipal organization organized under the laws of the State of California with its principal place of business at 7800 Katella Avenue, Stanton, California 90680 (“City”) and **BGB DESIGN GROUP, a CORPORATION**, with its principal place of business at **3185 AIRWAY AVENUE, SUITE C-1, COSTA MESA, CA 92626** (“Consultant”). City and Consultant are sometimes individually referred to herein as “Party” and collectively as “Parties.”

**2. RECITALS.**

**2.1 Consultant.**

Consultant desires to perform and assume responsibility for the provision of professional **LANDSCAPE ARCHITECTURAL DESIGN** consultant services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing professional **LANDSCAPE ARCHITECTURAL DESIGN** consultant services to public clients, is licensed in the State of California, and is familiar with the plans of City.

**2.2 Project.**

City desires to engage Consultant to render such services for the **LANDSCAPE ARCHITECTURAL DESIGN SERVICES FOR ORANGEWOOD PARKETTE** project (“Project”) as set forth in this Agreement.

**3. TERMS.**

**3.1 Scope of Services and Term.**

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional **LANDSCAPE ARCHITECTURAL DESIGN** consultant services necessary for the Project (“Services”). The Services are more particularly described in Exhibit “A” attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from **February 22, 2022 to December 31, 2023**, unless earlier terminated as provided herein

### 3.2 Responsibilities of Consultant.

3.2.1 Independent Contractors, Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee. Consultant shall complete, execute, and submit to City a Request for Taxpayer Identification Number and Certification (IRS Form W-9) prior to commencement of any Services under this Agreement. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City and shall at all times be under Consultant's exclusive direction and control. Neither City, nor any of its officials, officers, directors, employees or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, City shall respond to Consultant's submittals in a timely manner. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of City.

3.2.4 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the City. The key personnel for performance of this Agreement are as follows: **Arthur Guy**.

3.2.5 City's Representative. The City hereby designates the City Manager, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. The City Manager hereby designates **the Public Works Director**, or his or her designee, as the City's contact for the implementation of the Services hereunder.

Consultant shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.2.6 Consultant's Representative. Consultant hereby designates **Arthur Guy**, or his or her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Consultant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold City, its officials, directors, officers, employees, agents and volunteers free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.10 Insurance.

3.2.10.1 Time for Compliance. Consultant shall not commence Work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this section.

3.2.10.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder and without limiting the indemnity provisions of the Agreement, the Consultant in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement, the following policies of insurance. If the existing policies do not meet the Insurance Requirements set forth herein, Consultant agrees to amend, supplement or endorse the policies to do so.

- (a) **Commercial General Liability:** Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office “occurrence” form CG 0001, with minimum limits of at least \$1,000,000 per occurrence, and if written with an aggregate, the aggregate shall be double the per occurrence limit. Defense costs shall be paid in addition to the limits.

The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; or (3) contain any other exclusion contrary to the Agreement.

- (b) **Automobile Liability Insurance:** Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering “Any Auto” (Symbol 1) with minimum limits of \$1,000,000 each accident.
- (c) **Professional Liability:** Professional Liability insurance with minimum limits of \$1,000,000. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusions that may potentially affect the work to be performed (for example, any exclusions relating to lead, asbestos, pollution, testing, underground storage tanks, laboratory analysis, soil work, etc.).

If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least three (3) years from termination or expiration of this Agreement.

- (d) **Workers’ Compensation:** Workers’ Compensation Insurance, as required by the State of California and Employer’s Liability

Insurance with a limit of not less than \$1,000,000 per accident for bodily injury and disease.

3.2.10.3 Endorsements. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval.

(a) The policy or policies of insurance required by Section 3.2.10.2 (a) Commercial General Liability and (c) Contractor’s Pollution Liability shall be endorsed to provide the following:

(1) Additional Insured: The City, its officials, officers, employees, agents, and volunteers shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement.

Additional Insured Endorsements shall not (1) be restricted to “ongoing operations”; (2) exclude “contractual liability”; (3) restrict coverage to “sole” liability of Consultant; or (4) contain any other exclusions contrary to the Agreement.

(2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(b) The policy or policies of insurance required by Section 3.2.10.2 (b) Automobile Liability and (d) Professional Liability shall be endorsed to provide the following:

(1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(c) The policy or policies of insurance required by Section 3.2.10.2 (e) Workers’ Compensation shall be endorsed to provide the following:

(1) Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the indemnified parties.

(2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City

except ten (10) days shall be allowed for non-payment of premium.

3.2.10.4 Primary and Non-Contributing Insurance. All insurance coverages shall be primary and any other insurance, deductible, or self-insurance maintained by the indemnified parties shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

3.2.10.5 Waiver of Subrogation. Required insurance coverages shall not prohibit Consultant from waiving the right of subrogation prior to a loss. Consultant shall waive all subrogation rights against the indemnified parties. Policies shall contain or be endorsed to contain such provisions.

3.2.10.6 Deductible. Any deductible or self-insured retention must be approved in writing by the City and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

3.2.10.7 Evidence of Insurance. The Consultant, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates and endorsements on forms approved by the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

3.2.10.8 Failure to Maintain Coverage. Consultant agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to the City. The City shall have the right to withhold any payment due Consultant until Consultant has fully complied with the insurance provisions of this Agreement.

In the event that the Consultant's operations are suspended for failure to maintain required insurance coverage, the Consultant shall not be entitled to an extension of time for completion of the Services because of production lost during suspension.

3.2.10.9 Acceptability of Insurers. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

3.2.10.10 Insurance for Subconsultants. All Subconsultants shall be included as additional insureds under the Consultant's policies, or the Consultant shall be responsible for causing Subconsultants to purchase the appropriate insurance in compliance with

the terms of these Insurance Requirements, including adding the City as an Additional Insured to the Subconsultant's policies.

3.2.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subconsultants, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

### **3.3 Fees and Payments.**

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed **EIGHTY-NINE THOUSAND AND SIXTY DOLLARS (\$89,060)** ("Total Compensation") without written approval of City's **Public Works Director**. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from the City.

3.3.5 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or

“maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant’s principal place of business and at the project site. It is the intent of the parties to effectuate the requirements of sections 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code within this Agreement, and Consultant shall therefore comply with such Labor Code sections to the fullest extent required by law. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees, agents and volunteers free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

### **3.4 Accounting Records.**

3.4.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

### **3.5 General Provisions.**

#### 3.5.1 Termination of Agreement.

3.5.1.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

**Consultant:**

BGB Design Group  
3185 Airway Avenue, Suite C-1  
Costa Mesa, CA 92626  
Attn: **Arthur Guy, President**

**City:**

City of Stanton  
7800 Katella Avenue  
Stanton, CA 90680  
Attn: **Joe Ames, Department of Public Works**

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.3 Ownership of Materials and Confidentiality.

3.5.3.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement (“Documents & Data”). Consultant shall require all subconsultants to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by the City. City shall not be limited in any way in its use of the Documents and Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City’s sole risk.

3.5.3.2 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of City, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City’s name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

3.5.3.3 Confidential Information. The City shall refrain from releasing Consultant's proprietary information ("Proprietary Information") unless the City's legal counsel determines that the release of the Proprietary Information is required by the California Public Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case the City shall notify Consultant of its intention to release Proprietary Information. Consultant shall have five (5) working days after receipt of the Release Notice to give City written notice of Consultant's objection to the City's release of Proprietary Information. Consultant shall indemnify, defend and hold harmless the City, and its officers, directors, employees, and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. City shall not release the Proprietary Information after receipt of the Objection Notice unless either: (1) Consultant fails to fully indemnify, defend (with City's choice of legal counsel), and hold City harmless from any legal action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that City release such information.

3.5.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.5 Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.5.6 Indemnification.

To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorneys fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the Consultant or the City, its officials, officers, employees, agents or volunteers.

If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

The obligation to indemnify, as provided herein, shall survive the termination or expiration of this Agreement.

3.5.7 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.5.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Orange County.

3.5.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

**3.6 City's Right to Employ Other Consultants**. City reserves right to employ other consultants in connection with this Project.

**3.7 Successors and Assigns**. This Agreement shall be binding on the successors and assigns of the parties.

**3.8 Assignment or Transfer**. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

**3.9 Construction; References; Captions**. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

**3.10 Amendment; Modification**. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

**3.11 Waiver**. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

**3.12 No Third Party Beneficiaries**. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

**3.13 Invalidity; Severability.** If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

**3.14 Prohibited Interests.** Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

**3.15 Equal Opportunity Employment.** Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

**3.16 Labor Certification.** By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

**3.17 Authority to Enter Agreement.** Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

**3.18 Counterparts.** This Agreement may be signed in counterparts, each of which shall constitute an original.

**3.19 Declaration of Political Contributions.** Consultant shall, throughout the term of this Agreement, submit to City an annual statement in writing declaring any political contributions of money, in-kind services, or loan made to any member of the City Council within the previous twelve-month period by the Consultant and all of Consultant's employees, including any employee(s) that Consultant intends to assign to perform the Services described in this Agreement.

**3.20 Subcontracting.**

**3.20.1 Prior Approval Required.** Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written

approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

*[Signatures on following page.]*

IN WITNESS WHEREOF, the parties have executed this Professional Services Agreement on this \_\_\_\_ day of \_\_\_\_\_, 202\_.

CITY OF STANTON

BGB Design Group

By: \_\_\_\_\_  
Jarad Hildenbrand  
City Manager

By: \_\_\_\_\_  
Name: Arthur Guy  
Titles: President, Secretary

By: \_\_\_\_\_  
Name: Jeffrey Kraus  
Title: Chief Financial Officer

**ATTEST:**

By: \_\_\_\_\_  
Patricia Vazquez  
City Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Best Best & Krieger LLP  
City Attorney

## **EXHIBIT “A”**

### **SCOPE OF SERVICES**

The City desires to retain an experienced team, ideally with prior park design experience, for the final design and development of all necessary construction drawings and documents for the development of the park.

The Consultant is expected to establish and maintain a close working relationship with City Staff throughout each phase of the project.

Services and deliverables shall include, but are not limited to, the following:

#### **Refinement of the Preliminary Design**

- Project review meetings with City staff, residents/citizens, and any ad-hoc design committee established by City Council to verify needs, determine materials, and provide options for playground equipment;
- Provide “cut sheets” of materials and equipment to City staff for selection;
- Coordinate with playground manufacturer to produce a 3-D graphic of the selected playground equipment;
- Develop a preliminary estimate of probable construction cost to ensure the available budget and estimated construction costs are coordinated;
- Make adjustments to the scope of work and materials and equipment selections based on City staff direction.

#### **Final Design**

- Upon approval from City staff to move forward with final design, consultant will begin final design and preparation of construction drawings, specifications, and bid schedule sheet(s);
- Develop a comprehensive bid schedule sheet with units and quantities to be inserted in City staff produced project bid specifications;
- Develop technical rubberized surface specification to be inserted into City staff produced bid specifications;
- Provide complete set of construction plans and associated details that include complete specifications and drawings for onsite amenities, infrastructure/utilities, grading and drainage, landscape, signage, lighting, etc. All plans shall be done at a scale of 1” = 20’ and all plan sheets shall be 24” x 36”. Plan sheets to include demolition, construction, plumbing and electrical sheets;
- Final construction plans, in electronic PDF and AutoCAD DWG formats, that expand on the design development plans and create full working drawings ready for bidding and construction;
- As-built drawings in electronic PDF and Auto CAD DWG formats, along with final signed mylar sheets;
- Parking and use analysis;
- Provide an estimate of probably construction cost;
- Submit plans and specifications for City staff review and make changes as requested;
- Respond to bidder questions during the bid process, as requested by City staff; and

- Construction design support.

The Consultant shall assemble a team to provide all key services related to the necessary architecture and engineering to produce a complete, biddable, and constructible design package. The City anticipates that such a design team may include, but is not limited to, specialists in the following fields:

- Park Design
- Landscape Architecture
- Civil Engineering
- Mechanical, Electrical, and Plumbing Engineering
- Utility Coordination
- Environmental Consulting
- Cost Estimating

The consultant's proposal and any promises made regarding deliverables is also incorporated herein by reference.

**EXHIBIT “B”**

**SCHEDULE OF SERVICES**

**The City is expecting final design plans to be completed within six months of the contract award.**

BGB Design Group provided a Project Schedule to complete the project within 6-months of contract award, shown below.

**PROJECT SCHEDULE**

<u>Preliminary Design:</u>	Weeks
● Kick-off Meeting	1
● Site Survey and Geotechnical Report, Research, Review Conceptual Design, Traffic Analysis	5
● Prepare 30% Design Development	4
● City Review	*
● Prepare and host Pubic Meeting #1	2
● Prepare 100% Design Development	1
● City Review	*
● Design Development revisions (if necessary)	1
● City Review (if necessary)	*
● Prepare 30% Construction Documents	3
● City Review	*
● Prepare 60% Construction Documents	3
● City Review	*
● Prepare 90% Construction Documents	2
● City Review	*
● Prepare 100% Construction Documents	2
● City Review	*
	<hr/>
	24 weeks

Notes:

1. City Review time is indicated with (\*) and is not included.
2. Some tasks are not shown but will be performed concurrently with other work.
3. Time allocations shown are estimates and may be adjusted if necessary, with mutual consent.

**EXHIBIT “C”**  
**COMPENSATION**



**FEE SUMMARY FOR ORANGEWOOD PARKETTE**

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BGB Design Group – Landscape Architecture / Prime Consultant	\$ 39,000.
Toal Engineering – Civil Engineer	15,000
Petra Geoscience – Geotechnical Engineer	6,800.
Design West Engineering – Electrical Engineer	9,730.
KDM Meridian- Survey	11,720
Elias Transportation- Traffic	750
Structics, Inc. – Structural Engineering	2,000.
3D Ikon – Rendering	1,200.
<b>Fee Subtotal:</b>	<u>\$ 86,200.</u>
5% Consultant Markup:	2,360.
Reimbursable Allocation:	500.
<b>Total Fee Summary:</b>	<b><u>\$ 89,060.</u></b>
<i>Optional Construction Management:</i>	
Murow Development Consultants	\$23,000
<b>Grand Total Fee Summary:</b>	<b><u>\$ 112,260.</u></b>

Note: Refer to Exhibit “A” - Task / Hour Breakdown Matrix for detailed cost breakdown.

**EXHIBIT "A" - COST SUMMARY FORM  
CITY OF STANTON - LANDSCAPE ARCHITECTURAL/ENGINEERING SERVICES  
ORANGEWOOD PARKETTE PROJECT  
TASK / HOURS BREAKDOWN**

C-2

TASK NO.	Work Task or Item DESCRIPTION	PRINCIPAL/PROJECT DIRECTOR			PROJECT MANAGER			SENIOR CADD OPERATOR			TOTAL BGB	TOTAL BGB	TOTAL ENGINEERING Civil	PETRA GEOSCIENCES Geotechnical	DESIGN WEST ENGINEERING Electrical	KDM MERIDIAN Survey	SUB CONSULTANTS					TOTAL HOURS	TOTAL SUB \$5	5% sub consultant markup	GRAND TOTAL HOURS	GRAND TOTAL FEE				
		\$180	\$2,880	\$720	\$1,440	\$20	\$2,800	\$120	\$16	\$2,880							\$1,200	\$500	\$11,720	\$750	\$4,820						\$6,300	\$2,000	\$1,200	\$1,200
A.	Project Coordination	16	\$2,880					16	\$2,880													0	\$0	\$0	16	\$2,880				
B.	Records Research / Field Review	4	\$720					4	\$720	\$1,200	\$500											0	\$1,700	\$85	4	\$2,505				
C.	Preliminary Design	8	\$1,440	20	\$2,800			28	\$4,240						\$11,720							0	\$0	\$0	28	\$4,240				
D.	Survey																					0	\$11,720	\$586	0	\$12,306				
F.	Geotechnical Investigation/Analysis/Studies/Report										\$6,300											0	\$6,300	\$315	0	\$6,615				
G.	Traffic- Parking Analysis																					0	\$750	\$38	0	\$788				
H.	Utility Coordination	2	\$360					2	\$360	\$1,200				\$4,820								0	\$6,020	\$301	2	\$6,681				
	<b>Report</b>																													
I.	Water Quality Management Plan (May be optional)									\$2,800												0	\$2,800	\$140	0	\$2,940				
J.	Rendering	2	\$360					2	\$360													0	\$1,200	\$60	2	\$1,620				
K.	Meetings / Public Outreach	12	\$2,160	4	\$560			16	\$2,720													0	\$0	\$0	16	\$2,720				
	<b>Plans, Specifications and Estimates (PS&amp;E) 60%, 90%, 100%</b>																													
L.	Landscape Construction and Irrigation Plans	24	\$4,320	80	\$11,200	40	\$4,800	144	\$20,320													0	\$0	\$0	144	\$20,320				
M.	Civil Engineering Plans									216	\$9,800											216	\$9,800	\$490	216	\$10,290				
N.	Electrical Plans													\$3,710								0	\$3,710	\$186	0	\$3,896				
O.	Structural Engineering (as needed)																					0	\$2,000	\$100	0	\$2,100				
P.	Cost Estimating (60, 90 & 100%)	8	\$1,440	4	\$560	2	\$240		\$2,240													0	\$0	\$0	0	\$2,240				
	<b>Reimbursable: Reproduction</b>								\$500													0	\$0	\$0	0	\$500				
	<b>Subtotal Design Cost:</b>	<b>76</b>	<b>\$13,680</b>	<b>108</b>	<b>\$15,120</b>	<b>42</b>	<b>\$5,040</b>	<b>212</b>	<b>\$34,340</b>	<b>216</b>	<b>\$15,000</b>	<b>0</b>	<b>\$6,800</b>	<b>0</b>	<b>\$8,530</b>	<b>0</b>	<b>\$11,720</b>	<b>0</b>	<b>\$750</b>	<b>0</b>	<b>\$2,000</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>\$1,200</b>	<b>216</b>	<b>\$46,000</b>	<b>\$2,300</b>	<b>428</b>	<b>\$82,640</b>
	<b>Construction Support</b>																													
Q.1	Submittal / Shop Drawing Review	6	\$1,080					6	\$1,080					\$1,200								0	\$1,200	\$60	6	\$2,340				
Q.2	Periodic Field Observation Reporting	16	\$2,880					16	\$2,880													0	\$0	\$0	16	\$2,880				
Q.3	Record Drawing Preparation	2	\$360	6	\$840			8	\$1,200													0	\$0	\$0	8	\$1,200				
	<b>Subtotal Construction Support Cost:</b>	<b>24</b>	<b>\$4,320</b>	<b>6</b>	<b>\$840</b>	<b>0</b>	<b>\$0</b>	<b>30</b>	<b>\$5,160</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>\$0</b>	<b>\$1,200</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>\$1,200</b>	<b>\$60</b>	<b>30</b>	<b>\$6,420</b>	
	<b>Total Base Contract Bid:</b>	<b>100</b>	<b>\$18,000</b>	<b>114</b>	<b>\$15,960</b>	<b>42</b>	<b>\$5,040</b>	<b>242</b>	<b>\$39,000</b>	<b>216</b>	<b>\$15,000</b>	<b>0</b>	<b>\$6,800</b>	<b>0</b>	<b>\$9,730</b>	<b>0</b>	<b>\$11,720</b>	<b>0</b>	<b>\$750</b>	<b>0</b>	<b>\$2,000</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>\$1,200</b>	<b>216</b>	<b>\$47,200</b>	<b>\$2,360</b>	<b>458</b>	<b>\$89,060</b>
	<b>Optional: Const. Mgmt / Contract Admin. / Inspection</b>																													
R.1	Constr. Mgmt/ Admin./Inspect. (based on 20 hrs/wk x 8 wks)																					160	\$23,200		160	\$23,200				
	<b>Constr. Mgmt / Inspection (Optional) Cost:</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>\$0</b>	<b>160</b>	<b>\$23,200</b>	<b>0</b>	<b>\$0</b>	<b>160</b>	<b>\$23,200</b>	<b>\$0</b>	<b>0</b>	<b>\$23,200</b>
	<b>Grand Total with Optional CM / Inspection Services:</b>	<b>100</b>	<b>\$18,000</b>	<b>948</b>	<b>\$15,960</b>	<b>42</b>	<b>\$5,040</b>	<b>242</b>	<b>\$39,000</b>	<b>216</b>	<b>\$15,000</b>	<b>0</b>	<b>\$6,800</b>	<b>0</b>	<b>\$9,730</b>	<b>0</b>	<b>\$11,720</b>	<b>0</b>	<b>\$750</b>	<b>0</b>	<b>\$2,000</b>	<b>160</b>	<b>\$23,200</b>	<b>0</b>	<b>\$1,200</b>	<b>376</b>	<b>\$70,400</b>	<b>\$2,360</b>	<b>458</b>	<b>\$112,260</b>
	<b>Percentage of Total Fee</b>		16.03%		14.22%		4.49%		34.74%		13.36%		6.06%		8.67%		10.44%		0.67%		1.78%		20.67%		1.07%		62.71%		2.10%	100.00%

## HOURLY RATE SCHEDULE 2022

BGB Design Group Team hourly rate schedule will be in effect for a period of 18 months from the date of this proposal. Reimbursable expenses above that which has been specified will be billed at cost plus 10%. Any additional work requested and approved by the City will either be billed as a lump sum, or on an hourly basis, based on the following rate schedule:

Reimbursables:

- City submittal packages / Final mylar submittals / Agronomy testing / Project specific mileage / Courier, Fedex, Overnight Mail

### BGB Design Group (Landscape Architecture)

Principal	\$ 180.
Project Manager	\$ 140.
Senior CAD Operator	\$ 120.
Administrative Assistant	\$ 70.
Mileage	\$ 0.56/mile

### Toal Engineering (Civil)

Principal Engineer	\$ 265.
Senior Design Engineer	\$ 205.
Design Engineer	\$ 150.
CADD Operator / Draftsperson	\$ 130.

### KDM Meridian (Survey)

Principal	\$ 215.
Project Manager	\$ 200.
Project Surveyor	\$ 185.
Survey Technician/Drafter	\$ 150.
Clerical/Administration/Technical Aide	\$ 85.
Expert Witness (4-hour minimum)	\$ 400.
Survey Crew (1-person) Prevailing Wages	\$ 205.
Survey Crew (2 persons) Prevailing Wages	\$ 315.
Survey Crew (3 persons) Prevailing Wages	\$ 440.

### Elias Transportation (Traffic)

Senior Traffic Engineer	\$ 225
Associate Traffic Engineer	\$ 150.
Project Coordinator	\$ 120.

### Design West Engineers (Electrical)

Senior Engineer	\$ 195.
Electrical Project Manager	\$ 150.
Electrical Designer	\$ 115.
Electrical CAD Draftsperson	\$ 95.

### Structics (Structural Engineering)

Principal Engineer	\$ 150.
Project Engineer	\$ 130.
Draftsperson	\$ 100.
Administration	\$ 60.

**STANDARD FEE SCHEDULE**

**Coastal Communities of Orange, Los Angeles, Ventura and San Diego Counties  
ENGINEERING GEOLOGY, AND GEOTECHNICAL AND ENVIRONMENTAL ENGINEERING SERVICES  
January 1, 2022**

**Professional Services (Engineers, Geologists, Environmental Scientists)**

Assistant	\$ 145.00/hr.
Staff	\$ 156.00/hr.
Senior Staff	\$ 184.00/hr.
Project	\$ 198.00/hr.
Senior Project	\$ 225.00/hr.
Associate	\$ 235.00/hr.
Senior Associate	\$ 245.00/hr.
Principal	\$ 275.00/hr.
President/Senior Principal (Review and Consultation)	\$ 285.00/hr.
Fault Hazard Specialist	\$ 245.00/hr.
Senior Fault Hazard Specialist	\$ 285.00/hr.
In-house Legal Advisor	\$ 250.00/hr.

**Forensic Services (Engineers, Geologists, Environmental Scientists)**

Senior Project/ Project (Review, Analysis, Consultation)	\$ 350.00/hr.
Senior Project/ Project (Depositions, Hearings, Mediation and Trials; in 4-Hour Increments)	\$ 400.00/hr.
Senior Associate/Associate (Review, Analysis, Consultation)	\$ 400.00/hr.
Senior Associate/Associate (Depositions, Hearings, Mediation and Trials; in 4-Hour Increments)	\$ 450.00/hr.
Senior Principal/Principal (Review, Analysis, Consultation)	\$ 465.00/hr.
Senior Principal/Principal (Depositions, Hearings, Mediation and Trials; in 4-Hour Increments)	\$ 550.00/hr.

**Technical Services**

Engineering Technician	\$ 112.00/hr.
Associate Engineering Technician	\$ 118.00/hr.
Senior Engineering Technician	\$ 126.00/hr.
Supervising Engineering Technician	\$ 158.00/hr.
Field Technician (Prevailing Wage Projects)	\$ 140.00/hr.
LA Deputy Geotechnical Inspector	\$ 140.00/hr.
Laboratory Technician	\$ 125.00/hr.
Senior Laboratory Technician	\$ 140.00/hr.
Laboratory Manager	\$ 170.00/hr.
Draftsperson	\$ 135.00/hr.

**Support Services**

Outside Consultants (Corresponding to in-house levels)	In-House Rate
Drilling/Backhoe/Dozer/CPT/Equipment Rental	Cost + 20%
Client Requested Accounting	\$ 90.00/hr.
Word Processing, Technical Editing, Project Administration	\$ 85.00/hr.
Field Services Communications Charges	1% of Invoice
Laboratory Tests	See attached rates
Company Owned Equipment Usage	See attached rates
Copy Rate	\$ 0.35/sheet
Postage and Shipping	Cost + 20%
PDF File Transmittal	\$ 30.00/file
CD/Flash Drive File Transmittal	\$ 35.00/file

**NOTE: Travel time to field job sites is charged on a portal to portal basis at the appropriate hourly rate. Overtime for non-registered professionals and technicians is \$60.00 over the hourly rate. A minimum of two hours will be charged for all personnel for each field visit.**



**SOLID AS A ROCK**

**PROPOSAL**  
LANDSCAPE ARCHITECTURAL DESIGN SERVICES  
FOR ORANGEWOOD PARKETTE



Rolling Hills Park  
Fullerton, CA



Hobie Pocket Park  
Corona del Mar, CA



Ketchum-Libolt Park  
Costa Mesa, CA



**CITY OF STANTON**  
**PUBLIC WORKS**

January 27, 2022

Joe Ames, PE, TE  
Public Works Director / City Engineer  
7800 Katella Avenue  
Stanton, CA 90680  
JAmes@StantonCA.gov

Submitted by:

**BGB | DESIGN GROUP**

Landscape Architecture    Planning    Urban Design

January 27, 2022

Mr. Joe Ames, Public Works Director / City Engineer  
CITY OF STANTON  
7800 Katella Avenue  
Stanton, CA 90680

**Re: Proposal for Professional Consultant Services for Orangewood Parkette Consulting Design Services**

BGB has visited the proposed park site and reviewed the City's goals for the project. Additionally, BGB has incorporated subsequent addenda issued following the initial RFP. This undeveloped street terminus pocket park will be an ideal enhancement to the "T" intersection and compliments the Stanton monument ID at the Beach Boulevard intersection. Located in Costa Mesa, our firm has recently completed several public parks including pocket parks for the cities of Anaheim, Fullerton, Laguna Beach and Newport Beach.

We have assembled a Design Team of highly qualified and experienced professional consultants, all of whom have worked together on past projects. A summary of key Design Team members is as follows:

**BGB Design Group / Prime Consultant:** Landscape Architecture and Project Management  
Art Guy, RLA – Principal-in-Charge / Project Director  
Nicole Nguyen, ASLA – Associate Project Manager  
DBA: BGB Design Group, Inc.  
3185 Airway Ave., Suite C1  
Costa Mesa, CA 92626  
714.545.2898 (o)  
949.246.0460 (c)  
art@bgb-inc.com

The following proposal shall remain valid for a period of not less than (90) days from the date of this submittal. BGB does not take any exceptions to the standard contract agreement. The authorized signature below of Arthur Guy, shall bind the consultant team to the terms of the proposal. Furthermore, as attested by the signature below, all the information is true and correct. We feel that our team of consultants is uniquely qualified to successfully complete this project. We thank you for the opportunity to submit our proposal and look forward to working with you to make this important project a reality for the City of Stanton.

Sincerely,



Art Guy, RLA, CLIA  
President

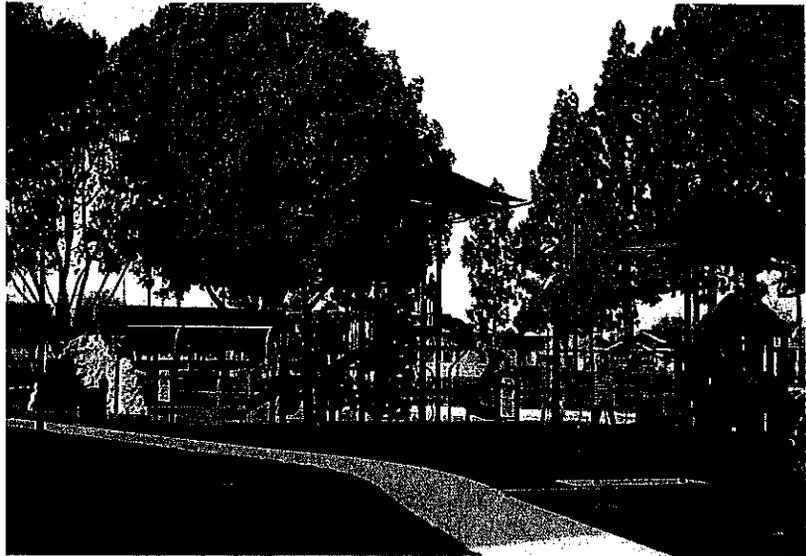
## PROPOSAL

### QUALIFICATIONS, RELEVANT EXPERIENCE, AND REFERENCES

Located in Costa Mesa and established in 1998, BGB Design Group structured as an S-Corp, employs a staff of eight including two Licensed Landscape Architects. We have a balanced workload of both public and private sector projects offering comprehensive landscape and irrigation design services. BGB has a long track record of public agency clients throughout Southern California, including Avalon, San Pedro, Rancho Santa Margarita, Redondo Beach, La Mirada, San Clemente, Dana Point, Laguna Beach, Costa Mesa, Anaheim, Fullerton, and the Orange County Sanitation District, among others. We are currently "On-Call" consultants for the cities of Anaheim, Fullerton, Gardena, and Newport Beach.

In 23 years of business only one lawsuit has been filed against BGB and was settled as a summary judgment in favor of BGB. The firm is not involved with any pending litigation, nor has it been through any form of bankruptcy. It has had continuous insurance coverage since its founding.

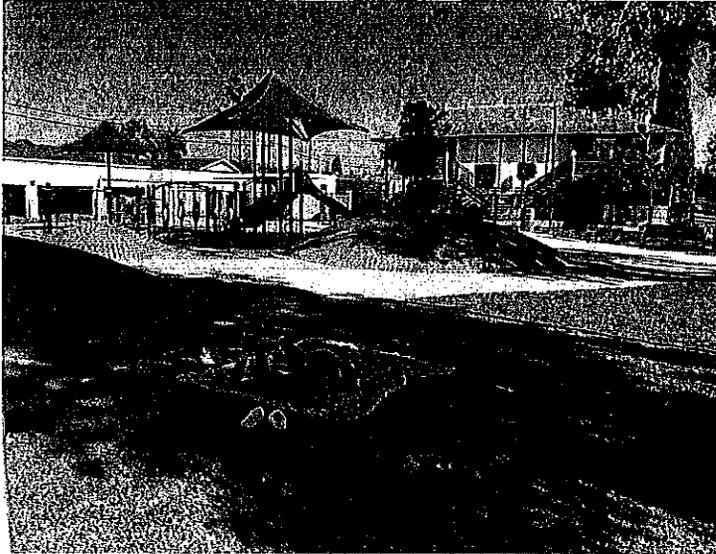
For public projects we have extensive experience in designing parks, streetscapes, open spaces, trails, and public facilities. We have received professional awards for projects such as the Avalon Downtown Waterfront (Catalina Island), the 2.4-mile San Clemente Beach Trail, and the Redondo Beach Esplanade, among others. Most recently, Pearl Park (.5 ac. pocket park) in Fullerton was grant funded through Prop 68 State funding, with BGB preparing the submittal design and following it through completion in 2021. In 2020, BGB completed Julianna Park, another pocket park



Gardenhill Park - La Mirada, CA

of <1 ac., with similar scope for the City of Anaheim. Additionally, BGB provided final design documents for a series of (5) tot lot renovation projects for the City of La Mirada.

BGB has been recognized by Metropolitan Water District for knowledge and promotion of the "California-Friendly" plant palette, and we are on the leading edge of native plant and adapted drought-tolerant species utilization. We understand and appreciate the role that landscape architects can play in the evolving science of landscape sustainability. BGB president Art Guy is a Certified Landscape Irrigation Auditor in the State of California. Two of our key staff members assigned to this project are bilingual: Nicole Nguyen (English – Vietnamese) and Celerino Villa (English – Spanish) if translation needs arise during public outreach. As a local mid-size firm, we offer direct principal-level design, construction documentation, and management of each project.



Pearl Park - Fullerton, CA

The individual firms on our design team have completed many successful projects with cities and agencies throughout Southern California. BGB Design Group is partnering on Orangewood Parkette with Toal Engineering ("Toal") as a 2nd generation civil engineering firm and having worked together on many projects over the past 15-plus years, including Pearl Park, Pacific Drive Park, Woodcrest and Rolling Hills Parks for Fullerton, and Barton and Julianna Parks for Anaheim. Design West Engineering, and Petra Geosciences have also provided support over the years on various commissions.

Murow Development Consultants will provide construction management services to support city staff in the event this service is optioned by the city (refer to resume for additional background).

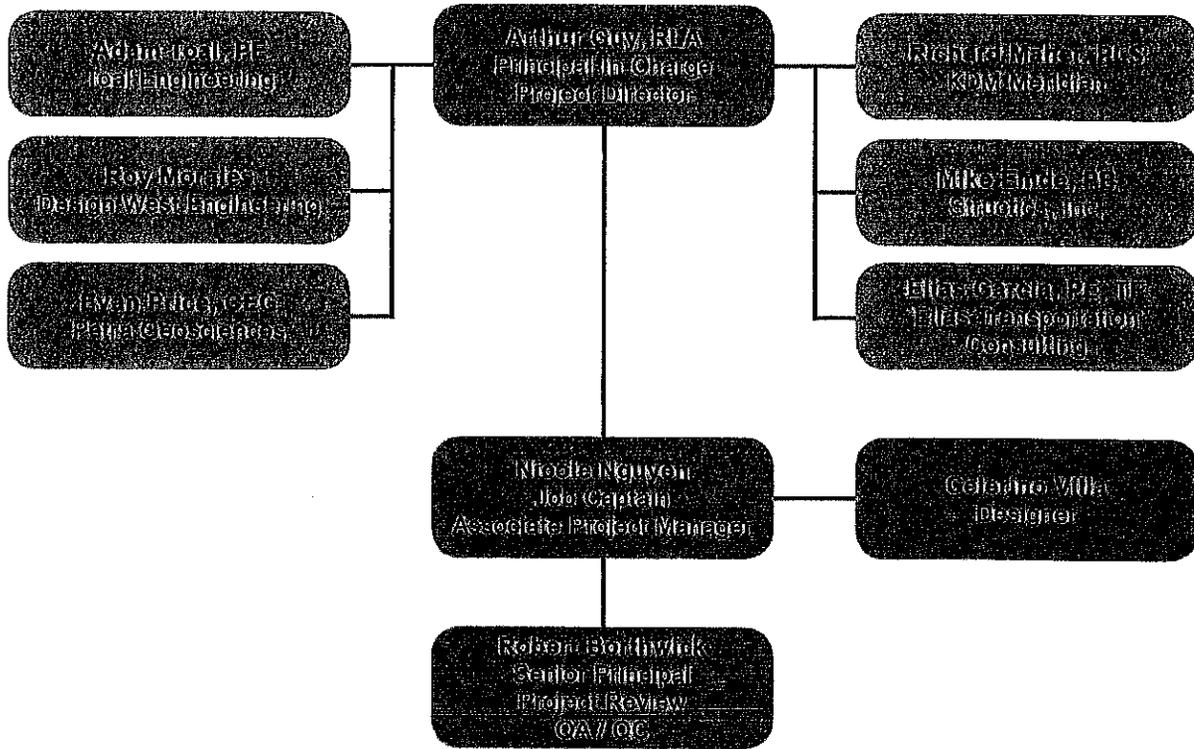
For over 45 years Petra Geosciences ("Petra") has provided public and private geotechnical engineering, engineering geology and environmental engineering for hundreds of projects. Petra will be tasked with standard geotechnical reporting, percolation testing for potential water quality BMP's, foundation and pervious pavement design requirements. Petra has its own testing facility for quick and reliable turnaround.

Our team is conversant in the methodology of public work design and envision a seamless delivery of product to meet the city's 6-month delivery window. BGB provides Principal level coordination through the entire design process to ensure staff allocation is met to ensure timelines are met. BGB and their team members pride themselves in always meeting project timelines.

The Design Team was tailored for this specific scope for continuity of service with available personnel at hand to adequately perform and fulfill the goals of the city.

**PROJECT ORGANIZATIONAL CHART**

Key personnel listed below are committed for the entirety of this project.



**BGB Design Group (Prime): Landscape Architecture**  
 Arthur Guy, ASLA, RLA, CLIA – Principal-In-Charge, Project Director  
 Nicole Nguyen, ASLA – Project Manager  
 3185 Airway Ave., Suite C1  
 Costa Mesa, CA 92626  
 714.545.2898  
 Art@bgb-inc.com

**SUB-CONSULTANTS**

**Toal Engineering: Civil Engineering**  
 Adam Toal, PE – Project Engineer  
 139 Avenida Navarro  
 San Clemente, CA 92672  
 949.492.8586  
 AToal@toalengineering.com

**Murrow Development Consultants: Construction Management (Optional Service)**

Jarred Gormly  
1151 Duryea Avenue  
Irvine, CA 92614  
949.398.6742  
jgormly@murrowdc.com

**Design West Engineering: Electrical Engineering and Utility Coordination**

Roy Morales – Senior Electrical Project Manager  
Leo Maya, PE, LEED AP BD+C – Engineer of Record  
412 E. Vanderbilt Way  
San Bernardino, CA 92408  
909.890.3700  
rmorales@designwesteng.com

**Petra Geosciences: Environmental Engineering**

Siamak Jafroudi, Ph.D, GE – President / Principal-In-Charge  
Evan Price, CEG – Associate Geologist  
3186 Airway Avenue, Suite K  
Costa Mesa CA 92626  
714.549.8921  
eprice@petra-inc.com

**KDM Meridian: Site Survey (On-Call w/ Stanton)**

Richard Maher, PLS – President  
Patrick Earl, PLS – Survey Manager  
1340 Reynolds Ave., Suite 110  
Irvine, CA 92614  
949.768.0731  
rmaher@kdmmeridian.com

**Structics, Inc.: Structural Engineering**

Mike Emde, PE  
1754 Avenida Regina  
San Marcos, CA 92069  
760.814.2201  
memde@structics.com

**Elias Transportation Consulting**

Elias Garcia, PE, TE – Principal  
714.809.9689  
elias@eliastransportation.com

**REFERENCES - BGB Design Group**

Four (4) professional references:

Pamela Galera, Director of Parks, Recreation and Community Services  
CITY OF RIVERSIDE  
(Formerly Parks Manager for City of Anaheim)  
951.826.2075  
pgalera@riversideca.gov  
Services: Park

Naomi Gruenthal, Park Planner  
CITY OF ANAHEIM  
714.765.4465  
ngruenthal@anaheim.net  
Services: Project Manager - Julianna and Barton Parks, Olive Hills Dog Park

David Grantham, PE, Principal Civil Engineer  
CITY OF FULLERTON  
714.738.6853  
dgrantham@cityoffullerton.com  
Services: Park

Kevin Kwak, PE, Principal Civil Engineer  
CITY OF GARDENA  
310.217.9643  
kkwak@cityofgardena.org  
Services: Park Master Planning

# BGB | DESIGN GROUP

Landscape Architecture | Planning | Urban Design

## Arthur Guy ASLA, CLIA

President

Arthur Guy has over 38 years of landscape architecture and irrigation design experience; the previous 18 years as Principal with BGB. Among multiple duties, Mr. Guy directs a comprehensive approach to irrigation design the firm and serves as the technical liaison pertaining to water management issues which arise during the planning, design, and implementation phases of projects. Mr. Guy's knowledge of horticulture extends from high desert to tropical bioregions, enabling him to effectively design planting and irrigation systems appropriate to individual environmental requirements. Additionally, Mr. Guy provides landscape and irrigation plan check services relating to the City of Rancho Santa Margarita's Water Conservation Landscape Ordinance. Recent projects include a one-mile Class I Bike Trail, "Smart Street" improvement project for N. El Camino Real, City of San Clemente, and as an on-call consultant for the City of Newport Beach; a median / parkway renovation project for a one-mile reach of West PCH and Jamboree Blvd. turf replacement median project. Previous projects include landscape improvements for ADA access, parking lot and slope renovation for Whittier College.



### Representative Projects

#### Railroad Corridor Pedestrian Beach Trail *City of San Clemente, Ca*

BGB was the prime consultant for this \$15M multi-phase oceanfront project. The 2.5-mile trail is located at the base of the oceanfront bluffs that run the entire length of the City. Features included bridges, handicap accessible ramps, beach access facilities, native landscaping, signage, public art and pedestrian accent areas.

Mr. Guy was the leader for this large team of consultants during the eight-year planning and design phases of the project. In addition, he was the primary contact person for all governmental agencies that were involved in processing (including the City of San Clemente, Caltrans, the Southern California Regional Rail Authority, the California Coastal Commission, etc.). This project received an Award of Excellence by the American Planning Association and a Merit Award from the American Society of Landscape Architects.

#### University Drive *City of Irvine, Ca*

As a sub-consultant to Harris & Associates, BGB provided preliminary design thru construction documents for the one mile reach adjacent to UCI Campus. Landscape and irrigation scope included conversion to reclaimed water. Additionally, photo-simulations were provided to convey interface between the landscape / bike trail and vehicular travel lane. The \$1M (landscape scope) Project is currently under construction with completion in late 2020.

#### Woodcrest Park *City of Fullerton, Ca*

This 5 ac. park redevelopment project, was master-planned by BGB to shut down a frontage road transforming a portion of the road to a street scene skate park. Other improvements included improved parking, a new restroom building, play structures, basketball court, gazebos lighting and picnic facilities in addition to the renovation of the existing baseball field. Project was completed in 2019 with a budget of \$1.8m.

#### Barton Park *City of Anaheim, Ca*

This 5 ac. Park is a joint-use project with the adjacent elementary school to provide an all-weather trail to facilitate the school's "century walk program". Existing irrigation was modified in a temporary condition to maintain the central soccer turf during the 6-month construction schedule enabling a shorter delivery to the community. A new irrigation system was designed for efficiency addressing the 25% turf reduction desired by the City. A new restroom building, re-located softball field and Disney donated "Kaboom" play structures were included in the design program. Park was completed in 2019 with a budget of \$1.4m.

#### Ole Hanson Beach Club *City of San Clemente, Ca*

Project included landscape design for the recently renovated Ole Hanson Beach Club, originally built in 1928 by the founder of San Clemente. As a historic focal point for the town, the Beach Club is used for recreation activities as well as weddings and special events. The plant material selections included succulents and other drought-tolerant materials used in the 1930's, and the new irrigation system was designed to incorporate recycled water. Landscape was completed in 2017, under budget at \$300k. This project marks the centerpiece of the 2.4-mile Coastal Trail and El Camino Bike Trail projects completed earlier by BGB.

