CITY COUNCIL AGENDA

Tuesday, September 6, 2022 at 1:00 PM

Council Chambers

City of Las Cruces®

Mayor
Ken Miyagishima

Mayor Pro Tem
Kasandra Gandara

Councilors
Tessa Abeyta
Becki Graham
Johana Bencomo
Becky Corran
Yvonne Flores

CITY HALL
P.O. BOX 20000
LAS CRUCES, NM 88004

700 N. Main St.
PHONE (575) 541-2067

If you need an accommodation for a disability to enable you to fully participate in this event please contact us 72 hours before this event at 541-2115/V.

CONSENT AGENDA

Minutes and Items on the Consent Agenda Are Considered Routine Items and Will Be Voted on with One Motion Unless a Councilor Requests That a Specific Item Be Removed. There Will Be No Discussion.

Page

1. OPENING CEREMONIES

1.1. Pledge of Allegiance -Councilor Graham.

1.2. Pets of the Week.

1.3. Jobs of the Week.

1.4. Presentation of Certificates of Appreciation/Proclamations -Councilor Graham.

2. CONFLICT OF INTEREST INQUIRY BY MAYOR AS REQUIRED BY LCMC SECTION 2-27 (E)(2)

3. PUBLIC PARTICIPATION

4. READ CLOSED MEETING STATEMENT

4.1. Read August 22, 2022 Closed Meeting Statement into the record.

5. ACCEPTANCE OF AGENDA

6. CITY COUNCIL MINUTES

6.1. Regular City Council Meeting of August 1, 2022. 4 - 19
City Council - Aug 01 2022 - Minutes - Pdf

6.2. Work Session of August 8, 2022. 20 - 38
Work Session - Aug 08 2022 - Minutes - Pdf

6.3. Regular City Council Meeting of August 15, 2022. 39 - 57
City Council - Aug 15 2022 - Minutes - Pdf

6.4. Work Session of August 22, 2022. 58 - 74
Work Session - Aug 22 2022 - Minutes - Pdf

7. RESOLUTION(S) AND/OR ORDINANCE(S) FOR CONSENT AGENDA

7.1. RESOLUTION NO. 23-025: A RESOLUTION TO AWARD CONTRACTS FOR MECHANICAL ENGINEERING SERVICES ON AN AS-NEEDED BASIS TO BOHANNAN HUSTON, INC. AND PIPELINE STRATEGIES & INTEGRITY DBA PSI, LLC, IN AN AMOUNT NOT TO EXCEED $500,000.00 ANNUALLY FOR EACH, FOR A PERIOD OF ONE (1) YEAR WITH THE OPTION TO EXTEND FOR THREE (3) ADDITIONAL ONE-YEAR TERMS, SUBJECT TO ANNUAL RENEWALS AND APPROVED BUDGET APPROPRIATIONS (PROCUREMENT NO. 21-22-067). 75 - 105
Resolution No. 23-025 - Pdf

7.2. COUNCIL BILL NO. 23-003; ORDINANCE NO. 3009: AN ORDINANCE SUPPORTING INVESTMENT OF $235,000 IN AN ECONOMIC DEVELOPMENT PROJECT IN ACCORDANCE WITH THE CITY OF LAS CRUCES LOCAL ECONOMIC DEVELOPMENT PLAN, AUTHORIZING A PROJECT PARTICIPATION AGREEMENT BETWEEN THE CITY AND ELECTRONIC CAREGIVER, INC., AND ENTERING INTO AN AGREEMENT TO SERVE AS FISCAL AGENT FOR THE STATE OF NEW MEXICO'S PARTICIPATION NOT TO EXCEED $1,000,000 IN THE PROJECT. 106 - 210
Ordinance No. 3009 - Pdf

8. RESOLUTION(S) AND/OR ORDINANCE(S) FOR DISCUSSION

8.1. RESOLUTION NO. 23-026: A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES (CITY) TO ACCEPT VARIOUS GRANT AWARDS FOR VARIOUS CITY DEPARTMENTS THROUGH AN AMENDMENT TO THE CITY'S ADOPTED FY2023 BUDGET AND THE FY2023 CAPITAL IMPROVEMENT PLAN (CIP). 211 - 316
Resolution No. 23-026 - Pdf

8.2. RESOLUTION NO. 23-027: A RESOLUTION ADOPTING FUNDING PRIORITIES AND ALLOCATIONS TO VARIOUS LAS CRUCES NON-PROFIT ORGANIZATIONS FOR THE CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS ESTABLISHED BY THE AMERICAN RESCUE PLAN ACT (ARPA). 317 - 1136
Resolution No. 23-027 - Pdf

8.3. **APPEAL PROCESS.** RESOLUTION NO. 23-028: A RESOLUTION REVERSING A DENIAL DECISION OF THE PLANNING AND ZONING COMMISSION REGARDING A VARIANCE REQUEST OF ± 300 FEET TO THE MINIMUM 300-FOOT BUFFER DISTANCE REQUIRED BETWEEN A CANNABIS FACILITY AND A QUALIFYING SCHOOL. 1137 - 1204
Resolution No. 23-028 - Pdf

8.4. COUNCIL BILL NO. 23-004; ORDINANCE NO. 3010: AN ORDINANCE TO REPEAL AND REPLACE NOISE ORDINANCE OF THE LAS 1205 - 1213

CRUCES MUNICIPAL CODE 1998, AS AMENDED, CHAPTER 19, ARTICLE III, DIVISION 2, SECTIONS 19-121 THROUGH 19-136.
Ordinance No. 3010 - Pdf

9. BOARD APPOINTMENTS

10. NOTICE OF PROPOSED ORDINANCE(S)

1) There will be no public discussion.
2) A Councilor may ask staff for clarification on the proposed ordinance(s).

11. CITY COUNCIL MEMBER BOARD REPORTS AND COMMENT

12. CITY MANAGER REPORT

13. ADJOURNMENT

City of Las Cruces®

MINUTES

City Council

Monday, August 1, 2022 @ 1:00 PM

City Council Chambers, City Hall

PRESENT: Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, and Councilor Yvonne Flores

ABSENT:

1. OPENING CEREMONIES

1.1 PLEDGE OF ALLEGIANCE - MAYOR MIYAGISHIMA.

1.2 PETS OF THE WEEK.

Jennifer Martinez with the Communications Office presented the Pets of the Week.

1.3 JOBS OF THE WEEK.

Dr. Francisco Pallares, Deputy Director Economic Development presented the Jobs of the Week.

1.4 PRESENTATION OF CERTIFICATES OF APPRECIATION/PROCLAMATIONS - MAYOR MIYAGISHIMA.

Mayor Miyagishima presented a proclamation to Dr. Martha Morales for "Breastfeeding Month."

2. CONFLICT OF INTEREST INQUIRY BY MAYOR AS REQUIRED BY LCMC SECTION 2-27 (E)(2)

2.1

There was none.

3. PUBLIC PARTICIPATION

3.1

Paul Borunda, Member of the Public said I have lived here in this community for the past 77 years and was here about two weeks ago to complain about the Las Cruces Police Department not assisting me with 20 checks that were written not by me, and the funds were taken from my bank. I got a call from Bank of the West and they are

closing my account and I want to make the City Council aware. I have not done anything wrong, but the criminals wrote checks that they are responsible for, and they say I am to much of a risk. Is that fair to me? The Chief of Police has not notified me at all about the investigation.

Ann Chase, Member of the Public said I am here as a representative of AAUW to present the case for the importance of affordable housing. We believe that it is of the upmost importance to provide the full $6 million for affordable housing to provide safe and stable environments for people and families in homes they can afford. The people that would most benefit from this investment are families with children, senior citizens, and households with a disabled family member. Affordable housing is not about homeless shelters, although those are important. Affordable housing is about providing safe homes for our citizens that are struggling.

Councilor Becki Graham moved, seconded by Councilor Johana Bencomo, to Allow Councilor Gandara to participate telephonically.

RESULT:	**Carried**
MOVER:	Councilor Becki Graham
SECONDER:	Councilor Johana Bencomo
AYES:	Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, and Councilor Yvonne Flores

3.2

Elizabeth Rodriguez Johnson, Member of the Public said I was born in, and raised in for most of my childhood in subsidized housing in the Lower Rio Grande Valley in Texas . I am here to offer you an example of the profits that can be had when you invest in a community of need. I am here to support the affordable housing act.

Eric Montgomery, Member of the Public said I am the Regional Director of Governmental Affairs with El Paso Electric and I just want to thank the City of Las Cruces. This las weekend the Lift Up Las Cruces event was very successful and very well attended. It was a great opportunity for us to mix and mingle with our neighbors and in the neighborhoods and talk about the energy efficiency programs that we have.

Rick Reynaud, Member of the Public said I have some good news for you today regarding Desert Hope Apartments. I work in that neighborhood right across the street and I could be monitoring and coming down here and letting you know how things are going. In general citizens and taxpayers are ok with helping people but only if they will help themselves.

Richard A DeMaria, Member of the Public said the reason why I am here is the lack of respect, especially with neighbors. See all this, this is fireworks debris that I took off my roof and yard. This type of thing I thought was going to be limited to where only they did it in approved areas but evidently not. How many people got arrested or ticketed for fireworks that they illegally did in their home area?

Mayor Miyagishima, said Mr. De Maria we don’t have that information handy but we can certainly email it to you.

Sarah Smith, Member of the Public said I wanted to share my thoughts about the GO Bond with related to affordable housing. I facilitated the community meeting between Councilor Graham and community members, Pro-Tem Gandara was also there. We really heard what is happening from people who are living there near that housing project and how they are facing an unsafe neighborhood at this point. It seems irresponsible to me for you to fund further similar projects until we know that this situation can be fixed.

Paige Ritter McCain, Member of the Public said I am a Property Manager here in Las Cruces. We have worked very closely with the Community of Hope over the last ten years, and I have been able to see firsthand how housing impacts an individual and their situation and that is why I am in support of the $6 million going towards affordable housing.

Rene Adams, Member of the Public said I am here representing the American Legion Auxiliary, I am the Legislative Chair. It affects all of us including veterans, military, and their families. We certainly support the approval of this.

Lorenzo Perea, Member of the Public said I am the owner and President of Solar Smart Living. I just want to ask for some support for the City Building and Inspection Department. One of the problems we are seeing are a very long period of our inspectors getting to our job sites. It's causing financial pressure on my company but also other companies that are not able to get their loans funded until our inspections are passed. I just ask that you look at your budgeting for your department and help us out.

Paul Borunda, Member of the Public said there has been some discussion here today about advocating for homelessness and I agree with that, but we have a much bigger problem. The bigger problem I see, and I am involved in this is because the issues I am having with the Police Department. We do not want to blame anybody because that is why they exist. We are always running away from the truth.

4. ACCEPTANCE OF AGENDA

Councilor Johana Bencomo moved, seconded by Councilor Yvonne Flores, to accept the agenda as presented.

RESULT:	**Carried**
MOVER:	Councilor Johana Bencomo
SECONDER:	Councilor Yvonne Flores
AYES:	Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, and Councilor Yvonne Flores

5. CITY COUNCIL MINUTES

5.1 REGULAR CITY COUNCIL MEETING OF JULY 5, 2022.

5.2 WORK SESSION MINUTES OF JULY 11, 2022.

5.3 REGULAR CITY COUNCIL MEETING OF JULY 18, 2022.

6. RESOLUTION(S) AND/OR ORDINANCE(S) FOR CONSENT AGENDA

6.1 RESOLUTION NO. 23-014: A RESOLUTION TO APPROVE AN AMENDMENT TO A CONTRACT WITH HOME KARE, INC. OF DONA ANA FOR ADDITIONAL IN-HOME RESPITE SERVICES, INCREASING THE CONTRACT TO AN AMOUNT NOT TO EXCEED $99,000.00 ANNUALLY, PLUS APPLICABLE TAXES AND INCREASING THE HOURLY RATE TO $17.50 PER HOUR FOR YEARS TWO (2) THROUGH FOUR (4) OF THE AGREEMENT (PROCUREMENT NO. 20-21-004).

7. RESOLUTION(S) AND/OR ORDINANCE(S) FOR DISCUSSION

7.1 RESOLUTION NO. 23-015: A RESOLUTION CALLING FOR THE SUBMISSION OF GENERAL OBLIGATION BOND QUESTIONS TO ALL QUALIFIED VOTERS AT THE GENERAL ELECTION TO BE HELD ON NOVEMBER 8, 2022, FOR THE PURPOSE OF VOTING ON THE ISSUANCE OF GENERAL OBLIGATION BONDS IN AN AGGREGATE PRINCIPAL AMOUNT OF $23,000,000, DESCRIBING THE PURPOSES TO WHICH THE BOND PROCEEDS WOULD BE EXPENDED; PROVIDING FOR THE FILING OF THE ELECTION RESOLUTION WITH THE DOÑA ANA COUNTY CLERK; AUTHORIZING AND DIRECTING THE OFFICERS AND EMPLOYEES OF THE CITY TO COORDINATE WITH AND ASSIST THE DOÑA ANA COUNTY CLERK WITH RESPECT TO THE ELECTION; PRESCRIBING OTHER DETAILS IN CONNECTION WITH SUCH ELECTION AND BONDS; AND RATIFYING ACTION PREVIOUSLY TAKEN IN CONNECTION THEREWITH.

David Weir, Deputy Director of Community Development gave an overhead presentation.

Mayor Miyagishima said I want to share an email and response I received. Thank you for emailing me but please know we are talking about two different items. The Desert Hope project was not used with bond money but rather dividends from our investment account of the Telshor Fund which we contributed $500,000 and the State Investment Council covered the rest. The ballot question is for affordable housing for projects such as Tierra Del Sol on San Pedro Street, Alta Tierra Apartments on Madrid Street, Montana Senior Village on Montana Avenue, just to name a few. I hope the organization that is putting out these mass emails knows that Desert Hope was used for homeless residents. The affordable housing question is for residents who meet lower income guidelines and are not specifically homeless residents.
Councilor Bencomo asked is there a reminder on the ballot that says that this will not raise your taxes? Is there this disclaimer on the ballot?