### Education

California State Polytechnic University, Pomona  
Bachelor of Science, Landscape Architecture

### Licenses

Registered Landscape Architect, California #2214  
Registered Landscape Architect, Nevada #488

### Professional Memberships

American Society of Landscape Architects, Full Member  
Irrigation Association, Full Member

### Special Training

Certified Landscape Irrigation Auditor #81966



# BGB | DESIGN GROUP

Landscape Architecture | Planning | Urban Design

**Name:** Nicole Nguyen, ASLA

**Position:** Associate Project Manager

**Education:** B.S. Landscape Architecture, Cal Poly Pomona, 2016



Nicole Nguyen received her A.A. degree from Irvine Valley College in 2012 in Social and Behavioral Sciences. She transferred to Cal Poly Pomona and received her B.S. degree in Landscape Architecture from Cal Poly Pomona in 2016. As a graduating student, Nicole received the prestigious Howard O. Boltz Memorial Award, the 2016 ASLA Student Honor Award, and the 2015 Don Brinkerhoff Scholarship. She was a Student Teaching Assistant in studio classes for design professors.

In addition, Nicole was president of the student ASLA Chapter, and after graduation was elected to the Executive Board of the Southern California Chapter of ASLA. She currently serves on the Cal Poly Pomona Professional Advisory Board. Nicole is a skilled photographer, is highly proficient in all aspects of landscape architecture, and is a valuable member of our BGB staff.

**Representative Projects:**

**Julianna Park, City of Anaheim**

**Oak Canyon Nature Center, City of Anaheim**

**Pacific Drive Park, City of Fullerton**

**Gardenhill Park, City of Fullerton**

**Pacific Coast Highway Median Improvements, City of Newport Beach**

**Yorba Linda Town Center, City of Yorba Linda**

**Crystal Cove Historic District, State of California**

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**Name:** Celerino Villa

**Position:** Project Manager / Job Captain

**Education:** B.S. Landscape Architecture, Cal Poly Pomona, 2011



Celerino Villa received a degree in Liberal Studies from Fullerton College in 2008 prior to transferring to Cal Poly Pomona. During his education, Cele worked with landscape construction crews in the field. He learned techniques and practices that proved valuable in producing landscape plans.

He received his B.S. degree in Landscape Architecture from Cal Poly Pomona in 2011. Following graduation, he was a Landscape Construction Estimator for a large contracting company. Cele is highly skilled in all forms of CAD work, including conceptual plans through construction documents. He is fluent in English and Spanish and has been a key member of our firm since 2013.

**Representative Projects:**

**Pearl Park, City of Fullerton**

**Woodcrest Park, City of Fullerton**

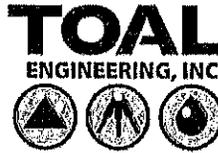
**Rolling Hills Park, City of Fullerton**

**Barton Park, City of Anaheim**

**Pacific Coast Highway / N. El Camino Real Class I Bicycle Trail, City of San Clemente**

**El Camino Real Bike Trail, City of San Clemente**

**Jamboree Road Median Turf Replacement, City of Newport Beach**



139 Avenida Navarro  
San Clemente, CA 92672  
949.492-8586  
www.toalengineering.com

## **CORPORATE PROFILE**

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Toal Engineering, Inc. is a Civil Engineering and Land Surveying firm engaged in providing services for construction of site improvements for land development projects, from initial concept through completion of construction. Since its founding in 1971 in the City of San Clemente, Toal Engineering has provided such services for a wide array of clients throughout Southern California, from the Central Coast to San Diego, from individual single-family residences to multi-lot residential, commercial, institutional, and public works projects. We provide services in three broad categories related to land development: Civil Engineering, Land Surveying, and Stormwater Quality.

California Department of Industrial Relations No. 1000046429.

### **CIVIL ENGINEERING**

Toal Engineering is experienced in the provision of civil engineering services for land development projects in the following broad categories: Custom Residential, Tract Residential, Commercial, Educational, Institutional, and Public Works. A partial list of our services:

- Grading and Drainage
- Erosion control
- Hydrology
- Retaining wall design
- Street improvements, signage, and striping
- Sewer improvements
- Water improvements
- Storm drain improvements
- Underground fire service

### **LAND SURVEYING**

Toal Engineering is experienced in all aspects of topographic, boundary, and construction phase surveying related to land development, and can provide a wide range of surveying services including:

- Field-shot Topography
- Aerial Topography
- Construction Staking and Certifications
- ALTA Surveys
- Boundary Surveys
- Map Preparation
- Condominium Plans
- Expert Witness Services
- Record of Survey
- Slope Analysis
- GPS Control Surveys
- Lot Mergers / Lot Line Adjustments

### **STORMWATER QUALITY**

We provide the following services to help our clients ensure compliance with state and local storm water quality ordinances:

- Low Impact Development Plans
- Water Quality Management Plans
- Storm Water Pollution Prevention Plan preparation and implementation



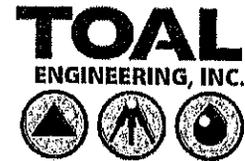
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San Clemente, CA 92672  
949.492-8586  
www.toalengineering.com

## RELATED PROJECT EXPERIENCE

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- City of Anaheim On Call Professional Services– Little Pine Park – Lot Line Adjustments (2021)
- City of Anaheim On Call Professional Services – Downtown Community Center – Surveying Services (2021)
- City of Anaheim Park Renovation Projects – Barton Park, Julianna Park (2018-2021)
- Euclid Library Renovation – City of Anaheim (2020)
- City of Fullerton Park Renovation Projects - Rolling Hills Park, Pearl Park, Woodcrest Park, Pacific Drive Park (2016-2021)
- Mas Fukai Park Master Plan – City of Gardena (2020)

Toal Engineering is currently under contract with the City of Anaheim for On Call Professional Services (Civil Engineering, Stormwater Services, and Land Surveying)



## **ADAM L. TOAL, P.E.**

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### **POSITION**

President and Project Manager / Civil Engineer

### **YEARS WITH FIRM**

22

### **EDUCATION**

M.B.A., May 2010, Chapman University

M.S. in Environmental Engineering, May 1996, University of California at Berkeley

B. S. in Civil Engineering, May 1995, Loyola Marymount University

### **PROFESSIONAL REGISTRATIONS**

Registered Professional Engineer, Civil Engineering, California, No. 59275

### **RELEVANT PROJECT EXPERIENCE**

As President, overall managerial control of all business activities. As Project Manager / Civil Engineer, supervise and engage in the design of engineered improvements and the preparation of engineering plans and reports.

- City of Anaheim Park Renovation Projects - Barton Park, Julianna Park
- Euclid Library Renovation - City of Anaheim
- City of Fullerton Park Renovation Projects - Rolling Hills Park, Pearl Park, Woodcrest Park, Pacific Drive Park
- Mas Fukai Park Master Plan - City of Gardena
- Fort Irwin "G" Avenue Improvements, Fort Irwin, California
- Project Manager for 300+ residential and commercial projects of varying sizes and types requiring civil engineering, surveying, and storm water treatment services

### **PREVIOUS WORK EXPERIENCE**

Parsons Engineering Science, Inc., Pasadena, California

Civil / Environmental Engineer (1996 - 1999)

- Whittier Narrows Water Reclamation Plan Chemical Systems Modification Project (LACSD)
- Shell-Toll Development Reservoir and Booster Pump Station (Yorba Linda Water District)
- Marina Del Rey 24-inch Feedline (LA County DPW)
- Anaheim Resort Area Wall No. 55 (City of Anaheim)



## **LEO MAYA, PE, LEED AP**

### **Engineer of Record**

With over 20 years of design and project management experience, Leo Maya has worked on a wide array of projects including large commercial and industrial buildings, health care and Institutional facilities, data centers, sports field lighting, street and area lighting, golf course electrical systems, custom residences, and various dry utility designs. Mr. Maya joined the Design West team in 2005 and in 2009 took over the responsibility of running the electrical production. Apart from standard electrical and lighting design, he oversees the electrical BIM design team; solar photovoltaic design; specialized analyses including arc flash, coordination studies and load flow evaluation; all low voltage applications including fire alarm, security, data and signal, and A/V systems. His continuing education in the field of the electrical engineering and lighting design, along with his membership and board position for the IESNA (Illuminating Engineers Society of North America) keep him up to date with the latest lighting and energy efficient technologies. Beyond his technical prowess, it is Mr. Maya's dedication to maintaining long-term client relationships and his diverse background that have made him such a valuable asset to the Design West team. This dedication to customer service is evident in the work ethic and the character displayed by his whole team.

#### **REGISTRATION**

California P.E. #E19480  
LEED AP BD+C

#### **EDUCATION**

Bachelor of Science in  
Electrical Engineering  
California Polytechnic  
State University,  
Pomona

#### **EXPERIENCE**

15 Years at Design West  
25 Years in Industry

#### **RELEVANT EXPERIENCE INCLUDES:**

- City of Stanton Central Park
- Stanton Park Shelter Lights
- Ponderosa Park and Community Center
- City of San Clemente Vista Hermosa Park
- City of Fountain Valley Mile Square Park



## **ROY MORALES**

### **Senior Electrical Project Manager**

Roy has relationships with many of the local agencies after providing years of reliable design and service to this clientele. His experience includes design for buildings, sports fields, street lighting, and solar photovoltaic systems. Roy is a Senior Project Manager as well as the Electrical Department Head for the San Bernardino office. Roy joined the Design West team after working several years with Dream Engineering when the company was bought out in 2009. Roy brought an expertise in electrical applications, including parks and street projects. His greatest sector of work is with municipal clients. Beyond exterior lighting projects, he also great experience with essential service facilities, community buildings, government operations facilities, aviation buildings, and Federal government projects. His wide-ranging experience includes design for communication towers, generator systems, utility coordination, electrical distribution, communications distribution (copper & fiber optic), commercial buildings, and industrial buildings. Roy is a proven team leader, both in how he runs his teams internally, and how he runs his project teams when working with clients.

#### **EDUCATION**

Associate of Science,  
California State  
University, San  
Bernardino

#### **EXPERIENCE**

12 Years at Design West  
22 Years in Industry

#### **RELEVANT EXPERIENCE INCLUDES:**

- City of Stanton Central Park
- Stanton Park Shelter Lights City of Riverside Carlson Park
- Ponderosa Park and Community Center
- City of San Clemente Vista Hermosa Park
- City of Fountain Valley Mile Square Park
- City of Coachella Bagdouma Park



## Evan Price, CEG

Associate Geologist



### *Education:*

B.S., Geological Sciences, University of California, Santa Barbara, 2005

### *Professional Qualifications:*

Certified Engineering Geologist | 2589 (CA)

Registered Professional Geologist | 8861 (CA)

CFR 1910.120 OSHA 40-Hour Training

*Years of Experience:* 16 Years



Mr. Evan Price, CEG, is a licensed Engineering Geologist with more than 16 years of experience in a wide variety of engineering geology projects ranging from municipal developments and

infrastructure, multi-tract residential developments, commercial and industrial facilities, water infrastructure and resources, and transportation. This range of projects includes experience in grading, landslide buttresses, subsurface drainage systems, production groundwater well installation, ground

modification techniques, shoring systems, tie-back anchors, soil nail walls, drilled foundations, driven pile foundations, stone column soil improvements, micropile foundations, tunneling techniques, slope repair, compaction testing, forensic studies, resistivity testing, percolation testing, and as-graded geologic evaluation/mapping.

### *Selected Project Experience*

- ***Cochran Adams Relief Sewer Project, City of Los Angeles Department of Public Works, Los Angeles, CA*** – Project Manager and Geologist involved in the geotechnical exploration for the installation of a new sewer force main to be constructed utilizing micro-tunneling techniques. A subsurface exploration was performed that consisted of the drilling and logging of 2 bucket auger borings along the alignment to investigate subsurface conditions and to assess the presence of any oversized materials that may affect the proposed construction. A draft and final data report was prepared to develop recommendations for the design and construction of the project.
- ***Asilomar Boulevard Landslide Mitigation Project, City of Los Angeles Department of Public Works, Pacific Palisades, CA.*** - Field Geologist for the geotechnical evaluation and stabilization of the Asilomar Boulevard Landslide. The project consisted of geologic mapping of the failure, downhole logging, drilling of hollow-stem borings, and the installation and monitoring of instrumentation array, including survey monuments, slope inclinometers along perimeter and within the Landslide to monitor landslide movements, and monitoring wells to monitor subsurface water. The project involved daily to weekly monitoring of an array of inclinometers and monitoring wells during the design phase to protect in-place the City of Los Angeles fire access road and adjacent residential developments. Project involved daily analysis and weekly reporting of current and changing conditions to city officials.
- ***Manhattan Well Field Deep Production Well Installation, LADWP, Los Angeles, CA*** – Project Geologist involved in the design and installation of four new groundwater supply wells and a nested monitoring well up to 1,640 deep and two additional pilot boreholes within the Central Groundwater Basin for the City of Los Angeles Department of Water and Power's (LADWP) Manhattan Well Field. Field activities consisted of mud rotary drilling of the pilot boreholes, the reaming of the production and monitoring wells, and the installation and development of the production or monitoring wells including geologic observations and documentations, logging and sampling of soils, and the collection of groundwater samples from Simulprobes and zone tests for analytical testing.

- ***Parkway Basin Water Quality Improvement Project, County of Los Angeles Public Works Department, Los Angeles, CA*** – Project Manager and geologist for a construction infiltration study of newly constructed Low Impact Development (LID) features over an 18-month period. The LID features were flooded in a way to simulate real-life a storm event and actual as-built percolation rates were recorded. To date, no other “proof of concept testing” of these LID features has been performed. As such, the study drew great interest and oversight from other departments within the County and other regulatory agencies. The results of our study provided significant input into the design and maintenance of future LID features. The project was completed on time under the lump sum budget.
- ***AES Huntington Beach Energy Project, Kiewit Power Constructors, Huntington Beach, CA*** - Project Manager and Geologist for a baseline geotechnical evaluation for new natural gas-fired, combined cycle, air cooled electrical generators and associated improvements that would be constructed within the existing plant property. The project involved providing geotechnical consulting services which including mud rotary borings up to 120 feet deep and Cone Penetrometer Tests to evaluate subsurface conditions at the site to develop recommendations for design and construction of the generation station and to help mitigate geologic and seismic hazards which included high groundwater and near surface soft compressible clays over liquefiable sands prone to lateral spread.
- ***Five Coves and Lincoln Basin Bypass Pipeline Project - Orange County Water District, Anaheim, CA*** – Field Geologist for the Geotechnical Investigation to support the design and construction of a new conveyance and distribution system along the westerly bank of Upper and Lower Five Coves Basins and Lincoln Basin. The system included approximately 4,300 linear feet of 66-inch diameter pipeline, three turnout structures, and two drain structures. The investigation included drilling and logging of ten borings and the logging of 24 test pits. The project involved providing geotechnical consulting services to evaluate subsurface conditions at the site to develop recommendations for the design and construction of the proposed project.
- ***El Rodeo K-8 School Fault Hazard Studies, BHUSD, Beverly Hills, CA*** - Project Geologist for several fault studies at the El Rodeo K-8 School campus. Our explorations consisted of an extensive program of continuous core borings on the campus and within Wilshire Boulevard. Drilling operations were conducted at night (9PM to 5AM) to limit disruption to school activities and congested traffic along heavily travelled Wilshire Boulevard and required extensive traffic control and permitting. Fault trench excavations were explored along structural fault projections from offsite faults inferred by academia and private consultants. The report was reviewed and commented on by the California geological Survey (CGS) meeting with final approval by CGS in February 2016.

**Siamak Jafroudi, Ph.D., GE**  
President/Principal-in-Charge  
Sr. Principal Engineer



*Education:*

Ph.D., Geotechnical Engineering, UC Davis, 1983

M.S., Civil Engineering, U.C. Davis, 1978

M.S., Civil Engineering, U.T., 1973

*Professional Qualifications:*

Registered Geotechnical Engineer | 2024 (CA)

Professional Civil Engineer | 36641 (CA)

Diplomate of the Academy of Geo-Professionals

CFR 1910.120 OSHA 40-Hour Training

*Years of Experience: 47 Years*



Dr. Jafroudi started his professional practice in the field of geotechnical engineering in 1973. His area of specialization is material characterization as it relates to slope stability, liquefaction analysis, pavement

design, earthquake engineering, and design of earth retaining structures. Siamak's experience includes design and supervision of a multitude of field exploration programs and soil mechanics laboratory tests. His broad range of experience has benefitted countless projects for which he has served as a Senior Principal Engineer. Key clients have included school

districts, colleges and universities, public and private transportation agencies, commercial residential developers, as well as other private sector clients.

In the rapidly evolving field of geotechnical engineering, it is crucial that the practicing professional remain up-to-date with respect to current industry standards and the local regulatory environment. For this reason, Siamak's personal philosophy is centered on continued professional education and active participation in peer organizations.

*Selected Project Experience*

- **First Street Viaduct Widening over the Los Angeles River, City of Los Angeles, CA.** Provided geotechnical services for improvements to an existing historic bridge over the Los Angeles River. The bridge, originally constructed in the 1920's, spans the Los Angeles river channel, as well as multiple railroad lines (SCARRA, AMTRAK, METRO, UP, BNSF). Designed pile foundations that could work with the variability's of the local geology by adjusting design to each specific location as construction progressed. Prepared and implemented an extensive pile load testing program.
- **Geotechnical Investigation and Construction Monitoring, Allen-McColloch Parallel Pipeline, Yorba Linda, CA.** Siamak provided oversight and acted as lead technical reviewer review during preparation of a finite difference analysis for the main Metropolitan Water District pipeline and a connector line where it exits the foothills of the Santa Ana Mountains in the city of Yorba Linda.
- **Crown Valley Parkway Widening, City of Mission Viejo, CA.** Siamak was the lead engineer in multiple phases of Crown Valley Parkway widening from Interstate 5 to Ladera Ranch. His responsibilities included evaluating soil conditions along the freeway ramp alignment, monitoring of the adjacent commercial properties, retaining wall and graded slope design, construction monitoring during installation of deep utilities, and evaluation of structural pavement sections in consideration of future traffic volumes.



# Statement of Qualifications

**Elias Transportation Consulting (Elias)** is a multidiscipline engineering, sole proprietor business, specializing in municipal and transportation engineering throughout the southern California region. Through the utilization of computer-aided equipment, Elias is able to provide its clients with quality, cost effective professional services in a timely manner. Elias' success can be attributed to the firm's commitment to provide clients with personalized, quality service.

Elias' range of services offered can be divided into 5 primary areas of expertise: traffic engineering, day-to-day traffic signal operations, transportation planning, communication and operational control of traffic signal systems, and actual onsite City Traffic Engineer staffing. It should be noted that Elias' experience further includes design of street lighting, extensive work with Geographic Information System (GIS) mapping, and curb ramp design.

Prior to establishing, Mr. Elias Garcia provided professional engineering consulting services for multiple Cities throughout Southern California as part of Albert Grover & Associates, Inc., as an independent contractor, and as Senior Traffic Engineer for the City of Long Beach. His expertise includes design of construction plans for traffic signals, roadway striping, signal communications, traffic control, bicycle and pedestrian facilities, signal timing, and signal coordination. Over the years, he has developed critical relationships with a multitude of City personnel, field technicians, construction contractors, and agencies like Caltrans, Orange County Transportation Authority (OCTA), Los Angeles County Metropolitan Transportation Authority (LA MTA) and Southern California Edison. Elias' experience further includes providing expert witness services for both public and private sector clients.

Projects managed by Elias include traffic signal upgrading, traffic signal interconnect design, traffic signing and striping design, roadway improvements, bicycle and pedestrian improvements, roundabout analyses and designs, traffic impact studies/analyses/reviews, and streetlighting design.

## Relevant Experience

**KECK Medical Center of USC, Parking Structure Traffic Analysis, Newport Beach** – Elias' has been involved with private development projects for KECK Medical Center of UCS to conduct parking demand analyses, vehicle access and circulation planning, and trip generation analysis. Elias was a subcontractor to ConAm Building Co. for this recently completed project in the City of Newport Beach.

**Yorba Linda Town Center Rehabilitation Project, Yorba Linda** – As part of a multi-discipline effort to improve the City of Yorba Linda Town Center, Elias was responsible for design efforts that included Traffic Signals, Signing & Striping, and Street Lighting. Efforts included preparation of plans, specifications, and cost estimates while working closely with landscape architects, civil engineers, utility agencies, and City personnel to achieve the desired applications.

**Bicycle Improvement Project, Fullerton** – Preparation of full design plans, specifications, and cost estimation for bicycle facilities on seven different street segments (over 5 miles of roadway throughout the City of Fullerton). This project was a part of the City's Capital Improvement Programs and Elias was further involved with construction bid selection and request for information responses.

**Citywide Traffic Analysis and Speed Survey, City of Torrance** – Elias' involvement entailed providing upgrade recommendations for 123 signalized intersections. Recommendations included upgrades for signal controllers, cabinets, communications, detections, pedestrian countdown modules, ADA accessibility, and vehicle signal indications. Elias further developed a Citywide Traffic Signal Communications map for this assignment.

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TRANSPORTATION CONSULTING ENGINEERS

Southern California Region

Phone: (714) 809-9689      E-Mail: [elias@eliastransportation.com](mailto:elias@eliastransportation.com)



**Traffic Calming Study, North Drive, Norco/Caltrans**—Mr. Garcia was directly involved with evaluating traffic operations and developing various traffic calming concepts to address heavy vehicle by-pass traffic along various local 2-way streets in the City of Norco. He collected traffic volume and speed data for peak periods, midday, and evening hours, and determined the origin/destination of the traffic by field observation. Mr. Garcia developed a list of potential alternatives and recommendations that included a list of “pros” and “cons” for the proposed traffic calming strategies.

**Street Lighting Improvement Projects**—Mr. Garcia has provided plans for the design of downtown street lighting for the Cities of Fullerton, Yorba Linda, Torrance, Diamond Bar, and Cerritos.

**Citywide Traffic Engineering, Speed Surveys, Speed Zone Maps and Traffic Volume Maps**—Mr. Garcia has provided these services for over 20+ Cities throughout the Southern California region, including Chino, Cerritos, Garden Grove, Fullerton, Fountain Valley, Lancaster, Santa Ana, and Gardena.

**On-Call As-Needed Traffic Engineering Services**—As a traffic engineering consultant, Mr. Garcia has provided a variety of traffic engineering services for the Cities of Fullerton, Riverside, La Habra, Long Beach, Diamond Bar, and Torrance.

#### Professional References

**Edward Lara, P.E.**  
Principal Engineer  
City of Riverside  
Email [elara@riversideca.gov](mailto:elara@riversideca.gov)  
Phone (951) 531-5654

**Arthur Guy**  
President  
BGB Design Group  
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Phone (949) 246-0460

**David Grantham, P.E.**  
Civil Engineer  
City of Fullerton  
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**Michael Plotnik, T.E.**  
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Phone (714) 928-7409

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#### TRANSPORTATION CONSULTING ENGINEERS

Southern California Region

Phone: (714) 809-9689

E-Mail: [elias@eliasrtransportation.com](mailto:elias@eliasrtransportation.com)

# MUROW DEVELOPMENT CONSULTANTS

*Providing Land Development Solutions with a High Level of Experience and Expertise*



Murow Development Consultants (Murow DC) provides the real estate industry with a full suite of land development services for every phase of a project including; Pre-Development, During Development, and Post-Development. The company was founded in 2012 by Steven M. Murow, and is headquartered in Irvine, California. Our team is made up of 60+ professionals with varied backgrounds, significant experience, and a team approach to solving the challenges that inherently arise throughout any project. Murow Development Consultants is actively involved in over 400 projects throughout California.

Murow Development Consultants takes pride in providing the most talented and experienced professionals in the industry, while staying on top of the latest land development practices and methodologies. Our Leadership Team represents an average of 30+ years of experience in real estate development, including former general engineering contractors.

Our experience includes land acquisition / entitlement of over \$1B in transaction volume, the development of master planned and mixed-use developments, the completion of major infrastructure projects including dams, bridges, highways, earthwork, and wastewater/potable water treatment facilities. Our team members are highly skilled and ensure both the budget and schedule remain on track while maintaining a superior service throughout the entire process. We are goal-oriented and problem solvers, which allows our clients to procure the benefits of cost savings and avoidance of delays and complications.

## MUROW DC OFFERS A VARIETY OF SERVICES

### PRE-DEVELOPMENT

- **Budgets & Cost Estimates**
  - Grading Analysis
  - Fee Analysis
  - DRE Budget Services
- **Consulting Services**
  - Due Diligence
  - Land Residual Analysis
  - Entitlement
- **Dry Utilities Design & Coordination**

### DURING-DEVELOPMENT

- **Bid Administration**
- **Construction Management**
- **Project Management**
  - Labor Compliance
  - Aerial Documentation
  - Site Assessments
- **Common Area Maintenance Manuals**
- **Declarant Board Service**

### POST-DEVELOPMENT

- **Credits & Reimbursements**
- **Bond Exoneration**
- **Expert Witness & Litigation Support**
- **HOA/Community Association Services**

# CONSTRUCTION MANAGEMENT

*During Development*



Murow Development Consultants Construction Management Services enhance the management and administrative practices of any construction project. Our Construction Management Specialists are goal oriented, problem solvers. This allows our clients to procure the benefits of cost savings and avoidance of delays and complications. Our core group of Senior Construction Managers average nearly forty years in the industry.

Having a single point of contact, with their eyes and ears on the job, to manage your land development or infrastructure construction project is priceless. This is one of the best ways to ensure that your job is completed on time and within budget. Without a team of trained professionals that can be held accountable, your project can run into costly delays, site hazards, over-spending and needless liability. Our team of construction management consultants are highly experienced in mass grading and erosion control projects, sewer, storm drain, and water system installations, dry utilities, street improvement, signal improvements, landscaping, and park construction.

## **OUR SERVICES INCLUDE:**

- Coordinate and manage all field activities
- Review and adhere to plans and specifications
- Scheduling of Pre-Construction, During Construction, Post-Construction activities
- Engage with Contractors and agencies
- Enforce contract compliance
- Agency inspection coordination and testing
- Daily Report Documentation
- Erosion control & SWPPP Compliance
- Project closeout documentation, punch list, and bond exoneration
- Work with agency and contractor(s) to finalize and complete the punch list and turnover to the agency for maintenance
- Mechanic liens and Impairment analysis

Murow Development Consultants are "contractor based," where our team has either owned, operated and/or provided "hands-on" services to contracting firms. This foundation allows our group to not only think like a contractor but also maneuver through the various "tricks of the trade" of one. We have the leadership and credentialed resources from its parent company DIRTONU, Inc. - an industry leader in land development litigation support. We minimize our clients' liability exposure by taking a proactive approach and devoting our focus on key and sensitive areas of the project from inception to final acceptance.



# JARRED GORMLY

SR. CONSTRUCTION MANGER WITH  
EXPERTISE IN PARKS



Mr. Gormly's construction experience dates back to 2005 where he started as a laborer and was able to learn the trade as an electrician, working on multi-unit conversions and office upgrades in warehouses. In 2011, Mr. Gormly began working as a basic laborer for a disaster management contracting firm. It wasn't long from his initial start date before he moved up to Foreman. Mr. Gormly's ability to think fast, coupled with his experience and his strong work ethic allowed him to excel at this position. As a Foreman of multiple jobs, he completed daily reports, hired employees, processed payroll, ordered materials, attended meetings with city officials, and met the demands and requirements of the multiple jurisdictions (i.e. inspections, planning, board permits, and city codes).

In 2014, Mr. Gormly joined Murow Development Consultants as a field assistant. Through his thirst for learning and ability to adapt to all situations, he was promoted to Senior Construction Manager. With expertise in parks, Mr. Gormly has acted as the senior construction manager overseeing many notable projects like the University Park master-planned community in Palm Desert which includes 17 acres of parks. His ability and know-how to manage projects ensure the project schedule stays on track while keeping within the budget.

## YEARS OF EXPERIENCE: 15+

### CREDENTIALS | CERTIFICATIONS | LICENSES

Saddleback College | Associates Degree (2008)  
San Francisco State University | Hstory (2008-2010)  
First Aide/CPR/AED (2015 - Present)

### NOTEWORTHY PROJECTS

KB Homes Paseo Del Mar | Irvine, CA (\$90,000,000)  
KB Homes Euclid Place | Anaheim, CA (\$5,000,000)  
City Square Multifamily Townhomes | Irvine, CA  
(\$35,000,000)  
Menifee Town Center Loop Road Improvements Project |  
Menifee, CA (\$3,000,000)  
Menifee Town Center Great Oak Improvement Project |  
Menifee, CA (\$2,500,000)  
Menifee Town Center Central Park Project | Menifee, CA  
(\$2,500,000)  
C. David Molina Park | Long Beach, CA (\$4,500,000)  
University Park | Palm Desert, CA (two parks on-site  
totaling \$1,500,000)

jgormly@murowdc.com | 949.398.6742

Murow Development Consultants | 1151 Duryea Avenue Irvine, CA 92614 | www.murowdc.com

# PROJECT SUMMARY



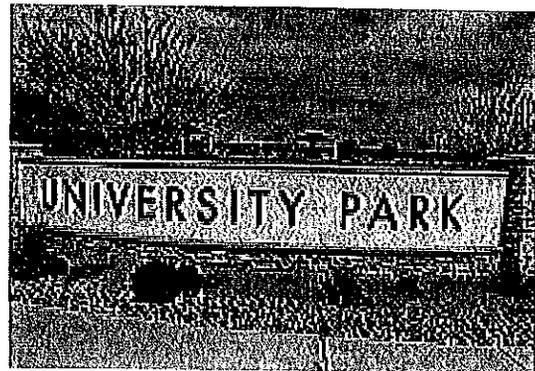
**University Park | Location: Palm Desert, CA | Client: Mission Valley Homes / BlackRock**

## PROJECT DESCRIPTION:

Murow Development Consultants (Murow DC) provided pre-construction coordination, cost estimation and General Contracting services specific to the University Park master-planned community. The 174-acre development in Palm Desert, CA is slated for 1,069 residential units which will include 623 single family homes, 110 townhomes and 336 apartments, 17 acres of parks and five miles of looping walking trails. Murow DC's initial involvement is specific to Phase I which is comprised of 50 acres and 236 single-family detached homes that will be delivered to the merchant builder by year-end 2021. In collaboration with our client, Murow DC was instrumental in managing the day-to-day construction all while maintaining the budget and project schedule and delivering the project site on time to the merchant builder.

## Components of the Project:

- Grading of approximately 270,000 cubic yards of mass excavation and remedial grading
- Wet and Dry Utility Installation consisting of:
  - Approximately 10,000 Linear Feet of 8" Sewer Piping
  - Approximately 800 Linear Feet of 18" – 36" HDPE Storm Drain
  - Approximately 10,000 Linear Feet of 8" and 12" Water Piping
  - Approximately 10,200 Linear Feet of Dry Utility Joint Trench
- Street Improvements: Approximately 300,000 square feet of new asphalt pavement and 16,000 linear feet of new curb and gutter
- Landscaping: Two onsite parks totaling approximately \$1.5M and an additional \$1M for parkway landscaping and trees
- Walls: Approximately 30,000 square feet of retaining walls and an additional 3,900 linear feet of six-foot-high block wall
- Collaboration with City and onsite building contractor.



**Project Start:** January 2021

**Project End:** January 2022

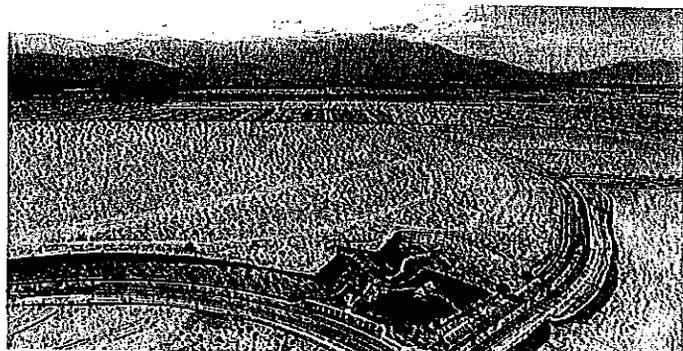
**Project Value:** \$14 Million

**Client:** Mission Valley Homes

**Contact:** Ravi Nandwana

**Phone:** (925) 683-9321

**Email:** ravi@missionvalleyhomes.com



## PROJECT UNDERSTANDING

The project site at the terminus of Orangewood Avenue is bounded on two sides with single family homes and a rear CMU block wall separating the railroad R.O.W. Although we see this pocket park as a benefit to the community and enhancing the aesthetics of the existing barricade condition; the project may receive criticism from the immediate neighbors. It will be important to provide positive light on the project benefits with strong public outreach. Dealing with safety issues, such as homeless encampment may be addressed with neighborhood watch and adequate sensoried lighting helping to inhibit any potential ruffraff. Due to the proximity to vehicle traffic, consideration of aesthetic fencing (i.e. laser cut panels) and reinforced bollards would give parents added "peace of mind". This could also provide some additional control during after-dark closure and police patrol.

Although the project is <10,000 sf. and the existing condition is predominantly asphalt, therefore achieving non-priority WQMP or exempt status for should not be a problem. However, the geotechnical work would establish infiltration rates for parameters to ensure proper BMP's to satisfy stormwater retention. We would encourage pervious concrete pavers and pervious resilient

surfacing under the play equipment. BGB would offer the city several types of resilient surfacing to consider based on cost, longevity / maintainability, and aesthetics. Additionally, irrigation and planting design would be appropriate and robust due to the harsh environment of "children-at-play". Unless the city has a preferred park standard for luminaires, we will offer fixture design that has proven well on other similar parks which offer LED style contemporary design aesthetics, with great cut-off to prevent overspill onto adjacent residential properties. Design West Engineering will handle the SCE utility coordination / documentation to provide power for lighting and irrigation controller. BGB has reached



Woodcrest Park - Fullerton, CA

out to Great Western Recreation to ensure they are familiar with the project design selections so they will ultimately meet fall zone requirements, equal access and surfacing requirements. The design must meet ADA standards and Title II, so that clearances, running and cross slopes, and changes in elevation standards are met. An independent agent shall conduct a "head drop test per ASTM F1292-99/04 to ensure compliance to fall and installation standards.

Although the RFP requests the plans be drawn at 1"=20' scale, our recommendation and preference is to prepare the drawings at 1"=10' which provides better accuracy and conveys more information which translates to tighter bidding and less opportunity for potential change orders. Technical specifications will be prepared using standard three-part CSI format. The front-end boilerplate will be provided by city staff. The larger scaled drawing will also provide better communication to the community with a well rendered site plan and exhibits for all the equipment and furnishing cut-sheets during the design development stage.

Shade becomes an important element during the warm summer months with longer days with kids out of school. The current "concept" is showing triangular sail shades over each of the equipment elements. Our experience is that while these triangles are aesthetically pleasing, they don't offer much shade protection at the high cost of each sail. We would work with the preferred sail shade manufacturer to develop the most appropriate design that maximizes shade while still providing the aesthetics and possibly utilizing less posts which have a high unit cost. Our recommendation with sail shades, though not required, is to specify as "design / build" with the manufacturer / installer providing the structural calculations and turn-key installation.

An accessible parking stall is advised for this new park amenity. The logical location is in front of the park as to not impact neighboring homes. However, aesthetically this is not an optimum location. With the Active Transportation Project Conceptual plan provided by the city, our thought is to potentially offer temporary accessible parking in front of the parkette and then propose to replace the accessible parking with permanent stall(s) as part of the future ATP project on Orangewood near the Rosalia intersection.

### **SCOPE OF CONSULTANT SERVICES**

- A. **Project Coordination**: BGB President Art Guy will manage and coordinate the project, with direct communication with Design Team consultants for their respective scope of responsibility.
- B. **Records Research / Field Review**: This work will primarily be coordinated by Toal Engineering and KDM Meridian. Additional field review shall be conducted by other members of the Design Team pertinent for their scope.
- C. **Survey**: KDM Meridian will perform research at the Orange County Surveyor's office for record maps to depict the property limits of the subject parcel. Centerline monuments and existing property corners will be searched for and surveyed to allow the depiction of record boundaries.

Local control points will be set in the established horizontal and vertical datums (i.e., NAD83 and NAVD88) to allow control of proposed improvements to be controlled by coordinates or station-offset method.

A topographic survey will be made of the subject parcel, bounded by the curb and gutter on each end and the buildings or fences along the length. Topography, culture, trees over 3" in diameter, hardscape, and visible utilities will be collected. Existing hardscape grades will be collected at no less than a 25-foot interval and unpaved surfaces at no less than a 50-foot interval.

The AutoCAD base map will include depiction of all surveyed items at a 1" = 20' scale with 1-foot interval contours. The record centerlines of adjacent streets and the subject properties record boundaries will be depicted.

Field survey will be accomplished over a 2-3 day period and complete base mapping will be available within 1-2 weeks following field survey completion.

The implementation of a park, in what appears to be street right-of-way, elevates our concern of the neighboring parcel owners questioning the boundaries established. If the existing sidewalks

are constructed to the street right-of-way extents, it is plausible that any new construction (e.g. walls) would be face to face with existing walls at the back of walk or additional property interest would need to be acquired to modify and improve the existing walls that currently have gates into the proposed park area. Very clear and precise location of the boundary can be important to settling how the adjoining walls and improvements are dealt with as an interface. In addition, elevated grades in the parcel neighboring to the south may require grading improvements (e.g. retaining wall) and or slope considerations outside of the existing street right-of-way.

A review of the existing record maps shows the survey will extend significantly beyond the topographic limits of survey to properly establish the centerlines for offset rights-of-way and the tract boundary. This extensive work will assure a reliable base map and property limits establishment that stands the scrutiny of neighboring owners and consultants they might employ to review proposed conditions they deem adverse.

D. **Preliminary Design**: After the site survey is complete, BGB will develop the "non-engineered" concept plan into a workable preliminary site plan, vetting the constraints that will arise with utilities, property line wall interface, street crown etc., while incorporating / addressing stormwater BMP's. Initial design will be reviewed with city staff to determine if the full project intent has been attained and discuss community outreach logistics. BGB will then develop a rendered site plan with the major project elements shown for clarity of design intent including perspective rendering of the proposed play equipment elements.

E. **Geotechnical Investigation Services**: Petra Geosciences will perform the following:

1. Collect and review readily available literature and maps pertaining to soil and geologic conditions within and adjacent to the site and review plans and project specifications made available to us at the time of our investigation. This would include site grading plans, foundation plans and other details for the proposed park development and associated improvements.
2. Coordinate with the local underground utilities locating service (Underground Service Alert) and onsite facilities maintenance personnel to obtain an underground utility clearance prior to commencement of the subsurface investigation.
3. Advance 2 to 3 hand auger borings and perform one pilot percolation test to a depth ranging from 5 to 10 feet below the ground surface at an accessible location near the proposed infiltration system in order to provide an indication of site soils infiltration characteristics. We will log and classify soil materials encountered in each boring and collect representative bulk and / or undisturbed soil samples for laboratory analysis.
4. Perform laboratory analyses on soil samples, which may include the following: in-situ and maximum dry density determination; in-situ density and optimum moisture content; Atterberg limits; expansion potential; consolidation characteristics; direct shear testing, hydrometer; grain size analysis; soluble sulfate and chloride content; general soil corrosivity (pH and minimum resistivity).
5. Perform engineering analysis of the field and laboratory data. Our analyses will include (but not be limited to) the determination of geotechnical foundation design parameters (including allowable bearing capacity).

6. Prepare a geotechnical report presenting the results of our evaluation and recommendations for the proposed development in general conformance with the 2019 California Building Code (CBC) and in accordance with applicable state and local jurisdictional requirements.
  7. Petra will assist BGB in the preparation of the CEQA checklist. This project should receive categorical exemption and BGB will assist the city in filing a Notice of Exemption.
- F. **Traffic: Parking Generation Analysis:** Elias Transportation shall provide the typical practice for conducting a parking analysis involving the use of the Parking Generation published by the Institute of Transportation Engineers (ITE). The analysis will take into account potential reduction of available on-street parking base on the Active Transportation Project conceptual plan provided by the city. A letter memorandum reporting the findings, estimated parking demand, and recommendations can then be produced.
- G. **Utility Coordination:** Toal Engineering will coordinate sewer, water, and storm drain points of connection. Toal will assist in the utility notifications with Design West Engineering who will coordinate with Southern California Edison for electrical connection.
- H. **Water Quality:** The project limit is <10,000 sf and with good design does not anticipate more than 2,500 sf of impervious pavement replacement. Therefore, standard stormwater BMP's will be explored to retain water on-site as possible. The BGB Design Team will provide the city with design(s) solutions to mitigate any constraints to ensure WQMP exempt status.
- I. **Rendering:** As part of the play equipment manufacturer scope, a 3-D rendering will be provided. However, BGB will provide an enhanced rendering reflecting the entire site in context with the neighborhood.
- J. **Meetings / Public Outreach:** BGB shall meet with city staff, residents and any ad-hoc committee established by the City Council as required to convey the design elements and address concerns during the design process.
- K. **Landscape and Irrigation Plans (30, 60, 90, 100% PS&E):** BGB Design Group will prepare 20 scale drawings that shall include all architectural feature components identified in the RFP Concept Plan. Civil, Electrical, and Structural Plans will be packaged together at appropriate stages.
1. DESIGN DEVELOPMENT (30%):
    - Site Plan with all major site features shown
    - Landscape areas defined with trees shown, including detailed plant palette and photo imagery
    - Irrigation master plan showing point of connection, mainline routing and valve / hydrozones indicated, including preferred irrigation equipment list.
    - Site sections
  2. CONSTRUCTION DOCUMENTS (60, 90, 100% PS&E)
    - Project Cover Sheet
    - General Notes / Construction Notes
    - Landscape Demolition Plans

- Landscape Construction Plans
- Irrigation Plans
- Irrigation Details / Water Conservation Calculations
- Planting Plans
- Planting Details
- Technical Specifications (CSI Format) (90 & 100%)
- Estimate of Probable Construction Costs
- Bid Proposal (90 & 100%)

L. **Civil Engineering Plans (30, 60, 90, 100% PS&E)**: Toal Engineering will provide Title Sheet / General Notes / Quantity Estimates, Horizontal and Vertical Control Plan, Grading and Drainage Plan, Site Utility Plan, and Erosion Control Plan / BMP's. Additionally, review the special provisions and assist in the preparation of standard specifications. Refer to Water Quality for additional coordination services. The anticipated scope as follows:

- Preparation of a Precise Grading and Drainage Plan.
- Preparation of an Erosion Control Plan.
- Preparation of a Horizontal Control Plan.
- Preparation of a Final Construction Cost Estimate.
- Preparation of a final Water Quality Management Plan (if required).

**Sheet List as follows:**

- C-1 Title Sheet / General Notes / Quantity Estimates
- C-2 Precise Grading and Drainage Plan
- C-3 Erosion Control Plan
- C-4 Horizontal Control Plan
- C-5 Section and Details

M. **Electrical Plans (30, 60, 90, 100% PS&E)**: Design West Engineering will prepare electrical plans for up to (4) fixtures, and irrigation controller service. Plans will include location of panels, switchgear, meters, schedules, details, photometric analysis, and notes:

1. Regularly scheduled coordination conference calls
2. Electrical specifications provided in book format
3. Licensed Professional Engineers stamp and signature
4. Completion of applicable governing agency comments (plan check comments)
5. Engineering calculations required to generate electrical design
6. Estimate of probable construction cost
7. Electrical site plan including the following:
  - Site lighting layout, circuiting, and control wiring diagram for general lighting purposes
  - Point by Point of site lighting foot candle levels
  - Schedule of lighting fixtures
  - Energy code lighting compliance forms
  - New service entrance and main meter sections design
  - Single line diagram
  - Load schedules
  - Panel schedules

- Convenience receptacle layout and circuiting
  - Voltage drop calculations
8. Utility Coordination including the following:
- Electrical utility coordination including the following:
  - Coordination of power service with serving utility
    - Completion of all paperwork and plan submittals with power company
    - Site meeting with power company
9. Deliverables as follows:
- Progress sets at the request of client - .pdf electronic files
  - For submission/re-submission to Plan Check - .pdf electronic files
10. Bidding support services:
- Provide response to RFIs to Architect
  - Provide clarifications and revisions to drawings and/or specifications when required
11. Construction administration support services:
- Provide response to RFIs to Architect
  - Review and return to the Architect, shop drawings and submittals
  - (1) Final site visit with "punch list"

N. **Structural Plans (90, 100% PS&E):** Sail shade manufacturer will provide engineering and calculations including installation at the discretion of the city of general contractor. Additional structural engineering for light standard foundations or other site features will be provided by Structics Inc.