David Weir said I do not believe this is the case.

Christine Rivera, City Clerk said that is something we would have to discuss with the County Clerk's Office.

Councilor Bencomo said obviously some of the wording could scare people away from voting on these good projects but I guess that's on our end to with public education and moving forward, is that right?

David Weir said that is correct as we provide information about the questions and the ballot. My understanding is that staff has to take a neutral stance on that and just provide information and not be seen as advocating or subverting these questions.

Councilor Bencomo said the only thing I wanted to talk about was the housing bond and after a lot of thought and conversations around it at our last work session I was the one who suggested we decrease that to 5 in order to put, and in addition to reducing the funding to the East Mesa Sports Facility to have $2 million dedicated to Parks Maintenance being that they don't have a dedicated source. I would like to take an additional one million off the East Mesa Sports Facility and put towards the $6 million that the folks have been advocating for affordable housing.

Councilor Flores said as far as affordable housing and going to Rose Garcia who does a fantastic job of making sure people have homes. Do you know if Rose Garcia contracts exclusively with HUD? Around a certain income? Is it limited to income?

David Weir said I do not know the specifics, but Natalie Green can help with our housing program. The way it is posed is that it would go to our Affordable Housing Project, the city has an Affordable Housing Ordinance, and they also have a Land Bank and Trust Fund. My understanding of Tierra Del Sol is that they look for as many funding sources as they can to address affordable housing.

Councilor Flores asked is the any other way to create affordable housing for those who fall just outside the parameters of HUD? My concern is that we won't be providing homes for people who have decent wages.

Natalie Green, Housing and Neighborhood Services Manager said for any HUD funding the limitation is 80% of area median income and I will get you that number shortly. These bonds will follow our Affordable Housing Trust Fund guideline so if there was no federal funding we could go up to as much as 120% of medium income and it is capped at the state level. So, in Las Cruces it is around $60,000 for a family of four.

Councilor Flores asked if the bond were to pass the GO Bond would we be limited to having it designated through an agency like HUD or I think you said maybe not? You do not know for sure?

David Weir said any funding would go through the city's affordable housing ordinance and there is a committee that views that and the parameters for how they allocate that funding would have to be met.

Councilor Graham said Mayor I appreciate you mentioning the email traffic that we have been receiving, specifically the affordable housing bond question. I think that you were very generous in your characterization of some of those emails because I

can say that some of the narratives that I experienced were disturbing. I just want to say that a lot of what I saw alluded to this notion that certain people deserve help and other people don't deserve help. I would like to say that everyone deserves help. Everyone deserves the support.

Natalie Green said affordable housing of course is a varied continuum, it is not only rental, its single-family home ownership, similar what to Councilor Flores was requesting. I did want to note that I pulled the latest data this morning in the Las Cruces area it would take 1.5 full-time minimum wage jobs to afford a two-bedroom apartment at $800. So that equates out to 61 hours of minimum wage employment. I also wanted to cover that your average social security income payment is $841 in this area so that if you're paying an $800 month two-bedroom rent at the end of the month you have $41.

Councilor Abeyta asked if there was a potential reduction from the East Mesa Complex what is the initial final tally that we need to finish off that project?

Tony Trevino, Deputy Director Public Works said based on the last cost estimate done by ARC, the consultant, I believe $22,000 to $24,000 to complete the project to meet the master plan.

Councilor Abeyta asked with the $5 million will you at least be about to make some completed items within that complex?

Tony Trevino said so with the current work that we did prepare a lot for the upcoming phase. The team will go back and see with this $5 million what fields can get done and completed.

Councilor Corran said I also want to support Councilor Bencomo's suggestion. I live in District 5 which is often considered a particular type of district and my hope is that with full support of affordable housing we can really look to diversifying the places where affordable housing occurs.

Councilor Flores asked my question is that when we passed the Go Bond in 2018 and that money was voted upon and whatever that amount was that the amount that was anticipated to develop the entire East Mesa Complex or were there intervening circumstances? So why are we voting on this again? And when would we expect for us to complete it?

David Weir said to my understanding of the 2018 project is that a master plan would be created, and there was always a realization that it would be constructed over time in multiple projects.

Tony Trevino said if you recall in 2018 the question that went to the public was for specifically multi use fields. Eight pickleball courts and a baseball complex and that is what the $6 million was based on public meetings for the master plan.

Councilor Flores said so does the GO Bond that we would probably be voting on does that money anticipate the completion or is it going to be worded in a way that sets forth pretty much what was set forth four years ago?

Tony Trevino said I believe this goes on to be $5,000,000, this is going to be just a small portion of what it is to finish the master plan. The projects that were voted on in 2018 will be completed in December and maybe extended to February 2023.

Mayor Miyagishima said I just have a couple of things, I wanted to make a comment on something brought up which was a very good point on whether or not we could have verbiage say that the passage of this bond will not increase taxes. The reason why it didn't appear last time was because it wasn't true. That was the first the city was able to successfully pass a bond in almost 50 years. I really believe the wording should say, Affordable Housing Trust Fund. Having just housing initiative does not tie it down as much.

Natalie Green said you are correct Mr. Mayor, council allocated 2.4 million dollars to the Three Sister's Apartments. It is a 17-million-dollar total development cost and will build 70 units of family housing near Hadley and Griggs.

Councilor Flores asked who would determine or put that language on the ballot?

Jennifer Vega, City Attorney said that it was a minor amendment and I think you can amend today.

Councilor Bencomo asked is Mayor you're explicitly saying what the plan is for this anyway? I just wanted clarification.

Mayor Miyagishima said that is correct, instead of it just saying affordable housing initiatives. It is my understanding that council wanted it deposited because there is no actual building that we are going to build. By saying that its going into the Affordable Housing Trust Fund at least the public will know it's going into a special fund.

David Weir said that if I understand it, the Mayor request that question be modified. I do not know the exact words but basically you will fund affordable housing through the Affordable Housing Trust Fund.

Councilor Abeyta said I agree as well for the change. I know we have to be a little vague on these things because you don't want to limit yourself but obviously there is a high level of misinformation especially with this question so I think being a little bit more specific with that language will help us being able to direct individuals who might have questions. We can point them to the trust fund and the stipulations with that.

Daniel Sanchez, Member of the Public said I am a community organizer for NM Café. I got home and I got a letter from my landlord. My rent went up. I am lucky and I have a good landlord. My rent went up $50, but it got me thinking. Not everyone has that good landlord. So, what I ask is that you support for the full amount and that I am happy to hear that there is a suggestion to get $6 million. This is to help families.

Mary Martinez White, Member of the Public said I am for addressing the issues of affordable housing. We know there is a housing crisis and to make matters worse the cost of homes has skyrocketed. We need affordable housing to target different income brackets. So, we ask you City Councilors for the full $6 million. I do believe that it will go a long way in our community, keeping us strong to weather some difficult times ahead.

Jane Ashe, Member of the Public said I am also here to talk about affordable housing and why it is so important to maximize the resources for this much needed public good. The research, a very abundant amount of research is very clear that when families have affordable decent housing, sufficient food, and a good basic level of health care service including mental health services, children, and community member's flourish. The latest research also provides evidence that if the housing provides an opportunity for cross class communication among social economic groups it raises the aspirational level for children in many instances to become successful adults in their career and family life. I plead with each of you to go all the way to commit and dedicate a full $6 million in general obligation bond funds for affordable housing.

Rosa Morales, Member of the Public said I am a resident of Las Cruces. I belong to various civic organizations, and I am here to support a GO Bond that includes $6 million for affordable housing. I want to talk about something that has not been addressed and it is very, very important. I have decided to buy a house in Las Cruces. The problem is that there is not a unit that I am interested in. I want a two-bedroom condo that is less than 20 years old. There is nothing here that is available. I want your actions to define your agenda and priorities. Let's start building environments where individuals and families can not only survive but strive and become contributors of our society.

Rev. Carolyn Wilkins, Member of the Public said I have been a part of this collation for affordable housing. It was already stated that there is a shortage of 5600 affordable rental units in the city. There is also a wait list for housing services of 2-6 years. I encourage you to vote yes for this GO Bond and it be at a $6 million level.

Father Jim Lehman, Member of the Public said I was impressed with the discussion and the statistics that were brought up. That an individual would have to work 60 hours a week to support a house. How do you manage all that? We have many families who are just that far from maybe a paycheck lost. I think we have an obligation with the affordable housing to help them in that process.

Monique Lopez, Member of the Public said on behalf of the Resilience Leaders 100% Community here in Dona Ana, I am here today to speak in support of the affordable housing Go Bond. I feel that we all have a role to play in making Dona Ana a community where our children and families can thrive. I believe your role is to vote yes to give to your community and help them not only survive but to thrive.

Art Marrujo, Member of the Public said I am here from Tierra Del Sol Housing Corporation. I have been here before in front of you all, we were discussing last on how a developer works the deal. I am so happy to see all this support for affordable housing, but I will be honest with you, $6 million is still not enough to address what we need out there. A non-profit developer's world is completely different then a private developer.

Juan Garcia, Member of the Public said I am not for or against this bond at this point in time. I'm just trying to understand what the end game is. Today you are saying that you need "X" amount of money. What is to say that next year, you are not going to come back and say oops we need another $20 million. Do you think that adding more money to this is going to fix it? Fix the root problem, fix the root cause and then we will not have to worry about this.

Councilor Flores said Mr. Garcia thank you for your comments What is your solution? How do we proceed?

Juan Garcia said my solution is we get to the root cause. What is causing this inflation?

Paul Bryce, Member of the Public said I am a resident of Desert Hope. It would be unfortunate if additional funding for affordable housing was even slightly based on the performance of Desert Hope. The rising crime rate throughout the city should be kept separate from the rising number of unhoused in Las Cruces. The rising number of homeless and the need for affordable housing isn't isolated to Las Cruces, it's becoming a national crisis.

Zeke Rodriguez, Member of the Public said I was born and raised here in New Mexico. I'm an Air Force Veteran, a business owner, and I'm here actually on behalf of the CCIA. So, when this came to me, this $23 million right away raised some flags to me. Particularly because I have not heard from one individual here today as why we are in this position. We not only are not addressing the issue that caused this, but we are not even planning for the issues to come. I hope that City Council and the Mayor will consider what I'm saying today and the people in the public will consider what I am saying today.

Carrie Hamblen, Member of the Public said today I am here in my own capacity as CEO and President of the Las Cruces Green Chamber of Commerce. I also have the honor of servicing the Senator of District 38 and for four years I was the President of the Board of Directors for Mesilla Valley Community of Hope. So, it is no surprise that I am here to talk about housing as a fundamental right for every resident of our state. We are experiencing a housing crisis here in Las Cruces and that Las Cruces is not immune to that and we are seeing this all over the country. We know and it has been mentioned a couple of times that rent is going up. The median listed home price was up 20% from last year. We know that folks are struggling to make ends meet, to pay their bills and to put food on their tables. However, I know that we all can agree that we need policies and funding to help keep housing within the reach of our local workforce, our young people, our seniors, and our veterans on fixed incomes as well

as our growing families. Today you have a chance to dedicate funds to the city's Affordable Housing Trust Fund by investing $6 million of the 2023 of general obligation bonds.

Linda Ruth Martinez Adams, Member of the Public said I am with the American Legion Auxiliary, and I am the Public Relations Chairperson. The American Legion Auxiliary supports the proposal to appropriating another million to add to the parent proposed $5 million at the general obligation bond. Please vote to amend the $6 million for affordable housing which includes all veterans, military, and their family.

Kari Bachman, Member of the Public said I am with Dona Ana Communities United. All our community members have gifts and assets. We need more voices from community members who are currently experiencing challenges, housing insecurity being one of them. What is the process going to be? How is this money going to be allocated, what types of projects are going to be done? Whose voices are going to be heard?

Mayor Miyagishima said Kari, thank you for your comments and I agree with what you have to say. The goal is to get this passed. To let the public, know what it is really used for and the best that we can do. I think those conversations need to be had while the process is going on. It's important, at least I think that the public understand what its being used for.

Kari Bachman said I am not at all suggesting that this money should not be allocated but in fact I'm probably one of the strongest proponents for allocation of $6 million and more for affordable housing. And in fact, I would argue Mr. Mayor that I am one of the people that wants to know how this money is going to be spent and to how the decisions will be made as to how the money is spent.

Councilor Flores said thank you for your comments. I do want you to know however, that we do have a Housing Policy Review Committee that is open to the world, not just our residents in the city of Las Cruces but any human being that wishes to attend. It meets the third Wednesday of every month at 2pm.

Richard Reynaud, Member of the Public said just a couple of things on the hierachy key of needs, housing. Those people over there. The residents that banded together who signed petitions and put a one-hour video together. Where is the compassion for them? I watched the video. There are homeless people complaining about Desert Hope.

Councilor Johana Bencomo moved, seconded by Councilor Yvonne Flores, to Amend Resolution No. 23-015 to reduce the amount of question number two to $5 million.

RESULT:	**Carried**
MOVER:	Councilor Johana Bencomo
SECONDER:	Councilor Yvonne Flores
AYES:	Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, and Councilor Yvonne Flores

Councilor Johana Bencomo moved, seconded by Councilor Becki Graham, to Amend Resolution No. 23-015 to change question number 3 to read "Shall the City of Las Cruces issue general obligation bonds payable from property taxes in an amount up to $6,000,000, and placed into the Affordable Housing Trust Fund, to provide resources to plan, design, construct, acquire, and preserve housing affordable for low to moderate income households, including the acquisition of necessary land?"

RESULT:	**Carried**
MOVER:	Councilor Johana Bencomo
SECONDER:	Councilor Becki Graham
AYES:	Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, and Councilor Yvonne Flores

Councilor Tessa Abeyta moved, seconded by Councilor Yvonne Flores, to Approve Resolution No. 23-015 as amended.