O. **Estimating Services:** With our recent constructed projects providing a good assessment of predictable construction costs, BGB with assistance from our subcontractors will the engineer's estimate and appropriate bid proposal format as directed by the city.

P. **Construction Support:** BGB team will provide the following construction support -

- Periodic field observation at construction milestones pursuant to city or CM request to validate the contractor's interpretation of the plan and specifications.
- Submittal / shop drawing review
- Record Drawing preparation based on contractor field drawings.

Q. **Optional Construction Management / Inspections:**

Pre-Construction Phase:

- Perform value engineering and constructibility review of project plans and specifications.
- Review of engineer's estimate and/or "approved" budget for the project.
- Prepare and maintain a master project schedule based on anticipated completion of design and construction phases, integrating all reviews and approvals, if required by agencies.
- Coordinate with project architect/design consultant in responding to relevant questions during bid phase. Issue addenda(s) as necessary to address these questions or clarifications.
- Review and evaluate responsive bids received and submit recommendation to award to lowest responsible bidder.

### Construction Phase:

- Arrange and conduct Pre Construction meeting with contractor, owner, applicable public agencies, utility companies, design engineers, subcontractors, etc. as required. Prepare minutes of Pre-Construction meeting for distribution to all attendees.
- Review construction schedule, including activity sequences and duration, schedule of submittals and delivery schedule of long lead materials and equipment. Review contractor's schedule updates and revisions.
- Schedule and conduct progress meetings to discuss contract issues, procedures, job progress and problems, change orders, submittals, request for information (RFIs), deficiencies and schedules.
- Process and track RFIs, submittals, proposed change orders and revisions.
- Review and evaluate proposed change orders. Review estimates for reasonableness and cost effectiveness and render recommendations to owner.
- Maintain cost accounting records on authorized work performed under contracted unit costs and additional work performed based on actual costs of time (labor) and materials (T&M).
- Assist owner in coordinating services of other consultants (geotechnical, NPDES, deputy inspection, special laboratory testing, etc.) that may be hired or selected for the project.
- Coordinate with project architect/design consultant contractor's requests for interpretation or clarification of meaning and intent of project plans and specifications.
- Establish and implement job safety procedures in compliance with CAL-OSHA requirements. Monitor contractor's compliance with established safety program, respond to deficiencies and hazards, and investigate and report on accidents.
- Track quantities of work completed for progress payment. Develop and implement procedures for review and processing of progress payment applications. Assist owner with review and certification for payment.
- Establish procedures and monitor contractor compliance with labor compliance regulations and requirements.
- Perform quality assurance reviews on a regular basis and recommend changes, as necessary.

### Post-Construction Phase:

- Evaluate completion of work and recommend when work is ready for final inspection.
- Conduct final inspection/walk through with agency staff, maintenance/service personnel and project architect/design consultant.
- Issue preliminary and final punch list, including schedule for punch list completion. Monitor and follow through with contractor until completion of all punch list items.
- Secure and transmit required guarantees, certifications, affidavits, leases, easement deeds, operating & maintenance manuals, warranties and other documents as stipulated in contract documents.
- Review contractor's request for final payment and release of retention.
- Deliver project construction management documentation to owner.

## PROJECT SCHEDULE

<u>Preliminary Design:</u>	Weeks
● Kick-off Meeting	1
● Site Survey and Geotechnical Report, Research, Review Conceptual Design, Traffic Analysis	5
● Prepare 30% Design Development	4
● City Review	*
● Prepare and host Pubic Meeting #1	2
● Prepare 100% Design Development	1
● City Review	*
● Design Development revisions (if necessary)	1
● City Review (if necessary)	*
● Prepare 30% Construction Documents	3
● City Review	*
● Prepare 60% Construction Documents	3
● City Review	*
● Prepare 90% Construction Documents	2
● City Review	*
● Prepare 100% Construction Documents	2
● City Review	*
	<hr/>
	24 weeks

### Notes:

1. City Review time is indicated with (\*) and is not included.
2. Some tasks are not shown but will be performed concurrently with other work.
3. Time allocations shown are estimates and may be adjusted if necessary, with mutual consent.



EXHIBIT C

PROPOSAL ACKNOWLEDGEMENT FORM

The Proposer hereby acknowledges receipt of addenda number(s) No.1, if any.

By signing below, the Proposer agrees to all terms and conditions in this RFP, except where expressly described in the Proposer's Services Proposal.

Original Signature by Authorized Officer/Agent

Arthur Guy

Type/Print Name of Signatory

President

Title

3185 Airway Ave. Suite C-1  
Costa Mesa CA 92626

Consultant Mailing Address

33-0783905

Vendor's Tax ID Number (FEIN)

BGB Design Group

Company Name

714.545.2898

Phone Number

714.545.7898

Fax Number

www.bgb-inc.com

Website Address

art@bgb-inc.com

E-mail Address

Form of Business (mark one of the following):

Sole Proprietor/Individual

Partnership

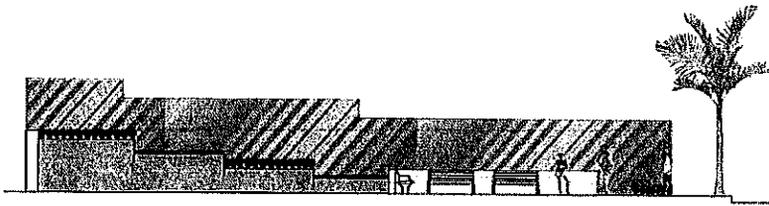
Corporation

Limited Liability Company (LLC)

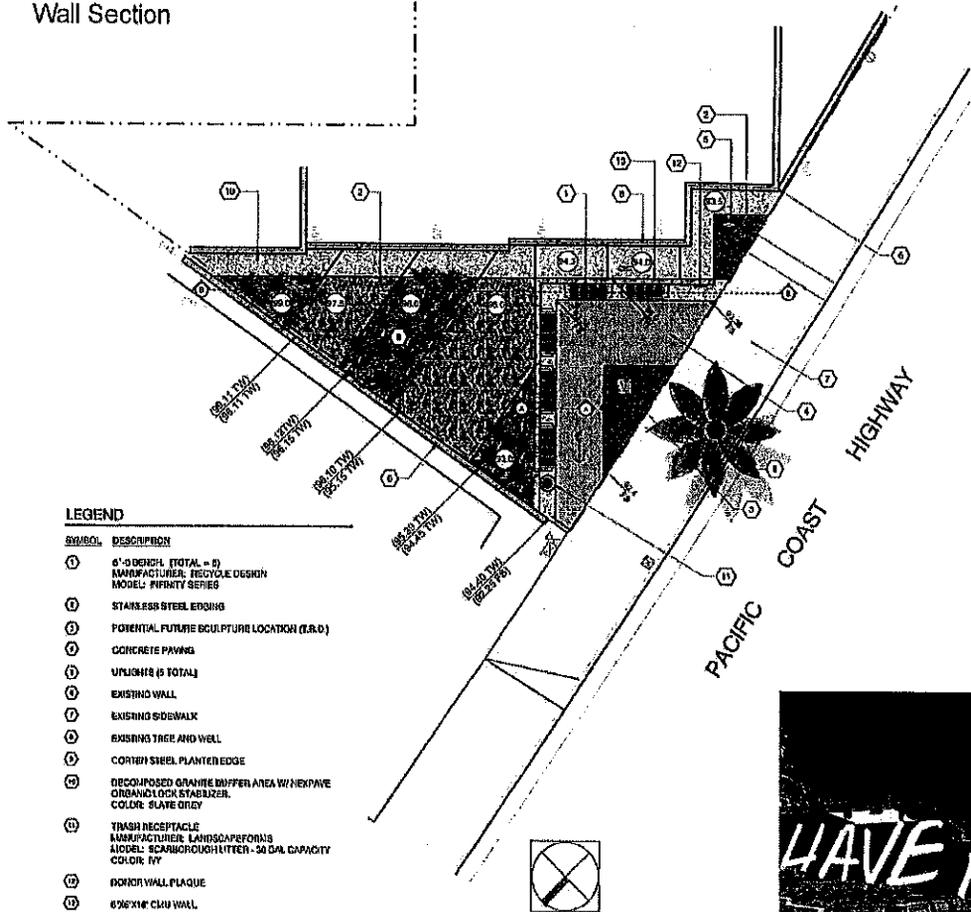
If a corporation, the State where it is incorporated: California

# HOBIE POCKET PARK Corona del Mar, California

Client: City of Newport Beach



Wall Section



**LEGEND**

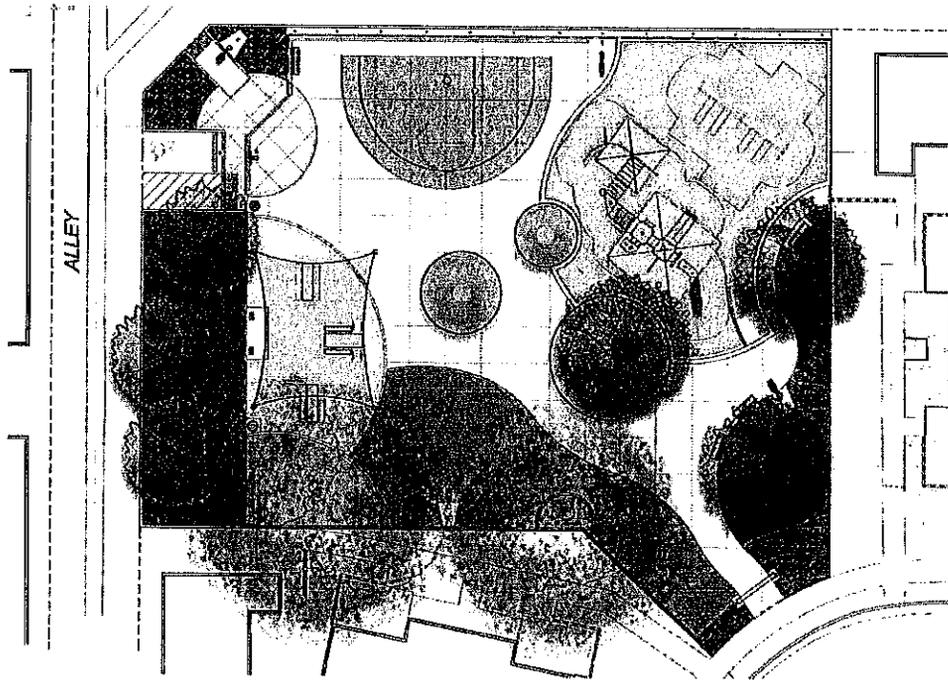
- | SYMBOL | DESCRIPTION   |
|--------|---|
| ①      | 0'-0" BENCH (TOTAL = 8)<br>MANUFACTURER: RECYCLE DESIGN<br>MODEL: FIFTY SERIES                                |
| ②      | STAINLESS STEEL EDGING  |
| ③      | POTENTIAL FUTURE SCULPTURE LOCATION (I.R.D.)  |
| ④      | CONCRETE PAVING   |
| ⑤      | W/ LIGHT (8 TOTAL)  |
| ⑥      | EXISTING WALL   |
| ⑦      | EXISTING SIDEWALK   |
| ⑧      | EXISTING TREE AND WELL  |
| ⑨      | CORTEN STEEL PLANTED EDGE   |
| ⑩      | DECOMPOSED GRANITE BUFFER AREA W/ NEWPINE<br>ORGANIC LOCK STABILIZER,<br>COLDIE SLATE GRAY                    |
| ⑪      | TINISH RECEPTACLE<br>MANUFACTURER: LANDSCAPEFORMS<br>MODEL: SCARBOROUGH LITTER - 50 GAL CAPACITY<br>COLOR: RY |
| ⑫      | DONOR WALL PLAQUE   |
| ⑬      | 606X10' CMU WALL  |

Preliminary Landscape Plan



The lot is triangular, sloping up towards the rear of the property. It is visually dominated by a tall masonry block wall that is used by Hobie Sports as a public art mural, which changes seasonally. This art wall use is planned to continue (along with accent lighting), so the park design will accommodate mural changes and maintenance. The art wall provides a visually exciting element to the CDM streetscape and is considered as asset to the park.

**PEARL PARK** Fullerton, CA  
Client: City of Fullerton



Illustrative Plan



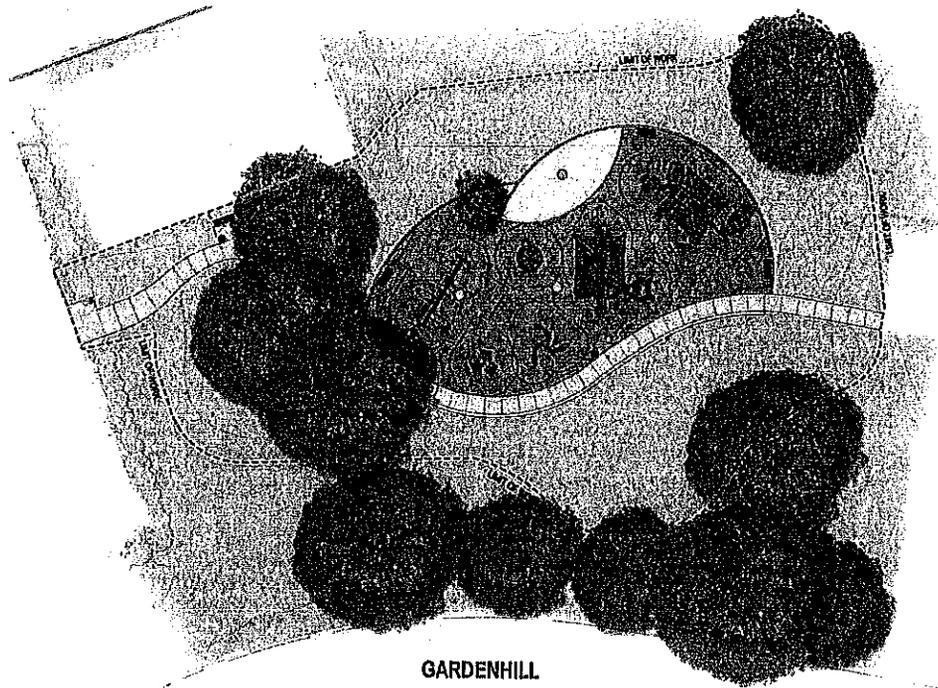
Pearl Park was a former 0.5-acre vacant lot surrounded by alleys and carports in a multi-family neighborhood. The park includes half-court basketball, a children's play area, picnic tables with BBQ's, creative play mounds made from granite cobbles, shade sail structures, and a small turf area. Mature existing trees were preserved. The park is well-used and very popular with the residents.

Funding was provided by Prop 68 Statewide Park Development and Community Revitalization Program, St. Jude HEAL Grant, and Park Dwellings Funds.

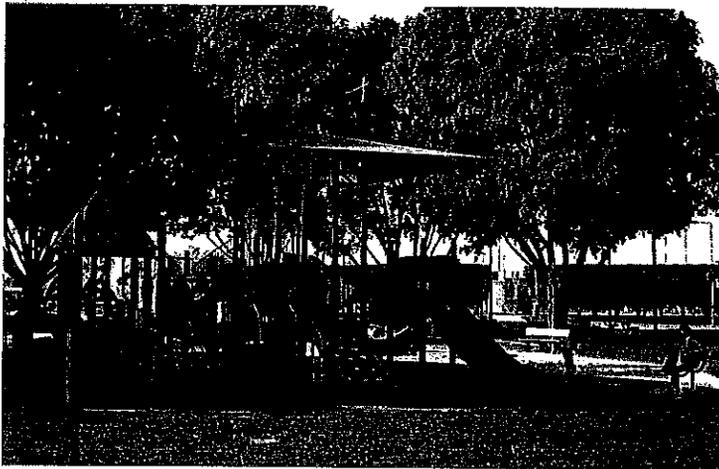


# LA MIRADA TOT LOT RENOVATION PROJECTS

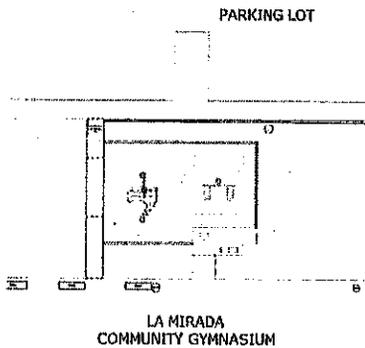
Client: City of La Mirada



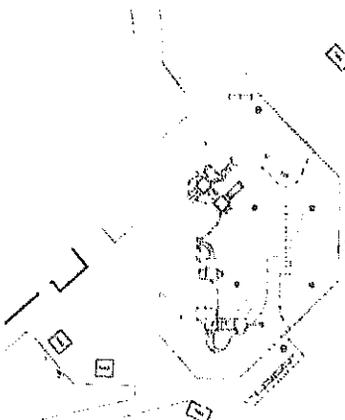
GARDENHILL



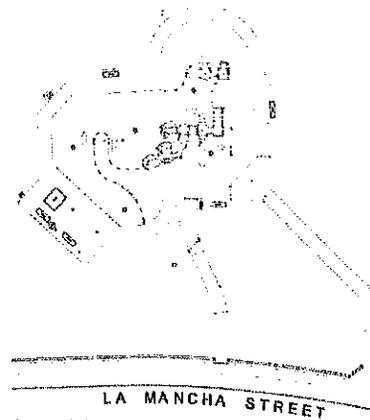
BGB Design Group was hired by the City of La Mirada, to execute a number of manufacturer programmed tot lot renovation projects. All the projects required ADA compliance upgrades and connectivity, landscape and irrigation rehabilitation, and drainage design. In the case of Gardenhill Park, a new site plan was required to accommodate the various play elements requested by the city. Planning required a continuous ADA compliant walkway connection between the community center, tennis and basketball courts while navigating through an existing grove of mature Ficus trees. The various projects were completed in 2018.



La Mirada Community Gymnasium Tot Lot

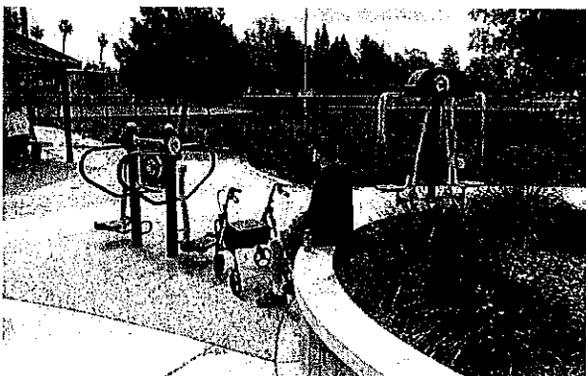
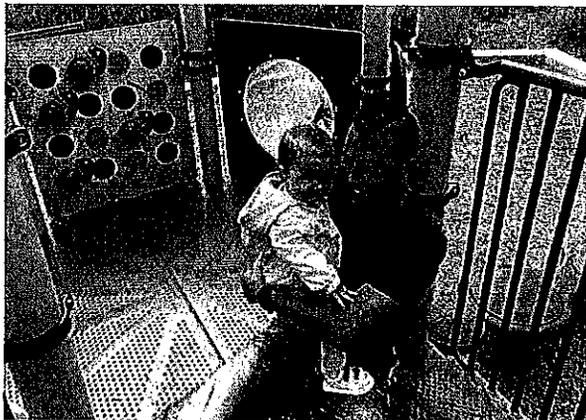
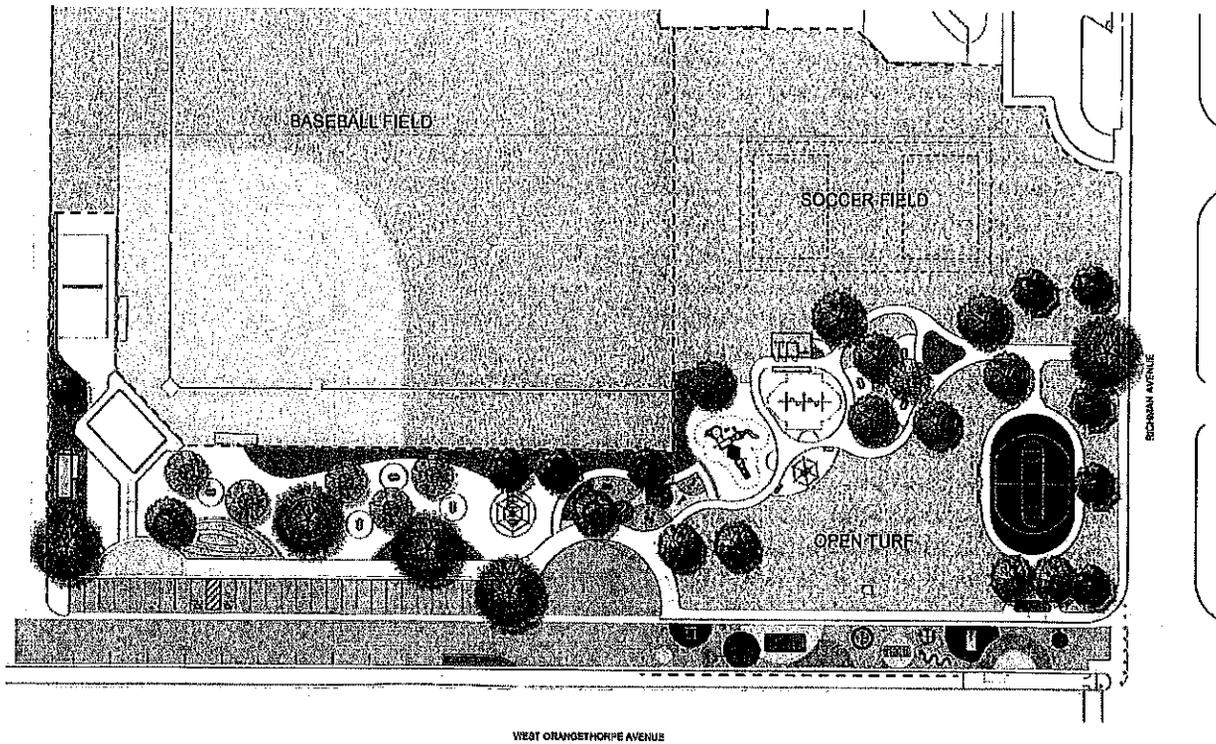


Frontier Park



Anna J. Martin Park

**WOODCREST PARK** Fullerton, CA  
Client: City of Fullerton

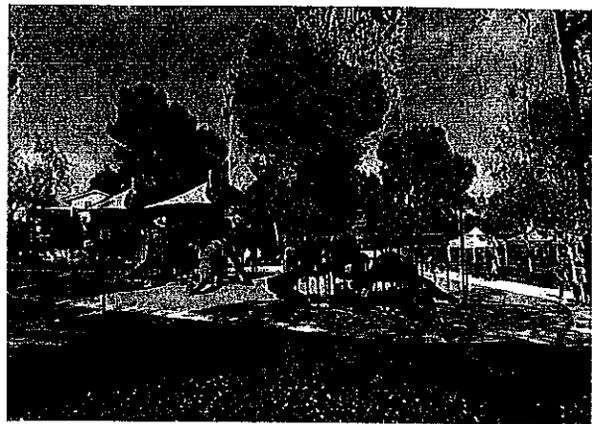
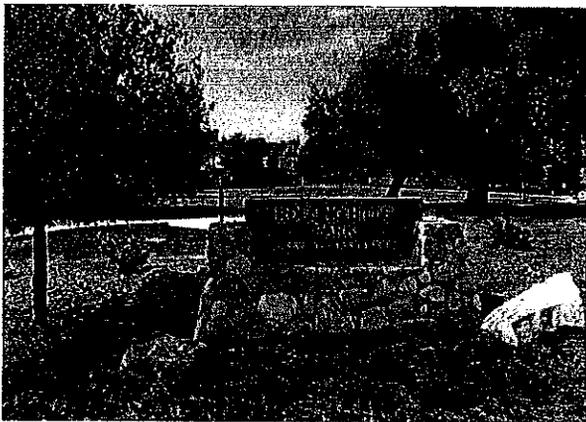
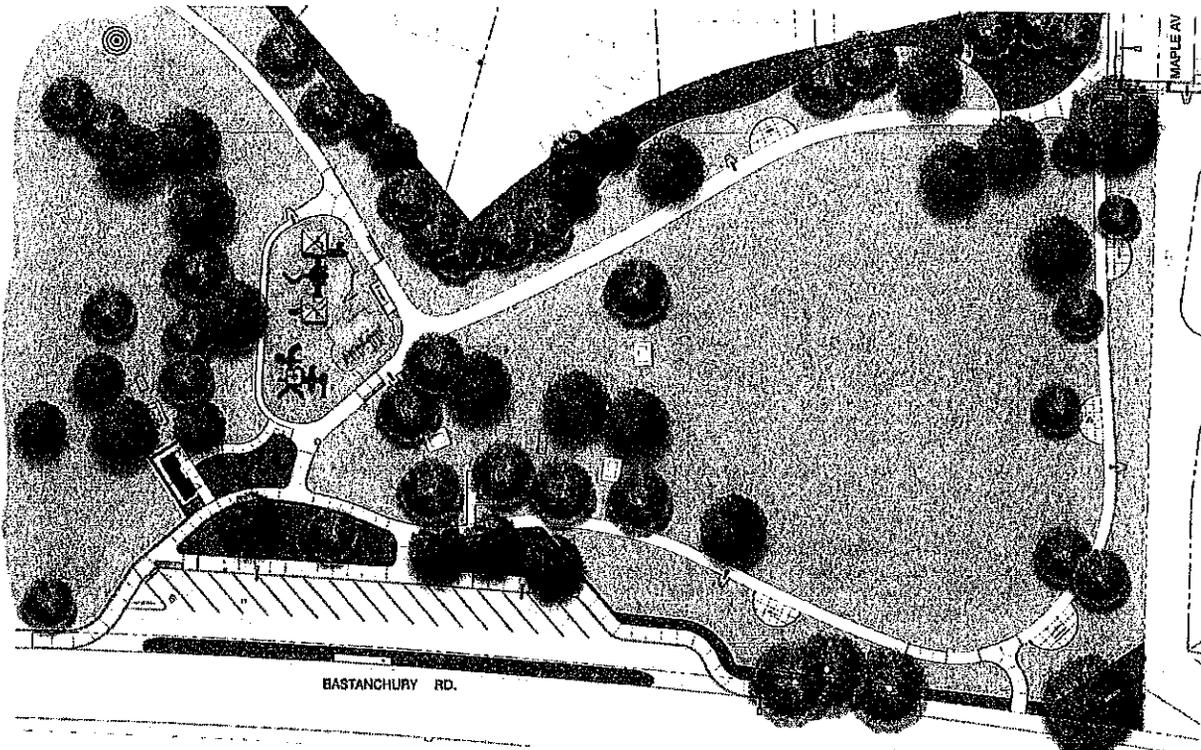


Design and landscape architectural construction documents for a 4.22-acre park renovation. Project included: basketball courts, outdoor fitness area, children's play areas, parking lot, soccer field, "street scene" multi-purpose area, new restroom, picnic areas, and related landscaping and irrigation.

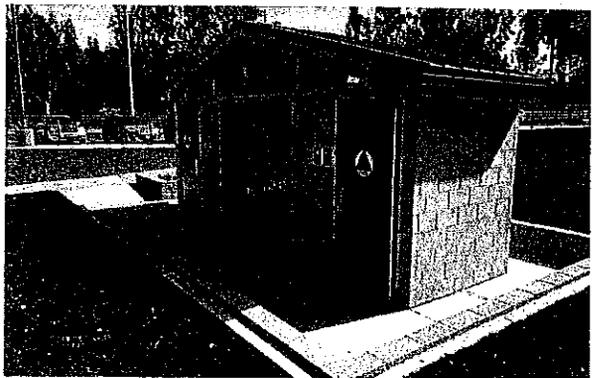
Completed 2019.

# ROLLING HILLS PARK Fullerton, CA

Client: City of Fullerton



Completed in Spring 2021, this 9.6-acre, \$1.5M park renovation included a (17) stall parking lot, with ADA compliant walkways to a new tot lot, exercise par course and restroom facility. Native landscaping now buffers the adjoining residential neighbors in addition to new 3-rail perimeter fencing, lighting, and entry monumentation. Given the age of the park and due to extensive reconfiguration, a redesigned and upgraded irrigation system was included in the renovation. A modular wetlands system linear by Bio-Clean provided an effective WQMP solution to the parking lot.



**FEE SUMMARY FOR ORANGEWOOD PARKETTE**

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BGB Design Group – Landscape Architecture / Prime Consultant	\$ 39,000.
Toal Engineering – Civil Engineer	15,000
Petra Geoscience – Geotechnical Engineer	6,800.
Design West Engineering – Electrical Engineer	9,730.
KDM Meridian- Survey	11,720
Elias Transportation- Traffic	750
Structics, Inc. – Structural Engineering	2,000.
3D Ikon – Rendering	1,200.
<b>Fee Subtotal:</b>	<u>\$ 86,200.</u>
5% Consultant Markup:	2,360.
Reimbursable Allocation:	500.
<b>Total Fee Summary:</b>	<u><b>\$ 89,060.</b></u>
<i>Optional Construction Management:</i>	
Murow Development Consultants	\$23,000
<b>Grand Total Fee Summary:</b>	<u><b>\$ 112,260.</b></u>

Note: Refer to Exhibit "A" - Task / Hour Breakdown Matrix for detailed cost breakdown.



# BGB | DESIGN GROUP

Landscape Architecture Planning Urban Design

## HOURLY RATE SCHEDULE 2022

BGB Design Group Team hourly rate schedule will be in effect for a period of 18 months from the date of this proposal. Reimbursable expenses above that which has been specified will be billed at cost plus 10%. Any additional work requested and approved by the City will either be billed as a lump sum, or on an hourly basis, based on the following rate schedule:

Reimbursables:

- City submittal packages / Final mylar submittals / Agronomy testing / Project specific mileage / Courier, Fedex, Overnight Mail

### **BGB Design Group (Landscape Architecture)**

Principal	\$ 180.
Project Manager	\$ 140.
Senior CAD Operator	\$ 120.
Administrative Assistant	\$ 70.
Mileage	\$ 0.56/mile

### **Toal Engineering (Civil)**

Principal Engineer	\$ 265.
Senior Design Engineer	\$ 205.
Design Engineer	\$ 150.
CADD Operator / Draftsperson	\$ 130.

### **KDM Meridian (Survey)**

Principal	\$ 215.
Project Manager	\$ 200.
Project Surveyor	\$ 185.
Survey Technician/Drafter	\$ 150.
Clerical/Administration/Technical Aide	\$ 85.
Expert Witness (4-hour minimum)	\$ 400.
Survey Crew (1-person) Prevailing Wages	\$ 205.
Survey Crew (2 persons) Prevailing Wages	\$ 315.
Survey Crew (3 persons) Prevailing Wages	\$ 440.

### **Elias Transportation (Traffic)**

Senior Traffic Engineer	\$ 225
Associate Traffic Engineer	\$ 150.
Project Coordinator	\$ 120.

**Design West Engineers (Electrical)**

Senior Engineer	\$ 195.
Electrical Project Manager	\$ 150.
Electrical Designer	\$ 115.
Electrical CAD Draftsperson	\$ 95.

**Structics (Structural Engineering)**

Principal Engineer	\$ 150.
Project Engineer	\$ 130.
Draftsperson	\$ 100.
Administration	\$ 60.

**Petra Geosciences**

Refer to attachment for comprehensive hourly rates.

## STANDARD FEE SCHEDULE

### Coastal Communities of Orange, Los Angeles, Ventura and San Diego Counties ENGINEERING GEOLOGY, AND GEOTECHNICAL AND ENVIRONMENTAL ENGINEERING SERVICES January 1, 2022

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#### Professional Services (Engineers, Geologists, Environmental Scientists)

Assistant	\$ 145.00/hr.
Staff	\$ 156.00/hr.
Senior Staff	\$ 184.00/hr.
Project	\$ 198.00/hr.
Senior Project	\$ 225.00/hr.
Associate	\$ 235.00/hr.
Senior Associate	\$ 245.00/hr.
Principal	\$ 275.00/hr.
President/Senior Principal (Review and Consultation)	\$ 285.00/hr.
Fault Hazard Specialist	\$ 245.00/hr.
Senior Fault Hazard Specialist	\$ 285.00/hr.
In-house Legal Advisor	\$ 250.00/hr.

#### Forensic Services (Engineers, Geologists, Environmental Scientists)

Senior Project/ Project (Review, Analysis, Consultation)	\$ 350.00/hr.
Senior Project/ Project (Depositions, Hearings, Mediation and Trials; in 4-Hour Increments)	\$ 400.00/hr.
Senior Associate/Associate (Review, Analysis, Consultation)	\$ 400.00/hr.
Senior Associate/Associate (Depositions, Hearings, Mediation and Trials; in 4-Hour Increments)	\$ 450.00/hr.
Senior Principal/Principal (Review, Analysis, Consultation)	\$ 465.00/hr.
Senior Principal/Principal (Depositions, Hearings, Mediation and Trials; in 4-Hour Increments)	\$ 550.00/hr.

#### Technical Services

Engineering Technician	\$ 112.00/hr.
Associate Engineering Technician	\$ 118.00/hr.
Senior Engineering Technician	\$ 126.00/hr.
Supervising Engineering Technician	\$ 158.00/hr.
Field Technician (Prevailing Wage Projects)	\$ 140.00/hr.
LA Deputy Geotechnical Inspector	\$ 140.00/hr.
Laboratory Technician	\$ 125.00/hr.
Senior Laboratory Technician	\$ 140.00/hr.
Laboratory Manager	\$ 170.00/hr.
Draftsperson	\$ 135.00/hr.

#### Support Services

Outside Consultants (Corresponding to in-house levels)	In-House Rate
Drilling/Backhoe/Dozer/CPT/Equipment Rental	Cost + 20%
Client Requested Accounting	\$ 90.00/hr.
Word Processing, Technical Editing, Project Administration	\$ 85.00/hr.
Field Services Communications Charges	1% of Invoice
Laboratory Tests	See attached rates
Company Owned Equipment Usage	See attached rates
Copy Rate	\$ 0.35/sheet
Postage and Shipping	Cost + 20%
PDF File Transmittal	\$ 30.00/file
CD/Flash Drive File Transmittal	\$ 35.00/file

NOTE: Travel time to field job sites is charged on a portal to portal basis at the appropriate hourly rate. Overtime for non-registered professionals and technicians is \$60.00 over the hourly rate. A minimum of two hours will be charged for all personnel for each field visit.

## **CITY OF STANTON**

### **REPORT TO CITY COUNCIL**

**TO:** Honorable Mayor and Members of the City Council

**DATE:** February 22, 2022

**SUBJECT: AB 1595 – OC VETERANS CEMETERY**

#### **REPORT IN BRIEF:**

Adoption of a Resolution of formal support for Assembly Bill 1595, which seeks to facilitate the authorization of a state veterans cemetery at a location within the County of Orange.

#### **RECOMMENDED ACTION:**

1. City Council declare that this item is not subject to the California Environmental Quality Act (“CEQA”) pursuant to Sections 15060(c)(2) and 15060(c)(3); and
2. Adopt Resolution No. 2022-11, entitled:

**“A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF STANTON, CALIFORNIA, DECLARING SUPPORT FOR ASSEMBLY BILL 1595, WHICH FACILITATES THE AUTHORIZATION OF A STATE VETERANS CEMETERY IN ORANGE COUNTY”.**

#### **BACKGROUND:**

A lack of consensus, public opposition, and cost concerns have led to multiple locations in Orange County being proposed and dismissed as potential sites for a veterans cemetery since 2014. Recently, the Irvine City Council received a presentation on a site study analysis for both the Amended and Restated Development Agreement (ARDA) site, located at the decommissioned Marine Corps Air Station El Toro, and the “Golf Course” site. The Irvine City Council took no action following the presentation, effectively barring the California Department of Veterans Affairs (CalVet) from submitting an application for a federal grant to move the process of building an Orange County veterans cemetery forward.

Meanwhile, the County of Orange has deeded to the Orange County Cemetery District (OCCD) over 200 acres of county-owned land, located at Gypsum Canyon near the intersection of the 91 freeway and 241 toll road in Anaheim Hills, for the purpose of building a veterans cemetery. On July 27, 2021, the Board of Supervisors unanimously approved the allocation of \$20 million exclusively for the development of a veterans cemetery at the Gypsum Canyon site, adjacent to a public civilian cemetery that will be constructed and financed by OCCD separate from the proposed veterans cemetery. OCCD has made a commitment to bring utilities and shared infrastructure to the property.

On January 11, 2022, the Orange County Board of Supervisors voted to support/co-sponsor AB 1595, written by Assemblymembers Sharon Quirk-Silva and Steven Choi. The bill will allow CalVet to acquire, study, design, develop, construct, and equip a state-owned and state-operated veterans cemetery in Orange County.

**ANALYSIS/JUSTIFICATION:**

Orange County is the State's largest county without a veterans cemetery. In 2014, CalVet estimated that the County was home to approximately 117,000 veterans, all of whom deserve the right to be interred at a final and proper resting place in Orange County. The nearest open veterans cemetery is the National Cemetery in Riverside.

Each time a new site is proposed, the State Legislature has to introduce a new bill to amend the current law so that it authorizes the development of a veterans cemetery at the new specified site. The legislative process for such an amendment can take a year or even longer. AB 1595 would simplify the process by amending the Military & Veterans Code to broadly authorize CalVet, in cooperation with local government entities, to acquire, study, design, develop, construct, and equip a state-owned and state-operated Southern California Veterans Cemetery within the County of Orange. AB 1595 also includes an urgency clause, allowing CalVet to promptly begin an acquisition study of a proposed cemetery location, as required by law.

**FISCAL IMPACT:**

None.

**ENVIRONMENTAL IMPACT:**

None. This item is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378(b)(5) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly).

**LEGAL REVIEW:**

None.

**STRATEGIC PLAN OBJECTIVE(S) ADDRESSED:**

- 5. Provide a high quality of life.

**PUBLIC NOTIFICATION:**

Public notice for this item was made through the regular agenda process.

Prepared By:

/s/ Jason Huynh

---

Jason Huynh  
Management Analyst

Approved By:

/s/ Jarad L. Hildenbrand

---

Jarad L. Hildenbrand  
City Manager

**Attachment(s):**

- A. AB 1595 Support Letter
- B. Resolution No. 2022-11

## Attachment: A

[Click here to return to the agenda.](#)



7800 Katella Avenue  
Stanton, CA 90680



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Stanton@StantonCA.gov  
[DShawver@StantonCA.gov](mailto:DShawver@StantonCA.gov)



### Date:

February 22, 2022

### The Honorable Sharon Quirk-Silva

Assemblymember, 65<sup>th</sup>  
District

1440 North Harbor  
Boulevard, Suite 270  
Fullerton, CA 92835

### The Honorable Steven Choi, Ph.D.

Assemblymember, 68<sup>th</sup>  
District  
3240 El Camino Real, Suite  
110

Irvine, CA 92602

## SUBJECT: AB 1595 – Veterans Cemetery, County of Orange – SUPPORT

### Dear Assemblymember Quirk-Silva and Assemblymember Choi,

On behalf of the City of Stanton, thank you for authoring Assembly Bill (AB) 1595 to allow the California Department of Veterans Affairs (CalVet) to design, develop, and construct a state-operated veterans cemetery in Orange County. Home to former Army, Navy, and Marine bases and an estimated 104,949 veterans, Orange County is California's largest county without a veterans cemetery.

On July 27, 2021, the Board of Supervisors unanimously approved the allocation of \$20 million exclusively for site development of a veterans cemetery at Gypsum Canyon and adopted a resolution to move forward with planning and developing a site to honor and respect the men and women who served our great country. The Board previously allocated over 200 acres of county-owned land at Gypsum Canyon in Anaheim Hills near the intersection of the 91 freeway and 241 toll road, which has been deeded to the Orange County Cemetery District (OCCD) for the purpose of building a veterans cemetery.

The County and OCCD have met with CalVet regarding the Gypsum Canyon site. CalVet is aware that the property will have a separate public civilian cemetery adjacent to it, and that it will be constructed and financed by OCCD separately from a veterans cemetery. OCCD will pay all costs to bring utilities and shared infrastructure to the property.

After years of delay due to lack of consensus on a location, the County's \$20 million commitment, along with OCCD's financing plan, offers an unprecedented opportunity to immediately begin funding the site. All 34 Orange County cities

February 22, 2022

have adopted resolutions supporting the Gypsum Canyon site. In addition, a bipartisan majority of Orange County state and federal delegation members, numerous veterans organization leaders, and more than 140 local elected officials all enthusiastically support a veterans cemetery at Gypsum Canyon. However, legislation is needed to amend the Military & Veterans Code in order to proceed.

AB 1595 would allow CalVet to acquire, study, design, develop, construct, and equip a state-owned and state-operated Southern California Veterans Cemetery in Orange County so that we may honor the men and women who served our country and who deserve the right to be buried in Orange County. For these reasons, the City of Stanton proudly supports AB 1595.

Sincerely,

---

David J. Shawver

**Mayor**

Cc: Assemblymember Jacqui Irwin: Chair, Assembly Military & Veterans Affairs Committee  
Senator Bob Archuleta, Chair – Senate Military & Veterans Affairs Committee  
Christian Burkin – Chief Consultant, Assembly Military & Veterans Affairs Committee  
Veronica Badillo – Staff Director, Senate Military & Veterans Affairs Committee  
Members, Orange County Legislative Delegation  
Members, Orange County Board of Supervisors

**RESOLUTION NO. 2022-11**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF STANTON, CALIFORNIA, DECLARING SUPPORT FOR ASSEMBLY BILL 1595, WHICH FACILITATES THE AUTHORIZATION OF A STATE VETERANS CEMETERY IN ORANGE COUNTY**

**WHEREAS**, the City of Stanton (“City”) wholeheartedly endorses building a Veterans cemetery in Orange County; and

**WHEREAS**, the City has a rich history of supporting the military, having dedicated Veterans Memorial Park at 10970 Cedar St. on November 11, 2007; and

**WHEREAS**, currently the nearest open Veterans cemetery to Orange County is the National Cemetery in Riverside, California; and

**WHEREAS**, to honor and respect the men and women who served our country and who deserve the right to be buried in Orange County, we ask federal, state, and local governments to closely consider this proposed project as a benefit, not only to Orange County, but to the broader region, as well; and

**WHEREAS**, the County of Orange has deeded to the Orange County Cemetery District (OCCD) over 200 acres of county-owned land, located at Gypsum Canyon near the intersection of the 91 freeway and 241 toll road in Anaheim Hills, for the purpose of building a veterans cemetery; and

**WHEREAS**, existing law only authorizes the California Department of Veterans Affairs (CalVet) to evaluate the placement of a veterans cemetery at either the specified site in the Orange County Great Park or the site known as the Golf Course Site, thereby excluding from consideration the Gypsum Canyon Site and any other site that might be deemed suitable by CalVet and the local community; and

**WHEREAS**, Assembly Bill 1595 of 2022 will amend Section 1410 of the Military and Veterans Code to give CalVet broader authorization to acquire, study, design, develop, construct, and equip a state-owned and state-operated Southern California Veterans Cemetery in the County of Orange at large.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Stanton, California, does hereby support the passage of Assembly Bill 1595.

**ADOPTED, SIGNED, AND APPROVED** this 22<sup>nd</sup> day of February, 2022.

\_\_\_\_\_  
DAVID J. SHAWVER, MAYOR

APPROVED AS TO FORM:

\_\_\_\_\_  
HONGDAO NGUYEN, CITY ATTORNEY

ATTEST:

I, Patricia A. Vazquez, City Clerk of the City of Stanton, California DO HEREBY CERTIFY that the foregoing Resolution, being Resolution No. 2022-11 has been duly signed by the Mayor and attested by the City Clerk, all at a regular meeting of the Stanton City Council, held on February 22, 2022, and that the same was adopted, signed and approved by the following vote to wit:

AYES: \_\_\_\_\_

NOES: \_\_\_\_\_

ABSENT: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

\_\_\_\_\_  
PATRICIA A. VAZQUEZ, CITY CLERK

## CITY OF STANTON

### REPORT TO CITY COUNCIL

**TO:** Honorable Mayor and City Council

**DATE:** February 22, 2022

**SUBJECT: AMENDMENT TO AGREEMENT FOR CONSULTANT SERVICES WITH CHARLES ABBOTT ASSOCIATES, INC. FOR BUILDING SERVICES**

#### **REPORT IN BRIEF:**

Request authorization to allow the City Manager to amend the Agreement with Charles Abbot Associates, Inc., to extend the existing contract from February 22, 2022, through June 30, 2022.

#### **RECOMMENDED ACTION:**

1. City Council declare the action not a project as defined by the California Environmental Quality Act ("CEQA") and will have no result direct or indirect to physical changes in the environment; and
2. Approve the Amendment to the Agreement with Charles Abbott Associates, Inc.; and
3. Authorize the City Manager to bind the City of Stanton and Charles Abbott Associates, Inc. in an amended agreement to provide building services.

#### **BACKGROUND:**

The City has been using the services of Charles Abbott and Associates to provide plan checking, field inspection and Building Official staffing during this contract term of November 2014 to February 20, 2022.

The City issued an RFP on August 31, 2021 to solicit proposals from various firms providing similar services. On September 22, 2021 the City received ten proposals and has been reviewing the staffing plan, costs, and references provided by these firms.

During the review for these proposal a review to bring services in house was considered. In December 2021 staff released a job opportunity for building inspection services to evaluate options for staffing this need. The City has received more than 20 qualified applications and is in the process of conducting interviews to determine if an appropriate candidate can be found.

**ANALYSIS/JUSTIFICATION:**

The City is experiencing a high level of development and construction activity. The building services provided to the development community, business community and residents of Stanton are a high priority and need to reflect the values of the community. The decision to continue with the current service provider or make a change is an important decision for the City of Stanton and must take into consideration, technical capabilities, efficiency, effectiveness and cost. The City is also evaluating the quality of service, continuity of staff and costs related to the building services for Stanton. In order to complete this review, determine the best staff solution and bring the Council a comprehensive plan, City staff needs additional time to complete the process. Charles Abbott (CAA) is committed to providing support to the City while we complete this review. It is our goal to complete the review and present the final proposed plan for Council consideration before the June 30, 2022, end of contract date, but given challenges that could arise, the June timeline is appropriate at this time.

**FISCAL IMPACT:**

The Amendment to the Agreement is an extension of time and does not change the billing rates or payment terms of the contract. The budget has anticipated Building services to be provided based on past annual costs and the services are paid based on the permit fees as established in the Agreement. No impact to the General Fund is anticipated.

**ENVIRONMENTAL IMPACT:**

In accordance with the provisions of the California Environmental Quality Act, this action is not a project.

**PUBLIC NOTIFICATION:**

Public notice for this item was made through the regular agenda process.

**STRATEGIC PLAN:**

- 1 – Provide a Safe Community
- 6 – Maintain and Promote a Responsive, High Quality and Transparent Government

Prepared By:

/s/ Jennifer A. Lilley

\_\_\_\_\_  
Jennifer A. Lilley, AICP  
Community & Economic Development Director

Approved by:

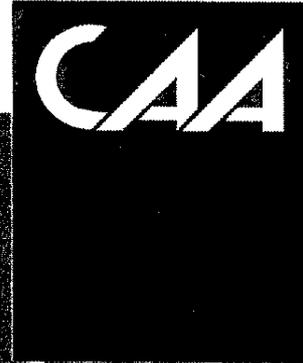
/s/ Jarad L. Hildenbrand

\_\_\_\_\_  
Jarad Hildenbrand  
City Manager

**Attachment:**

- A. Charles Abbott Associates, Inc. Contract and Proposal
- B. Draft Amendment to Agreement for Consultant Services

**Charles Abbott Associates, Inc.**



*"Helping public agencies provide effective and efficient municipal services to improve communities since 1984"*

**Proposal for**  
**Building and Safety Services**

**Prepared for**

**City of Stanton**

**Attn: Kelly Hart, Community and Economic Development Director**  
**7800 Katella Avenue**  
**Stanton, CA 90680**

**By:**  
**Charles Abbott Associates, Inc.**

27401 Los Altos # 220  
Mission Viejo, CA 92691  
Toll Free: (866) 530-4980

[www.caaprofessionals.com](http://www.caaprofessionals.com)

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## A. LETTER OF INTRODUCTION

October 17, 2018

Subject: Proposal for Building and Safety Services

Charles Abbott Associates, Inc. (CAA) is pleased to submit the enclosed Proposal for Building and Safety Services to the City of Stanton (City).

Since 1984, CAA has been providing a growing number of cities with outstanding Building Services. Over the years, our vast knowledge, experience, and proven ability to satisfy the needs of cities and counties of all sizes has earned us the reputation of being one of the most qualified firms in the industry.

CAA is exceptionally qualified to provide the requested services to the City as described in our submittal. Our team is not only comprised of building & safety experts, but also highly trained professionals who are able to balance regulatory requirements, cost effectiveness, political considerations, and practicality when advising our clients. Due to our depth of professional knowledge and our 30 years of industry experience, we feel we are superior to any other consultant providing these services in Southern California. CAA looks for creative solutions for our clients' needs, and we are committed to assuring cost effectiveness without sacrificing quality.

CAA maintains well qualified and educated inspectors and plan checkers. The staff regularly attends training courses, seminars, and conferences to ensure they are up-to-date on the most relevant issues in the industry. As an example of these advanced industry-training standards, CAA provides California Building Official, (CALBO) certified in-house training to ensure staff members are aware of all State mandated procedures, policies, and requirements.

CAA recently received a company rating of "2" by ISO for all of our California Cities in 2014. This rating illustrates CAA's commitment to mitigating losses and enforcing codes to improve safety in our communities.

We pledge the full resources and backing of our firm to assure that the City has the most efficient and cost effective building services strategy available. We stand by our commitment to unparalleled professionalism and service, as evidenced by the average length of service with our clients of over 16 years.

### **Project Understanding**

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CAA understands the City is currently seeking comprehensive Building and Safety Services to provide contract building department administration. Services to be provided include: building plan review, building inspection, public works land development plan check and inspection to ensure compliance with all applicable State and City codes. We understand the project term would be for 3 years, with the option for 2 one-year extensions.

CAA will dedicate highly trained staff members from our pool of resources to this project. Our staff will carry out the duties of the Building and Safety Division, as well as other duties as assigned. Our staffing levels will ensure that all City building inspections are



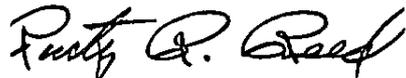
conducted in an efficient and courteous manner that is responsive to the City and the public's needs. CAA has the experience, knowledge, and ability to manage such tasks, assignments, and responsibilities while reducing the City's financial and staffing burdens. Additionally, CAA has the ability to add certified and qualified staff whenever workload demands increase.

Fernando Zarate will be assigned as the primary building inspector. Renee Meriaux CBO, CASp, MCP, will serve as the Project Manager and ensure that our policies, procedures, and manpower will provide the level of service the City desires. She will supervise the project and maintain continuous communication with the City to ensure that the City is 100% satisfied with our staff, our turnaround times, the quality of our work, and the overall teamwork between our staff and yours. Any shortcomings from the City's perspective will be dealt with promptly.

Should the City have any questions or require additional information, please contact Renee Meriaux CBO, CASp, MCP, or myself. We look forward to meeting with you to further discuss your service needs.

Thank you in advance for your consideration.

Sincerely,



CHARLES ABBOTT ASSOCIATES, INC.  
Rusty R. Reed, PE President

27401 Los Altos # 220  
Mission Viejo, CA 92691  
(949) 279-4124

## B. SCOPE OF SERVICES

CAA has been providing Building & Safety Services to a growing number of cities and counties in the Southern California region since 1984. The following table lists some of the services we provide to meet the needs of our clients:

SERVICE ROLES	SERVICES
<ul style="list-style-type: none"> <li>• Building Official</li> <li>• Building Inspector</li> <li>• Code Compliance Officer</li> <li>• Public Counter Technician</li> <li>• Public Works Director</li> <li>• City Engineer</li> <li>• Plan Checker</li> <li>• Fire Prevention Specialist/Inspector</li> <li>• Map Check Surveyor</li> <li>• Certified Environmental Trainers</li> <li>• Project/Construction Engineer</li> <li>• Landscape Manager/Supervisor</li> <li>• Landscape Architect</li> <li>• Redevelopment Agency Engineer</li> <li>• Assessment Engineer</li> <li>• Traffic Engineer</li> <li>• CASP Certified Specialist</li> </ul>	<ul style="list-style-type: none"> <li>• Building &amp; Safety Administration</li> <li>• Plan Review</li> <li>• Building Inspections</li> <li>• Accessibility Assessments</li> <li>• Grading and Improvement Review</li> <li>• Environmental Assessments</li> <li>• Municipal NPDES Programs</li> <li>• NPDES Review</li> <li>• Public Works Administrative Services</li> <li>• Public Works Contracting</li> <li>• Work Management and Budgeting Systems</li> <li>• Organizational/Personnel Audits</li> <li>• Evaluation of Fee Structures</li> <li>• Grant/Funding Applications</li> <li>• AB 939 Implementation</li> <li>• Pavement Management</li> <li>• Asset Management</li> </ul>

CAA will perform all Building and Safety Services outlined by the City. The CAA professionals that will be assigned to the City of Stanton have many years of municipal experience to support the City's Building Services Division. CAA's professional staff successfully services over 40 cities, including the cities of Mission Viejo, Aliso Viejo, and Laguna Niguel. CAA has been handling a complete package of City Building Department Services for over 30 years, including:

- A. Building Codes Administration
- B. Building Inspections
- C. Building Plans Review
- D. Environmental Management
- E. Code Enforcement

CAA will provide all materials, resources, tools and training required for our professionals to perform their assigned duties, including vehicles, cell phones, iPads, and other technology devices that enhance our service.

### **Building Official and Plan Check Services**

CAA has the resources and technical capabilities to meet the demands of the Building Services Division of the City. The Building Inspector assigned to the City will generally be onsite Monday through Friday, 7:00am to 8:00am and 1:00pm to 5:00pm, and will be

available at all times to respond to urgent matters within one hour of notification. Our Building Officials and Inspectors are ICC certified, and have a minimum of 2+ years experience in the State of California. The Building Official assigned to the City of Stanton will:

- Manage all Building Services functions
- Enforce and interpret building codes and other regulations
- Respond to concerns from residents, businesses, and other parties as required
- Prepare various documentation such as reports and inventories
- Conduct process reviews and make recommendations for process improvements, if applicable
- Be available to provide testimony for administrative and legal proceedings
- Conduct training and public outreach programs
- Assist with other related duties as assigned by the City

CAA will provide the plan review of any and all types of structures including, but not limited to, single family dwellings, multi-family dwellings, industrial and commercial buildings for compliance with all local ordinances and State and Federal laws that pertain to Building and Safety, and for compliance with the adopted California Building Code, California Residential Code, California Plumbing Code, California Electrical Code, and California Mechanical Code, Title 24, and the City Municipal Code. In addition, CAA will provide public works land development grading-drainage inspection and plan review which will include but not be limited to, curb, gutter, streets, sidewalks, dry utilities, wet utilities, storm drain, hydrology and hydraulics. Plan review will be performed in-house and off-site.

#### **General Plan Review Services**

Most minor plan review and rechecks can be performed in City Hall Offices, more complex plan reviews will be performed in our corporate office in Mission Viejo. CAA plan check staff is familiar with construction utilizing various state-of-the-art structural systems as well as the latest technology in mechanical and electrical systems. Staff project experience ranges from single-family dwellings to large multi-story buildings, including essential service buildings, commercial buildings, and industrial facilities.

##### **• Architectural**

CAA staff is certified and experienced in all phases of architectural review, including construction types, occupancies, separations, heights, areas, egress means, and fire/life safety. CAA staff will bring many years of experience to the City's review and inspection process with respect to size, shape, and use of buildings with varying complexities. Many of CAA's staff are active in architectural code promulgation at the state and national level and several sit on CALBO and International Code Council (ICC) committees.

##### **• Structural**

CAA's plan review structural engineers have reviewed structural plans with varying degrees of construction complexity from single-family homes to high-rise multi-use facilities. CAA's plan review engineers maintain California registration with an average experience of over 30 years in structural and design plan review.



- **Mechanical**

CAA staff is experienced in plan review and inspection of mechanical installations for compliance with the California Mechanical Code, including piping, duct layouts, and sizing for HVAC systems, mechanical equipment approval listings, and mechanical fixture locations, sizing, and counts. CAA staff will bring such knowledge, experience, and understanding to City reviews and inspections.

- **Plumbing**

CAA staff is trained to review plans for compliance with all aspects of the California Plumbing Code, including piping layouts and isometrics, plumbing fixture locations and approval listings, pipe size calculations, and accessibility details. CAA staff is well knowledgeable and experienced in the review and inspection of plumbing plans and installations, including applications from the simple to the complex. Since many of our staff has worked in the field, they can draw on their own expertise and experiences as the designer, developer, and inspector.

- **Electrical**

CAA staff is experienced in the plan review and the inspection of various electrical installations, both residential and commercial. CAA staff will review plans for compliance with the California Electrical Code, including the review of schematics, diagrams, panel schedules, load calculations, fixture approval listings, Title 24 Energy compliance calculations, and accessibility data.

- **T-24 Energy**

CAA staff are well informed of California's Energy Efficiency Standards for Residential and Non-Residential Buildings, or "T-24 Energy" standards. CAA staff receives extensive annual training to ensure that each is aware of the specifics of these state programs.

- **Accessibility**

CAA staff attends state and locally sponsored CALBO and ICC training relative to disabled access. CAA staff takes disabled access seriously and has been proactive on CALBO's Accessibility Compliance Committee. CAA can provide a Certified Access Specialist Program (CAsp) professional to meet California's new requirements that took effect in July 2010.

- **LEEDs**

CAA recognizes the importance of and pursues environmentally conscious design and development procedures consistent with the U.S. Green Building Council (USGBC), Leadership in Energy & Environmental Design (LEED) certification standards. CAA has staff certified through the LEED process that are available to review City development projects that are required to have LEED Certification(s).

- **Green Building Code Review**

CAA can and will provide staff that are aware and up to date on the 2016 California Green Building Standards (CALGreen) Code revisions. As with LEED certification, CAA seeks to enhance and improve City development projects through cooperation and collaboration with stakeholders.

- **Land Development Inspection and Plan Review**

CAA will provide public works land development grading and drainage inspections and plan review which will include but not be limited to, curb, gutter, streets, sidewalks, dry utilities, wet utilities, storm drain, hydrology and hydraulics.

## **Building Inspection Services**

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CAA will provide the inspection of structures under construction in the City for compliance with all local ordinances, state and federal laws that pertain to Building and Safety and for compliance with the adopted California Building Code, California Residential Code, California Plumbing Code, California Electrical Code, and California Mechanical Code.

CAA will provide one full-time Inspector and one part-time as-needed Building Official to the City. Additional inspectors will be available as required by workload. A CAA Building Inspector will be available at all times to conduct urgent building inspections, should they arise.

### **Inspection Personnel Qualifications**

CAA assigned staff will perform inspection services as required by the City. Our staff will meet or exceed the City's minimum qualifications for all position(s). Competent inspectors will be provided whose background, experience, applicable certifications and demeanor demonstrates the ability to conduct inspections in accordance with jurisdiction standards. All CAA inspectors are ICC certified.

### **Inspection Responsibilities**

Inspectors assigned to the City will perform periodic construction inspections to verify that the work of construction is in conformance with the approved project plans, as well as identifying issues of non-compliance with applicable codes. Projects under construction by permit from the City will be inspected for compliance with the State of California Building, Mechanical, Plumbing, Electrical, Energy, Green Building, and Accessibility Codes as adopted by the State and amended by the City, as well as a working familiarity with the Fire Codes. Inspectors are accessible and available to meet with the project design team and/or the client's representatives to work out problems and help resolve issues quickly and efficiently. Our inspection staff easily integrates into client organizations.

### **Guaranteed Response Times**

In an effort to provide quality assurance, CAA proposes to use our "best service guarantee" program. This program assures the City that all turn around times are met or improved, all inspections are conducted when requested, and emergency response is timely and effective.

- CAA will conduct any necessary or required building investigations as directed by the City. Investigations will include field and office research, investigation follow-ups and preparation of notices, letters, or documents.
- CAA will provide and maintain all vehicles and equipment required or necessary to carry out inspections and duties of the Building Services Division.

## **Building Permit Software**

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CAA will continue to provide the City with a customized Permit Issuance and Inspection Tracking through a user-friendly software system that allows for an efficient and accountable level of service to be delivered to the City and contractors.

## C. COMPANY PROFILE

Official name and address: Charles Abbott Associates, Inc.

27401 Los Altos, #220  
Mission Viejo, CA 92691

Primary point of contact: ReneeMeriaux, CBO, CASp, MCP

27401 Los Altos, #220  
Mission Viejo, CA 92691  
Tel: 949-367-2850  
[reneemeriaux@caaprofessionals.com](mailto:reneemeriaux@caaprofessionals.com)

Entity type: Corporation

Years in Business: 34

Federal Tax ID: 33-00753899

Company locations:

### CALIFORNIA – COMPANY HEADQUARTER

27401 Los Altos, #220  
Mission Viejo, CA 92691

Tel: (949) 367-2850  
Fax: (949) 367-2852

<p><b>FLORIDA</b></p> <p>3001 North Rocky Point Drive East, #200 Tampa, FL 33607 Tel: (866) 530-4980 Fax: (949) 367-2852</p>	<p><b>GEORGIA</b></p> <p>Two Ravinia, #500 Atlanta, GA 30346 Tel: (866) 530-4980 Fax: (949) 367-2852</p>
<p><b>COLORADO</b></p> <p>10955 Westmoor Dr, 4th Floor Westminster, CO 80021 Tel: (866) 530-4980 Fax: (949) 367-2852</p>	<p><b>NEVADA</b></p> <p>8537 Stone Harbor Las Vegas, NV 89145 Tel: (866) 530-4980 Fax: (949) 367-2852</p>
<p><b>ARIZONA</b></p> <p>60 E Rio Salado Parkway, #900 Tempe, AZ 85281 Tel: (866) 530-4980 Fax: (949) 367-2852</p>	<p><b>TEXAS</b></p> <p>9595 Six Pines, Bldg. 8, Level 2, #8210 The Woodlands, TX 77380 Tel: (866) 530-4980 Fax: (949) 367-2852</p>
<p><b>SOUTH CAROLINA</b></p> <p>4000 S. Faber Place Drive, #300 Charleston, SC, 29405 Tel: (866) 530-4980 Fax: (949) 367-2852</p>	

#### D. LOCATION OF PRINCIPAL OFFICE

Our corporate headquarter is located in close proximity to the City of Stanton at 27401 Los Altos, #220 in Mission Viejo, CA 92691. This gives CAA the unique advantage to provide additional staff if workload increases without delay. Our Plan Review Office is also located at our main office in Mission Viejo, where we have full-time plan and part-time plan reviewers available to meet additional workload as required.

## E. PROFESSIONAL QUALIFICATIONS

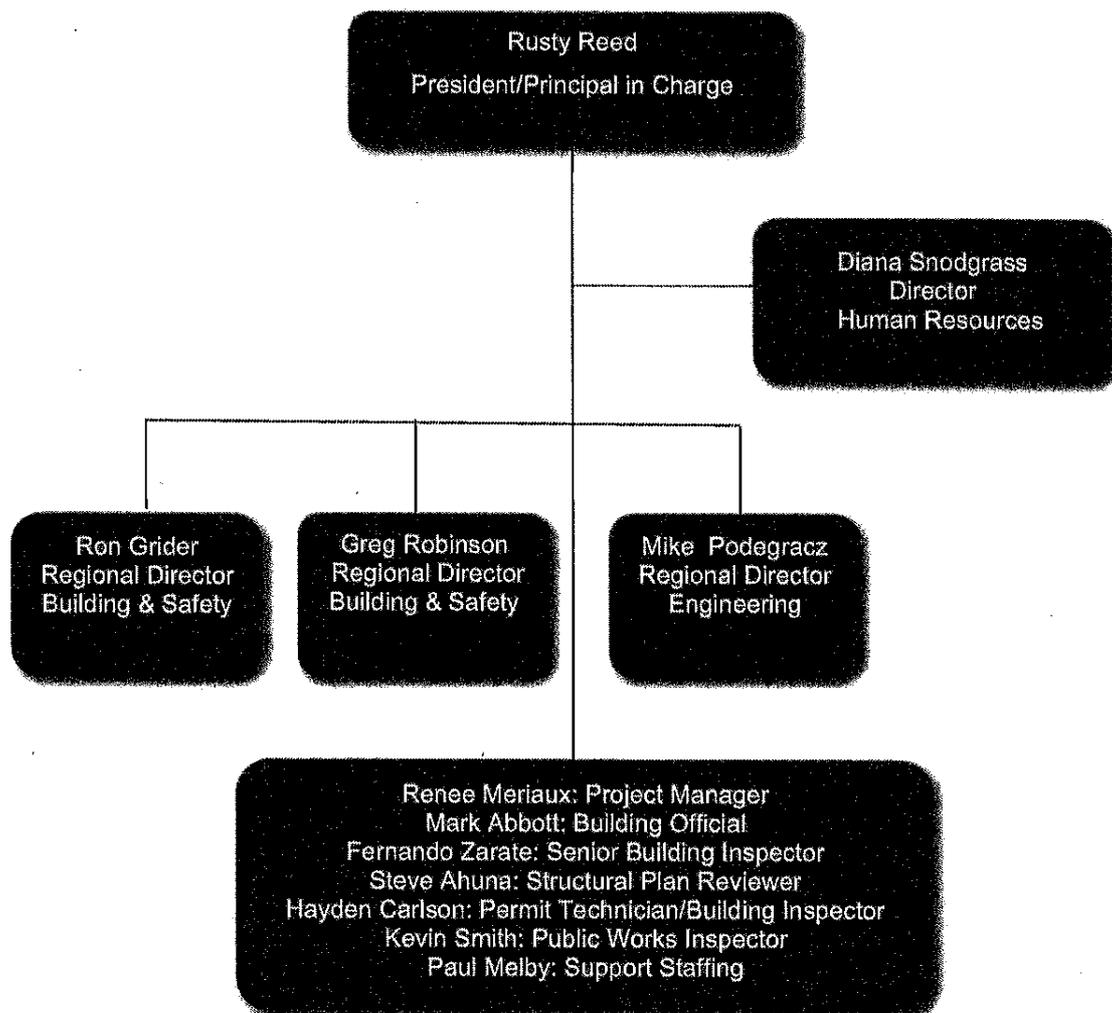
We have assembled a project team with the skills and qualifications necessary to serve the City successfully. This team of highly qualified and experienced staff has provided similar services to many cities and counties, and brings numerous combined years of related experience to the table. All employees work for the firm and are not independent contractors.

As part of our services, we assure the following to the City:

- Key personnel will be available to the extent proposed for the duration of the project, and no person designated "key" to the project will be removed or replaced without the prior written consent of the City.
- Should we wish to make any permanent staffing changes, we will discuss these changes with the City at least 30 days in advance; and
- If the City requests staffing changes, we will make them in a timely manner.

CAA will not be using any sub-consultants, sub-contractors, suppliers or manufacturers.

The following chart shows the structure of the staff proposed to the City:



## Key Personnel

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CAA employs full time personnel to staff municipal work engagements. The firm recruits individuals who are looking for long-term employment with a stable firm and a rewarding career. We are proposing experienced staff that can work as team members with City staff, augmenting their efforts and reach. With those principles in mind, the proposed key professionals are as follows:

Name: Renee Meriaux CBO, CASp, MCP, Project Manager  
[REDACTED]

Position: Project Manager

Education: B.S., Applied Science and Technology  
CBC, UBC, and IBC certified

Summary of Experience: Ms. Meriaux has served as a Building Official for multiple CAA cities including the City of Stanton. She has been responsible for the administration, inspection, plan check and permit issuance for the last 13 years in the cities of Camarillo, Moorpark, Stanton and Ojai. Ms. Meriaux has 22 years' experience in building and safety.

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Name: Mark Abbott, CBO  
[REDACTED]

Position: Building Official

Education: BS Business Administration  
MBA Business Administration  
Certified Building Official  
Certified Building Inspector

Summary of Experience: Mr. Abbott has over 15 years of municipal experience with building and engineering related activities and will serve as the Building Official for the City of Stanton.

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Name: Fernando Zarate  
[REDACTED]

Position: Building & Safety Official

Education: Building Inspector CBC

Summary of Experience: Building Inspector with 13 years experience who will be the **day to day contact person at the City of Stanton**. Mr. Zarate has been serving as the City of Stanton's Building Inspector since 2011.

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Name: Steve Ahuna, PE  
[REDACTED]

Position: Lead Plan Check Engineer  
Education: BS Architectural Engineering  
MS Applied Economics  
Certified Building Official  
Building Plans Examiner  
PE License CA

Summary of Experience: A Registered Professional Engineer who will oversee the plan review staff in the review of plans and calculations for compliance with adopted codes and any adopted amendments. Mr. Ahuna has 30 years experience.

2004 to Present Building Plan Examiner CAA

Professional Memberships: ICC, CALBO, SEAOSC

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Name: Paul Melby, CBO  
[REDACTED]

Position: Certified Building Official  
Education: A.A.  
UBC and IBC certified

Summary of Experience: A Building Official who will provide support to the City's Building Official in code administration, plan review, inspections, permit counter and will advise when requested. Mr. Melby has over 20 years experience.

2009 to Present Building Official CAA

Professional Memberships: ICC OE Board Member, CALBO Professional Licensing

### **Plan Transmittal**

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CAA will overnight Building Plans using "OnTrac" or other shipping firm to transport those plans requiring off-site review to and from the office of the City to CAA's main office, where the plan check service will be provided.

## F. PERMITTING SOFTWARE

CAA will provide our latest permitting software at no cost to the City of Stanton. Should CAA and the City terminate its contractual relationship at any time, CAA will invoice the City an annual license fee for continued use of the permitting software.

### **Building Permit Software**

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84 Permits is CAA's innovative, commercially available building permit software. Our permit system is full-feature, user-friendly, and easy to implement.

84 Permits' core functions include:

- Easily collect customer (owner, applicant and contractor) information and construction data
- Calculate and charge fees based on provided building improvement costs or construction type
- Track submitted architectural plans through the entire plan review process
- Instantly issue building permits and other supporting documents for approved projects
- Track building inspections during construction projects
- Issue final paperwork and close out projects
- Provide mobile access to 84 Permits via iPads for building inspectors in the field
- Easily compile permit reports, fee summary reports and other permit statistics

CAA is committed to upgrading our existing permit system at the City of Stanton to the newest version of 84 Permits during the contract period at no cost. Should CAA and the City terminate its contractual relationship at any time, CAA will invoice the City for an annual license fee of \$6000.

### **Electronic Plan Check Software**

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CAA has integrated e-PlanSoft's Electronic Plan Check (ePC) software into our 84 Permits software. ePC is the only electronic plan check software able to provide entirely web based document management and plan check markup, without requiring any local software installation. Additionally, CAA has gone one step further and developed a web site that can be customized according to the City's desired look and feel. This allows architects and/or owners to upload construction plans and pay plan check fees directly on the web, thereby reducing time, paper, printing, and delivery costs normally associated with the plan review process.

ePC features include:

- Concurrent, interdepartmental plan checking
- Real-time commenting and markups
- Efficient re-submittals and version tracking
- Built-in standard comment database
- Overlay and side-by-side document comparison and review
- Easily import your agency checklist items

- Interfaces with CAA's 84 Permits software

CAA is offering to provide both 84 Permits and ePC for the City of Stanton, if the City so chooses, for the following fee:

One-time setup fee of \$30,000

Annual data center hosting fee of \$7,500

Annual licensing and support fee of \$2,250 per user

CAA will cover the monthly user license fees and support fees for all CAA employees, including plan checkers and structural engineers, during the contractual period with the City.

## G. PROPOSED STAFF RESUMES

### Renee Meriaux, CBO, CASP, MCP – Project Manager

#### Years of Experience

22+ Municipal Experience

#### Education

Bachelor's of Science, Thomas Edison State College

Associates of Science, Ventura College

#### KEY QUALIFICATIONS

- Certified Master Code Professional
- Certified Building Official
- Certified Access Specialist
- Hands-on Construction and Building & Safety Experience

#### Certifications

ICC Certified Building Official (#375320)      ICC Certified Building Code Official (#375320)  
ICC Certified Plumbing Code Official (#375320)      ICC Certified Building Plans Examiner (#375320)  
ICC Certified Combination Inspector (#375320)      ICC Certified Building Inspector (#375320)  
ICC Certified Electrical Inspector (#375320)      ICC Certified Mechanical Inspector (#375320)  
ICC Certified Plumbing Inspector (#375320)      ICC Certified Plumbing Plans Examiner (#375320)  
ICC Certified Combo Dwelling Insp. (#375320)      ICC Certified Res. Combo. Inspector (#375320)  
ICC Certified Bldg Plans Ex UBC (#375320)      ICC Certified Mech Inspector UMC (#375320)  
ICC Certified Plumb Insp UPC (#375320)      ICC Certified Build Inspector UBC (#375320)  
ICC Certified Permit Technician (#375320)      ICC Certified Build Plans Ex CBC (#375320)  
ICC Certified Build Inspector CBC (#375320)      ICC Certified Elec Inspector CEC (#375320)  
ICC Certified Plumb Insp CPC (#375320)      ICC Certified Mech Insp CMC (#375320)  
ICC Certified Combo Dwelling Inspector Calif Codes (#375320)  
ICC Certified Combination Inspector Legacy (#375320)  
California Certified Access Specialist (CASP) (#180)  
ICC Certified Accessibility Inspector/Plans Examiner (#375320)

Ms. Meriaux brings over 35 years of construction experience to this project. She is an experienced Master Code Professional/Building Official/Building Inspector/Plans Examiner and a certified Building Official capable of providing all the necessary administrative support. She is active with ICC and CALBO serving on several Exam development committees.

#### Relevant Experience

- Currently Serving as Building Official for the City of Camarillo, Moorpark and Stanton.
- Previously served the Cities of Hidden Hills and Mission Viejo, and the County of Los Angeles.
- Thorough knowledge of building codes, regulations and construction industry standards.

## Fernando Zarate – Sr. Building Inspector and Plan Reviewer

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### Years of Experience

10+

### Education

International Association of Structural Iron Workers, Cerritos College

### Certifications

California Residential Plumbing Inspector  
California Residential Building Inspector  
California Commercial Plumbing Inspector  
Building Inspector  
California Commercial Building  
California Residential Mechanical Inspector  
Plumbing Inspector  
PC 832 – Powers of Arrest  
ACI – Special Inspectors – Field Tester

### KEY QUALIFICATIONS

- Certified Building Inspector
- Municipal Code Enforcement Background
- Hands-on Construction and Building & Safety Experience
- Excellent Interpersonal Skills

Mr. Zarate has over 9 years of combined construction and building and safety experience. He has been providing code enforcement and building inspection services on residential, commercial, and industrial projects and counter services for the City of Hawaiian Gardens for over 3 years.

He performs plan check and inspection services to assure that plans and construction are according to code, and has a thorough knowledge of building codes, regulations and construction industry standards.

He is highly experienced in enforcing and administering City ordinances and regulations, as well as all phases of the permit / inspection process including counter interface, permit issuance, processing, and building inspection.

### Relevant Experience

- Serves as a Building Inspector/Plans Examiner for the City of Stanton
- Assists with issuing building permits and answer building code questions for City of Stanton

## Mark Abbott, CBO - Building Official

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### Years of Experience

15+

### Education

B.S., Business Administration California State University, Long Beach

M.B.A., Business Administration California Baptist University

### Certifications

ICC Certified Building Official (5224949-CB)

ICC Combination Inspector (5224949)

ICC Certified Building Inspector (5224949-10)

OES/CALEMA Disaster Service Worker

### KEY QUALIFICATIONS

- Certified Building Official
- Certified Building Inspector
- Local Government Background
- Extensive Building and Safety Experience

Mr. Abbott has over 15 years of municipal experience with building and engineering related activities. In 2003 he began his career with Charles Abbott Associates, Inc. (CAA) in the Town of Apple Valley as a Building Inspector. He took on additional responsibility in 2007, by inspecting/managing capital improvement projects for the Engineering Division in the Town of Apple Valley. But due to his continued desire for new building related opportunities, he earned his ICC Building Official Certification in the fall of 2009. Mr. Abbott moved on to become the Building Inspector and Plan Checker for the City of Los Alamitos in 2010 and then became the Building Official for the City in 2015. In addition to these responsibilities, he also currently supports the Building Department at the City of Stanton, with whatever is needed.

Mr. Abbott has also worked diligently to improve the workflow for all CAA clients by modernizing CAA's own Building Permit and Code Enforcement Databases, and has even implemented electronic plan check solutions for the City of Fountain Valley and the City of Forest Park, GA.

### Relevant Experience

- Building Official for the City of Los Alamitos.
- Facilitated all code adoptions, agenda items, plan check, permit issuance, and inspections for the City of Los Alamitos.
- Streamlined CAA's own Building Permit system into a modern software application that has improved the permit issuance and permit tracking for all CAA clients.
- Implemented the installation of CAA's permit system with electronic plan check for a few CAA client cities.
- Building Inspector for the Town of Apple Valley, CA.
- Coordinated plan check, building inspections and off-site inspections for a Pulte Homes tract of 1,200-plus homes.

## Hayden Carlson

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### Permit Technician

#### Years of Experience

8+

#### Education

Marina High School, Huntington Beach, CA  
Vanguard University, Costa Mesa, CA 2014-2015

#### Certifications

ICC Certified Residential Building Inspector

Mr. Carlson has over 6 years of hands-on construction experience working as a field technician. He possesses extensive experience receiving and processing building and zoning permits, assisting with plan checks, and processing fees for building and zoning permits. In her role as permit technician for CAA at the City of Stanton, his responsibilities include assisting the public at the front counter; issuing permit applications; answering questions on policies and procedures; and providing information on the permit process. He receives and reviews completed building permit applications; ensures the information provided is accurate, complete, and in compliance with building and other regulations, and advises the public on necessary corrections. His responsibilities also include routing plans to appropriate staff; labeling and logging information into the City's permit system; setting up files; tracking and monitoring plan status; notifying contractors, owners, developers, and engineers of plan status, and issuing building permits. Mr. Carlson also verifies licensing and insurances on contractors; calculates and estimates fees for permits; collects fees for various applications, registrations, and licenses; issues receipts for fees collected, and inputs data into the City's computer system. Additionally, he performs a variety of clerical and technical tasks in support of assigned office functions, including assisting the public, record keeping, and report preparation as well as answering a variety of phone calls.

#### KEY QUALIFICATIONS

- Customer Service Driven
- Strong Communication Skills
- Certified Residential Building Inspector
- Building Permit Technician
- Hands-on Construction Experience

#### Relevant Experience

- Permit Technician, Stanton, CA

## Kevin Smith, P.E.

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### Associate Engineer

### Years of Experience

33+

### Education

Bachelor's of Science Degree, Civil Engineering,  
Loyola University

### Professional License

General Building Contractor, California

### KEY QUALIFICATIONS

- Extensive Project Management Experience
- Registered Civil Engineer in CA, NV, and AZ
- Municipal Experience
- Hands-on Public Works Experience

Mr. Smith has over 33 years of construction, public works, and building & safety experience with CAA. In his capacity as Associate Engineer, he has been involved extensively in Public works and traffic engineering, including the design, construction and maintenance of streets, storm drains, parks grounds and public buildings. Mr. Smith is currently assigned to the City of Rancho Palos Verdes, where he is responsible for the day-to-day management of \$1.9 million in operating and \$7.5 million in Capital Improvement budgets. He is responsible for preparing program budgets and monitoring staff performance, as well as evaluating productivity and implementing process improvements where necessary. Other typical duties include the evaluation of existing infrastructure for repair or replacement. With drainage facilities, Mr. Smith determines if expansion is possible or replacement is necessary.

In addition, Mr. Smith serves as the staff liaison for the Rancho Palos Verdes Traffic Committee, as well as special consultant to the Palos Verdes Estates Traffic Committee. In this role, he has found various solutions to on-street parking problems and implemented various changes.

### Relevant Experience

- Assistant Director of Public Works, Rancho Palos Verdes, CA
- Engineering Consultant, Palos Verdes Estates, CA
- Engineering Consultant, Hidden Hills, CA
- Engineering Consultant, Moorpark, CA

## Steve Ahuna, PE, CBO

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### Registered Civil Engineer/Certified Plans Examiner

#### Years of Experience

31+

#### Education

M.S., Applied Economics, Santa Clara University, Santa Clara, CA

B.S., Architectural Engineering, California State University, San Luis Obispo

#### Professional Memberships

ICC, CALBO, SEAOSC

#### Certifications

ICC Certified Building Official (1036330-CB)

ICC Certified Plans Examiner (1036330-B3)

ICC Certified Plans Examiner UBC (1036330-60)

OES/CALEMA DISASTER SERVICE WORKER

Post Disaster Assessment SAP

#### KEY QUALIFICATIONS

- Licensed and Certified
- Certified Building Official
- Building Plans Examiner
- PE License CA, CO, NV, FL and AZ
- Municipal Experience
- Structural and Architectural Review
- Extensive Plans Review Experience

#### Registration

Civil Engineer in California (C 34264), Colorado, Nevada, Florida and Arizona

Mr. Ahuna has over 30 years of experience in architectural and structural review of residential and non-residential plans. He has plan review experience working for both private and municipal entities. Prior to working as a plan checker, he worked for a private consulting structural engineering firm as a design engineer for residential and non-residential buildings. He will oversee the plan review staff in the review of plans and calculations for compliance with adopted codes and any adopted amendments.

#### Recent Project Experience

- 3-Story Senior Complex, Laguna Niguel, CA
- 20 Unit Townhouse Project, Huntington Beach, CA
- Several Industrial/Office Buildings, Huntington Beach, CA
- Preliminary Review of a 300 Unit Condo Project, Huntington Beach, CA
- Nevada Cancer Institute
- Fairfield Apartments

## Paul Melby, CBO

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### Years of Experience

20+

### Education

A.S. Construction Inspection,  
Mt. San Antonio College  
A.A. Architectural Drafting,  
Saddleback College  
A.A. Business Management, Saddleback College

### KEY QUALIFICATIONS

- Licensed and Certified
- Municipal Experience
- Construction Experience

### License

General Contractor B License

### Professional Memberships

ICC OE President, CALBO Professional Licensing Committee

### Certifications

ICC Building Official (0875834-CB)  
ICC Plans Examiner (0875834-60)  
ICC Combination Inspector (0875834-50)  
ICC Green Certified (0875834-G1)  
General Contractor (901300 B)

OES/CALEMA DISASTER SERVICE  
WORKER (SAP63248)  
FEMA IS-00700.a, IS-00100.b

Mr. Melby serves as the Building Official for the City of Rancho Santa Margarita, San Juan Capistrano and La Palma. He is responsible for the plan review of construction projects as well as the construction inspections in the City of Rancho Santa Margarita and La Palma. In addition Mr. Melby augments Rancho Santa Margarita City staff by providing support for Planning, Code Enforcement, Public Works and Water Quality. Mr. Melby prepares reports for City staff and coordinates with other agencies ensuring that projects are not permitted or finalized until the required approvals are obtained. Mr. Melby prides himself on being able to administer the code in a friendly, courteous manner. Coming from a construction background, he understands issues involving the mechanics and constructability of systems intended for compliance. Mr. Melby also is an instructor at Rancho Santiago college teaching Building code Classes for the Advanced Code Enforcement program.

### Recent Project Experience

- Building Official for the City of Rancho Santa Margarita
- Building Official for the City of La Palma
- Interim Building Official for the City of San Juan Capistrano
- Building Official and Stormwater Program Management at the City of Los Alamitos
- Plan Check Manager at Willdan Engineering: Supervised plan check engineers, soils engineers and provided plan check services for the County of Orange, and Cities of Santa Ana, Garden Grove, Tustin, Lake Forest and Laguna Hills
- Building and Safety/Code Enforcement Manager at the City of San Juan Capistrano: Responsible for Building and Grading and Code Enforcement. Supervised Inspectors and Code Enforcement Officers



## H. PLAN REVIEW TIMEFRAMES

All initial reviews will be returned within 10 business days for single family residential, small and large commercial projects, and improvement plans. Rechecks will be returned within 5 working days. These are maximum times, and we typically are able to turn around simple plan checks in less than half the time.

Initial Checks	5-10 days
Recheck	5 days
Plan Change	5 days
Single Family Dwelling	5-10 days
Apartments	10 days
Tenant Improvements	5-10 days
New Commercial/Industrial	10 days
Revisions to Approved Plans	1-5 days
Residential Improvements (i.e. room additions, etc.)	5-10 days

CAA provides accelerated plan review for additional cost. Plans are turned around in 48 hours for first plan check and rechecks from day of submittal.

### Communicating Plan Review Results

Plan reviews, when not immediately approved, will result in two complete typewritten plan check letters with comments referring to specific details and drawings, and referencing applicable code sections. We will provide a clear, concise, and thorough comment letter from which clients, designers, contractors, and owners can work. Comment letters are delivered to our clients and other designated recipients via email, fax, and/or reliable overland carrier unless directed otherwise. CAA will transmit plan review comments and coordinate re-checks directly to the City or to the applicant if desired, and completed plan review documents ready for approval will be returned to the City for final approval.

## I. REFERENCES

### City of Mission Viejo, CA

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Population: 94,196  
Type: Building and Safety Services – Full Service Department  
Scope: Building Official, Inspections, Plan Review, and additional services as needed

Service Dates: 1995 – current

Contact: Ms. Elaine Lister, Community Dev. Director  
[REDACTED]  
200 Civic Center, Mission Viejo, CA 92691

All inspections completed next day, all plan reviews completed in the required timelines by the City. Projects vary in complexity as well as type from residential to commercial/industrial and multi-family.

#### Example Projects:

##### **The Shops At Mission Viejo**

CAA serves as the City Building Official for the City of Mission Viejo, and as such, provided complete plan check for this 3 story, 500,000 square foot addition to a major shopping center. CAA checked electrical, mechanical, life safety, ADA, structural calculations, and framing. In addition to plan check, CAA also performed all building inspection services including plumbing, footing, slab, electrical, mechanical, framing, and roofing, as well as public works inspection for grading, drainage, and off-site work. Both the review and inspection process for this project were done in an extremely short period of time, to allow tenants to open for the upcoming holiday season. Both the developer and the Client were extremely complimentary of the speed and completeness of CAA's work on this project.

##### **Kaleidoscope Entertainment Center**

CAA provided complete plan check for this five story, 900,000 square foot commercial development. CAA checked electrical, mechanical, life safety, ADA, structural calculations, and framing. In addition to plan check, CAA also performed all building inspection services including plumbing, footing, slab, electrical, mechanical, framing, and roofing, as well as public works inspection for grading, drainage, and off-site work.

All plan checks were performed on time, and frequent meetings were held to assure clear understanding of review comments.