RESULT:	**Carried**
MOVER:	Councilor Tessa Abeyta
SECONDER:	Councilor Yvonne Flores
AYES:	Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, and Councilor Yvonne Flores

7.2 RESOLUTION NO. 23-016: A RESOLUTION NAMING THE GRIGGS WALNUT GROUNDWATER PLUME SUPERFUND SITE TREATMENT FACILITY AT 163 N. COTTONWOOD STREET THE 'PASCUAL RODRIGUEZ, JR. GRIGGS WALNUT GROUNDWATER PLUME SUPERFUND SITE TREATMENT FACILITY'.

Adrienne Widmer, Utilities Assistant Director gave the overhead presentation.

Councilor Corran said I just wanted to give a quick comment, when we got onboarded as new City Councilors we got to tour a lot of places including the Griggs Walnut site. For me it was an extraordinary highlight as a public health person. I feel really grateful to have seen it and to know now that we are going to name it after you. I feel really privileged.

Mayor Miyagishima said congratulations and thank you for your service to the city and to the community as a whole.

Councilor Johana Bencomo moved, seconded by Councilor Tessa Abeyta, to Approve Resolution No. 23-016.

RESULT:	**Carried**
MOVER:	Councilor Johana Bencomo
SECONDER:	Councilor Tessa Abeyta
AYES:	Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, and Councilor Yvonne Flores

7.3 RESOLUTION NO. 23-017: A RESOLUTION APPROVING THE MAYOR'S APPOINTMENT OF KIERAN RYAN TO ACT AS MUNICIPAL JUDGE II IN ACCORDANCE WITH THE CITY CHARTER, ARTICLE IX, SEC. 9.02(C).

Mayor Miyagishima discussed this item

Councilor Corran said this is a paid position, and I would just like to state for the record I preferred that we used a screening process to open an opportunity up to folks and then see who is up for it and make the best decision based on those applicants. I think it is really important that we be transparent when we make appointments about and especially paid positions.

Mayor Miyagishima said I appreciate that Councilor Corran, but I have to tell you that there are very few things that the Charter gives me, and this is one of the few things. I have to have your consent, but I get to appointment them.

Councilor Bencomo said honestly, I have similar concerns. I also feel uncomfortable with perhaps the lack of transparency behind the choice. I do have some reservations given the lack of information we are getting from this particular candidate.

Councilor Abeyta said I have come to really respect Judge Ryan on our Oversight Committee. His knowledge of the law is very strong. I myself am very much in support of filling the position and giving some relief to Judge Goldbaum but also, I truly do respect Judge Ryan and am happy to support him.

Councilor Flores said I too have had the opportunity to observe and work with Kieran Ryan in attending the Oversight Committee. His demeanor is very wonderful, he is very courteous, he did spend time with each person in the courtroom. I think he has the disposition and the knowledge and the experience of being a member of the bench. I support the appointment Mr. Mayor.

Councilor Gandara said I too am in support of the recommendation to bring Judge Ryan into the court system. I have had the opportunity to work with him also in the Oversight Committee. He is insightful, he brings a lot of knowledge of the judicial system, something that I think is really important. I too am in favor of this appointment.

Councilor Yvonne Flores moved, seconded by Councilor Tessa Abeyta, to Approve Resolution No. 23-017.

RESULT:	**Carried**
MOVER:	Councilor Yvonne Flores
SECONDER:	Councilor Tessa Abeyta
AYES:	Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, Councilor Johana Bencomo, and Councilor Yvonne Flores
NAYS:	Councilor Becky Corran

8. BOARD APPOINTMENTS

8.1

There were none.

9. NOTICE OF PROPOSED ORDINANCE(S)

1) There will be no public discussion.

2) A Councilor may ask staff for clarification on the proposed ordinance(s).

9.1 <u>COUNCIL BILL NO. 23-002; ORDINANCE NO. 3008</u>: AN ORDINANCE APPROVING A ZONE CHANGE FROM R-1A (SINGLE FAMILY MEDIUM DENSITY) TO R-2 (MULTI-DWELLING LOW DENSITY) FOR A PROPERTY ENCOMPASSING 2.68 + ACRES LOCATED AT 5600 MCGUFFEY STREET. SUBMITTED BY THE FORT CONSTRUCTION, REPRESENTATIVE.

Council agreed to bring forward.

10. CITY COUNCIL MEMBER BOARD REPORTS AND COMMENT

10.1 MAYOR MIYAGISHIMA

Just a reminder of National Night Out, tomorrow at 6 o'clock at the Plaza. I will not be her next week so Mayor Pro-Tem will run the Work Session.

10.2 COUNCILOR GANDARA

Shoutout to staff for the wonderful showing of the block party, Lift Up Las Cruces that had a great attendance. That block party was phenomenal, and we got so many people attending and excited and asking when the next one is.

We also worked with the Dona Ana County Resilience Leaders in conjunction with the city to put up a mural. I did many live videos to show the progression. Its looking fantastic. I know our muralist Raquel Madrigal, which is phenomenal to work with and she is so good with the public as well.

I am looking forward to hearing the survey results that went out by mail to the Tree Shades area and then some. I was wondering Mayor if I could ask Ifo about the map, it is a little difficult to see on the website. Maybe listing more specifically to see what the boundaries are. I am really looking forward to work and collaboration with Mesilla Valley Housing Authority. They have an office space dedicated to our LCPD officer and I have talked to them about holding office hours there.

I am very appreciative for the press conference that was held. Thank you, Chief Dominguez, for the facts but also providing just a forum for folks to understand what is happening.

I am so excited that this item for the GO Bond passed so that we can get the affordable housing up to $6 million to ensure that folks have a safe space to live and they're able to get all the other necessary resources.

10.3 COUNCILOR FLORES

I wanted to report on the Animal Service Center. There isn't a lot to report there except that TNR has become a thorn at its side. I support everything that Clint Thacker has done for the center.

On the Southcentral Rapid Transit District, Mr. Armijo is doing a fantastic job and ridership is up. Money is coming in from the federal government's Department of Transportation.

10.4 COUNCILOR CORRAN

I do want to revisit something Councilor Flores said about the TNR. The board did support hiring a TNR Coordinator and it is a number of new things happening at the shelter to bring it on board for the December opening. We just saw how the shelter could look if it were increasing capacity by using the old shelter.

Tomorrow morning TSI PRC will meet in the conference room 2007-A. It is going to be one of those times when we are really seeking input of the committee members and the expertise of the community members.

10.5 COUNCILOR BENCOMO

We had our third Faith for the Unhoused Meeting last week on Thursday. We keep getting a really great turnout with faith leaders and clergy.

We also had our second West Picacho small business meeting. That is going really well. We had an incredible turn out at Extreme Garage from a bunch of small business owners around the area, the motel owners came, and it has been a really great show. The biggest sort of issue in people's hearts is public safety but the reality is that folks who invested their money, sweat, tears, and joy into their business along the corridor. We will have a third meeting next month.

My two questions and I have spoken to Ifo about it already. When we did that El Paseo/ South Solano Ad Hoc Committee one of the outcomes of that was that we establish an MRA. Then I raised the issue about West Picacho, and Economic Development said they wanted to do a blight study all over the city before we begin doing some of these things. We know two very specific areas that need that type of support, including El Paseo/ South Solano as one and the West Picacho is the second one. We know there is blight, we know there is a bunch of abandoned buildings. I do not know what the pathway is to move forward on these two areas.