### Town of Apple Valley, CA

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Population: 70,172  
Type: Building and Safety Services , Town Engineering - Full Service Department  
Scope: Building Official, Inspections, Plan Review, Town Engineer and additional services as needed



Service Dates: 1990 – current

Contact: Mr. Frank Robinson, Town Manager  
[REDACTED]  
14955 Dale Evans Parkway, Apple Valley, CA 92307

All inspections completed next day, all plan reviews completed in the required timelines by the City. Projects vary in complexity as well as type from residential to commercial/industrial and multi-family.

Example Projects:

Wal-Mart Distribution Center, 1,300,000 + sq. ft. –  
Wal-Mart Solar Panels. 5.300 ground mounted solar panels – one megawatt power

### **City of Camarillo, CA**

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Population: 65,201  
Type: Building and Safety Services – Full Service Department  
Scope: Building Official, Inspections, Plan Review, and additional services as needed

Service Dates: 1994 – current

Contact: Mr. Dave Norman, City Manager  
[REDACTED]  
601 Carmen Drive, Camarillo, CA 93010

All inspections completed next day, all plan reviews completed in the required timelines by the City. Projects vary in complexity as well as type from residential to commercial/industrial and multi-family.

#### **Example Projects:**

Camarillo Outlet Mall, 1,000,000+ sq. ft. – Type V-1hr- review time 10 days

CAA provided complete plan check services for this one story, 482,000 square foot outlet shopping center. CAA checked electrical, mechanical, life safety, ADA, structural calculations, and framing. In addition to plan check, CAA also performed all building inspection services including plumbing, footing, slab, electrical, mechanical, framing, and roofing, as well as public works inspection for grading, drainage, and off-site work. CAA also issued all permits.

The City of Camarillo used CAA's service record of rapid plan review to "sell" the developer on using this site over similar sites in nearby jurisdictions.

*Example Construction projects shown for informational purposes, additional projects can be provided upon request. See reference section of our proposal for further information.*



## J. COST PROPOSAL

For the Cities consideration CAA proposes two options for staffing:

CAA will provide an as needed Building Official position and a full-time Building Inspector position, including our permit issuance and tracking system for the following percentage of fees collected:

<b>Monthly Fees Collected</b>	<b>CAA % of Fees</b>
The first \$20,000	55%
Additional amounts between \$20,001 and \$30,000	50%
Additional amounts over \$30,000	40%

Additional as needed staffing will be provided and billed at the hourly rates specified in our hourly rate sheet. On the following page, we have listed our current hourly rates for additional professional services and other direct costs.

## STANDARD HOURLY RATE SCHEDULE

ENGINEERING/PUBLIC WORKS CLASSIFICATION	HOURLY RATES	BUILDING & SAFETY CLASSIFICATION	HOURLY RATES
Principal Engineer	175.00	Principal Building Official	145.00
City Engineer	135.00	Building Official	125.00
Project Manager	145.00	Senior Building Inspector*	105.00
Senior Engineer	140.00	Building Inspector/Plan Checker	97.00
Project Engineer	132.00	Building Inspector*	90.00
Associate Engineer	110.00	Permit Specialist	66.00
		Code Enforcement Officer	75.00
Senior Design Engineer	115.00		
Assistant/Design Engineer	98.00	Senior Plan Check Engineer	125.00
		Building Plan Checker	105.00
Senior Plan Check Engineer	125.00		
Plan Check Engineer	105.00	COMMUNITY DEVELOPMENT CLASSIFICATION	HOURLY RATES
Senior Traffic Engineer/Manager	150.00		
Transportation Planner	110.00	Community Develop Director	145.00
Traffic Engineer Associate	95.00	Principal Planner	140.00
		Senior Planner	120.00
3-Person Survey Crew	270.00	Associate Planner	97.00
2-Person Survey Crew	210.00	Assistance Planner	80.00
		Planning Technician	70.00
Senior Draftsperson (CADD)	95.00	Code Enforcement Officer	75.00
Draftsperson (CADD)	85.00		
		OTHER CLASSIFICATIONS	HOURLY RATES
Senior Public Works Inspector*	105.00		
Public Works Inspector*	95.00	Landscape Architect Director	125.00
		Associate Landscape Architect	95.00
STORM WATER CLASSIFICATION	HOURLY RATES		
		Expert Witness Services	300.00
Environmental Project Manager	145.00		
Environmental Program Manager	115.00	Senior Contract Administrator	110.00
Environmental Analyst	92.00		
Environmental Associate	87.00	Administrative Assistant	60.00
Environmental Inspector	80.00	Clerical	50.00

*The above hourly rates include general and administrative overhead and fees and employee payroll burden. Rates are subject to an annual adjustment based upon increases adopted by Charles Abbott Associates, Inc. as reflected in the Consumer Price Index (CPI).*

\*The Hourly Rates identified are for Non-Prevailing Wage project inspection. Hourly Rates for Prevailing Wage project inspection will be \$120.00 for regular time; \$143.00 for overtime on Mondays through Saturdays; and \$167.00 for overtime on Sundays and Holidays. Prevailing Wage rates are subject to increases pursuant to the State of California's Department of Industrial Wage Rate Determinations.

## K. OTHER INFORMATION

### Staff Training

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Maintaining high quality services is what has made CAA as successful as we are today. We understand that having experienced and qualified personnel is a fundamental requirement of being able to delivery quality service to our clients, and we place considerable effort in attracting and retaining our highly trained staff.

CAA is devoted to keeping our certified and licensed staff up-to-date on the latest practice, techniques and skills in their areas of specialization. Our staff regularly attends training courses, seminars, and conferences to ensure each is up-to-date with the most relevant issues in the industry. As an example of these advanced industry-training standards, CAA provides California Building Official, (CALBO) certified in-house training to ensure staff members are aware of all State-mandated procedures, policies, and requirements. Additionally, we provide financial incentives to encourage participation in obtaining International Code Council (ICC) and other nationally recognized certifications. The knowledge obtained in achieving these certifications helps our professionals to keep up with the "State of the Art" and therefore gives us the ability to constantly improve the quality of service we are able to deliver to our clients.

We strongly believe in cross-training our employees in order to streamline the inspection process. Each inspector is able to perform multiple inspections, which is both cost effective to the City and simplifies the process for contractors, causing less wait times for inspections to be approved. Providing Cities with an efficient inspection process allows local communities to become more competitive in attracting economic development projects. Our approach to training is on going and not just occasional, assuring clients of work that is in full compliance to current standards. In addition, because the staff is well trained, they face virtually no learning curve and are able to get to work immediately.

### Integration Plan

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CAA prides itself on being a "team player" in each municipal service engagement. We train our staff to recognize that citizens of the community, City staff and other consultants are our customers and, as such, deserve our best efforts to respond, assist, support, and work hand-in-hand.

CAA assures you that our team members will learn and keep up to date on City policies and procedures as we commence the engagement. Our staff will participate, as requested, in staff meetings and meetings with individuals and companies who are coming to the City to procure services. CAA staff will adhere to all City personnel policies and directives including hours of operation, dress code, and other team building efforts.

Our people are encouraged to participate in community activities including New Years, State of the City and other regularly scheduled public events. We consistently reinvest in our customers through sponsorship of events and civic activities.

CAA expects and demands that the staff we assign to the City quickly become a productive part of the City Team. We will obtain prior written approval prior to substituting or adding individuals to our key staff. Although our agreements do not

specifically require it, we assure you that if we make an assignment and our staff member is not compatible (personality, personal behavior, etc.) with City staff we will, with your knowledge and approval, substitute another CAA staff member who can integrate seamlessly into your team.

CAA staff will strictly adhere to your policies and procedures regarding confidentiality, public release of information, and communications with media. CAA values each client and our staff conducts themselves in a manner not to bring attention to CAA but rather to always put the City in favorable public light. This is why the average length of service with our clients is over 16 years.

### Project Controls

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CAA tracks and controls project costs and will provide timely invoices through the company's payroll and accounting systems. Employees enter their time into the CAA payroll system from the primary workstation. The data is checked weekly by the Project Manager for accuracy and validity. CAA's administrative staff will prepare a monthly invoice per the agreement with the City. All invoices will be reviewed by the project manager prior to submittal to the City for payment.

### Client List

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The following contains related projects for CAA in the State of California, with an outline of services provided to each client, as well as the period of time that we have been performing the referenced service. We are extremely proud of our track record and the length of time we have continuously provided services to our clients. We invite you to contact any of our clients to obtain their opinion of the services we provide for their cities.

REFERENCES	SERVICES	SINCE
<b>City of Ojai</b> Steve McClary, City Manager (805) 646-5581 401 S. Ventura Street, Ojai, CA 93023	Building & Safety Code Enforcement	<b>2016</b>
<b>City of Rancho Palos Verdes</b> Lauren Ramezani, Sr. Administrative Analyst- Public Works (310) 544-5245 30940 Hawthorne Blvd., Rancho Palos Verdes, CA 90275	Building Plan Check Environmental/NPDES	<b>1984</b> <b>2016</b>
<b>City of Lake Forest</b> Angela Redding, City Manager (949) 461-3575 25550 Commercentre Drive, Suite 100 Lake Forest, CA 92630	Street Maintenance	<b>2016</b>
<b>City of Canyon Lake</b> Aaron Palmer, City Manager (951) 244-2955 31516 Railroad Canyon Rd, Canyon Lake, CA 92587	Building & Safety Engineering Public Works Planning	<b>2016</b>

<b>City of Avalon</b> Jordan Monroe, Management Aide (310) 510-0220 x 128 410 Avalon Canyon Rd., Avalon, CA 90704	Environmental/NPDES	2015
<b>City of Banning</b> Patty Nevins, Community Development Director (951) 922-3120 99 E. Ramsey St., Banning, CA 92220	Building & Safety City Engineering As Needed	2015
<b>City of Moreno Valley</b> Ahmad Ansari, Director of Public Works (951) 413-3000 14177 Frederick Street, Moreno Valley, CA 92552	Environmental/NPDES	2014
<b>City of Pico Rivera</b> Gladis Deras, Associate Engineer (562) 801-4332 6615 Parsons Boulevard, Pico Rivera, CA 135660	Environmental/NPDES	2014
<b>City of Calimesa</b> Bonnie Johnson, City Manager (909) 795-9801 908 Park Avenue, Calimesa, CA 92320	Building & Safety Full Service Planning Public Works Code Enforcement	2014
<b>City of San Dimas</b> Krishna Patel, Community Dev. Director (909) 394-6200 245 E Bonita Ave, San Dimas, CA 91773	Environmental/NPDES	2014
<b>City of Duarte</b> Craig Hensley, Community Dev. Director (626) 386-6835 1600 Huntington Dr, Duarte, CA 91010	Building & Safety Inspection & Plan Check, Code Administration	2013
<b>City of Redondo Beach</b> Geraldine Trivedi, Project Manager (310) 372-1171 415 Diamond Street Redondo Beach, CA 135277	Environmental/NPDES	2013
<b>City of La Palma</b> Laurie Murray, City Manager (714) 690-3334 7822 Walker Street, La Palma, CA 90623	Building & Safety Environmental/NPDES	2012
<b>City of Laguna Hills</b> Bruce Channing, City Manager (949) 707-2600 24035 El Toro Road, Laguna Hills, CA 92653	Street Maintenance	2012
<b>City of Laguna Woods</b> Chris Macon, City Manager (949) 639-0500 24264 El Toro Road, Laguna Woods, CA 92637	Environmental/NPDES	2010
<b>City of Los Alamitos</b> Les Johnson, Development Services Director (562) 431-3538 3191 Katella Avenue, Los Alamitos, CA 90270	Building & Safety Environmental/NPDES	2010

<b>City of Pomona</b> Julie Carver Environmental Programs Supervisor (909) 620-2261 505 South Garey Ave, Pomona, CA 91766	Environmental/NPDES	<b>2010</b>
<b>City of Cypress</b> Douglas Dancs, Director of Public Works (714) 229-6752 5257 Orange Avenue, Cypress, CA 90630	Plan Check Building Inspection NPDES Inspection and Plan Review	<b>2008</b>
<b>City of Rancho Santa Margarita</b> Cheryl Kuta, Development Services Director (949) 635-1800, ext. 6707 22122 El Paseo, Rancho Santa Margarita, CA 92688	Building & Safety Environmental Public Works Code Enforcement	<b>2007</b>
<b>City of Fountain Valley</b> Andy Perea, Interim Dev. Services Director (714) 593-4436 10200 Slater Ave, Fountain Valley, CA 92708-4736	Building & Safety	<b>2004</b>
<b>City of Stanton</b> Kelly Hart, Community Dev. Director (714) 890-4213 7800 Katella Avenue, Stanton, CA 90680	Building & Safety	<b>2004</b>
<b>City of Aliso Viejo</b> David Doyle, City Manager (949) 425-2500 12 Journey, Suite 100, Aliso Viejo, CA 92656	Building & Safety Engineering Support Code Enforcement Environmental	<b>2002</b>
<b>City of Mission Viejo</b> Elaine Lister, Community Dev. Director (949) 470-3000 200 Civic Center, Mission Viejo, CA 92691	Building & Safety Public Works Plan Check Public Works Inspection	<b>1995</b>
<b>City of Camarillo</b> Dave Norman, City Manager (805) 388-5307 601 Carmen Drive, Camarillo, CA 93010	Building & Safety Public Works Inspections Environmental/NPDES	<b>1994</b>
<b>City of Yucaipa</b> Ray Casey, City Manager (909) 797-2489 34272 Yucaipa Boulevard, Yucaipa, CA 92399	Building & Safety Engineering Support Fire Marshall Services	<b>1993</b>
<b>City of Twentynine Palms</b> Frank Luckino, City Manager (760) 367-6799 6136 Adobe Road, Twentynine Palms, CA 92277	Building & Safety City Engineering Traffic Engineering	<b>1993</b>
<b>Town of Yucca Valley</b> Shane Steuckle, Community Dev. Director (760) 369-7207 57090 Twentynine Palms Highway, Yucca Valley, CA 92284	Building & Safety	<b>1992</b>
<b>Town of Apple Valley</b>	Building & Safety	<b>1990</b>

Doug Robertson, Town Manager (760) 240-7000 14955 Dale Evans Parkway, Apple Valley, CA 92307	Public Work Administration Town Engineering	
<b>City of Hidden Hills</b> Kerry Kallman, City Manager (818) 888-9281 6165 Spring Valley Road, Hidden Hills, CA 91302	Building & Safety City Engineering	<b>1990</b>
<b>City of Moorpark</b> David Bobardt, Community Development Director (805) 517-6281 799 Moorpark Avenue, Moorpark, CA 93021	Building & Safety Environmental/NPDES	<b>1988</b>

**CITY OF STANTON**

**SECOND AMENDMENT TO  
AGREEMENT FOR BUILDING SERVICES**

**1. PARTIES AND DATE.**

This Second Amendment to the Agreement for Building Services (“Second Amendment”) is entered into on the 22<sup>nd</sup> day of February, 2022 by and between the City of Stanton (hereinafter referred to as the “City”) and Charles Abbott Associates, Inc. (hereinafter referred to as the Consultant. City and Charles Abbott Associates, Inc. are sometimes collectively referred to herein as the “Parties.”

**2. RECITALS.**

2.1 Agreement. The Parties entered into that certain Agreement for Building Services dated February 22, 2022 (“Agreement”). The Agreement was amended, per the First Amendment to February 20, 2022

2.2 Second Amendment. The Parties now desire to amend the Agreement to extend the term in order to provide Building Services to the City while completing the review, vetting and decision-making process for providing these services to the City long-term.

**3. TERMS.**

3.1 Term. This Amended Agreement shall commence on **February 22, 2022** and shall remain and continue in effect until tasks described herein are completed, but in no event later than **June 30, 2022**.

3.2 Scope of Services. The Agreement is hereby amended to include the scope of services set forth in Exhibit “A,” attached hereto and incorporated herein by reference.

3.3 Compensation. The Agreement is hereby amended to revise the Compensation as follows:

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth herein, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed **55% of permit fees for the first \$20,000, 50% of permit fees for fees collected between \$20,001 and \$30,000, and 40% of fees for more than \$30,000, in addition to special plan check and inspection services charged at the hourly rate identified in the payment schedule** for the total term of the Amended Agreement unless additional payment is approved as provided in this Agreement.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement that are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Consultant at the time City's written authorization is given to Consultant for the performance of said services. The City Manager may approve additional work not to exceed ten percent (10%) of the amount of the Agreement, but in no event shall such sum exceed ten thousand dollars (\$10,000.00). Any additional work in excess of this amount shall be approved by the City Council.

(c) Consultant will submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of Consultant's fees it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

3.4 Remaining Provisions of Agreement. Except as otherwise specifically set forth in this Second Amendment, the remaining provisions of the Agreement shall remain in full force and effect.

*[Signatures on following page]*

**SIGNATURE PAGE TO CITY OF STANTON AND CHARLES ABBOTT ASSOCIATES, INC. SECOND AMENDMENT TO AGREEMENT**

IN WITNESS WHEREOF, the parties have executed this Second Amendment to Agreement on this 22<sup>nd</sup> day of February, 2022.

**CITY OF STANTON**

**CHARLES ABBOTT ASSOCIATES, INC.**

By: \_\_\_\_\_  
Jarad L. Hildenbrand  
City Manager

By: \_\_\_\_\_  
RUSTY REED

**ATTEST:**

By: \_\_\_\_\_  
Patricia A. Vazquez  
City Clerk

By: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Best Best & Krieger LLP  
City Attorney

**EXHIBIT "A"**  
**TO SECOND AMENDMENT TO**  
**AGREEMENT FOR BUILDING SERVICES**

**SCOPE OF SERVICES**

## CITY OF STANTON

### REPORT TO CITY COUNCIL

**TO:** Honorable Mayor and Members of the City Council

**DATE:** February 22, 2021

**SUBJECT: CYPRESS COLLEGE FOUNDATION ANNUAL AMERICANA AWARDS**

#### **REPORT IN BRIEF:**

City Council consider participation through a sponsorship contribution for the 47<sup>th</sup> Annual Cypress College Foundation Americana Awards Live Stream Gala scheduled for Saturday, March 26, 2022. This gala is used as a fundraiser for the Cypress College Foundation with all proceeds benefiting Cypress College students and programs and also honors the Citizen of the Year from surrounding communities.

#### **RECOMMENDED ACTION:**

1. City Council find that this item is not subject to California Environmental Quality Act ("CEQA") pursuant to Sections 15378(b)(5)(Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment); and
2. Approve the City's participation through a sponsorship contribution for the 47<sup>th</sup> Annual Cypress College Foundation Americana Awards; and
3. Direct staff to proceed with selection and purchase of the Benefactor Sponsorship at a cost of \$3,000 for the City's participation through sponsorship contribution for the 47<sup>th</sup> Annual Cypress College Foundation Americana Awards.

#### **BACKGROUND:**

The 47<sup>th</sup> Annual Cypress College Foundation Americana Awards Live Stream Gala will be held on March 26, 2022. Annually each surrounding City has had the opportunity to honor an individual who has made a significant contribution to their community as Citizen of the Year. This year Mr. Tom Carpenter has been selected and will be honored as the City of Stanton's Citizen of the Year.

**ANALYSIS/JUSTIFICATION:**

Historically the City Council has participated in the Cypress College Foundation Americana Awards Dinner. This gala is used as a fundraiser for the Cypress College Foundation with all proceeds benefiting Cypress College students and programs.

**FISCAL IMPACT:**

The participation cost for the City’s sponsorship contribution to the event is available from the City Council’s Travel / Conference / Meeting Expense account number 101-1100-607110.

**ENVIRONMENTAL IMPACT:**

This item is not subject to California Environmental Quality Act (“CEQA”) pursuant to Sections 15378(b)(5)(Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment).

**LEGAL REVIEW:**

None.

**STRATEGIC PLAN OBJECTIVE ADDRESSED:**

Objective 6: Maintain and Promote a Responsive, High Quality and Transparent Government.

**PUBLIC NOTIFICATION:**

Through the normal agenda process.

Prepared By:

/s/ Patricia A. Vazquez

\_\_\_\_\_  
Patricia A. Vazquez  
City Clerk

Concurred by:

/s/ Michelle Bannigan

\_\_\_\_\_  
Michelle Bannigan  
Finance Director

Approved by:

/s/ Jarad L. Hildenbrand

\_\_\_\_\_  
Jarad L. Hildenbrand  
City Manager

**Attachment:**

- A. Cypress College Foundation Letter of Invitation / Sponsorship Opportunities

**Attachment: A**

*Click here to return to the agenda.*



**Saturday, March 26, 2022**

**Disneyland Hotel Grand Ballroom**

Silent Auction & No Host Cocktails  
5:30 p.m.

Dinner and Program  
7:00 p.m.

**Black Tie Encouraged**

Register Online  
[www.AmericanaAwards.org](http://www.AmericanaAwards.org)  
or return the enclosed registration card

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Sponsored by  
 **UnionBank**<sup>®</sup>

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## MAN OF THE YEAR

Chief Brian Fennessy

## CITIZENS OF THE YEAR

Stephen Sain, *Anaheim*

Alice Burnett, *Buena Park*

Loree Erpelding, *Cypress*

Virginia “Ginny” Moore, *Garden Grove*

Mic & Dee Vincenti, *La Palma*

Troy Edgar, *Los Alamitos*

Deb Machen, *Seal Beach*

Tom Carpenter, *Stanton*

[www.AmericanaAwards.org](http://www.AmericanaAwards.org)  
[foundation@cypresscollege.edu](mailto:foundation@cypresscollege.edu)



Register online at [www.AmericanaAwards.org](http://www.AmericanaAwards.org)





Sponsored by  UnionBank

**SATURDAY, MARCH 26, 2022**

**Step 1: Select Registration Options**

Registration Options  Contact Information  Verification  Payment

**Registration for Credit Card Payment Only**

**If you plan to send a payment by check, please click here to register.**

(<http://weblink.donorperfect.com/Americana2022check>)

**Presenting Sponsor \$50,000+**

Presenting sponsor recognition on event literature, including "save-the-date" card, invitation, printed program, on website and Cypress College marquee. Two-page spread in center of printed program. Primary recognition in event publicity, press releases, @Cypress newsletter and annual report. Recognized during the event, and special live or video welcome at the start of the event; Registration for 50 people.

\$50000.00

**Title Sponsor ~~\$25,000~~ SOLD OUT**

Identified in event literature, including "save-the-date" card, invitation, printed program, on website and Cypress College marquee. Full-page ad placed inside the front cover of the printed program. Acknowledged in event publicity, press releases, @Cypress newsletter and annual report. Recognized during the event, and special live or video welcome at the start of the event; Registration for 30.

\$25000.00

**Platinum Sponsor \$20,000**

Registration for 10. Full-page color donor acknowledgment in superior location in Americana Program, recognition on website and during the event. Identified on Cypress College marquee.

\$20000.00

**President's Circle Sponsor \$15,000**

Registration for 10. Full-page color donor acknowledgment in prime location in Americana Program, recognition on website and during the event. Includes all Corporate Level President's Circle Benefits for year-long recognition and events.

\$15000.00

**Patriot Sponsor \$10,000**

Registration for 10. Full-page color donor acknowledgment in prime location in Americana Program, recognition on website and during the event.

\$10000.00

### Founder Sponsor \$5,000

Registration for 10. Full-page color donor acknowledgment in Americana Program, recognition on website and during the event.

\$5000.00

### Benefactor Sponsor \$3,000

Registration for 10. Half-page color donor acknowledgment in Americana Program.

\$3000.00

### Spirit Sponsor \$2,000

Full-page color donor acknowledgment in Americana Program.

\$2000.00

### Patron Sponsor \$1,000

Half-page color donor acknowledgment in Americana Program.

\$1000.00

### Star Sponsor \$700

Registration for two and Americana Program listing.

\$700.00

### Individual Registration \$250

One Americana registration.

Quantity

0 x \$250.00 = 0.00

### Individual Registration (Cypress College Employees)

For Cypress College employees and a significant other.

One Americana registration.

**# of Individual Tickets**

0 ▾ x \$150.00 = 0.00

## Opportunity Drawing Tickets \$50

Win a pair (2) of **Electric Bicycles and other prizes valued up to \$10,000.**

Drawing will be held on Saturday, March 26, 2022 at the 47th Annual Americana Awards. Winner need not be present to win.

**# of Tickets**

0 ▾ x \$50.00 = 0.00

## Would you like to make an additional donation?

**Amount**

\$1,000

\$500

\$250

\$100

Other

Next

Contact us at:

Cypress College Foundation  
9200 Valley View Street  
Cypress, CA 90630  
[foundation@cypresscollege.edu](mailto:foundation@cypresscollege.edu) (<mailto:foundation@cypresscollege.edu>)

**Privacy Policy**

We take precautions to protect your information. We collect credit card or bank account information, names, addresses, and other data related to your transaction when you make a payment through our site. We use this information to process your payment.

**Terms/Conditions**

By submitting your payment, you authorize us to charge the account above for the amount specified in the Transaction Amount field. Account information for Recurring Pledges/Monthly Giving is encrypted and stored securely via SafeSave™ for automatic processing of your future payments. Notify us at anytime if you wish to discontinue your pledge.



online forms (<https://www.donorperfect.com/fundraising-software/integrated-online-forms/>)

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## CITY OF STANTON

### REPORT TO CITY COUNCIL

**TO:** Honorable Mayor and City Council

**DATE:** February 22, 2022

**SUBJECT: CONSIDERATION OF REVISED CITY COUNCIL DISTRICT ELECTORAL BOUNDARIES AS REQUIRED BY ELECTIONS CODE SECTION 21601**

#### **REPORT IN BRIEF:**

Pursuant to Election Code section 21601, cities with by-district election systems are required to redraw their district boundary maps to ensure compliance with the California and federal Voting Rights Acts. The process to complete the redistricting requires a minimum of four public hearings and dedicated public outreach to ensure minority populations and communities of interest are aware of the redistricting effort and are provided with options to participate. The City held its first public hearing on November 23, 2021, its second public hearing on December 16, 2021, and its third public hearing on January 25, 2022. The deadline for Stanton to complete the redistricting process is April 17, 2022.

#### **RECOMMENDED ACTION:**

1. City Council declare the action not a project as defined by the California Environmental Quality Act ("CEQA") and will have no result direct or indirect to physical changes in the environment; and
2. Continue public hearing #4 to the next regularly scheduled City Council meeting of March 8, 2022, at 6:45 pm (City Hall / Council Chambers: 7800 Katella Avenue, Stanton, 90680).

Prepared By:

Approved by:

/s/ Patricia A. Vazquez

/s/ Jarad L. Hildenbrand

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Patricia A. Vazquez  
City Clerk

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Jarad L. Hildenbrand  
City Manager

# Item: 8A

*Click here to return to the agenda.*

## ORDINANCE NO. 1119

### **AN ORDINANCE ADDING CHAPTERS 19.23 AND 20.211 TO THE STANTON MUNICIPAL CODE TO REGULATE URBAN LOT SPLITS AND TWO-UNIT PROJECTS UNDER SB 9; AND FINDING THE ACTION TO BE EXEMPT FROM CEQA**

**WHEREAS**, the City of Stanton, California (“City”) is a municipal corporation, duly organized under the constitution and laws of the State of California; and

**WHEREAS**, in 2021, the California Legislature approved, and the Governor signed into law Senate Bill 9 (“SB 9”), which among other things, adds Government Code section 65852.21 and 66411.7 to impose new limits on local authority to regulate urban lot splits and two-unit projects; and

**WHEREAS**, SB 9 allows local agencies to adopt objective zoning, subdivision, and design review standards for urban lot splits and two-unit projects; and

**WHEREAS**, SB 9 takes effect January 1, 2022, and preempts any conflicting city regulation; and

**WHEREAS**, the City desires to amend its local regulatory scheme to comply with Government Code sections 66411.7 and 65852.21 and to appropriately regulate projects under SB 9; and

**WHEREAS**, staff and the City Attorney prepared the proposed Ordinance, including the proposed language and terminology, and any additional information and documents deemed necessary for the Planning Commission to take action; and

**WHEREAS**, on December 14, 2021, the City Council adopted an Urgency Ordinance to address the immediate threats to public health and safety; and

**WHEREAS**, on December 15, 2021, the Planning Commission conducted and concluded a duly noticed public hearing concerning the Zoning Text Amendment contained herein as required by law and received testimony from City staff and all interested parties regarding the proposed amendments and recommended that the City Council adopt the amendments; and

**WHEREAS**, on January 25, 2022), the City Council conducted and concluded a duly noticed public hearing concerning the Municipal Code amendments contained herein as required by law and received testimony from City staff and all interested parties regarding the proposed amendments; and

**WHEREAS**, all legal prerequisites to the adoption of the Ordinance have occurred.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF STANTON DOES ORDAIN AS FOLLOWS:**

**SECTION 1:** The recitals above are each incorporated by reference and adopted as findings by the City Council.

**SECTION 2:** Under California Government Code sections 65852.21, subd. (j), and 66411.7, subd. (n), the adoption of an ordinance by a city or county implementing the provisions of Government Code sections 66411.7 and 65852.21 and regulating urban lot splits and two-unit projects is statutorily exempt from the requirements of the California Environmental Quality Act ("CEQA"). Therefore, adoption of this Ordinance is statutorily exempt from CEQA because it implements these new laws enacted by SB 9.

**SECTION 3:** The Stanton Municipal Code is hereby amended as indicated in Exhibit A, attached hereto and incorporated herein by reference.

**PASSED, APPROVED, AND ADOPTED** this 22<sup>nd</sup> day of February, 2022.

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DAVID J. SHAWVER, MAYOR

ATTEST:

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PATRICIA A. VAZQUEZ, CITY CLERK

APPROVED AS TO FORM:

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HONGDAO NGUYEN, CITY ATTORNEY

STATE OF CALIFORNIA            )  
COUNTY OF ORANGE            ) ss.  
CITY OF STANTON                )

I, Patricia A. Vazquez, City Clerk of the City of Stanton, do hereby certify that the foregoing Ordinance No. 1119 was duly introduced and placed upon its first reading at a regular meeting of the City Council on the 8<sup>th</sup> day of February, 2022, and thereafter, said Ordinance was duly adopted and passed at a regular meeting of the City Council on the 22<sup>nd</sup> day of February, 2022, by the following vote, to wit:

AYES:            COUNCILMEMBERS: \_\_\_\_\_  
NOES:            COUNCILMEMBERS: \_\_\_\_\_  
ABSENT:          COUNCILMEMBERS: \_\_\_\_\_  
ABSTAIN:        COUNCILMEMBERS: \_\_\_\_\_

\_\_\_\_\_  
CITY CLERK, CITY OF STANTON

**EXHIBIT A**

**Amendments to Stanton Municipal Code**

(Follows this page)

Chapter 19.23 is hereby added to the Stanton municipal code to read as follows:

**Chapter 19.23 – State-mandated Subdivisions.**

**Section 19.23.010 – Urban Lot Splits.**

**A. Purpose.** The purpose of this section is to allow and appropriately regulate urban lot splits in accordance with Government Code section 66411.7.

**B. Definition.** An “urban lot split” means a the subdivision of an existing, legally subdivided lot into two lots in accordance with the requirements of this section.

**C. Application.**

1. Owners.

a. Only individual property owners may apply for an urban lot split. “Individual property owner” means a natural person holding fee title individually or jointly in the person’s own name or a beneficiary of a trust that holds fee title. “Individual property owner” does not include any corporation or corporate person of any kind (partnership, LP, LLC, C corp, S corp, etc.) except for a community land trust (as defined by Rev. & Tax Code § 402.1(a)(11)(C)(ii)) or a qualified nonprofit corporation (as defined by § 214.15).

b. Any person with a mortgage interest in the lot to be split under this section must sign the application and the parcel map indicating the person’s consent to the project

2. An application for an urban lot split must be submitted on the city’s approved form. Only a complete application will be considered. The city will inform the applicant in writing of any incompleteness within 30 days after the application is submitted.

3. The city may establish a fee to recover its costs for adopting, implementing, and enforcing this section of the code, in accordance with applicable law. The city council may establish and change the fee by resolution. The fee must be paid with the application.

**D. Approval.**

1. An application for a parcel map for an urban lot split is approved or denied ministerially, by the Director of Community and Economic Development, without discretionary review.

2. A tentative parcel map for an urban lot split is approved ministerially if it complies with all the requirements of this section. The tentative parcel map may not be recorded. A final parcel map is approved ministerially as well, but not until the owner demonstrates that the required documents have been recorded, such as the deed restriction and easements. The tentative parcel map expires three months after approval.

3. The approval must require the owner and applicant to hold the city harmless from all claims and damages related to the approval and its subject matter.
4. The approval must require the owner and applicant to reimburse the city for all costs of enforcement, including attorneys' fees and costs associated with enforcing the requirements of this code.

**E. Requirements.** An urban lot split must satisfy each of the following requirements:

**1. Map Act Compliance.**

a. The urban lot split must conform to all applicable objective requirements of the Subdivision Map Act (Gov. Code § 66410 et. seq., "SMA") and implementing requirements in this title, except as otherwise expressly provided in this section.

b. If an urban lot split violates any part of the SMA, the city's subdivision regulations, including this section, or any other legal requirement:

(1) The buyer or grantee of a lot that is created by the urban lot split has all the remedies available under the SMA, including but not limited to an action for damages or to void the deed, sale, or contract.

(2) The city has all the remedies available to it under the SMA, including but not limited to the following:

(a). An action to enjoin any attempt to sell, lease, or finance the property.

(b) An action for other legal, equitable, or summary remedy, such as declaratory and injunctive relief.

(c) Criminal prosecution, punishable by imprisonment in county jail or state prison for up to one year, by a fine of up to \$10,000, or both; or a misdemeanor.

(d) Record a notice of violation.

(e) Withhold any or all future permits and approvals.

c. Notwithstanding section 66411.1 of the SMA, no dedication of rights-of-way or construction of offsite improvements is required for an urban lot split.

**2. Zone.** The lot to be split is in a single-family residential zone. For purposes of this section, a single-family residential zone is a zone where the only residential use that is allowed as a primary use is a single residential dwelling on a lot.

**3. Lot Location.**

a. The lot to be split is not located on a site that is any of the following:

- (1) Prime farmland, farmland of statewide importance, or land that is zoned or designated for agricultural protection or preservation by the voters.
- (2) A wetland.
- (3) Within a very high fire hazard severity zone, unless the site complies with all fire-hazard mitigation measures required by existing building standards.
- (4) A hazardous waste site that has not been cleared for residential use.
- (5) Within a delineated earthquake fault zone, unless all development on the site complies with applicable seismic protection building code standards.
- (6) Within a 100-year flood hazard area, unless the site has either:
  - (a) been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the local jurisdiction, or
  - (b) meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program.
- (7). Within a regulatory floodway, unless all development on the site has received a no-rise certification.
- (8). Land identified for conservation in an adopted natural community conservation plan, habitat conservation plan, or other adopted natural resource protection plan.
- (9). Habitat for protected species.
- (10). Land under conservation easement.

b. The purpose of subpart E.3.a above is merely to summarize the requirements of Government Code section 65913.4(a)(6)(B)–(K). (See Gov. Code § 66411.7(a)(3)(C).)

c. The applicant must provide evidence that the requirements of Government Code section 65913.4(a)(6)(B)–(K) are satisfied.

**4. Not Historic.** The lot to be split must not be a historic property or within a historic district that is included on the State Historic Resources Inventory. Nor may the lot be or be within a site that is designated by ordinance as a city or county landmark or as a historic property or district.

## **5. No Prior Urban Lot Split.**

- a. The lot to be split was not established through a prior urban lot split.
- b. The lot to be split is not adjacent to any lot that was established through a prior urban lot split by the owner of the lot to be split or by any person acting in concert with the owner. “Any person acting in concert with the owner” here includes any third-party that coordinates or assists the owners of two adjacent lots with their respective urban lot splits.

## **6. No Impact on Protected Housing.**

- a. The urban lot split must not require or include the demolition or alteration of any of the following types of housing:
  - (1) Housing that is income-restricted for households of moderate, low, or very low income.
  - (2) Housing that is subject to any form of rent or price control through a public entity’s valid exercise of its policy power.
  - (3) Housing, or a lot that used to have housing, that has been withdrawn from rental or lease under the Ellis Act (Gov. Code §§ 7060–7060.7) at any time in the 15 years prior to submission of the urban lot split application.
  - (4) Housing that has been occupied by a tenant in the last three years.
- b. The applicant and the owner of a property for which an urban lot split is sought must provide a sworn statement as to this fact with the application for the parcel map.
  - (1) The sworn statement must state that:
    - (a) No housing that is income-restricted for households of moderate, low or very low income will be demolished or altered.
    - (b) No housing that is subject to any form of rent or price control will be demolished or altered.
    - (c) No housing that has been withdrawn from rental or lease under the Ellis Act at any time in the last 15 years will be demolished or altered.
    - (d) No housing that has been occupied by a tenant in the last three years will be demolished or altered.

(2) The city may conduct its own inquiries and investigation to ascertain the veracity of the sworn statement, including but not limited to, surveying owners of nearby properties; and the city may require additional evidence of the applicant and owner as necessary to determine compliance with this requirement.

#### **7. Lot Size.**

- a. The lot to be split must be at least 2,400 square feet.
- b. The resulting lots must each be at least 1,200 square feet.
- c. Each of the resulting lots must be between 60 percent and 40 percent of the original lot area.

#### **8. Easements.**

- a. The owner must enter into an easement agreement with each public-service provider to establish easements that are sufficient for the provision of public services and facilities to each of the resulting lots.
- b. Each easement must be shown on the tentative parcel map.
- c. Copies of the unrecorded easement agreements must be submitted with the application. The easement agreements must be recorded against the property before the final map may be approved, in accordance with section D.2 above.
- d. If an easement is recorded and the project is not completed, making the easement moot, the property owner may request, and the city will provide, a notice of termination of the easement, which the owner may record.

#### **9. Lot Access.**

- a. Each resulting lot must adjoin the public right-of-way.
- b. Each resulting lot must have frontage on the public right-of-way of at least 12.5 feet.

#### **10. Unit Standards.**

**a. Quantity.** No more than two dwelling units of any kind may be built on a lot that results from an urban lot split. For purposes of this paragraph, “unit” means any dwelling unit, including, but not limited to, a primary dwelling unit, a unit created under section 17.86.010 of this code, an ADU, or a JADU

#### **b. Unit Size.**

(1) The total floor area of each primary dwelling that is developed on a resulting lot must be

(a) less than or equal to 800 and

(b) more than 500 square feet.

(2) A primary dwelling that was legally established prior to the urban lot split and that is larger than 800 square feet is limited to the lawful floor area at the time of the urban lot split. It may not be expanded.

(3) A primary dwelling that was legally established prior to the urban lot split and that is smaller than 800 square feet may be expanded to 800 square feet after the urban lot split.

**c. Height Restrictions.**

(1). On a resulting lot that is larger than 2,000 square feet, no new primary dwelling unit may exceed a single story or 16 feet in height, measured from grade to peak of the structure.

(2) On a resulting lot that is smaller than 2,000 square feet, no new primary dwelling unit may exceed two stories or 22 feet in height, measured from grade to peak of the structure. Any portion of a new primary dwelling that exceeds one story must be stepped back by an additional five feet from the ground floor; no balcony deck or other portion of the second story may project into the setback.

(3) No rooftop deck is permitted on any new or remodeled dwelling or structure on a lot resulting from an urban lot split.

**d. Lot Coverage.** Lot coverage may not exceed 50 percent of the lot. This lot coverage standard is only enforced to the extent that it does not prevent two primary dwelling units on the lot at 800 square feet each.

**e. Open Space.** A minimum of 50 percent of the lot must be maintained as open space. This open space standard is only enforced to the extent that it does not prevent two primary dwelling units on the lot at 800 square feet each.

**f. Setbacks.**

(1). Generally. All setbacks must conform to those objective setbacks that are imposed through the underlying zone.

(2) Exceptions. Notwithstanding subpart E.10.f(1) above:

(a) Existing Structures. No setback is required for an existing legally established structure or for a new structure that is constructed in the same location and to the same dimensions as an existing legally established structure.

(b). 800 sf; four-foot side and rear. The setbacks imposed by the underlying zone must yield to the degree necessary to avoid physically precluding the construction of up to two units on the lot or either of the two units from being at least 800 square feet in floor area; but in no event may any structure be less than four feet from a side or rear property line.

(3) Front Setback Area. Notwithstanding any other part of this code, dwellings that are constructed after an urban lot split must be at least 30 feet from the front property lines. The front setback areas must:

(a) be kept free from all structures greater than three feet high;

(b) be at least 50 percent landscaped with drought-tolerant plants, with vegetation and irrigation plans approved by a licensed landscape architect;

(c) allow for vehicular and fire-safety access to the front structure.

**g. Parking.** Each new primary dwelling unit that is built on a lot after an urban lot split must have at least one off-street parking space per unit unless one of the following applies:

(1) The lot is located within one-half mile walking distance of either

(a) a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours or

(b) a site that contains

(i) an existing rail or bus rapid transit station,

(ii) a ferry terminal served by either a bus or rail transit service, or

(iii) the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

(2) The site is located within one block of a car-share vehicle location.

**h. Architecture.**

(1) If there is a legal primary dwelling on the lot that was established before the urban lot split, any new primary dwelling unit must match the existing primary dwelling unit in exterior materials, color, and dominant roof pitch. The dominant roof slope is the slope shared by the largest portion of the roof.

(2) If there is no legal primary dwelling on the lot before the urban lot split, and if two primary dwellings are developed on the lot, the dwellings must match each other in exterior materials, color, and dominant roof pitch. The dominant roof slope is the slope shared by the largest portion of the roof.

(3) All exterior lighting must be limited to down-lights.

(4) No window or door of a dwelling that is constructed on the lot after the urban lot split may have a direct line of sight to an adjoining residential property. Fencing, landscaping, or privacy glass may be used to provide screening and prevent a direct line of sight.

(5) If a dwelling is constructed on a lot after an urban lot split and any portion of the dwelling is less than 30 feet from a property line that is not a public right-of-way line, then all windows and doors in that portion must either be (for windows) clerestory with the bottom of the glass at least six feet above the finished floor, or (for windows and for doors) utilize frosted or obscure glass.

#### **i. Landscaping.**

(1) Tree Removal.

(a) No mature tree may be removed on a lot with any development under this section unless removal is necessary to constructing a dwelling unit that must be allowed under state law.

(b) "Mature tree" means a tree with a diameter of six inches or more or a height of eight feet or taller.

(c) A tree may only be removed under subparagraph E.10.i(1)(a) above if it is replaced with at least two mature trees of the same type and with a trunk diameter that is the same or larger than that of the removed tree.

(d) If a certified arborist determines that there is not space on the lot for a replacement tree that is required under subparagraph E.10.i(1)(c) above, owner may pay the replacement cost of the tree, as determined by the tree-replacement cost schedule.

(2) Evergreen landscape screening must be planted and maintained between each dwelling and adjacent lots (but not rights of way) as follows:

(a) According to a planting and irrigation plan that is prepared by a licensed landscape architect.

(b) At least one 15-gallon size plant shall be provided for every five linear feet of exterior wall. Alternatively, at least one 24-inch box size plant shall be provided for every ten linear feet of exterior wall.

(c) Plant specimens must be at least six feet tall when installed. As an alternative, a solid fence of at least six feet in height may be installed.

(d) All landscaping must be drought-tolerant.

**j. Nonconforming Conditions.** An urban lot split is approved without requiring a legal nonconforming zoning condition to be corrected.

**k. Utilities.**

(1) Each primary dwelling unit on the lot must have its own direct utility connection to the utility service provider.

(2) Notwithstanding paragraph E.10.k(i) above, a primary dwelling unit may have a direct utility connection to an onsite wastewater treatment system in accordance with this paragraph and the city's code. Each primary dwelling unit on the lot that is or that is proposed to be connected to an onsite wastewater treatment system must first have a percolation test completed within the last five years or, if the percolation test has been recertified, within the last 10 years.

(3) All utilities must be underground.

**l. Building & Safety.** All structures built on the lot must comply with all current local building standards. An urban lot split is a change of use.

**11. Fire-Hazard Mitigation Measures.**

a. A lot in a very high fire hazard severity zone must comply with each of the following fire-hazard mitigation measures:

(1) It must have direct access to a public right of way with a paved street with a width of at least 40 feet. The public right of way must have at least two independent points of access for fire and life safety to access and for residents to evacuate.

(2) All dwellings on the site must comply with current fire code requirements for dwellings in a very high fire hazard severity zone.

(3) All enclosed structures on the site must have fire sprinklers.

(4) All sides of all dwellings on the site must be within a 150-foot hose-pull distance from either the public right of way or of an onsite fire hydrant or standpipe.

(5) If the lot does not have a swimming pool, the lot must have a water reservoir of at least 5,000 gallons per dwelling, with fire-authority approved hookups compatible with fire-authority standard pump and hose equipment.

b. Prior to submitting an application for an urban lot split, the applicant must obtain a certificate of compliance with all applicable fire-hazard mitigation measures in accordance with this subpart E.11. The city or its authorized agent must inspect the site, including all structures on the site, and certify as to its compliance. The certificate must be included with the application. The applicant must pay the city's costs for inspection. Failure to pay is grounds for denying the application.

## **12. Separate Conveyance.**

a. Within a resulting lot.

(1) Primary dwelling units on a lot that is created by an urban lot split may not be owned or conveyed separately from each other.

(2) Condominium airspace divisions and common interest developments are not permitted on a lot that is created by an urban lot split.

(3) All fee interest in a lot and all dwellings on the lot must be held equally and undivided by all individual property owners.

(4) No timeshare, as defined by state law or this code, is permitted. This includes any co-ownership arrangement that gives an owner the right to exclusive use of the property for a defined period or periods of time.

b. Between resulting lots. Separate conveyance of the resulting lots is permitted. If dwellings or other structures (such as garages) on different lots are adjacent or attached to each other, the urban lot split boundary may separate them for conveyance purposes if the structures meet building code safety standards and are sufficient to allow separate conveyance. If any attached structures span or will span the new lot line, the owner must record appropriate CC&Rs, easements, or other documentation that is necessary to allocate rights and responsibility between the owners of the two lots.

## **13. Regulation of Uses.**

**a. Residential-only.** No non-residential use is permitted on any lot created by urban lot split.

**b. No Short-term Rentals.** No dwelling unit on a lot that is created by an urban lot split may be rented for a period of less than 30 days.

**c. Owner Occupancy.** The applicant for an urban lot split must sign an affidavit stating that the applicant intends to occupy one of the dwelling units on one of the resulting lots as the applicant's principal residence for a minimum of three years after the urban lot split is approved.

#### **14. Notice of Construction.**

a. At least 30 business days before starting any construction of a structure on a lot created by an urban lot split, the property owner must give written notice to all the owners of record of each of the adjacent residential parcels, which notice must include the following information:

- (1) Notice that construction has been authorized,
- (2) The anticipated start and end dates for construction,
- (3) The hours of construction,
- (4) Contact information for the project manager (for construction-related complaints), and
- (5) Contact information for the Building & Safety Department.

b. This notice requirement does not confer a right on the noticed persons or on anyone else to comment on the project before permits are issued. Approval is ministerial. Under state law, the City has no discretion in approving or denying a particular project under this section. This notice requirement is purely to promote neighborhood awareness and expectation.

**15. Deed Restriction.** The owner must record a deed restriction on each lot that results from the urban lot split, on a form approved by the city, that does each of the following:

- a. Expressly prohibits any rental of any dwelling on the property for a period of less than 30 days.
- b. Expressly prohibits any non-residential use of the lots created by the urban lot split.
- c. Expressly prohibits any separate conveyance of a primary dwelling on the property, any separate fee interest, and any common interest development within the lot.
- d. States that:

(1) The lot is formed by an urban lot split and is therefore subject to the city’s urban lot-split regulations, including all applicable limits on dwelling size and development.

(2) Development on the lot is limited to development of residential units under section 17.86.010 of this code, except as required by state law.

#### **F. Specific Adverse Impacts.**

1. Notwithstanding anything else in this section, the city may deny an application for an urban lot split if the building official makes a written finding, based on a preponderance of the evidence, that the project would have a “specific, adverse impact” on either public health and safety or on the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.

2. “Specific adverse impact” has the same meaning as in Gov. Code § 65589.5(d)(2): “a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete” and does not include (1) inconsistency with the zoning ordinance or general plan land use designation or (2) the eligibility to claim a welfare exemption under Revenue and Taxation Code section 214(g).

3. The building official may consult with and be assisted by planning staff and others as necessary in making a finding of specific, adverse impact.

Chapter 20.211 is hereby added to the Stanton Municipal Code to read as follows:

#### **Chapter 20.211 – State-mandated Residential Projects**

##### **Section 20.211.010 – Two-unit Projects**

**A. Purpose.** The purpose of this section is to allow and appropriately regulate two-unit projects in accordance with Government Code section 65852.21.

**B. Definition.** A “two-unit project” means the development of two primary dwelling units or, if there is already a primary dwelling unit on the lot, the development of a second primary dwelling unit on a legally subdivided lot in accordance with the requirements of this section.

##### **C. Application.**

###### 1. Owner

A. Only individual property owners may apply for a two-unit project. “Individual property owner” means a natural person holding fee title individually or jointly in the person’s own name or a beneficiary of a trust

that holds fee title. “Individual property owner” does not include any corporation or corporate person of any kind (partnership, LP, LLC, C corp, S corp, etc.) except for a community land trust (as defined by Rev. & Tax Code § 402.1(a)(11)(C)(ii)) or a qualified nonprofit corporation (as defined by Rev. & Tax Code § 214.15).

B. Any person with a mortgage interest in the lot to be split under this section must sign the application and the parcel map indicating the person’s consent to the project.

2. An application for a two-unit project must be submitted on the city’s approved form.
3. The applicant must obtain a certificate of compliance with the Subdivision Map Act for the lot and provide the certificate with the application.
4. Only a complete application will be considered. The city will inform the applicant in writing of any incompleteness within 30 days after the application is submitted.
5. The city may establish a fee to recover its costs for adopting, implementing, and enforcing this section of the code, in accordance with applicable law. The city council may establish and change the fee by resolution. The fee must be paid with the application.

#### **D. Approval.**

1. An application for a two-unit project is approved or denied ministerially, by the director of community development, without discretionary review.
2. The ministerial approval of a two-unit project does not take effect until the city has confirmed that the required documents have been recorded, such as the deed restriction and easements.
3. The approval must require the owner and applicant to hold the city harmless from all claims and damages related to the approval and its subject matter.
4. The approval must require the owner and applicant to reimburse the city for all costs of enforcement, including attorneys’ fees and costs associated with enforcing the requirements of this code.

#### **E. Requirements.** A two-unit project must satisfy each of the following requirements:

- 1. Map Act Compliance.** The lot must have been legally subdivided.
- 2. Zone.** The lot is in a single-family residential zone. For purposes of this section, a single-family residential zone is a zone where the only residential use that is allowed as a primary use is a single residential dwelling on a lot.

### 3. Lot Location.

a. The lot is not located on a site that is any of the following:

(1) Prime farmland, farmland of statewide importance, or land that is zoned or designated for agricultural protection or preservation by the voters.

(2) A wetland.

(3) Within a very high fire hazard severity zone, unless the site complies with all fire-hazard mitigation measures required by existing building standards.

(4) A hazardous waste site that has not been cleared for residential use.

(5) Within a delineated earthquake fault zone, unless all development on the site complies with applicable seismic protection building code standards.

(6) Within a 100-year flood hazard area, unless the site has either:

(a) been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the local jurisdiction, or

(b) meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program.

(7) Within a regulatory floodway unless all development on the site has received a no-rise certification.

(8) Land identified for conservation in an adopted natural community conservation plan, habitat conservation plan, or other adopted natural resource protection plan.

(9) Habitat for protected species.

(10) Land under conservation easement.

b. The purpose of subpart E.3.a above is merely to summarize the requirements of Government Code section 65913.4(a)(6)(B)–(K). (See Gov. Code § 66411.7(a)(3)(C).)

c. The applicant must provide evidence that the requirements of Government Code 65913.4(a)(6)(B)-(K) are satisfied.

**4. Not Historic.** The lot must not be a historic property or within a historic district that is included on the State Historic Resources Inventory. Nor may the lot be or be within a site that is designated by ordinance as a city or county landmark or as a historic property or district.

**5. No Impact on Protected Housing.**

a. The two-unit project must not require or include the demolition or alteration of any of the following types of housing:

(1). Housing that is income-restricted for households of moderate, low, or very low income.

(2). Housing that is subject to any form of rent or price control through a public entity's valid exercise of its policy power.

(3). Housing, or a lot that used to have housing, that has been withdrawn from rental or lease under the Ellis Act (Gov. Code §§ 7060–7060.7) at any time in the 15 years prior to submission of the urban lot split application.

(4). Housing that has been occupied by a tenant in the last three years.

b. The applicant and the owner of a property for which a two-unit project is sought must provide a sworn statement by affidavit representing and warranting that subpart E.5.a above is satisfied.

(1) The sworn statement must state that:

- (a) No housing that is income-restricted for households of moderate, low, or very low income will be demolished or altered.
- (b) No housing that is subject to any form of rent or price control will be demolished or altered.
- (c) No housing that has been withdrawn from rental or lease under the Ellis Act at any time in the last 15 years will be demolished or altered.
- (d) No housing that has been occupied by a tenant in the last three years will be demolished or altered.

(2) The city may conduct its own inquiries and investigation to ascertain the veracity of the sworn statement, including but not

limited to, surveying owners of nearby properties; and the city may require additional evidence of the applicant and owner as necessary to determine compliance with this requirement.

## **5. Unit Standards.**

### **a. Quantity.**

(1) No more than two dwelling units of any kind may be built on a lot that results from an urban lot split. For purposes of this paragraph, “unit” means any dwelling unit, including, but not limited to, a primary dwelling unit, a unit created under this section of this code, an ADU, or a JADU.

(2) A lot that is not created by an urban lot split may have a two-unit project under this section, plus any ADU or JADU that must be allowed under state law and the city’s ADU ordinance.

### **b. Unit Size.**

(1) The total floor area of each primary dwelling built that is developed under this section must be

(a) less than or equal to 800 and

(b) more than 500 square feet.

(2) A primary dwelling that was legally established on the lot prior to the two-unit project and that is larger than 800 square feet is limited to the lawful floor area at the time of the two-unit project. The unit may not be expanded.

(3) A primary dwelling that was legally established prior to the two-unit project and that is smaller than 800 square feet may be expanded to 800 square feet after or as part of the two-unit project.

### **c. Height Restrictions.**

(1) On a lot that is larger than 2,000 square feet, no new primary dwelling unit may exceed a single story or 16 feet in height, measured from grade to peak of the structure.

(2) On a lot that is smaller than 2,000 square feet, no new primary dwelling unit may exceed two stories or 22 feet in height, measured from grade to peak of the structure. Any portion of a new primary dwelling that exceeds one story must be stepped back by an additional five feet from the ground floor; no balcony deck or other portion of the second story may project into the stepback.

(3) No rooftop deck is permitted on any new or remodeled dwelling or structure on a lot with a two-unit project.

**d. Demo Cap.** The two-unit project may not involve the demolition of more than 25 percent of the existing exterior walls of an existing dwelling unless the site has not been occupied by a tenant in the last three years.

**e. Lot Coverage.** Lot coverage may not exceed 50 percent of the lot. This lot coverage standard is only enforced to the extent that it does not prevent two primary dwelling units on the lot at 800 square feet each.

**f. Open Space.** At least 50 percent of the lot must be maintained as open space. This open space standard is only enforced to the extent that it does not prevent two primary dwelling units on the lot at 800 square feet each.

## **6. Setbacks.**

**a. Generally.** All setbacks must conform to those objective setbacks that are imposed through the underlying zone.

**b. Exceptions.** Notwithstanding subpart E.6.g(i) above:

(1). Existing Structures. No setback is required for an existing legally established structure or for a new structure that is constructed in the same location and to the same dimensions as an existing legally established structure.

(2) 800 sf; four-foot side and rear. The setbacks imposed by the underlying zone must yield to the degree necessary to avoid physically precluding the construction of up to two units on the lot or either of the two units from being at least 800 square feet in floor area; but in no event may any structure be less than four feet from a side or rear property line.

**c. Front Setback Area.** Notwithstanding any other part of this code, dwellings that are constructed under this section must be at least 25 feet from the front property lines. The front setback area must:

(1) be kept free from all structures greater than three feet high;

(2) be at least 50 percent landscaped with drought-tolerant plants, with vegetation and irrigation plans approved by a licensed landscape architect;

(3) allow for vehicular and fire-safety access to the front structure.

**7. Parking.** Each new primary dwelling unit must have at least one off-street parking space per unit unless one of the following applies:

- a. The lot is located within one-half mile walking distance of either
  - (1) a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours or
  - (2) a site that contains
    - (a) an existing rail or bus rapid transit station,
    - (b) a ferry terminal served by either a bus or rail transit service, or
    - (c) the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.
  - (3) The site is located within one block of a car-share vehicle location.

## **8. Architecture.**

- a. If there is a legal primary dwelling on the lot that was established before the two-unit project, any new primary dwelling unit must match the existing primary dwelling unit in exterior materials, color, and dominant roof pitch. The dominant roof slope is the slope shared by the largest portion of the roof.
- b. If there is no legal primary dwelling on the lot before the two-unit project, and if two primary dwellings are developed on the lot, the dwellings must match each other in exterior materials, color, and dominant roof pitch. The dominant roof slope is the slope shared by the largest portion of the roof.
- c. All exterior lighting must be limited to down-lights.
- d. No window or door of a dwelling that is constructed on the lot may have a direct line of sight to an adjoining residential property. Fencing, landscaping, or privacy glass may be used to provide screening and prevent a direct line of sight.
- e. If any portion of a dwelling is less than 30 feet from a property line that is not a public right-of-way line, then all windows and doors in that portion must either be (for windows) clerestory with the bottom of the glass at least six feet above the finished floor, or (for windows and for doors) utilize frosted or obscure glass.

## **9. Landscaping.**

**a. Tree Removal.**

(1) No mature tree may be removed on a lot with any development under this section unless removal is necessary to constructing a dwelling unit that must be allowed under state law.

(2) “Mature tree” means a tree with a diameter of six inches or more or a height of eight feet or taller.

(3) A tree may only be removed under subparagraph E.9.a.(1) above if it is replaced with at least two mature trees of the same type and with a trunk diameter that is the same or larger than that of the removed tree.

(4) If a certified arborist determines that there is not space on the lot for a replacement tree that is required under subparagraph E.9.a(1) above, owner may pay the replacement cost of the tree, as determined by the city’s tree-replacement cost schedule.

**b. Screening.** Evergreen landscape screening must be planted and maintained between each dwelling and adjacent lots (but not rights of way) as follows:

(1) According to a planting and irrigation plan that is prepared by a licensed landscape architect.

(2) At least one 15-gallon size plant shall be provided for every five linear feet of exterior wall. Alternatively, at least one 24” box size plant shall be provided for every ten linear feet of exterior wall.

(3) Plant specimens must be at least six feet tall when installed. As an alternative, a solid fence of at least 6 feet in height may be installed.

c. All landscaping must be drought-tolerant.

d. All landscaping must be from the city’s approved plant list.

**10. Nonconforming Conditions.** A two-unit project may only be approved if all nonconforming zoning conditions are corrected.

**11. Utilities.**

a. Each primary dwelling unit on the lot must have its own direct utility connection to the utility service provider.

b. Notwithstanding paragraph E.11.a above, a primary dwelling unit may have a direct utility connection to an onsite wastewater treatment system in accordance with this paragraph and the city's code. Each primary dwelling unit on the lot that is or that is proposed to be connected to an onsite wastewater treatment system must first have a percolation test completed within the last five years or, if the percolation test has been recertified, within the last 10 years.

c. All utilities must be underground.

**12. Building & Safety.** All structures built on the lot must comply with all current local building standards. A project under this section is a change of use and subjects the whole of the lot, and all structures, to the city's current code.

#### **F.. Fire-Hazard Mitigation Measures.**

1. . A lot in a very high fire hazard severity zone must comply with each of the following fire-hazard mitigation measures:

a. It must have direct access to a public right of way with a paved street with a width of at least 40 feet. The public right of way must have at least two independent points of access for fire and life safety to access and for residents to evacuate.

b. All dwellings on the site must comply with current fire code requirements for dwellings in a very high fire hazard severity zone.

c. All enclosed structures on the site must have fire sprinklers.

d. All sides of all dwellings on the site must be within a 150-foot hose-pull distance from either the public right of way or of an onsite fire hydrant or standpipe.

e. If the lot does not have a swimming pool, the lot must have a water reservoir of at least 5,000 gallons per dwelling, with fire-authority approved hookups compatible with fire-authority standard pump and hose equipment.

2. Prior to submitting an application for an urban lot split, the applicant must obtain a certificate of compliance with all applicable fire-hazard mitigation measures in accordance with this subpart E.7. The city or its authorized agent must inspect the site, including all structures on the site, and certify as to its compliance. The certificate must be included with the application. The applicant must pay the city's costs for inspection. Failure to pay is grounds for denying the application.

#### **G. Separate Conveyance.**

1 Primary dwelling units on the lot may not be owned or conveyed separately from each other.

2. Condominium airspace divisions and common interest developments are not permitted within the lot.

3. All fee interest in the lot and all the dwellings must be held equally and undivided by all individual property owners.

a. No timeshare, as defined by state law or this code, is permitted. This includes any co-ownership arrangement that gives an owner the right to exclusive use of the property for a defined period or periods of time.

## **H. Regulation of Uses.**

**1. Residential-only.** No non-residential use is permitted on the lot.

**2. No Short-term Rentals.** No dwelling unit on the lot may be rented for a period of less than 30 days.

**3. Owner Occupancy.** Unless the lot was formed by an urban lot split, the individual property owners of a lot with a two-unit project must occupy one of the dwellings on the lot as the owners' principal residence and legal domicile.

## **I. Notice of Construction.**

1 At least 30 business days before starting any construction of a two-unit project, the property owner must give written notice to all the owners of record of each of the adjacent residential parcels, which notice must include the following information:

(a) Notice that construction has been authorized,

(b) The anticipated start and end dates for construction,

(c) The hours of construction,

(d) Contact information for the project manager (for construction-related complaints), and

(e) Contact information for the Building & Safety Department.

2 This notice requirement does not confer a right on the noticed persons or on anyone else to comment on the project before permits are issued. Approval is ministerial. Under state law, the City has no discretion in approving or denying a particular project under this section. This notice requirement is purely to promote neighborhood awareness and expectation.

**J. Deed Restriction.** The owner must record a deed restriction, on a form approved by the city, that does each of the following:

1 Expressly prohibits any rental of any dwelling on the property for a period of less than 30 days.

2 Expressly prohibits any non-residential use of the lot.

3 Expressly prohibits any separate conveyance of a primary dwelling on the property, any separate fee interest, and any common interest development within the lot.

4. If the lot does not undergo an urban lot split: Expressly requires the individual property owners to live in one of the dwelling units on the lot as the owners' primary residence and legal domicile.

5. Limits development of the lot to residential units that comply with the requirements of this section, except as required by state law.

**K. Specific Adverse Impacts.**

1 Notwithstanding anything else in this section, the city may deny an application for a two-unit project if the building official makes a written finding, based on a preponderance of the evidence, that the project would have a "specific, adverse impact" on either public health and safety or on the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.

2 "Specific adverse impact" has the same meaning as in Gov. Code § 65589.5(d)(2): "a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete" and does not include (1) inconsistency with the zoning ordinance or general plan land use designation or (2) the eligibility to claim a welfare exemption under Revenue and Taxation Code section 214(g).

3 The building official may consult with and be assisted by planning staff and others as necessary in making a finding of specific, adverse impact.

**G. Remedies.**

If a two-unit project violates any part of this code or any other legal requirement:

1 The buyer, grantee, or lessee of any part of the property has an action for damages or to void the deed, sale, or contract.

2 The city may:

a Bring an action to enjoin any attempt to sell, lease, or finance the property.

b Bring an action for other legal, equitable, or summary remedy, such as declaratory and injunctive relief.

c Pursue criminal prosecution, punishable by imprisonment in county jail or state prison for up to one year, by a fine of up to \$10,000, or both; or a misdemeanor.

d Record a notice of violation.

e Withhold any or all future permits and approvals.

f Pursue all other administrative, legal, or equitable remedies that are allowed by law or the city's code.

## CITY OF STANTON

### REPORT TO CITY COUNCIL

**TO:** Honorable Mayor and Members of the City Council

**DATE:** February 22, 2022

**SUBJECT: CITY OF STANTON'S AMERICAN RESCUE PLAN ACT (ARPA)  
ALLOCATION OF FUNDS REVIEW AND UPDATE**

#### **REPORT IN BRIEF:**

Staff will provide an American Rescue Plan Act (ARPA) presentation to provide the City Council with an update and review of the City's ARPA allocation plans.

#### **RECOMMENDED ACTION:**

1. City Council declare that this item is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) and 15060(c)(3); and
2. Receive and file the presentation.

#### **BACKGROUND:**

Through the passage of H.R. 1319, the American Rescue Plan Act of 2021 (ARPA), state, tribal, and local governments have received billions in much-needed relief to help offset the negative impacts of COVID-19. The City of Stanton has been allocated a total of \$9,123,660 of these Coronavirus State and Local Fiscal Recovery Funds (SLFRF), with the second of two equal installments expected to be received at the end of July 2022. The entire SLFRF allocation must be encumbered by the end of calendar year 2024. The first Annual Project and Expenditure report is due to the U.S. Department of the Treasury by April 30, 2022.

#### **ANALYSIS:**

On January 27, 2022, the U.S. Treasury Department published a Final Rule to implement the SLFRF program. The Final Rule establishes five eligible use categories for the funds:

- Responding to the public health emergency or its negative economic impacts.
- Providing premium pay to eligible workers (performing essential work).
- Providing government services (to the extent of the reduction in the recipient's general revenue due to the public health emergency).

- Making necessary investments in water, sewer, and broadband infrastructure.
- Meeting the non-federal matching requirements for Bureau of Reclamation projects.

Under the Final Rule’s Standard Allowance threshold, the City is allowed to claim \$10 million as general revenue loss due to the public health emergency. By opting to take the Standard Allowance, the City is permitted to use its entire \$9,123,660 for the provision of government services. The Treasury Department has clarified 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.” Activities that the Treasury Department has explicitly excluded from the definition of government services include:

- Payment of debt service;
- Replenishing of financial reserves (e.g., rainy day funds);
- 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;
- Deposits into any pension fund; and
- Uses that conflict with the overall statutory purpose of ARPA to reduce the spread of COVID-19.

**FISCAL IMPACT:**

No new fiscal impact.

**ENVIRONMENTAL IMPACT:**

None. This item is not subject to the California Environmental Quality Act (“CEQA”) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378(b)(5) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly).

**LEGAL REVIEW:**

None.

**STRATEGIC PLAN OBJECTIVE(S) ADDRESSED:**

1. Provide a safe community.
2. Provide a strong local economy.
3. Provide a quality infrastructure.
4. Ensure fiscal stability and efficiency in governance.

5. Provide a high quality of life.
6. Maintain and promote a responsive, high-quality, and transparent government.

**PUBLIC NOTIFICATION:**

Public notice for this item was made through the regular agenda process.

Prepared By:

Reviewed By:

/s/ Jason Huynh

/s/ Soo Elisabeth Kang

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Jason Huynh  
Management Analyst

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Soo Elisabeth Kang  
Assistant to the City Manager

Approved By:

/s/ Jarad L. Hildenbrand

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Jarad L. Hildenbrand  
City Manager

**Attachment(s):**

- A. City of Stanton’s ARPA Update Presentation – Year 1, Quarter 2
- B. U.S. Department of Treasury Coronavirus State and Local Fiscal Recovery Funds Final Rule

**ARPA**  
**YEAR 1, QUARTER 2**  
**CITY COUNCIL UPDATE**  
**RESPOND, RECOVER, REBUILD**

Reporting Period:  
September 29, 2021, to January 25, 2022

# FINAL RULE UNVEILED

## What HAS NOT Changed

### THE SPIRIT OF ARPA

1. **Fight the pandemic** and support families and businesses struggling with its *public health and economic impacts*
2. **Maintain vital public services**, even amid declines in revenue resulting from the crisis
3. **Build a strong, resilient, and equitable recovery** by making investments that support long-term growth and opportunity

“Related and Reasonably Proportional”

RESPOND

RECOVER

REBUILD

## What HAS Changed

### INCREASED THRESHOLDS

#### COVID-19 Response

- Restoring pre-pandemic employment up to **7.5% above** the City’s pre-pandemic employment baseline
- Revised definitions of “impacted” and “**disproportionately impacted**” communities/classes

#### Backfilling Loss Revenue

- Standard Allowance of **up to \$10 M** for “provision of government services”

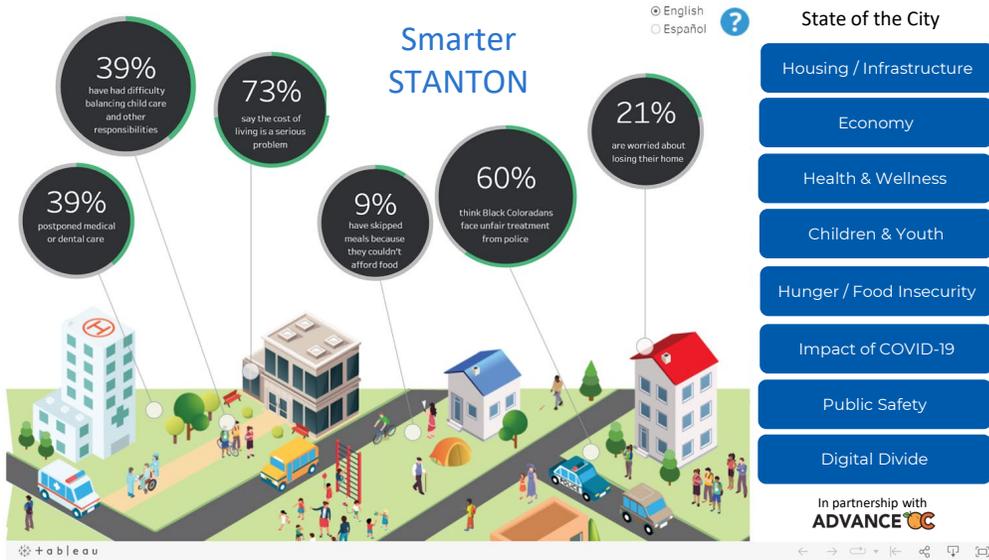
And More Eligibility Expansions

# RECOVER & REBUILD: HELPING OUR MOST VULNERABLE

Department	Project	Progress
Public Safety	Homeless Outreach	<p><b>Homeless Outreach Coordination</b></p> <ul style="list-style-type: none"> <li>Expansion of outreach and engagement to homeless individuals impacted by COVID-19 to provide resources such as shelter, mental health services, and housing placement.</li> <li>69 street exits facilitated (homeless individuals placed or successfully referred) between August 1 and December 21</li> </ul>
Community & Economic Development	Permanent Supportive Housing	<p><b>Riviera Motel Conversion</b></p> <ul style="list-style-type: none"> <li>Application to Homekey program submitted</li> <li>\$2.5 M encumbered by the City (contingent on Homekey award)</li> </ul>
Community & Economic Development	Affordable Housing	<p><b>Magnolia Crossings (Revitalization)</b></p> <ul style="list-style-type: none"> <li>Exclusive negotiations with Brandywine Homes, C&amp;C Development, and National CORE regarding the Tina-Pacific neighborhood</li> </ul>
Community Services	Addressing Food Insecurity	<p><b>Emergency Food Distribution</b></p> <ul style="list-style-type: none"> <li>Hundreds of meals served from October to December</li> <li>280 grocery gift cards distributed to families</li> </ul>
Community Services	Community Needs Assessment	<p><b>Community Needs Assessment</b></p> <ul style="list-style-type: none"> <li>Survey launched in Arabic, Chinese, English, Korean, and Spanish</li> <li>Random sample, intended to match the overall demographics of residents in Stanton</li> <li>Approx. 2 weeks of response gathering (phone call, email)</li> <li>Results and recommendations upcoming</li> </ul>

Home > Smarter Stanton

Who says small cities can't be smart cities? The City of Stanton is using emerging technology to enhance our services to the community, harnessing the power of data to adapt to the community's needs in real time, and centering our operations around performance indicators that support community well-being. This transparency and accountability hub will ensure that the City's work is effective, efficient, and equitable. We hope these digital tools will help empower you to reach out so we can better serve you. Together, we will make our community healthier and more resilient. Welcome to a Smarter Stanton!



Smarter Stanton is here for you! We want to bring you information that is tailored for your needs. Select from one of the following community profiles below to get customized data.

I am a small business owner

I am a parent with young children

I am a senior resident

I am a resident needing help with basic needs

I am a citizen concerned about the homeless

I am a resident looking for more information on COVID-19

Share your story with us!

Have you noticed something in your neighborhood that needs attention, or have a concern about city services, please tell us what we can do to help you and your family.

**Share your Story**

# Smarter Stanton Homepage Concept

Departments

- Administration
- Finance
- Community & Economic Development
- Community Services
- Public Safety
- Public Works & Engineering

Contact Us

7800 Katella Ave  
Stanton, CA 90680  
(714) 379-9222

Monday - Thursday  
7am - 12pm; 1pm - 6pm



CONNECT | f t g+ in

Alert Sign-Up

Sign-up here for City Alerts & Notifications.

email/phone GO



Home > Smarter Stanton > COVID-19 Response & Recovery  
**COVID-19 Response & Recovery**



Welcome to the City of Stanton's COVID-19 Dashboards. My name is David and I serve as your Mayor. These last 2 years have been very challenging for our community with many parts of our lives disrupted in ways we could not have imagined.

As a result of these events, the city of Stanton launched new services to address the specific needs from the community during the pandemic. We will share information about these activities in the following data dashboards.

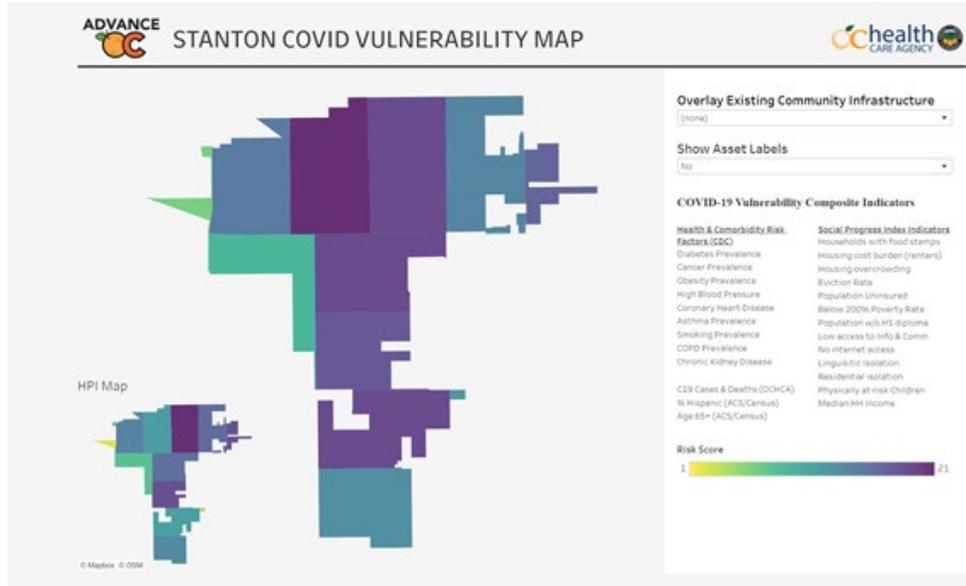
These dashboards will help you see the impact of the pandemic on your neighborhood, as well as the risk COVID-19 poses to your neighborhood today.

First, click on the button below to look up your census tract. From there, type in the last 5 digits into the Stanton Equity Map below to spotlight your neighborhood.

If you have any questions or encounter any difficulties with these dashboards, please contact Jason Huynh

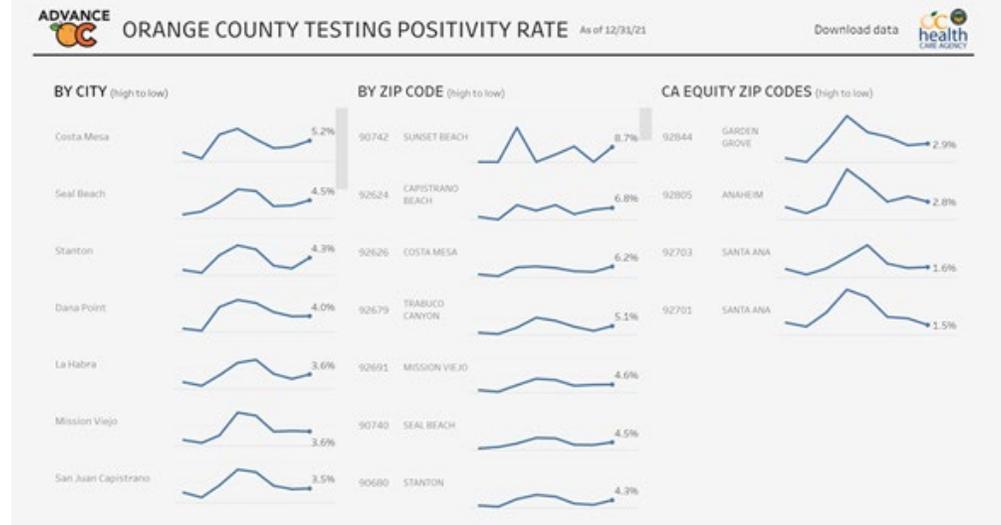
[Click Here to Look Up Your Census Tract](#)

- COVID-19 Vulnerability
- COVID-19 Health Impacts
- Community Needs Assessment
- OC Community Health Survey
- COVID-19 Economic Impacts
- Smarter Stanton Home Dashboard



**[Infographics (click to expand/download)]**

# COVID Dashboard Page Concept



**Departments**

- Administration
- Finance
- Community & Economic Development
- Community Services
- Public Safety
- Public Works & Engineering

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CONNECT |

## LOOKING AHEAD

- ARPA Budget Reassessment, Research, & Reporting
- Shade Structure Expansion at Stanton Central Park
- Outdoor Fitness Court (Stanton Park)
- Bauman's Market Environmental Site Assessment
- NeoGov Recruitment Software Rollout
- Cybersecurity Modernization
- City Rebranding
- Boys & Girls Club of Stanton Update
- On-Call Translation Services
- Crime Prevention Program

AND MORE!





## 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)<sup>1</sup> established the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) to provide state, local, and Tribal governments<sup>2</sup> 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, 2021<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> The economy has gradually added back jobs, with growth accelerating in the first half of 2021.<sup>7</sup> 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 size<sup>8</sup> and unemployment had fallen below 5 percent,<sup>9</sup> 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.<sup>10</sup> 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 funds<sup>11</sup> 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

<sup>8</sup>U.S. Bureau of Economic Analysis, Real Gross Domestic Product [GDPC1], retrieved from FRED, Federal Reserve Bank of St. Louis, <https://fred.stlouisfed.org/series/GDPC1> (last visited December 7, 2021).

<sup>9</sup>U.S. Bureau of Labor Statistics, *supra* note 6.

<sup>10</sup>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).

<sup>11</sup>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.

<sup>1</sup>Public Law 117-2. <https://www.congress.gov/117/plaws/publ2/PLAW-117-publ2.pdf>.

<sup>2</sup>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.

<sup>3</sup>86 FR 26786 (May 17, 2021).

<sup>4</sup>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).

<sup>5</sup>Centers for Disease Control and Prevention, COVID Data Tracker, <http://www.covid.cdc.gov/covid-data-tracker/#datatracker-home> (last visited December 7, 2021).

<sup>6</sup>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).

<sup>7</sup>*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.<sup>12</sup> 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.<sup>13</sup> Long-standing disparities in health and economic outcomes in

<sup>12</sup> Centers for Disease Control and Prevention, COVID Data Tracker, <http://www.covid.cdc.gov/covid-data-tracker/#datatracker-home> (last visited December 31, 2021).

<sup>13</sup> U.S. Bureau of Labor Statistics, All Employees, Total Nonfarm [PAYEMS] <https://fred.stlouisfed.org/series/PAYEMS> (last visited December 7, 2021).

underserved<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup>

#### 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.<sup>17</sup> 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

<sup>14</sup>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.

<sup>15</sup>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).

<sup>16</sup>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>.

<sup>17</sup>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”).<sup>18</sup> 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

<sup>18</sup> 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.<sup>19</sup>

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

<sup>19</sup>In designing an intervention to mitigate COVID-19, the recipient should consider guidance from public health authorities, particularly the Centers for Disease Control and Prevention (CDC), in assessing appropriate COVID-19 mitigation and prevention strategies (see Centers for Disease Control and Prevention, COVID-19, <https://www.cdc.gov/coronavirus/2019-ncov/index.html>). A program or service that imposes conditions on participation in or acceptance of the service that would undermine efforts to stop the spread of COVID-19 or discourage compliance with practices in line with CDC guidance for stopping the spread of COVID-19 is not a permissible use of funds.

use is reasonably proportional, recipients should consider relevant factors about the harm identified and the response. For example, recipients may consider the size of the population impacted and the severity, type, and duration of the impact. Recipients may also consider the efficacy, cost, cost-effectiveness, and time to delivery of the response.

If a recipient intends to fund capital expenditures in response to the public health impacts of the pandemic, recipients should refer to the section Capital Expenditures for details about the eligibility of capital expenditures.

##### Standards: Designating a Negative Economic Impact

*Public Comment:* Many commenters expressed uncertainty about how to determine whether uses of funds, beyond those specifically enumerated as eligible, might be eligible responses to negative economic impacts. For example, many commenters submitted questions asking whether specific uses of funds would be eligible. Others described what they considered to be impacts of the pandemic and argued that uses of funds to respond to these issues should be eligible. Some commenters requested that Treasury provide additional detail to guide their assessments of eligible uses of funds. These comments ranged in their specificity and covered the full range of eligible uses to respond to negative economic impacts. Several commenters asked for clarification about what types of food assistance would be considered eligible. Another commenter requested that the establishment of outdoor dining be eligible. Many commenters inquired about homeless shelters as an eligible use of SLFRF funds.

Commenters also expressed uncertainty about the ability to establish classes, including geographic areas, that experienced a negative economic impact or disagreed with the requirement that an individual entity be impacted by the pandemic in order to receive assistance. For example, a commenter argued that interventions should not be limited to individuals or businesses that experienced an economic impact and should instead be used broadly to support economic growth. These commenters argued that an expenditure that supports a more robust economy may help combat the pandemic’s negative economic impacts, and it can do so even if funding is provided to individuals or entities that did not themselves experience a negative economic impact during the pandemic.

*Treasury Response:* The final rule maintains the standard articulated in

the interim final rule. For clarity, the final rule re-articulates that when assessing whether a program or service is an eligible use to respond to the negative economic impacts of the COVID-19 public health emergency, Treasury will consider the two eligibility requirements discussed below.

First, there must be a negative economic impact, or an economic harm, experienced by an individual or a class. The recipient should assess whether, and the extent to which, there has been an economic harm, such as loss of earnings or revenue, that resulted from the COVID-19 public health emergency. A recipient should first consider whether an economic harm exists and then whether this harm was caused or made worse by the COVID-19 public health emergency. This approach is consistent with the text of the statute, which provides that funds in this category must be used to “respond to the public health emergency with respect to . . . its negative economic impacts.”

While economic impacts may either be immediate or delayed, individuals or classes that did not experience a negative economic impact from the public health emergency would not be eligible beneficiaries under this category. As noted above, the interim final rule permitted recipients to presume that households that experienced unemployment, increased food or housing insecurity, or are low- or moderate-income experienced a negative economic impact from the pandemic. For discussion of the final rule’s approach to this presumption, see section Populations Presumed Eligible.

The final rule also maintains several provisions included in the interim final rule and subsequent guidance that are intended to ease administration of identifying that the beneficiary experienced a negative economic impact or harm. For example, the interim final rule allowed, and the final rule maintains the ability for, recipients to demonstrate a negative economic impact on a population or group, referred to as a “class,” and to provide assistance to households, small businesses, or nonprofits that fall within that class. In such cases, the recipient need only demonstrate that the household, small business, or nonprofit is within the class that experienced a negative economic impact, see section Standards: Designating Other Impacted Classes. This would allow, for example, an internet access assistance program for all households with children to support those households’ ability to participate in healthcare, work, and

educational activities like extending learning opportunities, among other critical activities. In that case, the recipient would only need to identify a negative economic impact to the class of “households with children” and would not need to document or otherwise demonstrate that each individual household served experienced a negative economic impact.

Second, the response must be designed to address the identified economic harm or impact resulting from or exacerbated by the public health emergency. In selecting responses, the recipient must assess whether, and the extent to which, the use would respond to or address this harm or impact. This approach is consistent with the text of the statute, which provides that funds may be used to “respond to” the “negative economic impacts” of the public health emergency “including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality.” The list of potential responses (“assistance” or “aid”) suggests that responses should address the “negative economic impacts” of particular types of beneficiaries (e.g., households or small businesses).

Responses must be reasonably designed to benefit the individual or class that experienced the negative economic impact or harm. Uses of funds should be assessed based on their responsiveness to their intended beneficiary and the ability of the response to address the impact or harm experienced by that beneficiary.<sup>20</sup>

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.<sup>21</sup> 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

<sup>20</sup>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.

<sup>21</sup>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.

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.

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).<sup>22</sup>

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.<sup>23</sup>

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

<sup>22</sup> 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.

<sup>23</sup> 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.<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup>

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.<sup>27</sup> 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.<sup>28</sup> 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

<sup>24</sup> 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>.

<sup>25</sup> 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>.

<sup>26</sup> 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](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>.

<sup>27</sup> See U.S. Bureau of Labor Statistics, Occupational Employment and Wage Estimates, [https://www.bls.gov/oes/current/oes\\_nat.htm](https://www.bls.gov/oes/current/oes_nat.htm) (last visited December 7, 2021).

<sup>28</sup> 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.<sup>29</sup> 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.<sup>30</sup> Moreover, the metric of 300 percent of FPG covers households that, while above the poverty line, often lack economic security.<sup>31</sup> 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

<sup>29</sup>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](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/Sawhill\\_FINAL.pdf](https://www.brookings.edu/wp-content/uploads/2016/07/Sawhill_FINAL.pdf).

<sup>30</sup>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](https://www.bls.gov/oes/current/oes_nat.htm) (last visited December 7, 2021).

<sup>31</sup>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](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,<sup>32</sup> as well as a lack of poverty guidelines developed for these jurisdictions,<sup>33</sup> 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.<sup>34</sup> 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.<sup>35</sup>

#### 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

<sup>32</sup>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).

<sup>33</sup>U.S. Department of Health and Human Services, *supra* note 24.

<sup>34</sup>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](https://www.census.gov/Tribal/Tribal_glossary.php).

<sup>35</sup>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/>.

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

Eligible schools<sup>36</sup> 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

<sup>36</sup> 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.<sup>37</sup> 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.<sup>38</sup>

<sup>37</sup> 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>.

<sup>38</sup> 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.<sup>39</sup>

As of December 2021, COVID-19 in total has infected over 50 million and killed over 800,000 Americans.<sup>40</sup> 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.<sup>41</sup> 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.<sup>42</sup> 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

<sup>39</sup> Cases and Deaths in the US Reported to CDC, by State/Territory, [https://covid.cdc.gov/covid-data-tracker/#trends\\_dailytrendscases](https://covid.cdc.gov/covid-data-tracker/#trends_dailytrendscases) (last visited December 7, 2021).