I would like Municipal Court Judge Goldbaum to come to a Work Session soon. I feel like we have been asking for one for a while.

10.6 COUNCILOR GRAHAM

My only note for the week is a small but important shoutout to the team that made the Bellamah Street Reconstruction Project public meeting happen last week. I really appreciate how the Public Works Department is able to balance really technical information with people's very every day lived concerns. Thank you for making these things happen.

10.7 COUNCILOR ABEYTA

Thank you for mentioning National Night Out which will be held from 6-9pm tomorrow at the Downtown Plaza.

I will be giving a copy of the Proposed New 2022-2023 Annual Resolutions from the New Mexico Municipal League to our City Clerk so that she can distribute those out.

I do want to mention my use of the personal privilege for the Standard Rules of Procedure. I have spoken up before when I felt there was inappropriate conduct and use of a person's time at the podium, and I wanted to do the same today. The

individual I felt was utilizing first names as a way to degrade my fellow colleagues. That happened multiple times and I let the first time go but when the individual came back up and started utilizing it again that is when I felt the need to step in and at least reference the rules of procedure.

11. CITY MANAGER REPORT

11.1 IFO PILI

Thank you, Mayor Pro-Tem, for mentioning the Lift Up. I want to express my appreciation to all the departments and all the staff that was there and all the team that made it possible. Amber Vaughn was our project manager carrying it through. Especially the community, it was really neat to see all the non-profits and all the entities out there supporting. I just want to recognize all the efforts that have been done.

Just a reminder about the preparation for the Great American Shakeout on October 20, 2022. Both City Staff and City Council and will begin emergency preparedness training in the upcoming weeks. City Council should expect emails very soon to schedule their in-person emergency management training specifically for elected officials for dates later in August.

Also from our Communications on info on last Wednesday. The city and LCPD partnered with Las Cruces Public Schools to put on a Public Safety Forum last Wednesday. It was televised on Comcast channel 20 and is available on YouTube.

I just wanted to inform you of our funding we just received with our federal request. We contracted with our federal lobbyist there is a lot of good work that is being done. We requested a total of $11.3 million. We received $3.2 million that is going for funding bills, the Mobile Integrated Health Program the proposed allocation $547,000, Project Light $485,000, Southern New Mexico Regional Critical Response Team proposed $1.75 million, Public Safety Technology there is proposed allocation of $450,000, Mesilla Valley Public Housing Authority proposed allocation of $2.2 million which is a collaborative partnership with the City of Las Cruces. I appreciate all the work that has been done from our grants team and our federal lobbyist and Councilor Abeyta and Andy going to DC.

12. ADJOURNMENT

12.1

Councilor Johana Bencomo moved, seconded by Councilor Yvonne Flores, to Adjourn at 4:39 p.m.

RESULT:	**Carried**
MOVER:	Councilor Johana Bencomo
SECONDER:	Councilor Yvonne Flores
AYES:	Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, and Councilor Yvonne Flores

Mayor

City Clerk

City of Las Cruces

MINUTES

Work Session

Monday, August 8, 2022 @ 1:00 PM

City Council Chambers, City Hall

PRESENT: Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Johana Bencomo, Councilor Yvonne Flores, Councilor Becki Graham, and Councilor Becky Corran

ABSENT: Mayor Ken Miyagishima

1. PETS OF THE WEEK

1.1

Jennifer Martinez, Communications Department introduced the Pets of the Week.

2. JOBS OF THE WEEK

2.1

Dr. Francisco Pallares, Deputy Director, Economic Development introduced the Jobs of the Week.

3. AGENDA ITEM

3.1 ARMS QUARTERLY UPDATE.

Richard Dayoub, Member of the Executive Committee for ARMS gave an overhead presentation.

John Bailey, Vice Chairman of ARMS continued the overhead presentation.

Richard Dayoub continued the overhead presentation.

Councilor Flores asked you mentioned that you are in partnership with the Greater Las Cruces Chamber of Commerce, is that correct?

Richard Dayoub said yes, in fact Gus Rodriguez, our Chairman, has been meeting with Debbi and they've agreed in principle to having a signed memorandum of understanding that we work together to support one another. This week's event is in partnership with Debbi Moore and the Las Cruces Chamber.

Councilor Flores asked does that include the trip to Washington, D.C.?

Richard Dayoub said yes, she's invited to go with us to D.C. as well.

Councilor Flores asked when you talk about encroachment at WSMR, who's encroaching?

John Bailey said the encroachment we're concerned about is City, County, State, and it's really building things within a 5-mile radius of the end of the White Sands land. That can affect the training that goes on there. It's making sure that we don't encroach on the Military side of the house.

Councilor Flores asked why is it a concern if there's boundaries?

Richard Dayoub said there was a period of time not very long ago when there were some concerns about interference in terms of their ability to transmit communications. With the Private Sector looking to operate on similar wavelengths, that would have intruded and placed them in a risk factor for accurate communications.

Councilor Flores said you mean security.

Richard Dayoub said we had a similar situation a few years ago at Fort Bliss where there was a developer going in and we were able to work with a developer to have them back out of that area and provide a wider buffer from the edge of the property line so that when they were running tanks at night at 2:00 in the morning on training exercises, the people who were buying those homes wouldn't be awakened. Our role is to ensure that those who are looking to do those things are understanding what the rules of engagement are. Sometimes the military comes to us to alert us of concerns, sometimes the civilian community comes to us to alert us of their concerns. All we try to do is connect them with the right individuals within the Department of Defense, Department of the Army so they can communicate with each other, and we can avoid unintended consequences.

Councilor Flores said you mentioned that there are military programs at the installations. What are the military programs and where are the installations exactly?

Richard Dayoub said what they do is classified and not shared with any of us as civilians. White Sands Missile Range, their Mission Command is the Army Test and Evaluation Command, which is not too far from Washington D.C. They direct the activities that are pursued at White Sands: what kind of testing they do, what kind of weapons systems that they are testing, things of that nature.

Councilor Abeyta asked how frequently do you give updates to our Federal Delegation?

John Bailey said we try to talk to the Federal Delegation scheduled at least quarterly. But if there's things that pop up we actually have direct lines with their office staff, and we talk to them on a regular basis. We probably talk to them at least monthly.

Richard Dayoub said in addition to that, we conduct a virtual brief every single month for all of our ARMS partners. Their staffs are invited so they're able to get updated from us as well as to pose questions to us if they have any issues they're concerned about.

Councilor Abeyta asked and how many usually attend these calls?

Richard Dayoub said it varies monthly. We usually have at least one representative from each of the New Mexico representatives as it relates to this area. The Mayor's invited, the City Manager's invited, the County Manager is also invited and then we have representatives from Otero County also participating.

Councilor Abeyta said I'm happy to hear that you are working on coordinating with our Chamber of Commerce. I had the privilege of being able to attend their event to D.C. along with Mr. Andy Hume, where we went and did briefings with the military delegation as well. I am curious on how you coordinate with that organization as well to make sure that they are getting informed since you're having these frequent meetings on issues that you've already briefed these delegations with and then what other items need to be covered.