<sup>40</sup> *Id.*

<sup>41</sup> Centers for Disease Control and Prevention, COVID Data Tracker, <http://www.covid.cdc.gov/covid-data-tracker/#data-tracker-home> (last visited December 31, 2021).

<sup>42</sup> 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).

<sup>43</sup> *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.<sup>43</sup> 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.<sup>44</sup>

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.<sup>45</sup> 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

<sup>43</sup> Columbus, Ohio Recovery Plan, <https://www.columbus.gov/recovery/>.

<sup>44</sup> Luzerne County, Pennsylvania Recovery Plan, <https://www.luzernecounty.org/DocumentCenter/View/26304/Final-Interim-Recovery-Plan-Performance-Report-83121>.

<sup>45</sup> 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.<sup>46</sup> 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.<sup>47</sup> The proportion of children’s emergency department visits related to mental health has also risen noticeably.<sup>48</sup> 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.<sup>49</sup> 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.<sup>50</sup>

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.<sup>51</sup> 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.<sup>52</sup> In particular, the estimated number of aggravated assault offenses rose 12 percent, while murder and manslaughter increased 30 percent from 2019 to 2020.<sup>53</sup> The proportion of homicides committed with firearms rose from 73 percent in 2019 to 76 percent in 2020.<sup>54</sup> 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.<sup>55</sup> Addressing community violence as a public health issue may help prevent and even reduce additional harm to individuals, households, and communities.<sup>56</sup>

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.<sup>57</sup> 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.<sup>58</sup>

While the pandemic affected communities across the country, it disproportionately impacted some demographic groups and exacerbated health inequities along racial, ethnic, and socioeconomic lines.<sup>59</sup> 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.<sup>60</sup>

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.<sup>61</sup> 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.<sup>62</sup> Over the course of the

<sup>57</sup> St. Louis, MO Recovery Plan, <https://www.stlouis-mo.gov/government/recovery/covid-19/arpa/plan/>.

<sup>58</sup> Los Angeles County, CA Recovery Plan, <http://file.lacounty.gov/SDSInter/bos/supdocs/160391.pdf>.

<sup>59</sup> 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>.

<sup>60</sup> 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](https://www.cdc.gov/mmwr/volumes/70/wr/mm7015e2.htm?s_cid=mm7015e2_w).

<sup>61</sup> 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](https://covid.cdc.gov/covid-data-tracker/#pop-factors_totaldeaths) (last visited December 7, 2021).

<sup>62</sup> 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

<sup>46</sup> 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 É. Czeisler et al., Mental Health, Substance Abuse, and Suicidal Ideation During COVID-19 Pandemic—United States, June 24–30 2020, *Morb. Mortal. Wkly. Rep.* 69(32):1049–57 (Aug. 14, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6932a1.htm>.

<sup>47</sup> *Id.*

<sup>48</sup> 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>.

<sup>49</sup> 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).

<sup>50</sup> Panchal, *supra* note 46; Mark É. Czeisler et al., *supra* note 46.

<sup>51</sup> 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/>.

<sup>52</sup> 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>.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> 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).

<sup>56</sup> 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.<sup>63</sup> Low-income and minority communities also exhibit higher rates of pre-existing conditions that may contribute to an increased risk of COVID–19 mortality.<sup>64</sup> 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.<sup>65</sup>

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.<sup>66</sup> 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.<sup>67</sup>

Vulnerability Index, [https://covid.cdc.gov/covid-data-tracker/#pop-factors\\_totaldeaths](https://covid.cdc.gov/covid-data-tracker/#pop-factors_totaldeaths) (last visited December 7, 2021).

<sup>63</sup> 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).

<sup>64</sup> 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).

<sup>65</sup> 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](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>.

<sup>66</sup> 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>.

<sup>67</sup> 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.<sup>68</sup> 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>.

<sup>68</sup> 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;<sup>69</sup> 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.<sup>70</sup> 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.<sup>71</sup> 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

<sup>69</sup> See Centers for Disease Control and Prevention, COVID Data Tracker, [https://covid.cdc.gov/covid-data-tracker/#trends\\_dailycases](https://covid.cdc.gov/covid-data-tracker/#trends_dailycases) (last visited December 7, 2021).

<sup>70</sup> See Centers for Disease Control and Prevention, COVID-19, <https://www.cdc.gov/coronavirus/2019-ncov/index.html> (last visited November 8, 2021).

<sup>71</sup> See § 35.6(b); Coronavirus State and Local Fiscal Recovery Funds, 86 FR at 26786.

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.<sup>72</sup> Since that time, the FDA has authorized booster vaccine doses for certain groups and certain vaccines and has also authorized vaccines for youths.<sup>73</sup> 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

<sup>72</sup> 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).

<sup>73</sup> 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).

<sup>74</sup> U.S. Food and Drug Administration, FDA Authorizes Pfizer-BioNTech COVID-19 Vaccine for Emergency Use in Children 5 through 11 Years of Age, <https://www.fda.gov/news-events/press-announcements/fda-authorizes-pfizer-biontech-covid-19-vaccine-emergency-use-children-5-through-11-years-age> (last visited November 8, 2021).

use of funds so long as such costs are reasonably proportional to the expected public health benefit.”<sup>75</sup> 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

<sup>75</sup> 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.<sup>76</sup> 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.<sup>77</sup>

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

<sup>76</sup> 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).

<sup>77</sup> 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 insurance<sup>78</sup> 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

<sup>78</sup> However, SLFRF funds may not be used to reimburse a service that was also billed to insurance.

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.<sup>79</sup> 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,

<sup>79</sup>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>.

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

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.<sup>80</sup> One year later, in April 2021, the economy still remained over 8 million jobs below its pre-pandemic peak,<sup>81</sup> and the unemployment rate hovered around 6 percent.<sup>82</sup>

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;<sup>83</sup> the unemployment rate fell more than 1.5 percentage points to 4.2 percent, which is the lowest rate since February 2020;<sup>84</sup> and the size of the nation's economy surpassed the pre-pandemic peak in the second quarter of 2021.<sup>85</sup>

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.<sup>86</sup> Supply chain disruptions have also demonstrated the difficulties of restarting a global economy.<sup>87</sup> Moreover, although many Americans have returned to work as of November 2021, the economy remains 3.9 million jobs below its pre-pandemic peak,<sup>88</sup> and 2.4 million workers have dropped out of the labor market altogether relative to February 2020.<sup>89</sup> 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.<sup>90</sup> Job losses have also been particularly steep among low-wage workers, with these workers remaining furthest from recovery as of the end of 2020.<sup>91</sup> 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.<sup>92</sup>

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).

<sup>80</sup> 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/cpseea04.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/cpseea05.htm> (last visited December 7, 2021).

<sup>91</sup> 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>.

<sup>92</sup> 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).

<sup>80</sup> 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).

<sup>81</sup> *Id.*

<sup>82</sup> 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).

<sup>83</sup> U.S. Bureau of Labor Statistics, *supra* note 80.

<sup>84</sup> U.S. Bureau of Labor Statistics, *supra* note 82.

<sup>85</sup> U.S. Bureau of Economic Analysis, Real Gross Domestic Product [GDPC1], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/GDPC1> (last visited December 7, 2021).

<sup>86</sup> U.S. Department of the Treasury, Economy Statement by Catherine Wolfgram, 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>.

<sup>87</sup> 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>.

<sup>88</sup> U.S. Bureau of Labor Statistics, *supra* note 80.

<sup>89</sup> 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.<sup>93</sup> 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.<sup>94</sup> Women of color have been hit especially hard: The labor force participation rate for Black women has fallen by 3.6 percentage points<sup>95</sup> during the pandemic as compared to 1.3 percentage points for Black men<sup>96</sup> and 1.7 percentage points for White women.<sup>97</sup>

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.<sup>98</sup> In addition to the labor market consequences for unemployed workers, recessions can also cause longer-term economic challenges

<sup>93</sup>Michael Karpman, Dulce Gonzalez, Genevieve M. Kenney, Parents Are Struggling to Provide for Their Families during the Pandemic, Urban Institute (May 2020), [https://www.urban.org/research/publication/parents-are-struggling-provide-their-families-during-pandemic?utm\\_source=urban\\_researcher&utm\\_medium=email&utm\\_campaign=covid\\_parents&utm\\_term=hhp](https://www.urban.org/research/publication/parents-are-struggling-provide-their-families-during-pandemic?utm_source=urban_researcher&utm_medium=email&utm_campaign=covid_parents&utm_term=hhp).

<sup>94</sup>Women have carried a larger share of childcare responsibilities than men during the COVID-19 crisis. See, e.g., Gema Zamarró & Maria 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>.

<sup>95</sup>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).

<sup>96</sup>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).

<sup>97</sup>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).

<sup>98</sup>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 scores<sup>99</sup> and reduced familial and childhood wellbeing.<sup>100</sup> 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.<sup>101</sup> Similarly, low- and moderate-income households reported being housing insecure<sup>102</sup> at rates more than twice as high as higher-income households, and low- and moderate-income households reported housing quality hardship<sup>103</sup> at rates statistically significantly greater than the rate for higher-income households.<sup>104</sup> 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.<sup>105</sup> While the

<sup>99</sup>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](https://www.nclc.org/images/pdf/credit_reports/report-credit-conundrum-2013.pdf).

<sup>100</sup>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>.

<sup>101</sup>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](https://www.urban.org/sites/default/files/publication/98701/2001896_foodinsecurity_housinghardship_medicalcareutilization_finalized.pdf).

<sup>102</sup>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.

<sup>103</sup>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).

<sup>104</sup>*Id.*

<sup>105</sup>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.<sup>106</sup> 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.<sup>107</sup> During that same time period, the highest wage occupations in public education, management, actually saw jobs increase by 7 percent.<sup>108</sup>

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.<sup>109</sup> 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.<sup>110</sup> 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.<sup>111</sup>

2021), available at <https://www.epi.org/publication/swa-2020-employment-report/>.

<sup>106</sup>*Id.*

<sup>107</sup>*Id.*

<sup>108</sup>*Id.*

<sup>109</sup>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>.

<sup>110</sup>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/>.

<sup>111</sup>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://>

## 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 reorganized 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;<sup>112</sup> 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.

<sup>112</sup> 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

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.”<sup>113</sup> 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.<sup>114</sup> 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,<sup>115</sup> meaning they do not have the ability to meet their energy needs.<sup>116</sup> 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.<sup>117</sup> These

<sup>114</sup>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>.

<sup>115</sup>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>.

<sup>116</sup>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>.

<sup>117</sup>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)

<sup>113</sup> 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.<sup>118</sup> 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.<sup>119</sup> 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).<sup>120</sup> 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.<sup>121</sup> 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.<sup>122</sup> 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.<sup>123</sup>

*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>.

<sup>120</sup> 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>.

<sup>121</sup> 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/>.

<sup>122</sup> 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/>.

<sup>123</sup> *Id.*

<sup>118</sup> A. Drehobl, & 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>.

<sup>119</sup> 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.<sup>124</sup> 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

<sup>124</sup> 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).<sup>125</sup> In other cases, policies like public charge and asset testing can discourage otherwise eligible households.<sup>126</sup> 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.<sup>127</sup>

*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.<sup>128</sup> 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.<sup>129</sup> As a result, working parents in communities across the country, and more specifically women, may face challenges entering or reentering the labor force.<sup>130</sup>

<sup>128</sup> 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>.

<sup>129</sup> See, e.g., Center For The Study Of Child Care Employment (CSCCE), Child Care Sector Jobs: BLS Analysis (November 8, 2021), <https://csce.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.

<sup>130</sup> 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.<sup>131</sup> 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.<sup>132</sup>

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.<sup>133 134</sup>

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.<sup>135</sup> 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,<sup>136</sup> and health and safety concerns.<sup>137</sup> As a result, children's school readiness has suffered, leading to potential long-term impacts on life outcomes.<sup>138</sup> The impact also extended

<sup>131</sup> 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>.

<sup>132</sup> *Id.*

<sup>133</sup> 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>.

<sup>134</sup> 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>.

<sup>135</sup> G. G. Weisenfeld, Impacts of Covid-19 on Preschool Enrollment and Spending, New Brunswick, NJ: National Institute for Early Education Research (2021), [https://nieer.org/wp-content/uploads/2021/03/NIEER\\_Policy\\_Brief\\_Impacts-of-Covid-19on\\_Preschool\\_Enrollment\\_and\\_Spending\\_3\\_16\\_21.pdf](https://nieer.org/wp-content/uploads/2021/03/NIEER_Policy_Brief_Impacts-of-Covid-19on_Preschool_Enrollment_and_Spending_3_16_21.pdf).

<sup>136</sup> 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/>.

<sup>137</sup> 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>.

<sup>138</sup> Daphna Bassok and Anna Shapiro, Understanding COVID-19-era enrollment drops

<sup>125</sup> 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>.

<sup>126</sup> 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>.

<sup>127</sup> 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.<sup>139</sup> Furthermore, pregnant individuals with COVID-19 are more likely to experience preterm birth (delivering the baby earlier than 37

weeks).<sup>140</sup> In addition to heightened health risks from COVID-19, pregnant individuals may have experienced significant changes to their prenatal care during the pandemic<sup>141</sup> or may also have experienced increased mental health challenges, including high levels of depression, anxiety, loneliness, and post-traumatic stress during the pandemic.<sup>142</sup>

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.<sup>143</sup> 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.<sup>144</sup> 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.<sup>145</sup>

**Treasury Response: Home Visiting:** Given the widespread impact of

<sup>140</sup> *Id.*

<sup>141</sup> 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>.

<sup>142</sup> A Basu, HH Kim, R Basaldua, KW 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>.

<sup>143</sup> 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>.

<sup>144</sup> 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/>.

<sup>145</sup> U.S. Department of Health and Human Services, Home Visiting Evidence of Effectiveness, <https://homvee.acf.hhs.gov/outcomes/maternal%20health/In%20Brief>.

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,<sup>146</sup> essential mental health care was shifted to a virtual environment, and attendance and performance in school among foster children dropped sharply.<sup>147</sup> 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.<sup>148</sup> 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,<sup>149</sup> or other associated costs of the pandemic. Therefore, support to decrease these hardships will support families and increase positive outcomes for youth

<sup>146</sup> 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>.

<sup>147</sup> 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>.

<sup>148</sup> 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>.

<sup>149</sup> 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.

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/>.

<sup>139</sup> 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).

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.<sup>150</sup>

*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.<sup>151</sup>

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.<sup>152</sup>

<sup>150</sup> 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.

<sup>151</sup> 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>.

<sup>152</sup> Consumer Financial Protection Bureau, Housing insecurity and the COVID–19 pandemic

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.<sup>153</sup> Meanwhile, many low-income renters and homeowners are struggling with lost employment and income and are behind on their housing payments.<sup>154</sup>

*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](https://files.consumerfinance.gov/f/documents/cfpb_Housing_insecurity_and_the_COVID-19_pandemic.pdf).

<sup>153</sup> 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\\_Nations\\_Housing\\_2021.pdf](https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_State_Nations_Housing_2021.pdf).

<sup>154</sup> 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.<sup>155</sup>

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.<sup>156</sup> 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.<sup>157</sup> Workers of color and workers with lower incomes are less likely to have access to paid leave.<sup>158 159</sup>

<sup>155</sup> 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>.

<sup>156</sup> Scott Brown et al., Employee and Worksite 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/WHD\\_FMLA2018Survey\\_Results\\_FinalReport\\_Aug2020.pdf](https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/WHD_FMLA2018Survey_Results_FinalReport_Aug2020.pdf).

<sup>157</sup> *Id.*

<sup>158</sup> Ann P. Bartel et al., Racial and ethnic disparities in access to and use of paid family and medical leave: evidence from four nationally representative datasets, U.S. Bureau of Labor Statistics (BLS) (January 2019), <https://www.bls.gov/opub/mlr/2019/article/racial-and-ethnic-disparities-in-access-to-and-use-of-paid-family-and-medical-leave.htm>.

For workers that are also caregivers for children, seniors, or other family members, there may be a similar need for—and benefits of—paid family leave. For example, some workers may have struggled during the pandemic to balance caring for children, as schools and daycares closed, and working. For new parents, paid parental leave results in fewer infant hospitalizations, lowering parental stress, increasing parental involvement, and improving the overall health of parent and child.<sup>160</sup> COVID-19 has also increased the levels of “caregiving intensity”<sup>161</sup> and “caregiving burden”<sup>162</sup> for those providing care to seniors or older family members.<sup>163 164</sup> 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.<sup>165</sup>

**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.<sup>166</sup> 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.<sup>167</sup> 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 2020<sup>168</sup> and 8.3 million people enrolled in insurance through the ACA marketplace.<sup>169</sup>

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.<sup>170</sup> 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.<sup>171</sup>

**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.<sup>172</sup> Currently, over 5 percent of families, or 7 million households are “unbanked,” meaning they do not have a bank account.<sup>173</sup> 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,

<sup>172</sup> Federal Deposit Insurance Corporation, FDIC National Survey of Unbanked and Underbanked Households (2015), <https://www.fdic.gov/household-survey/2015/2015execsumm.pdf>.

<sup>173</sup> 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>.

<sup>159</sup> 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>.

<sup>160</sup> 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>.

<sup>161</sup> 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>.

<sup>162</sup> 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>.

<sup>163</sup> 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.

<sup>164</sup> 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.

<sup>165</sup> *Id.*

<sup>166</sup> 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/>.

<sup>167</sup> 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>.

<sup>168</sup> 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>.

<sup>169</sup> 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>.

<sup>170</sup> 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>.

<sup>171</sup> *Id.*

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.<sup>174</sup> 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.<sup>175</sup> 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

<sup>174</sup> 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>.

<sup>175</sup> 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.

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.<sup>176</sup> The latter two classifications are types of labor underutilization, or “underemployed” workers.<sup>177</sup> 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

<sup>176</sup> 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).

<sup>177</sup> *Id.*

workers during the pandemic.<sup>178</sup> 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.<sup>179</sup> 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

<sup>178</sup> 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.

<sup>179</sup> 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.<sup>180 181</sup>

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.<sup>182</sup> This pattern held true for the effects of COVID-19 and the economic downturn: Historically undeserved groups experienced amplified negative impacts, further widening inequality.<sup>183</sup>

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).<sup>184</sup>

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.<sup>185</sup> 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.<sup>186</sup> 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

<sup>180</sup> 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](https://aspe.hhs.gov/sites/default/files/migrated_legacy_files/199901/covid-economic-equity-brief.pdf).

<sup>181</sup> 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](https://aspe.hhs.gov/sites/default/files/migrated_legacy_files/199516/covid-equity-issue-brief.pdf).

<sup>182</sup> 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>.

<sup>183</sup> *Id.*

<sup>184</sup> 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/>.

<sup>185</sup> 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).

<sup>186</sup> 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.<sup>187</sup> 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.<sup>188</sup>

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.<sup>189</sup> 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."<sup>190</sup> As such, CDC identifies "neighborhoods and built environment" as one of five key social determinants of health<sup>191</sup> 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 community<sup>192</sup> 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

<sup>190</sup>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).

<sup>191</sup>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).

<sup>192</sup>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).

<sup>187</sup> See, e.g., Centers for Disease Control and Prevention, Community Health Worker (CHW) Toolkit, <https://www.cdc.gov/dhds/pubs/toolkits/chw-toolkit.htm> (last visited November 9, 2021).

<sup>188</sup> 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>.

<sup>189</sup> See, e.g., Opportunity Insights, Creating Moves To Opportunity (August 2019), <https://opportunityinsights.org/policy/cmto/>.

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.”<sup>193</sup>

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.<sup>194</sup> 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.<sup>195 196</sup>

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.<sup>197</sup> Urban park use during the COVID–19 pandemic may have declined among lower-income individuals.<sup>198</sup> 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.<sup>199</sup> 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.<sup>200</sup> 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.

<sup>193</sup> 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](http://www.cdc.gov/pcd/issues/2009/jul/08_0163.htm).

<sup>194</sup> 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.

<sup>195</sup> 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>.

<sup>196</sup> 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>.

<sup>197</sup> 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>.

<sup>198</sup> 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>.

<sup>199</sup> 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>.

<sup>200</sup> 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/>.

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,<sup>201</sup> 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

<sup>201</sup> 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.<sup>202</sup> Such

<sup>202</sup> 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/>

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.<sup>203</sup>

*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/uses/what-are-the-definitions-of-abandoned-and-foreclosed/>.

<sup>203</sup> 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.lincolninst.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,<sup>204</sup> 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>.

<sup>204</sup> 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.

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 employment<sup>205</sup> and play a key role in supporting the overall economic recovery as they are responsible for two-thirds of net new jobs.<sup>206</sup> Since the beginning of the pandemic, however, 400,000 small businesses have closed, with many more at risk.<sup>207</sup> Sectors with a large share of small business employment have been among those with the most drastic drops in

employment.<sup>208</sup> 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.<sup>209</sup>

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.<sup>210</sup> In general, small businesses can face greater hurdles in accessing credit,<sup>211</sup> and many small businesses were already financially fragile at the outset of the pandemic.<sup>212</sup>

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.<sup>213</sup> 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.<sup>214</sup> Female business owners also saw significant impacts, with businesses owned by women falling by 25 percent.<sup>215</sup>

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.<sup>216</sup> 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).<sup>217</sup> Approximately 22 percent of all minority-owned business fell into the hardest hit industries compared to 13 percent of nonminority-owned businesses.<sup>218</sup>

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.<sup>219</sup>

#### 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

<sup>216</sup> Federal Reserve Bank of Atlanta. 2019. Small Business Credit Survey 2019 Report on Minority-Owned Firms. December. [fedsmbbusiness.org/survey/2019/report-on-minority-owned-firms](https://www.fedsmbbusiness.org/survey/2019/report-on-minority-owned-firms).

<sup>217</sup> 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](https://www.philadelphiafed.org/covid-19/covid-19-equity-in-recovery/what-small-businesses-will-be-impacted).

<sup>218</sup> 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>.

<sup>219</sup> 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>.

<sup>205</sup> Board of Governors of the Federal Reserve System, Monetary Policy Report (June 12, 2020), <https://www.federalreserve.gov/monetarypolicy/2020-06-mpr-summary.htm>.

<sup>206</sup> 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/>.

<sup>207</sup> Joseph R. Biden, Remarks by President Biden on Helping Small Businesses (Feb. 22, 2021), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/02/22/remarks-by-president-biden-on-helping-small-businesses/>.

<sup>208</sup> 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>.

<sup>209</sup> U.S. Census Bureau, Small Business Pulse Survey, <https://portal.census.gov/pulse/data/> (last visited December 7, 2021).

<sup>210</sup> 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>.

<sup>211</sup> 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>.

<sup>212</sup> 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>.

<sup>213</sup> 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>.

<sup>214</sup> 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>.

<sup>215</sup> Robert Fairlie, *supra* note 213.

“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.<sup>220</sup> 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

<sup>220</sup>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.<sup>221</sup> Prior to the pandemic, the median U.S. nonprofit reported that it had six months of cash on hand.<sup>222</sup> 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.<sup>223</sup> 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.<sup>224</sup> 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.<sup>225</sup> 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.<sup>226</sup> In addition, some nonprofits may have experienced declines in volunteer staffing during the pandemic.<sup>227</sup>

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.<sup>228</sup>

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.<sup>229</sup>

*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.<sup>230</sup> Commenters requested that Treasury note that the pandemic is

<sup>229</sup> 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.

<sup>230</sup> 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.

<sup>221</sup> 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>.

<sup>222</sup> 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>.

<sup>223</sup> *Id.*

<sup>224</sup> 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](https://www.urban.org/research/publication/nonprofit-trends-and-impacts-2021/view/full_report).

<sup>225</sup> *Id.*

<sup>226</sup> 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/>.

<sup>227</sup> Elizabeth T. Boris et al. *supra* note 224 at p. 38.

<sup>228</sup> § 35.3 Definitions.

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.<sup>231</sup>

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.<sup>232</sup> See section Distinguishing Subrecipients versus Beneficiaries for further information. Additional guidance on determining subrecipient status may be found in the Uniform Guidance.<sup>233</sup>

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

<sup>231</sup> 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.

<sup>232</sup> 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.<sup>234</sup> 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.<sup>235</sup>

**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.”<sup>236</sup> 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 districts<sup>237</sup> 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.

<sup>234</sup> § 35.3 Definitions.

<sup>235</sup> 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).

<sup>236</sup> Coronavirus State and Local Fiscal Recovery Funds, 86 FR at 26795.

<sup>237</sup> 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.<sup>238</sup> 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).<sup>239</sup> 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.

<sup>238</sup> 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.

<sup>239</sup> 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.<sup>240</sup> 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

<sup>240</sup> 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 benefits<sup>241</sup> for *public safety, public health, health care, human services, and similar employees*<sup>242</sup> 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

<sup>241</sup> 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.

<sup>242</sup> Note that the interim final rule adapted prior guidance issued for 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.

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 employees<sup>243</sup> 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

<sup>243</sup> 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.

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

records). Treasury anticipates that these types of records are generally retained in many government settings; recipients should also consult the Award Terms and Conditions for SLFRF funds for requirements on length of record retention. For example, a recipient could establish a reasonable presumption about the share of time that an employee, division, or operating unit is responding to COVID-19 and simply retain those employees' electronic records as a record to support their assessment.

*Public Comment: Public Health and Safety Staff Primarily Dedicated to COVID-19 Response:* Some commenters recommended expanding the administrative convenience for public health and safety staff primarily dedicated to COVID-19 response to further types of staff, to all public health and safety staff, or to public health and safety staff serving underserved areas.

*Treasury Response:* The interim final rule recognized that COVID-19 response continues to require substantial staff resources and provides an administrative convenience to make it relatively simpler to identify the eligibility of the types of workers—public health and safety workers—generally most involved in COVID-19 response. At the same time, many public health and safety workers perform roles unrelated to COVID-19; coverage of all roles would be overbroad compared to the workers responding to COVID-19 in actuality. For this reason, the final rule maintains the interim final rule's approach to permitting SLFRF funds to be used for public health and safety staff primarily dedicated to responding to COVID-19. Finally, to the extent that a greater proportion of public health and safety staff time is needed to respond to COVID-19 in disproportionately impacted communities, the "primarily dedicated" approach recognizes this increased need.

*Public Comment: Eligible Types of COVID-19 Response:* Some public commenters also sought further clarification on how to identify eligible types of "COVID-19 response." For example, commenters requested clarification on delineating COVID-19 response from general public health response and defining COVID-19 response for public safety employees.

*Treasury Response:* Treasury is clarifying that "responding to" COVID-19 entails work needed to respond to the public health or negative economic impacts of the pandemic, apart from the typical pre-pandemic job duties or workload of an employee in a comparable role, if one existed. For

example, responding to COVID-19 for a public safety worker may entail working in an emergency operations center to coordinate pandemic-related supply distribution, responding to an increased volume of 911 calls, or implementing COVID-19 prevention and mitigation protocols in a carceral setting.

*Public Comment: Eligible Employees:* Some commenters requested clarification on the types of eligible employees or expansion of eligible employees to include additional types of staff, including in behavioral health; administrative, management, or financial management positions; social services; morgue staff; and nonprofit staff supporting projects to undertake eligible uses of funds under SLFRF.

*Treasury Response:* Treasury provided further guidance on eligible types of employees following the interim final rule, which expressly included social services and morgue staff, and incorporates that guidance into the final rule. In addition, Treasury is clarifying that public health "employees involved in providing medical and other health services to patients and supervisory personnel" includes behavioral health services as well as physical health services.

Treasury also is clarifying that this provision only addresses employees of the recipient government responding to COVID-19. For discussion of eligible expenses to administer SLFRF, including eligible costs for subrecipients performing eligible activities on behalf of a recipient government, see section Administrative Expenses in Program Administration Provisions.

Finally, Treasury is clarifying that indirect costs for administrative, management, and financial management personnel to support public health and safety staff responding to COVID-19 are not permissible under this provision, given the relatively greater challenge of differentiating the marginal increase in staff time and workload due to pandemic response for indirect versus direct costs.

*Public Comment: Time Period:* Finally, some commenters made recommendations on the time period during which this eligible use should be available. Some commenters recommended eligibility begin before March 3, 2021, the period when Treasury's interim final rule permitted recipients to begin to incur costs using SLFRF funds; for discussion of this topic, see section Timeline for Use of SLFRF Funds in Program Administration Provisions. As noted above, Treasury also posed a question in the interim final rule asking for how long Treasury should maintain the

administrative convenience that SLFRF funds may be used for the full payroll and covered benefits of public health and safety staff primarily dedicated to COVID-19 response. Several commenters recommended that Treasury maintain this approach throughout the program or through December 31, 2024. Other commenters requested clarification on whether eligibility for this use of funds was tied to the length of the state of emergency or whether a jurisdiction has an active state of emergency.

*Treasury Response:* In the final rule, Treasury is clarifying that recipients will be permitted to fund the full payroll and covered benefits of public health and safety staff primarily dedicated to COVID-19 response throughout the period of performance for the SLFRF program, though recipients should periodically reassess their determination of primarily dedicated staff, including as the public health emergency and response evolves.

Government Employment and Rehiring Public Sector Staff

The interim final rule permitted use of funds for costs associated with rehiring state, local, and Tribal government staff in order to bolster the government's ability to effectively administer services. Specifically, recipients may pay for payroll, covered benefits, and other costs associated with the recipient increasing the number of its employees up to the pre-pandemic baseline, or the number of employees that the recipient government employed on January 27, 2020.

*Public Comment:* Many commenters requested greater flexibility and additional clarification on the provision's requirements, including the pre-pandemic baseline and re-hiring process. Some commenters requested that the final rule allow for hiring above the pre-pandemic baseline given historic underinvestment in the public sector workforce. Commenters suggested a number of adjustments to the pre-pandemic baseline, including adjusting based on population or revenue growth, while some recommended allowing recipients to set their own hiring levels. Others requested clarification on the definition of the baseline and the re-hiring process, including whether the pre-pandemic baseline referred to budgeted or filled positions and whether new hires had to fill the same roles as the previous hires. Commenters also asked whether recipients need to show if the reduction in number of employees was due to the pandemic in order to qualify for funding and requested that workers dedicated to

COVID-19 response be exempted from the calculation of number of employees.

Many commenters also requested an expanded set of eligible uses beyond restoring their workforce up to the pre-pandemic baseline. Commenters requested that funding be able to be used to avoid layoffs, provide back pay, retain employees through pay increases and other retention programs, or reimburse salaries and benefits already paid. Some commenters also requested clarification as to whether recipients can fund re-hired positions through the period of performance and on the definition of payroll and benefits. Other commenters requested preferential hiring for workers laid off, a strong commitment to equity, and a requirement that funds would not be used to pay for contract or temporary replacement workers during a labor dispute.

*Treasury Response:* The final rule allows for an expanded set of eligible uses to restore and support public sector employment. Eligible uses include hiring up to a pre-pandemic baseline that is adjusted for historic underinvestment in the public sector, providing additional funds for employees who experienced pay cuts or were furloughed, avoiding layoffs, providing worker retention incentives, and paying for ancillary administrative costs related to hiring.

*Restoring pre-pandemic employment.* In response to comments and recognizing underinvestment in public sector employment, the final rule expands the ability to use SLFRF funds to restore pre-pandemic employment. Treasury is also clarifying how, and the extent to which, recipients may use SLFRF funds to rehire public employees.

The final rule provides two options to restore pre-pandemic employment, depending on recipient's needs. Under the first and simpler option, recipients may use SLFRF funds to rehire staff for pre-pandemic positions that were unfilled or were eliminated due to the pandemic without undergoing further analysis. Under the second option, the final rule provides recipients an option to hire above the pre-pandemic baseline, by adjusting the pre-pandemic baseline for historical growth in public sector employment over time, as well as flexibility on roles for hire. Recipients may choose between these options but cannot use both.

To pursue the first option, recipients may use SLFRF funds to hire employees for the same positions that existed on January 27, 2020 but that were unfilled or eliminated as of March 3, 2021, without undergoing further analysis. For

these employees, recipients may use SLFRF funds for payroll and covered benefit costs that are obligated by December 31, 2024 and expended by December 31, 2026, consistent with the Uniform Guidance's Cost Principles at 2 CFR part 200 Subpart E. This option provides administrative simplicity for recipients that would simply like to restore pre-pandemic positions and would not like to hire above the pre-pandemic baseline.

To pursue the second option, recipients should undergo the analysis provided below. In short, this option allows recipients to pay for payroll and covered benefits associated with the recipient increasing its number of budgeted full-time equivalent employees (FTEs) up to 7.5 percent above its pre-pandemic employment baseline, which adjusts for the continued underinvestment in state and local governments since the Great Recession. State and local government employment as a share of population in 2019 remained considerably below its share prior to the Great Recession in 2007, which presented major risks to recipients mounting a response to the COVID-19 public health emergency. The *adjustment factor* of 7.5 percent results from estimating how much larger 2019 state and local government employment would have needed to be for the share of state and local government employment to population in 2019 to have been back at its 2007 level and is intended to correct for this gap.

Recipients should complete the steps described below. Recipients may choose whether to conduct this analysis on a government-wide basis or for an individual department, agency, or authority.

- *Step One:* Identify the recipient's budgeted FTE level on January 27, 2020. This includes all budgeted positions, filled and unfilled. This is called the *pre-pandemic baseline*.

- *Step Two:* Multiply the *pre-pandemic baseline* by 1.075 (that is, 1 + *adjustment factor*). This is called the *adjusted pre-pandemic baseline*.

- *Step Three:* Identify the recipient's budgeted FTE level on March 3, 2021, which is the beginning of the period of performance for SLFRF funds. Recipients may, but are not required to, exclude FTEs dedicated to responding to the COVID-19 public health emergency.<sup>244</sup> This is called the *actual number of FTEs*.

<sup>244</sup> 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  $1,000 * 1.075 = 1075$  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.<sup>245</sup> 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

<sup>245</sup> 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.<sup>246</sup> 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 Agendas<sup>247</sup> to support strategic evidence building, selection of evidence-based interventions, and program evaluations including impact evaluations (randomized control trials

<sup>246</sup> Results for America, Invest in What Works State Standard of Excellence (August 2020), [https://2020state.results4america.org/2020\\_State-Standard-of-Excellence.pdf](https://2020state.results4america.org/2020_State-Standard-of-Excellence.pdf).

<sup>247</sup> 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>.

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,<sup>248</sup> 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.

<sup>248</sup> 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).<sup>249</sup> This also includes

<sup>249</sup> 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

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

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.

resolution, and other expenses to expedite case resolution are eligible uses."

### 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).<sup>250</sup> 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 irreparable 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

<sup>250</sup> 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.<sup>251</sup> 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.<sup>252</sup> 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.<sup>253</sup>

#### 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.

<sup>252</sup> 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](https://www.cdc.gov/coronavirus/2019-ncov/hcp/long-term-care.html#anchor_1631030153017).

<sup>253</sup> 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>.

<sup>251</sup> 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 <sup>254</sup>	and the use is beyond those enumerated by Treasury as eligible, then <sup>255</sup>
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

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,

<sup>254</sup> 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.

<sup>255</sup> 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.

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 entity<sup>256</sup> 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

<sup>256</sup> 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.<sup>257</sup>

**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

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

<sup>257</sup> 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/](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](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>.

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.<sup>258</sup>

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.<sup>259</sup> Many of these workers earn lower wages on average and live in socioeconomically underserved communities as compared to the general population.<sup>260</sup> A recent study found that 25 percent of essential workers were estimated to have low household income, with 13 percent in high-risk households.<sup>261</sup> 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.<sup>262</sup> 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-public<sup>263</sup> 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

<sup>258</sup> See U.S. Department of Labor, *Hazard Pay*, <https://www.dol.gov/general/topic/wages/hazardpay> (last visited October 18, 2021).

<sup>259</sup> 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/>.

<sup>260</sup> McCormack, *supra* note 65.

<sup>261</sup> *Id.*

<sup>262</sup> See H.R. 6800, 116th Cong. (2020).

<sup>263</sup> 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.<sup>264</sup> 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,<sup>265</sup> 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

<sup>264</sup> 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/oooh/>.

<sup>265</sup> 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.<sup>266</sup>

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.<sup>267</sup> This change will expand the number of workers eligible to receive premium pay<sup>268</sup> 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

<sup>267</sup> Department of Labor, Overtime Pay, <https://www.dol.gov/agencies/whd/overtime>; see also 29 U.S.C. 207.

<sup>268</sup> 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 ELS 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.

<sup>266</sup> 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.<sup>269</sup>

**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.<sup>270</sup> 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.<sup>271</sup> Twenty-two state governments took actions to close budget gaps in fiscal year 2020<sup>272</sup> and nearly 80 percent of cities reported being less able to meet the fiscal needs of their communities relative to fiscal year 2019.<sup>273</sup> 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.<sup>274</sup>

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

<sup>271</sup> 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>.

<sup>272</sup> 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](https://higherlogicdownload.s3.amazonaws.com/NASBO/9d2d2db1-c943-4f1b-b750-0fca152d64c2/UploadedImages/Fiscal%20Survey/NASBO_Fall_2020_Fiscal_Survey_of_States_S.pdf).

<sup>273</sup> 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](https://www.nlc.org/wp-content/uploads/2020/08/City_Fiscal_Conditions_2020_FINAL.pdf).

<sup>274</sup> 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 Sobrepna, 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>.

<sup>269</sup> 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.”).

<sup>270</sup> 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.<sup>275</sup> 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,<sup>276</sup> 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.<sup>277</sup> 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.<sup>278</sup> Inflation-adjusted state and local government revenue did not return to the previous peak until 2013,<sup>279</sup> while employment in the sector returned to the previous peak in August 2019, nearly a decade later.<sup>280</sup> 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.<sup>281</sup>

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 + *growth adjustment*) ^ (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.<sup>282</sup> 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*,<sup>283</sup> 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

<sup>275</sup> Analysis of Quarterly Summary of State and Local Tax Revenue, U.S. Census Bureau, supra note 271.

<sup>276</sup> 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>.

<sup>277</sup> 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>.

<sup>278</sup> 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.

<sup>279</sup> 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>.

<sup>280</sup> 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>.

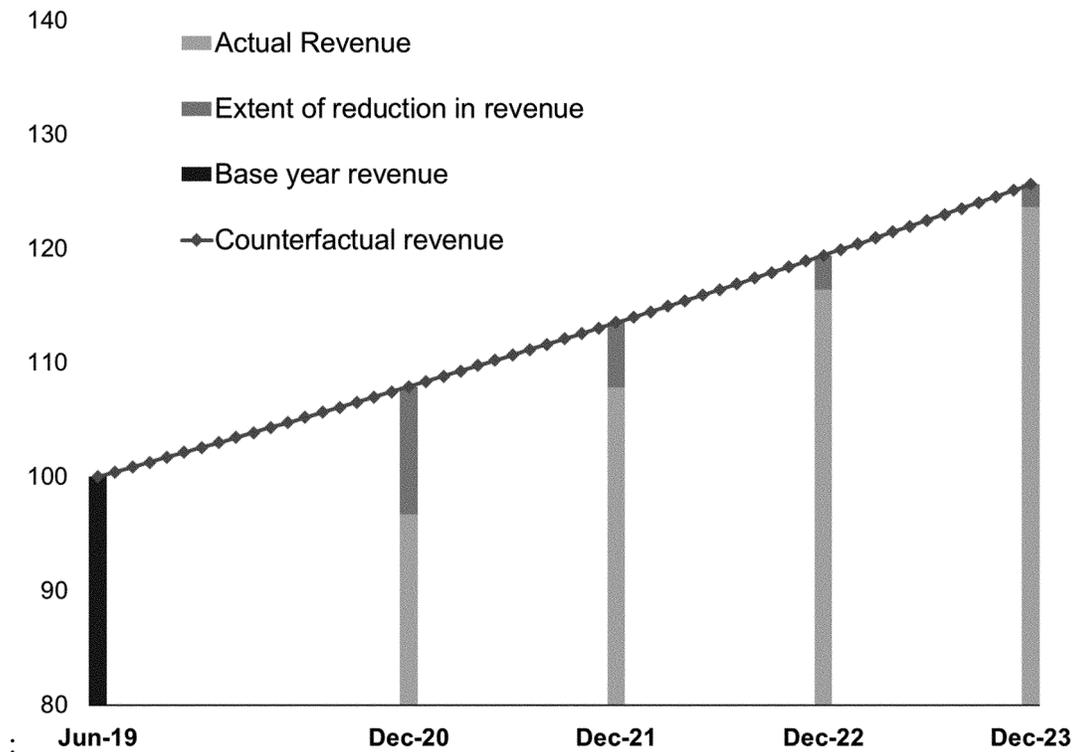
<sup>281</sup> Pew Research, State and Local Government Job Growth Lags as Economy Recovers (September 2021), available at <https://www.pewtrusts.org/en/research-and-analysis/articles/2021/09/14/state-and-local-government-job-growth-lags-as-economy-recovers>.

<sup>282</sup> 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.

<sup>283</sup> 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.<sup>284</sup> 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).<sup>285</sup> 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.<sup>286</sup> 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.<sup>287</sup>

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.<sup>288</sup>

#### 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.<sup>289</sup> 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

<sup>287</sup> 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”).

<sup>288</sup> 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.

<sup>289</sup> 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>.

<sup>284</sup> 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.

<sup>285</sup> Annual Survey of State and Local Government Finances (2019).

<sup>286</sup> 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.<sup>290</sup> 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.<sup>291</sup> 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

<sup>290</sup> 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.

<sup>291</sup> 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.

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.<sup>292</sup> 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.”<sup>293</sup>

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

<sup>292</sup> U.S. Energy Information Administration, Annual Electric Utility Data (October 2021), available at [https://www.eia.gov/electricity/sales\\_revenue\\_price/](https://www.eia.gov/electricity/sales_revenue_price/).

<sup>293</sup> 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/SLFRPFAQ.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.<sup>294</sup> 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.<sup>295</sup> 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

<sup>294</sup> 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”).

<sup>295</sup> *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).

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.<sup>296</sup> Most state budgeting processes require a “budget score,” often developed through a consensus process with executive and legislative branch experts,<sup>297</sup> 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,

<sup>296</sup> 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.

<sup>297</sup> 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-b750-0fca152d64c2/UploadedImages/Budget%20Processes/NASBO\\_2021\\_Budget\\_Processes\\_in\\_the\\_States\\_S.pdf](https://higherlogicdownload.s3.amazonaws.com/NASBO/9d2d2db1-c943-4f1b-b750-0fca152d64c2/UploadedImages/Budget%20Processes/NASBO_2021_Budget_Processes_in_the_States_S.pdf).

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

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.<sup>298</sup>

<sup>298</sup> 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.<sup>299</sup> 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.

<sup>299</sup> 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 building<sup>300</sup> 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

<sup>300</sup> 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.<sup>301</sup> 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,

<sup>301</sup> 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.<sup>302</sup>

#### 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

<sup>302</sup> See U.S. Department of the Treasury, *Compliance and Reporting Guidance*, 21 (June 24, 2021), <https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf>.

by the Environmental Protection Agency (EPA). By referring to these existing programs, with which many recipients are already familiar, Treasury intended to provide flexibility to recipients to respond to the needs of their communities while facilitating recipients’ identification of eligible projects. Furthermore, by aligning SLFRF eligible uses with these existing programs, Treasury could ensure that projects using the SLFRF are limited to “necessary investments.”

*Public Comment:* Treasury received many comments responding to the water and sewer infrastructure provisions of the interim final rule from state, local, and Tribal governments, industry trade associations, public interest groups, private individuals, and other interested parties. Commenters requested that Treasury provide a wider set of eligible uses for water and sewer infrastructure beyond those uses articulated by the DWSRF and CWSRF, suggesting that Treasury expand the definition of necessary water and sewer infrastructure.

*Treasury Response:* In response to commenters, Treasury is expanding the eligible use categories for water and sewer infrastructure, discussed in further detail below. Because the interim final rule aligned the definition of necessary water and sewer infrastructure with the eligible uses included in the DWSRF and CWSRF, Treasury is reflecting in the final rule a revised standard for determining a necessary water and sewer infrastructure investment for eligible water and sewer uses beyond those uses that are eligible under the DWSRF and CWSRF.

#### Interpretation of Necessary Investments and Water and Sewer Infrastructure

*Necessary Investments:* As discussed above, Treasury considers an investment in infrastructure to be necessary if it is (1) responsive to an identified need to achieve or maintain an adequate minimum level of service, which for some eligible project categories may include a reasonable projection of increased need, whether due to population growth or otherwise and (2) a cost-effective means for meeting that need, taking into account available alternatives. In addition, in the case of investments in drinking water service infrastructure to supply drinking water to satisfy a projected increase in population, the project must also be projected to be sustainable over its estimated useful life. As detailed further below, DWSRF and CWSRF eligible projects continue to be presumed to be necessary investments under the final

rule, with the exception of projects for the rehabilitation of dams and reservoirs, which the EPA has permitted in certain circumstances under the DWSRF and, as discussed below, are addressed separately in the final rule.

In evaluating whether a project would respond to a need to achieve or maintain an adequate minimum level of service, a recipient should consider whether it would meet the needs of the population to be served and would satisfy applicable standards. For example, a drinking water project must be sized such that it provides an adequate volume of water to households and other customers and must meet applicable standards for drinking water quality under the Safe Drinking Water Act (SDWA). Similarly, a centralized wastewater treatment project should be designed to manage updated estimated flow rates and comply with Clean Water Act requirements. These requirements are already reflected in the eligibility criteria of the DWSRF and CWSRF, respectively.

In evaluating whether a project is a cost-effective means of providing the water or sewer service, the recipient should consider the need for the project, the costs and benefits of the project compared to alternatives, and the effectiveness of the project in meeting the identified need. Recipients are not required to conduct a full cost-benefit analysis; however, they should consider and analyze relevant factors. For example, a recipient may not use funds to pursue a costly dam rehabilitation to provide drinking water to a community if it could provide the same service with a significantly smaller investment by drawing water from another available reservoir, assuming that doing so would meet the other requirements of the final rule. As detailed further below, recipients are only required to assess cost-effectiveness of projects for the creation of new drinking water systems, dam and reservoir rehabilitation projects, or projects for the extension of drinking water service to meet population growth needs.

Certain DWSRF eligibilities are already subject to a cost-effectiveness test. Specifically, projects that create new drinking water systems must be a cost-effective solution to addressing the identified problem.<sup>303</sup> 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.<sup>304</sup>

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

<sup>304</sup> 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.

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.<sup>305</sup> 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

<sup>305</sup> 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.

<sup>303</sup> See 40 CFR 35.3520(b)(2)(vi).

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.<sup>306</sup>

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.<sup>307</sup> 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

<sup>306</sup> 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.

<sup>307</sup> 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.”

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 program<sup>308</sup> or (2) constitute reuse of

<sup>308</sup> 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.<sup>309</sup> 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.

<sup>309</sup> 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.<sup>310</sup> 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.<sup>311</sup> 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)<sup>312</sup> 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);<sup>313</sup>

(ii) for the implementation of a management program established under section 319 of the CWA;<sup>314</sup>

(iii) for the development and implementation of a conservation and management plan under section 320 of the CWA;<sup>315</sup>

(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.

<sup>312</sup> 33 U.S.C. 1383(c).

<sup>313</sup> 33 U.S.C. 1292.

<sup>314</sup> 33 U.S.C. 1329.

<sup>315</sup> 33 U.S.C. 1330.

<sup>310</sup> See 40 CFR 35.3520(d)(1).

<sup>311</sup> 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.<sup>316</sup> Projects that develop or implement a watershed pilot project related to at least one of the six areas identified in section 122 of the CWA are eligible: Watershed management of wet weather discharges, stormwater best management practices, watershed partnerships, integrated water resource planning, municipality-wide stormwater management planning, or increased resilience of treatment works.

(viii) to any municipality, intermunicipal, interstate, or state agency for measures to reduce the energy consumption needs for publicly owned treatment works. Projects may include, but are not limited to, the installation of energy efficient lighting, HVAC, process equipment, and electronic equipment and systems at publicly owned treatment works. Planning activities, such as energy audits and optimization studies are also eligible.

(ix) for reusing or recycling wastewater, stormwater, or subsurface drainage water. Projects involving the reuse or recycling of wastewater, stormwater, or subsurface drainage water are eligible. This includes, as part of a reuse project, the purchase and installation of treatment equipment sufficient to meet reuse standards. Other eligible projects include, but are not limited to, distribution systems to support effluent reuse, including piping the effluent on the property of a private consumer, recharge transmission lines, injection wells, and equipment to reuse effluent (e.g., gray water, condensate, and wastewater effluent reuse systems).

(x) for measures to increase the security of publicly owned treatment works. Security measures for publicly owned treatment works might include, but are not limited to, vulnerability assessments, contingency/emergency response plans, fencing, security cameras/lighting, motion detectors, redundancy (systems and power), secure chemical and fuel storage, laboratory equipment, securing large sanitary sewers, and tamper-proof manholes. The CWSRF cannot fund operations and maintenance activities. Therefore, maintaining a human presence (i.e., security guards) and monitoring activities are not eligible.

#### Other Clarifications of DSWRF and CWSRF Eligible Project Categories

*Public Comment:* Several commenters requested that Treasury provide clarification of the requirements associated with use of SLFRF funds for necessary investments in water and sewer infrastructure.

*Treasury Response:* After release of the interim final rule, Treasury clarified in further guidance that, while recipients must ensure that water and sewer infrastructure projects pursued are eligible under the final rule, recipients are not required to obtain project pre-approval from Treasury or any other federal agency when using SLFRF funds for necessary water and sewer infrastructure projects unless otherwise required by federal law. For projects that are being pursued under the eligibility categories provided through the DWSRF or CWSRF programs, project eligibilities are based on federal project categories and definitions for the programs and not on each state's eligibility or definitions. While reference in the final rule to the DWSRF, CWSRF, or other federal water programs is provided to assist recipients in understanding the types of water and sewer infrastructure projects eligible to be funded with SLFRF, recipients do not need to apply for funding from the applicable state programs or through any federal water program. Similarly, besides eligible project categories, the final rule does not incorporate other program requirements or guidance that attach to the DWSRF, CWSRF, or other federal water programs. However, as noted above, recipients should be aware of other federal or state laws or regulations that may apply to construction projects or water and sewer projects, independent of SLFRF funding conditions, and that may require pre-approval from another federal or state agency.

#### Expanded Eligible Uses for Water and Sewer Infrastructure Summary

*Public Comment:* Many commenters requested broader flexibility in the use of SLFRF funds for water and sewer infrastructure projects that are not eligible under the DWSRF and CWSRF. These commenters argued that localities are best situated to identify the highest-need water and sewer projects in their communities. Several Tribal government commenters noted that Tribes have different water and sewer infrastructure needs than states and localities and that additional flexibility in the use of funds would lift current

barriers to improving infrastructure on Tribal lands.

To achieve additional flexibility, commenters suggested a range of options for broadening the eligible use of SLFRF funds for necessary water and sewer infrastructure. For example, several commenters suggested Treasury broaden the eligibilities provided under the interim final rule to include project types eligible under other federal water and sewer programs.

*Treasury Response:* Treasury agrees that additional flexibility for use of SLFRF funds is warranted and is providing expanded eligibilities as described below, several of which address specific areas of need outlined by Tribal and rural communities.

As discussed below, Treasury has incorporated into the final rule projects that are eligible under certain programs established by the EPA under the Water Infrastructure Improvements for the Nation Act (WIIN Act). Other water-related grant programs cited by commenters include projects that are otherwise already covered by the final rule, for example because they are covered as eligible under the DWSRF or the CWSRF, or projects that are ineligible under the final rule because they are beyond the scope of the meaning of water and sewer projects for purposes of ARPA. To minimize the need for recipients of SLFRF funds to cross reference eligibilities across multiple federal programs, which may exacerbate current challenges to understanding eligibility under SLFRF, Treasury is providing detailed information related to expanded eligibilities within the text of this **SUPPLEMENTARY INFORMATION** for the final rule.

#### Stormwater Infrastructure

*Public Comment:* Several commenters requested that additional stormwater infrastructure projects be included as eligible uses of SLFRF funds under the final rule. Commenters suggested that culvert repair and resizing and replacement of storm sewers is necessary to address increased rainfall brought about by a changing climate. Other commenters noted that rural communities that do not manage their own sewer systems may rely on this type of water infrastructure.

*Treasury Response:* The CWSRF includes a broad range of stormwater infrastructure projects, and as such these projects were eligible under the interim final rule and continue to be eligible under the final rule. These projects include gray infrastructure projects, such as traditional pipe, storage, and treatment systems. Projects

<sup>316</sup> 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.<sup>317</sup>

*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.<sup>318</sup> 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 lead<sup>319</sup> and certain other water systems.<sup>320</sup>

Treasury is expanding eligible uses of SLFRF funds to include infrastructure projects eligible under EPA grant programs authorized by the WIIN Act.<sup>321</sup> 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.<sup>322</sup> Remediation

<sup>318</sup> 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).

<sup>319</sup> Environmental Protection Agency, *supra* note 188.

<sup>320</sup> 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>.

<sup>321</sup> 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).

<sup>322</sup> Such testing and remediation programs would be an eligible use of SLFRF funds given that they

<sup>317</sup> 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.<sup>323</sup> 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.<sup>324</sup> 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.

<sup>324</sup> 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.

<sup>323</sup> 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.<sup>325</sup>

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].”<sup>326</sup>

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.<sup>327</sup> 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

<sup>326</sup> See Public Law 117–58, 40909(a)–(b) (Nov. 15, 2021).

<sup>327</sup> See Public Law 117–58 § 40909(c).

<sup>325</sup> See 40 CFR 35.3520(e)(5).

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,<sup>328</sup> middle-mile projects,<sup>329</sup> pre-project development costs,<sup>330</sup> broadband connections to schools or libraries,<sup>331</sup> and the applicability of the National Environmental Policy Act (NEPA) and the Davis-Bacon Act.<sup>332</sup>

*Summary of Public Comments:* Treasury received several comments on the interim final rule’s requirements regarding eligible areas for investment and build-to speed standards, as well as Treasury’s encouragements in the Supplementary Information of the interim final rule. Many commenters found the interim final rule’s requirement to limit projects to those designed to provide service to unserved or underserved households or businesses to be appropriately focused on hard-to-reach areas. In contrast, other commenters argued that this requirement was too restrictive and that it would limit the ability for some recipients, particularly local governments, to invest in broadband infrastructure.

Separately, some commenters supported the interim final rule’s requirement that eligible projects be built to reliable speeds of 100 Mbps symmetrical, with an exception for areas where it was impracticable, and encouragement that projects be built with fiber-optic infrastructure, while a

<sup>328</sup> 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>.

<sup>329</sup> See FAQ 6.10. *Id.*

<sup>330</sup> See FAQ 6.12. *Id.*

<sup>331</sup> See FAQ 6.16. *Id.*

<sup>332</sup> 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,<sup>333</sup> pre-project development costs,<sup>334</sup> broadband connections to schools or libraries,<sup>335</sup> and applicability of the National Environmental Policy Act (NEPA) and Davis-Bacon Act.<sup>336</sup>

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 Mbps<sup>337</sup> was too

<sup>333</sup> 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/SLFRFPFAQ.pdf>.

<sup>334</sup> See FAQ 6.12. *Id.*

<sup>335</sup> See FAQ 6.16. *Id.*

<sup>336</sup> See FAQ 6.4, 6.17. *Id.*

<sup>337</sup> 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 “reliab[le]” 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,<sup>338</sup> 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),<sup>339</sup> and other factors related to

<sup>338</sup> 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/SLFRPFAQ.pdf>.

<sup>339</sup> 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](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://>

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

[data.fcc.gov/download/measuring-broadband-america/2020/2020-Fixed-Measuring-Broadband-America-Report.pdf](https://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).

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,<sup>340</sup> 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.<sup>341</sup> 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.<sup>342</sup> 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,<sup>343</sup> 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

<sup>340</sup> 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).

<sup>341</sup> United States' Mobile and Broadband Internet Speeds—Speedtest Global Index, available at <https://www.speedtest.net/global-index/United-states#fixed>.

<sup>342</sup> 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>.

<sup>343</sup> 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>.

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.<sup>344</sup> 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

<sup>344</sup> 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](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 and 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.<sup>345</sup> 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."<sup>346</sup> 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.

<sup>345</sup> 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/>.

<sup>346</sup> 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 governments<sup>347</sup>), 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 interpretation<sup>348</sup> 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

<sup>347</sup>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.

<sup>348</sup>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.<sup>349</sup> 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 of 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.'" <sup>350</sup> "The power to keep a watchful eye on expenditures . . . is bound up with congressional authority to spend in the first place." <sup>351</sup> 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.<sup>352</sup> 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

<sup>350</sup> *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).

<sup>351</sup> *Sabri v. United States*, 541 U.S. 600, 608 (2004).

<sup>352</sup> 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).

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.<sup>353</sup> Changed

<sup>353</sup> 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

<sup>349</sup> 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).

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.<sup>354</sup> 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 Program<sup>355</sup> 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.<sup>356</sup> 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

<sup>355</sup> See Statement on State Fiscal Recovery Funds and Tax Conformity, April 7, 2021, available at <https://home.treasury.gov/news/press-releases/jy0113>.

<sup>356</sup> 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).

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).

<sup>354</sup> Assistance must be consistent with eligible uses of SLFRF funds. See section Eligible Uses of this **SUPPLEMENTARY INFORMATION**.

change and maintaining a consistent definition of “tax revenue.”<sup>357</sup>

**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.<sup>358</sup>

**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,<sup>359</sup> 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.”<sup>360</sup> 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).<sup>361</sup> 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

<sup>357</sup> 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.

<sup>358</sup> 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.

<sup>359</sup> 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>.

<sup>360</sup> 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.”

<sup>361</sup> 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.<sup>362</sup>

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

<sup>362</sup> 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.<sup>363</sup> 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.<sup>364</sup>

#### 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

<sup>363</sup> 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.

<sup>364</sup> 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.<sup>365</sup> 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

<sup>365</sup> “[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.<sup>366</sup>

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

<sup>366</sup> "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."

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.<sup>367</sup>

#### 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.

<sup>367</sup> 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.<sup>368</sup> 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.<sup>369</sup> 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.<sup>370</sup> 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 laws<sup>371</sup> 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

<sup>368</sup> See Sec. 602(a)(1); 603(a)(1); 602(c)(1); 603(c)(1).

<sup>369</sup> See 35.6(b); Coronavirus State and Local Fiscal Recovery Funds, 86 FR at 26786.

<sup>370</sup> 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."

<sup>371</sup> 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,<sup>372</sup> 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.

<sup>372</sup> 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](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.<sup>373</sup> Because Treasury interpreted the definition of an NEU<sup>374</sup> 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

<sup>373</sup> 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](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](https://home.treasury.gov/system/files/136/NEU_Methodology.pdf).

<sup>374</sup> 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](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,<sup>375</sup> 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

<sup>375</sup> Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; <https://home.treasury.gov/system/files/136/SLFRPFAQ.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,<sup>376</sup> 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.

<sup>376</sup> 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.”<sup>377</sup> Several commenters

<sup>377</sup>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-](https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal)

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.<sup>378</sup> 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.<sup>379</sup> 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.<sup>380</sup>

*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.<sup>381</sup> The broad eligible uses of the SLFRF funds available under sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act, combined with the purpose of these provisions (which is to provide general fiscal assistance to governments facing revenue losses due to the public health emergency), demonstrate that these funds are revenue sharing. They thus should generally be permitted to be used to meet the non-federal match and cost-share requirements of other federal programs. As such, the SLFRF funds available for the provision of government services, up to the amount of the recipient’s reduction in revenue due to the public health emergency, may be used to meet the non-federal match requirements of the Drinking Water State Revolving Fund and Clean Water State Revolving Fund programs administered by the EPA, for example.

Pursuant to 2 CFR 200.306(b) of the Uniform Guidance, if funds are legally available to meet the match or cost-share requirements of an agency’s federal program, such awarding agency is required to accept such funds for the purpose of that program’s match or cost-share requirements except in the circumstances enumerated in that section. The Office of Management and Budget has authority under 2 CFR

recovery-funds/recipient-compliance-and-reporting-responsibilities.

<sup>378</sup> *Id.*

<sup>379</sup> Coronavirus Relief Fund for States, Tribal Governments, and Certain Eligible Local Governments, 86 FR at 4192.

<sup>380</sup> 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/SLFRFPFAQ.pdf>.

<sup>381</sup> See U.S. Government Accountability Office, *Principles of Federal Appropriations Law, Third Edition, Volume II*, p. 10–99, GAO–06–382SP (February 2006), <https://www.gao.gov/assets/gao-06-382sp.pdf>.

200.102 of the Uniform Guidance to issue waivers of this requirement on request of the relevant awarding agency. Analogous requirements and waiver authorities may be present in other regulations. If a recipient seeks to use SLFRF funds to satisfy match or cost-share requirements for a federal grant program, it should first confirm with the relevant awarding agency that no waiver has been granted for that program, that no other circumstances enumerated under 2 CFR 200.306(b) would limit the use of SLFRF funds to meet the match or cost-share requirement, and that there is no other statutory or regulatory impediment to using the SLFRF funds for the match or cost-share requirement. Note that SLFRF funds may not be used as the non-federal share for purposes of a state's Medicaid and CHIP programs because the Office of Management and Budget has approved a waiver as requested by the Centers for Medicare & Medicaid Services pursuant to 2 CFR 200.102 of the Uniform Guidance and related regulations.

SLFRF funds beyond those that are available under sections 602(c)(1)(C) or 603(c)(1)(C) of the Social Security Act for the provision of government services may not be used to meet the non-federal match or cost-share requirements of other federal programs other than as specifically provided for by statute. For example, as discussed in other sections of this final rule, section 40909 of the Infrastructure Investment and Jobs Act provides that SLFRF funds may be used to meet the non-federal match requirements of any authorized Bureau of Reclamation project, and section 60102 of the Infrastructure Investment and Jobs Act provides that the SLFRF may be used to meet the non-federal match requirements of the broadband infrastructure program authorized under that section (see sections Water and Sewer Infrastructure and Broadband Infrastructure).

#### H. Reporting

The interim final rule established Treasury's authority to collect information from recipients through requested reports and any additional requests for information. The interim final rule also provided Treasury flexibility to extend or accelerate reporting deadlines and to modify requested content for the Interim Report, Project and Expenditure reports, and Recovery Plan Performance reports.

The **SUPPLEMENTARY INFORMATION** of the interim final rule provided initial guidance on the reporting requirements for the SLFRF funds. States (defined to include the District of Columbia), territories, metropolitan cities, counties,

and Tribal governments were required to submit one interim report and quarterly Project and Expenditure reports thereafter. Non-entitlement units of local government were not required to submit an interim report. States, territories, and metropolitan cities and counties with a population greater than 250,000 residents were also required to submit an annual Recovery Plan Performance report to Treasury. The Supplementary Information of the interim final rule provided guidance on the deadlines and content required for each type of report.

*Public Comment:* Treasury received many comments on the content and specific data elements required of program reporting. Some commenters expressed enthusiasm for including particular details in reporting to promote transparency. Other commenters requested that Treasury streamline reporting requirements to avoid imposing undue administrative burdens and compliance costs. Many commenters requested further clarification on or amendments to particular elements of reporting content. Some commenters requested that reports and specific reporting elements be public, including a request for a public website with a number of programmatic data metrics about the use of SLFRF funds. Some commenters sought clarification and guidance for using the reporting portal, which allows recipients to upload the required information, or requested user modifications to the portal. Finally, some commenters requested that Treasury provide example materials and reporting metrics to aid recipient understanding.

*Treasury Response:* Since the publication of the interim final rule, Treasury issued supplementary reporting guidance in the Compliance and Reporting Guidance and in the User Guide: Treasury's Portal for Recipient Reporting (User Guide).<sup>382</sup> 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

<sup>382</sup> 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>.

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.<sup>383</sup> 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

<sup>383</sup> *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.<sup>384</sup>

### *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.<sup>385</sup> 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.<sup>386</sup> 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

<sup>384</sup> *Id.*

<sup>385</sup> Treasury will also consider the tax offset provision on an annual basis.

<sup>386</sup> Funds subject to recoupment cannot later be returned.

violation,<sup>387</sup> 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.<sup>388</sup> 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.<sup>389</sup> 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

<sup>388</sup> 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).

<sup>389</sup> 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.<sup>390</sup> 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.<sup>391</sup>

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

<sup>390</sup> 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>.

<sup>391</sup> 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.<sup>392</sup> 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

<sup>392</sup> See U.S. Bureau of Labor Statistics, Occupational Employment and Wage Estimates, [https://www.bls.gov/oes/current/oes\\_nat.htm](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.<sup>393</sup>

<sup>393</sup> 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.<sup>394</sup> 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.<sup>395</sup> 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.

<sup>394</sup> 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).

<sup>395</sup> 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.<sup>396</sup>

*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
<b>Total .....</b>	<b>54,870</b>	<b>.....</b>	<b>54,980</b>	<b>.....</b>	<b>236,735</b>	<b>11,552,619</b>

\* 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

<sup>396</sup> See Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, 10.2,

as of July 19, 2021; <https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf>.

requirements, including the requirement to conduct a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. Because this rule is exempt from the notice and comment requirements of the APA, Treasury is not required to conduct a regulatory flexibility analysis.

### Rule Text

#### List of Subjects in 31 CFR Part 35

Executive compensation, State and Local Governments, Tribal Governments, Public health emergency.

For the reasons stated in the preamble, the United States Department of the Treasury amends 31 CFR part 35 as follows:

### PART 35—PANDEMIC RELIEF PROGRAMS

#### ■ 1. Revise Subpart A to read as follows:

#### Subpart A—Coronavirus State and Local Fiscal Recovery Funds

Sec.

- 35.1 Purpose.
- 35.2 Applicability.
- 35.3 Definitions.
- 35.4 Reservation of authority, reporting.
- 35.5 Use of funds.
- 35.6 Eligible uses.
- 35.7 Pensions.
- 35.8 Tax.
- 35.9 Compliance with applicable laws.
- 35.10 Recoupment.
- 35.11 Payments to States.
- 35.12 Distributions to nonentitlement units of local government and units of general local government.

**Authority:** 42 U.S.C. 802(f); 42 U.S.C. 803(f).

#### § 35.1 Purpose.

This part implements section 9901 of the American Rescue Plan Act (Subtitle M of Title IX of Pub. L. 117–2), which amends Title VI of the Social Security Act (42 U.S.C. 801 *et seq.*) by adding sections 602 and 603 to establish the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Fund.

#### § 35.2 Applicability.

This part applies to states, territories, Tribal governments, metropolitan cities, nonentitlement units of local government, counties, and units of general local government that accept a payment or transfer of funds made under section 602 or 603 of the Social Security Act.

#### § 35.3 Definitions.

*Baseline* means tax revenue of the recipient for its fiscal year ending in 2019, adjusted for inflation in each reporting year using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States.

*Capital expenditures* has the same meaning given in 2 CFR 200.1.

*County* means a county, parish, or other equivalent county division (as defined by the Census Bureau).

*Covered benefits* include, but are not limited to, the costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (Federal and State), workers' compensation insurance, and Federal Insurance Contributions Act taxes (which includes Social Security and Medicare taxes).

*Covered change* means a change in law, regulation, or administrative interpretation that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase. A change in law includes any final legislative or regulatory action, a new or changed administrative interpretation, and the phase-in or taking effect of any statute or rule if the phase-in or taking effect was not prescribed prior to the start of the covered period.

*Covered period* means, with respect to a state or territory, the period that:

(1) Begins on March 3, 2021; and

(2) Ends on the last day of the fiscal year of such State or territory in which all funds received by the State or territory from a payment made under section 602 or 603 of the Social Security Act have been expended or returned to, or recovered by, the Secretary.

*COVID-19* means the Coronavirus Disease 2019.

*COVID-19 public health emergency* means the period beginning on January 27, 2020 and lasting until the termination of the national emergency concerning the COVID-19 outbreak declared pursuant to the National Emergencies Act (50 U.S.C. 1601 *et seq.*).

*Deposit* means an extraordinary payment of an accrued, unfunded liability. The term deposit does not refer to routine contributions made by an employer to pension funds as part of the employer's obligations related to payroll, such as either a pension contribution consisting of a normal cost component related to current employees or a component addressing the amortization of unfunded liabilities

calculated by reference to the employer's payroll costs.

*Eligible employer* means an employer of an eligible worker who performs essential work.

*Eligible workers* means workers needed to maintain continuity of operations of essential critical infrastructure sectors, including health care; emergency response; sanitation, disinfection, and cleaning work; maintenance work; grocery stores, restaurants, food production, and food delivery; pharmacy; biomedical research; behavioral health work; medical testing and diagnostics; home- and community-based health care or assistance with activities of daily living; family or childcare; social services work; public health work; vital services to Tribes; any work performed by an employee of a State, local, or Tribal government; educational work, school nutrition work, and other work required to operate a school facility; laundry work; elections work; solid waste or hazardous materials management, response, and cleanup work; work requiring physical interaction with patients; dental care work; transportation and warehousing; work at hotel and commercial lodging facilities that are used for COVID-19 mitigation and containment; work in a mortuary; and work in critical clinical research, development, and testing necessary for COVID-19 response.

(1) With respect to a recipient that is a metropolitan city, nonentitlement unit of local government, or county, workers in any additional non-public sectors as each chief executive officer of such recipient may designate as critical to protect the health and well-being of the residents of their metropolitan city, nonentitlement unit of local government, or county;

(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; households 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:

$$\text{Max} \{ [\text{Base Year Revenue} * (1 + \text{Growth Adjustment})^{\{n_t/12\}} - \text{Actual General Revenue}; 0 \}$$

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.*

[FR Doc. 2022-00292 Filed 1-26-22; 8:45 am]

BILLING CODE P

## CITY OF STANTON

### REPORT TO CITY COUNCIL

**TO:** Honorable Mayor and Members of the City Council

**DATE:** February 22, 2022

**SUBJECT: CONSIDERATION OF RESOLUTION NO. 2022-08 TO PROHIBIT OVERNIGHT PARKING ON MAIN STREET FROM FLOWER AVENUE TO THE ALLEY BETWEEN COURT AVENUE AND SYCAMORE AVENUE, AND RESOLUTION NO. 2022-10 TO ALLOW FOR ANGLED PARKING BETWEEN ROSE STREET AND FLOWER AVENUE**

#### **REPORT IN BRIEF:**

The recommended resolution would establish no parking from 12:00 a.m. – 6:00 a.m., seven days per week, on Main Street from Flower Avenue to the alleyway between Court Avenue and Sycamore Avenue. A second resolution would establish new angled parking between Rose Street and Flower Avenue.

#### **RECOMMENDED ACTION:**

1. City Council remove any existing time limit parking on Main Street; and
2. Establish “No Parking” hours from 12:00 a.m. - 6:00 a.m. on Main Street from Flower Avenue to the alleyway between Court Avenue and Sycamore Avenue with a tow away enforcement provision; and
3. Adopt Resolution No. 2022-08 entitled:

**“A RESOLUTION OF THE CITY COUNCIL OF STANTON, CALIFORNIA, TO RESTRICT OVERNIGHT PARKING ON MAIN STREET FROM FLOWER AVENUE TO THE ALLEY BETWEEN COURT AVENUE AND SYCAMORE AVENUE”;** and

4. Declare that this Resolution will not have a significant effect, adverse or otherwise, on the environment pursuant to the California Environment Quality Act (“CEQA”) Guidelines Section 15061(b)(3); therefore, this resolution is found and determined to be not subject to analysis under the California Environment Quality Act of 1970, as amended, or the State CEQA Guidelines; and

5. Direct the City Engineer to follow-up with surveyed businesses in approximately six (6) months to ascertain the effects of these actions; and

6. Adopt Resolution No. 2022-10 entitled:

**“A RESOLUTION OF THE CITY COUNCIL OF STANTON, CALIFORNIA, PERTAINING TO ANGLED PARKING ON MAIN STREET BETWEEN ROSE STREET AND FLOWER AVENUE”;** and

7. Declare that this Resolution falls within the commonsense exemption to the California Environmental Quality Act (“CEQA”) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. Notably, the Resolution will not result in any construction or development that could have a significant effect on the environment. (State CEQA Guidelines, § 15061, subd. (b)(3).) Accordingly, this Resolution, and all parking configurations authorized hereby, are found and determined to be exempt from CEQA. Moreover, the implementation of angled parking on Main Street is additionally categorically exempt from CEQA under the Class 1 and Class 4 exemptions, both of which apply to minor alteration of land or facilities. (State CEQA Guidelines, §§ 15301, 15304).

## **BACKGROUND**

The City has become aware of vehicles that routinely park on Main Street for days at a time without moving. It was proposed to the City by some businesses establish a no overnight parking restriction on Main Street.

Portions of Main Street west of Beach Boulevard have a posted two-hour time limit while all of Main Street east of Beach Boulevard has no time limit. Main Street is entirely signed “no parking on street sweeping day” during sweeping hours.

The City Manager and the Public Works Director met with business owners west of Beach (Willy’s Locksmith, ExpressTees, and Beach Boulevard Pawn) and all were in support of establishing a no overnight parking restriction on Main Street. Most businesses commented that the existing two-hour time limit for parking west of Beach Boulevard was difficult to enforce. They also commented local nearby residents routinely park their vehicles overnight in front of their businesses making no parking available for customers in the morning and thereby causing loss of business.

## **ANALYSIS/JUSTIFICATION:**

After reviewing the request and meeting the business owners listed above, the City Engineer supports the request. The City Engineer is recommending that only a portion of Main Street fronting commercial businesses be posted “No Parking” from 12:00 a.m. to 6:00 a.m. with a tow away provision. These hours are similar to the recently adopted Resolution prohibiting overnight parking on Village Center Drive.

Only a portion of Main Street is recommended for an overnight parking prohibition to preserve parking in the residential areas west and east of the commercial district. If the observations of the adjoining businesses are correct, the proposed Resolution would not negatively affect businesses because most vehicles parked on Main Street belong to nearby residents.

City staff believes the establishment of the no overnight parking restriction may also reduce nighttime crime on Main Street by eliminating parked vehicles that may conceal sidewalk activities from Police Services. Optionally, in light of these assumptions, City Council may wish to consider longer daily no parking hours.

California Vehicle Code Section 22507 gives municipalities the authority to prohibit or restrict parking during all or certain hours of the day and requires the adoption of an ordinance or resolution to establish or change those restrictions. The resolution, as presented, meets the requirements of CVC Section 22507.

Anticipating that some nearby residents may need parking spaces for their displaced vehicles, City staff proposes adding angled parking spaces between Rose Street and Flower Avenue. There is sufficient roadway width in this segment of Main Street allow for angled parking. The equivalent of approximately 16 parking stalls currently exists on Main Street between Rose Street and Flower Avenue. The proposed angled parking stalls would add approximately 10 parking spaces. Angled parking is currently implemented on Main Street east of Flower Street, and this angled parking was authorized by City ordinance in 1958 and again in 1964 by resolution. The language in the existing 1958 ordinance and 1964 resolution has specific installation limits; therefore, a new resolution is required to implement angled parking in this area. The resolution, as presented, meets the requirements of CVC Section 22503 and Ordinance No. 1113.

#### **FISCAL IMPACT:**

The proposed angled parking striping and the installation of overnight parking prohibition signage may be performed within the existing Supplies & Materials Budget (101-3500-602140) and the Pavement Maintenance Budget (101-3500-710190).

#### **ENVIRONMENTAL IMPACT:**

The establishment of No Parking hours will not have a significant effect, adverse or otherwise, on the environment pursuant to the California Environment Quality Act ("CEQA") Guidelines Section 15061(b)(3); therefore, this Resolution is found and determined to be not subject to analysis under the California Environment Quality Act of 1970, as amended, or the State CEQA Guidelines.

The establishment of angled parking on Main Street between Rose Street and Flower Avenue falls within the commonsense exemption to the California Environmental Quality Act ("CEQA") because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. Notably, the

Resolution will not result in any construction or development that could have a significant effect on the environment. (State CEQA Guidelines, § 15061, subd. (b)(3).) Accordingly, this Resolution, and all parking configurations authorized hereby, are found and determined to be exempt from CEQA. Moreover, the implementation of angled parking on Main Street is additionally categorically exempt from CEQA under the Class 1 and Class 4 exemptions, both of which apply to minor alteration of land or facilities. (State CEQA Guidelines, §§ 15301, 15304.)

**PUBLIC NOTIFICATION:**

Posted at three public places, noticed on Main Street, and made public through the agenda-posting process.

**STRATEGIC PLAN:**

5 – Provide a High Quality of Life

Prepared by:

/s/ Joe Ames

\_\_\_\_\_  
Joe Ames, P.E., T.E.  
Public Works Director/City Engineer

Reviewed by:

/s/ HongDao Nguyen

\_\_\_\_\_  
HongDao Nguyen  
City Attorney

Reviewed by:

/s/ Michelle Bannigan

\_\_\_\_\_  
Michelle Bannigan  
Finance Director

Approved by:

/s/ Jarad L. Hildenbrand

\_\_\_\_\_  
Jarad L. Hildenbrand  
City Manager

**ATTACHMENTS:**

1. Draft Resolution No. 2022-08
2. Draft Resolution No. 2022-10
3. Exhibit Showing Limits of No Overnight Parking Prohibition and Angled Parking Installation

**RESOLUTION NO. 2022-08**

**A RESOLUTION OF THE CITY COUNCIL OF STANTON, CALIFORNIA, TO RESTRICT OVERNIGHT PARKING ON MAIN STREET FROM FLOWER AVENUE TO THE ALLEY BETWEEN COURT AVENUE AND SYCAMORE AVENUE**

**WHEREAS**, pursuant to California Vehicle Code section 22507, the City Council has the authority to adopt an ordinance or resolution that prohibits or restricts parking during all or certain hours of the day; and

**WHEREAS**, pursuant to California Vehicle Code section 22651 and Stanton Municipal Code section 10.08.020, any vehicle parked in violation of such a resolution may be towed away and impounded; and

**WHEREAS**, on February 22, 2022, the City Council conducted and concluded a duly noticed public hearing at which oral and written presentations were made and received; and

**WHEREAS**, all legal prerequisites have occurred prior to the adoption of this Resolution.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF STANTON DOES ORDAIN AS FOLLOWS:**

**SECTION 1:** The City Council finds that all the facts, findings and conclusions set forth above in this Resolution are true and correct.

**SECTION 2:** The City Council finds that this Resolution will not have a significant effect, adverse or otherwise, on the environment pursuant to the California Environment Quality Act ("CEQA") Guidelines Section 15061(b)(3); therefore, this resolution is found and determined to be not subject to analysis under the California Environment Quality Act of 1970, as amended, or the State CEQA Guidelines.

**SECTION 3:** The City shall prohibit parking along Main Street from Flower Avenue to the alley between Court Avenue and Sycamore Avenue between the hours of 12:00 a.m. and 6:00 a.m., seven days a week.

**SECTION 4:** The City may cite and/or tow any vehicle found to be in violation of this parking restriction in the manner and subject to the requirements of California Vehicle Code section 22651.

**SECTION 5:** The City Engineer is directed to place signs on such areas of Main Street consistent with the restrictions of this Resolution.

**SECTION 6:** The City Clerk shall certify the adoption of this Resolution.

**PASSED, APPROVED, AND ADOPTED** this 22<sup>nd</sup> day of February, 2022.

\_\_\_\_\_  
DAVID J. SHAWVER, MAYOR

ATTEST:

\_\_\_\_\_  
PATRICIA A. VAZQUEZ, CITY CLERK

APPROVED AS TO FORM

\_\_\_\_\_  
HONGDAO NGUYEN, CITY ATTORNEY

ATTEST:

I, Patricia A. Vazquez, City Clerk of the City of Stanton, California, do hereby certify that the foregoing Resolution No. 2022-08 was introduced at a regular meeting of the City Council of the City of Stanton, California, held on the 22<sup>nd</sup> day of February, 2022 and was duly adopted at a regular meeting of the City Council held on the 22<sup>nd</sup> day of February, 2022, by the following roll-call vote, to wit:

AYES:            COUNCILMEMBERS: \_\_\_\_\_

\_\_\_\_\_

NOES:            COUNCILMEMBERS: \_\_\_\_\_

ABSENT:        COUNCILMEMBERS: \_\_\_\_\_

ABSTAIN:       COUNCILMEMBERS: \_\_\_\_\_

\_\_\_\_\_  
PATRICIA A. VAZQUEZ, CITY CLERK

**RESOLUTION NO. 2022-10**

**A RESOLUTION OF THE CITY COUNCIL OF STANTON, CALIFORNIA, PERTAINING TO ANGLED PARKING ON MAIN STREET BETWEEN ROSE STREET AND FLOWER AVENUE**

**WHEREAS**, the City Council of the City of Stanton (“City Council”) desires to enhance the quality of life for the driving public in the City of Stanton (“City”). A key element of achieving this goal is bettering on-street parking opportunities, including the use of non-traditional parking configurations; and

**WHEREAS**, Ordinance No. 1113 was adopted by City Council on November 9, 2021 in conformance with Vehicle Code Section 22503 to authorize future implementations of angled on-street parking on any public street, subject to the prior review and recommendation by the City Engineer and an adopted City Council resolution identifying the specific location of the angled parking; and

**WHEREAS**, the City Engineer has, after analysis, determined that instituting angled parking on Main Street between Rose Street and Flower Street can be accommodated based on the width of the roadway and would generate approximately 10 more parking spaces in this segment of roadway; and

**WHEREAS**, on February 22, 2022, the City Council conducted and concluded a duly noticed public hearing at which oral and written presentations were made and received; and

**WHEREAS**, all legal prerequisites have occurred prior to the adoption of this Resolution.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF STANTON DOES ORDAIN AS FOLLOWS:**

**SECTION 1:** The City Council finds that all the facts, findings and conclusions set forth above in this Resolution are true and correct.

**SECTION 2:** The City Council finds that this Resolution falls within the commonsense exemption to the California Environmental Quality Act (“CEQA”) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. Notably, the Resolution will not result in any construction or development that could have a significant effect on the environment. (State CEQA Guidelines, § 15061, subd. (b)(3).) Accordingly, this Resolution, and all parking configurations authorized hereby, are found and determined to be exempt from CEQA. Moreover, the implementation of angled parking on Main Street is additionally categorically exempt from CEQA under the Class 1 and Class 4 exemptions, both of which apply to minor alteration of land or facilities. (State CEQA Guidelines, §§ 15301, 15304.)

**SECTION 3:** The angled parking shall be of the design and location as shown on Exhibit A of the City Council agenda report, attached hereto and incorporated herein by reference, excepting minor modifications as may be required by the City Engineer.

**SECTION 4:** The City Engineer is directed to proceed with the installation of angled parking on Main Street consistent with the restrictions of this Resolution.

**SECTION 5:** The City Clerk shall certify the adoption of this Resolution.

**PASSED, APPROVED, AND ADOPTED** this 22<sup>nd</sup> day of February, 2022.

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DAVID J. SHAWVER, MAYOR

ATTEST:

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PATRICIA A. VAZQUEZ, CITY CLERK

APPROVED AS TO FORM

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HONGDAO NGUYEN, CITY ATTORNEY

ATTEST:

I, Patricia A. Vazquez, City Clerk of the City of Stanton, California, do hereby certify that the foregoing Resolution No. 2022-10 was introduced at a regular meeting of the City Council of the City of Stanton, California, held on the 22<sup>nd</sup> day of February, 2022 and was duly adopted at a regular meeting of the City Council held on the 22<sup>nd</sup> day of February, 2022, by the following roll-call vote, to wit:

AYES: COUNCILMEMBERS: \_\_\_\_\_

\_\_\_\_\_

NOES: COUNCILMEMBERS: \_\_\_\_\_

ABSENT: COUNCILMEMBERS: \_\_\_\_\_

ABSTAIN: COUNCILMEMBERS: \_\_\_\_\_

\_\_\_\_\_  
PATRICIA A. VAZQUEZ, CITY CLERK

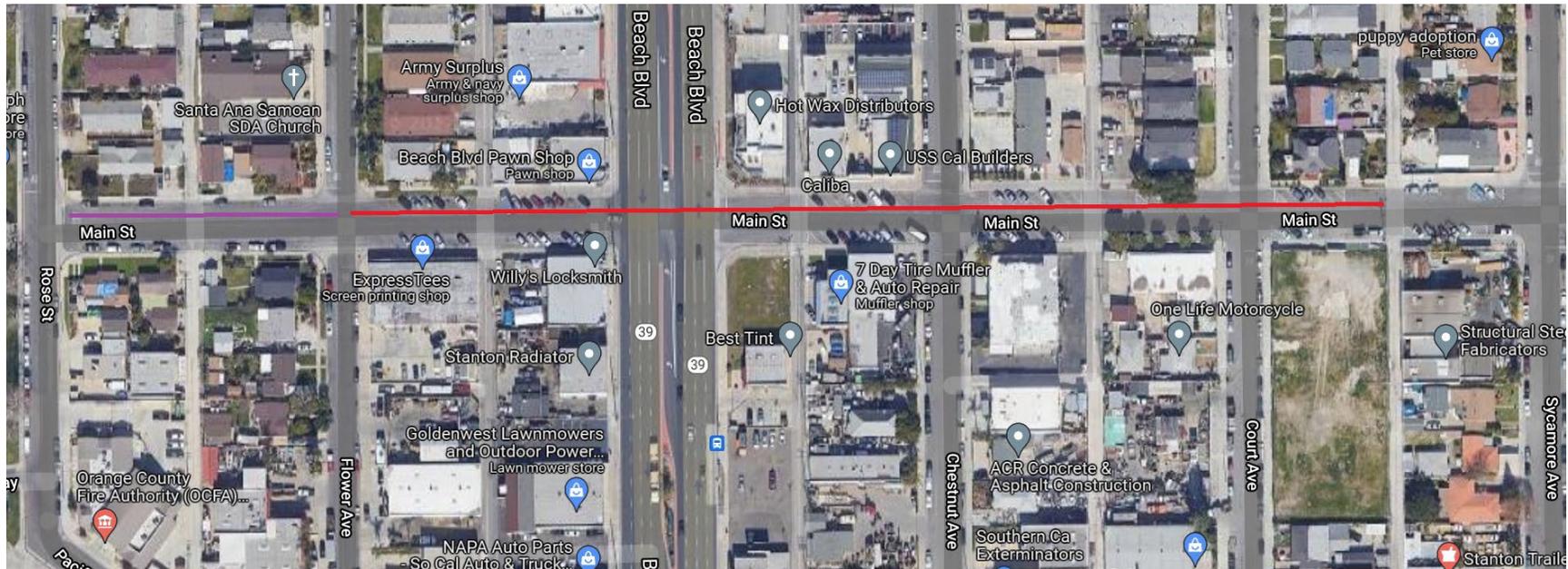
## Exhibit "A"

**Attachment: C**  
*Click here to return to the agenda.*

### Proposed Limits of No Overnight Parking Prohibition on Main Street & Proposed Angled Parking Implementation on Main Street

Red line indicates the proposed no overnight parking limits:  
Main Street from Flower Avenue to the alleyway between Court Avenue and Sycamore Avenue

Purple line indicates the proposed limits of new angled parking on Main Street:  
Main Street from Rose Street to Flower Avenue



## Exhibit "A"

### Proposed Limits of No Overnight Parking Prohibition on Main Street & Proposed Angled Parking Implementation on Main Street

Red line indicates the proposed no overnight parking limits:  
Main Street from Flower Avenue to the alleyway between Court Avenue and Sycamore Avenue

Purple line indicates the proposed limits of new angled parking on Main Street:  
Main Street from Rose Street to Flower Avenue