Richard Dayoub said I had a similar question posed to us by the County Manager's Office as they're planning to go with us to D.C. in October. It was, "How does the trip that we take at ARMS to Washington differ from the trip that you take as a Community Delegation to go up and advocate on behalf of Las Cruces Area and White Sands?" The answer is that when we go, we are moving up there to meet specifically with the Pentagon Leadership so that we can discuss what kinds of initiatives are going on at White Sands, what kind of growth is occurring in the City of Las Cruces, how we as a Region are working to support them, and ask them what kinds of opportunities they see on their horizon that we can encourage them to relocate missions to our installation here, in this case White Sands. When we go in October the Legislators themselves, because of the way AUSA schedules this annual event almost always falls at the same time that Congress is in recess, so we're unable to meet with our Legislative leaders at all. It's strictly the Department of Defense as well as defense contractors. So you have roughly 30,000 military leaders in D.C. for this 3½ day symposium. It's a rare opportunity for us to be able to do this in one visit to meet with those defense contractors and sell them on the Region as to why they should have either a bigger presence in Las Cruces, or if they have no presence at all why they should have a presence.

Councilor Abeyta asked what promotional materials do you use then to help advocate for the Region and how do you coordinate it with our economic development from our partners to the City itself?

John Bailey said we usually have a PowerPoint Presentation, we also have handouts that we build in conjunction with the Las Cruces Chamber, the City, the County. Whoever's coming with us we try to make sure we understand what their concerns or issues are so that we can list those out or what their opportunities are. Part of what we do is we're talking to the Pentagon. They hear

things, so it creates concern for them: we understand the area doesn't have enough housing. We go up there and dispel those by bringing data with us from the Housing Department or Economic Development. We dispel some of those concerns that they may voice to us by making sure we have information from the Chamber, from Economic Development, on the County side and the City side.

Councilor Abeyta asked what do you feel are the three top issues right now within WSMR?

Richard Dayoub said Education is almost always #1, sufficient and Affordable Housing is #2 and quality Medical Care #3.

John Bailey said the only one I would add to that with education is the Workforce. WSMR as a whole in their civilian population has a very aging Workforce. They're working very closely with NMSU to help develop the type of engineers with clearances that can start immediately at that.

Councilor Abeyta said we've heard a lot of concerns about Workforce, but as it relates to supportive staff. Childcare centers was one of the top concerns, and it seemed like it was a concern across the board.

John Bailey said workforce is a concern across the board. What we've talked to General Little and Sergeant Major about is their Civilian Workforce. In their STEM-type opportunities is a lot of those folks are of retirement age, so their biggest concern is that 50% of their staff could draw up their papers for retirement and walk away, and we don't have 50% of those people to replace them. That's why we're working very closely with NMSU and UTEP in their Engineering Department to get the focus on how we develop these students with the right skills, and how do we develop the clearances. We're working with both WSMR and NMSU to develop programs in their college that require a clearance that kids can get in their sophomore year, have their clearance, go through the program. When they graduate, they have a clearance and can move right into a White Sands-type job. But we're seeing issues in terms of Day Care is definitely an issue, trying to find the right Workforce on that. There's Workforce issues across the board, but the Workforce that we're really focused on is the technical that allows White Sands to do what they're tasked to do.

Councilor Abeyta said you've mentioned a few times that you've been talking with the County Manager. Are you looking to seek funding from them as well as you're having these conversations?

Richard Dayoub said they are funders of ours just as you are. We have Otero County and City of Alamogordo as well as you two and El Paso.

Councilor Abeyta asked with the projects that you've listed, how many are you all taking the lead in primary and how many are you just support?

Richard Dayoub said almost everything we're working on we're in a support position.

Councilor Abeyta asked with respect to helping educate high school students, what type of role do you play?

John Bailey said what we really do is we're dot connectors. We understand the Army has an issue and we try to find the right people in the civilian side that we can marry them together and solve those issues, connecting those dots. So in the recruiting standpoint, we work very closely with the El Paso Recruiting Command which includes all of Las Cruces all the way up through Alamogordo. We meet with them weekly to understand what their tasks are, where they're going and how do we make sure that we help support their recruiting efforts in terms of STEM/STEAM initiatives, various things like that within the Las Cruces School District. We bring together the Superintendent, the School District, we bring together the STEAM or STEM Coordinators for each one of the schools and we engage them with conversations through TRADOC, through White Sands Missile Range, but all of those are built around getting students to understand that there's more to the Army than guns and bullets. There's 150 military occupation specialties within it, and most of those have nothing to do with active combat. We talked to the Superintendent, connect them with the recruiting command to bring in the skills that are needed for their schools. We're working with Colonel Venable to bring in medical doctors from William Beaumont to teach classes in the high school in their uniform and answer questions about how did the Army get me to where I am? That is something we're directly coordinating through Recruiting Command.

Councilor Abeyta said Councilor Graham and I will be speaking for the Women's Equality Day at WSMR.

Mayor Pro Tem Gandara asked do you have talking points that we could utilize as we are in the community advocating with constituents and other partners?

Richard Dayoub said we actually provided to the City the talking points. I'm happy to send them again so that you can have them at your fingertips.

Councilor Flores said I'm happy to hear that you added STEAM in your outreach with the schools. The Arts have a place in every aspect of our lives, and it might be a good way to recruit the artistic students.

John Bailey said if you come to AUSA National, the convention, their whole opening ceremony is done by soldiers and it's singing, performing, and they recruit quite a bit of that. The "A" part is very important within the aspect of recruiting.

3.2 SUSTAINABILITY QUARTERLY UPDATE

Lisa LaRocque, Sustainability Officer gave an overhead presentation.

Jenny Hernandez, Sustainability Specialist continued the overhead presentation.

Mike Bartholomew, Transit Administrator continued the overhead presentation.

Josh Galovin, Co-Op continued the overhead presentation.

Councilor Graham said going back to the bike heavy portion, really happy to see the discussion of the green lanes. I love being on my bike. We have to make it as appealing as possible and that starts at my door leaving as a cyclist and wherever I'm looking to arrive. One of those things is bike racks, a safe place for me to leave my bike and I can feel sure that if I've done my part and locked it up it's going to be waiting for me when I get back. That remains a significant barrier. I believe new construction does – by City Ordinance – have to include bike racks, is that correct?

Jenny Hernandez said I believe so. I can talk to our Active Transportation Coordinator, Robert Messenger and get you a confirmation.

Councilor Graham said we need to find ways to get existing businesses to get more bike-friendly. The training of our mechanics and our technicians to be ready for the EV Transition; I'm just wondering if you can provide any insight on that and where we're standing?

Luis Vela, Fleet Manager said talking to Doña Ana Community College, they were going to have something together by this Fall Semester but looks like it got pushed to the Spring. The people that came and gave us the hybrid training are still putting together the EV training for us. I'm trying to go to an EV Conference in San Antonio September 15th so I can get more information on the Fleet side of the house. Right now there's only one technician in the City of Las Cruces that's EV-certified.

Councilor Graham asked is there enthusiasm from your crew for getting that training? Are people interested in making that transition?

Luis Vela said right now it's on a volunteer basis. It's going to be tied to pay because it is a little bit more dangerous and a little bit more technical. We're getting away from the internal combustion engine, we're getting away from lubrication, the standard way we've been doing business for the last 100 years so it's a completely different technology.

Councilor Graham said I had no idea that you're mentioning this is a big risk factor for the technician, I think that's really interesting. I want to continue to express my support to City Leadership. I love our commitment to training up our own people who are interested in making that transition and I think that's one of the strengths of our City is that we are committed to the professional development of the people we have.

Councilor Bencomo said you talked about the goal to reduce miles driven by 12%; how will we know when that has happened?

Jenny Hernandez said there's two components to that that's really tricky. One is that we currently can't really track increased ridership. The second thing is, how can we say that we know for sure that I biked 5 miles this week and therefore I

reduced my carbon footprint or greenhouse gas emissions by XYZ. In our greenhouse gas emission inventory, how it calculates it is by the number of miles biked is correlated to a coefficient of gas used in your vehicle, and that's how they came out with that 12%. It's a national average. We have census data that asks how many people bike to work and 2020 shows that in our population 1.7% of our population bikes to work which is very, very small. We don't know how long their commute is so we can't translate that into gas miles saved. I've talked with Robert Messenger, and I know that Mark Miller and a slew of other people are trying to figure that out and present that through their OpenGov Project that they're working on.

Lisa LaRocque said one thing that is an option for us is to have a Bike Share Program, and that way we would be able to see how the metric would increase because all of that data is tracked.

Councilor Bencomo said I would love to see a cost estimate of that for the City. Would it have to be through a private business, or could it be public?

Lisa LaRocque said we already created an Ordinance to allow a business to come in and pay for the use of our streets and sidewalks, so it would cost us nothing. What is somewhat of a hurdle is that those companies would like to have the University participate too because they would be a large constituency. Initially NMSU wanted to do scooters and not bikes because that's what the demand was, and after a six-month pilot they decided that it was not a good match for them.

Councilor Bencomo asked and they haven't rethought the Shared Bike Proposal?

Lisa LaRocque said we have not broached it with them, there's been a turnover of staff so it would be a good idea.

Councilor Bencomo said I'm curious what other much friendlier biking cities are doing. Have you thought about going to other cities and seeing how they're tracking some of this information?

Jenny Hernandez said absolutely, many cities have very good practices. Austin is a really good city and Denver, those are the ones that have really good bike programs. What most of them is is protected bike lanes, green bike lanes, and lots of multi-use shared paths.

Councilor Bencomo asked I'm curious if we have additional green bike lanes planned, how many miles and if not, how do we make it happen?

Jenny Hernandez said Sustainability does not because the funding that we used to pay for the green bike lanes was just for that pilot program, so we don't have any current funding for additional ones. But in deciding where to put the green bike lanes, we came up with a list of 25 priority bike lanes that are bike lane ready for the green paint, so it's a matter of if we could allocate funding, we have a list that is ready to go.

Councilor Bencomo asked are we able to use this kind of paint on multi-use trails?

Jenny Hernandez said it depends on what the trails are made out of. If it's asphalt, absolutely. If it's a combination of asphalt and concrete, they are just now working on a sealant for concrete but it's not ready.

Councilor Bencomo said thank you for providing information about this new historic climate legislation. I'm curious if you have any analysis on whether there will be funding through this legislation for municipalities to make improvements on this particular topic.

Josh Galovin asked are you talking about the Inflation Reduction Act? I was only familiar with the upgrades to personal homes and vehicles.

Councilor Bencomo said it's a pretty significant investment so I would hope that there's funding that we could leverage for municipalities.

Lisa LaRocque said there is a host of funding that will also be augmenting certain grants that we already have so some of it can be used for municipalities. The one thing that is most significant is that 40% of all funding has to go to the Justice40 purpose which is to help LMI Communities.

Councilor Corran said I just had the privilege of going to a conference in Denver which was related to local governance and there I took a bike tour where we drove from downtown to the Broncos Stadium. We rode on electric bikes via Bikeshare on green lanes, it was about 3½ miles. The conversations that were happening at this convening that Councilor Bencomo and I attended were really focused on equity in particular in all conversations related to alternative forms of transit. I want to echo the idea of increasing capacity to ride bikes. I think a bikeshare program would be really powerful and useful and certainly I saw it working really well in Denver. The other part of that conference that I really took home was related to public transit. I know that public transit is, in our community, underutilized but thinking about the workforce, thinking about the changes to the workforce, thinking about the changes to people's capacity to drive which I think is becoming less and less, while I appreciate our conversation about EV's that's not most people's reality right now. Most people's reality is struggling to make sure that their car works and that they can put gas in it.

I'm curious first where the possibilities are to increase ridership. We heard a lot about fare-free transit and Denver was having a fare-free transit month which included us going from the airport the whole way to our hotel with no cost whatsoever which in Denver is quite a stretch. Also related to our upcoming EV Buses, I heard a lot about the new interface of people collecting fares and the way that that actually makes the work of folks that are – just like many areas – there are fewer bus drivers and their jobs are harder now because of a myriad of factors, but one of the factors was people yelling at them about fares. So I'm curious where we are on fare-free and then in the new EV's that we're purchasing, how are they set up? Are they going to have a fare collection station? Are they going to have the drivers be interfacing with folks, not

interfacing with folks and what level are they being designed in a particular way that sets us up to potentially have a different interface with clients in particular?

Mike Bartholomew said as far as going fare-free, if we were just looking at fixed-route service we have the capacity, it wouldn't be much of an issue to go fare-free right away. With the way the Federal ADA requirements are, though, there's a ratio that we have to charge on our Paratransit; you can charge no more than twice a fixed-route fare so if the fare is free on fixed-route it has to be fare-free on our Paratransit service as well. That's where the dilemma is for us, because we don't have the capacity; if we were to go fare-free we would need more drivers and more vehicles to meet the demand on the Paratransit side, on the demand response side. One of the things we're looking at with the Microtransit service is having software that's more efficient than what we're using and mixing rides that are eligible for ADA and those that are using it as a demand response service like on the east side of town where we wanted to start our demonstration project. I foresee that we are going to have some sort of fare collection for a while, but we are looking at other ways to help people that really need fare-free.

Councilor Corran said I think fare-free is the future and I hope we don't invest any more infrastructure in creating new means testing for people to ride public transit. I don't think that's a useful approach to increasing transit portability. I'm going to continue to advocate for us to push through whatever we need to do, whatever added costs I hope that we can see what those look like so that we can move toward it. Increasing public transit access improves workers' situations and improves our climate situation; it's an imperative that I really believe that we have the capacity to do. I know that it's hard, but I think we can do it. For the new EV's is there going to be infrastructure? Do we have to buy extra things to collect fares to add to those?

Mike Bartholomew said initially we're going to have to have fare boxes but there are other payment methods through apps. That's one of the things we're looking at with the implementation of Microtransit. That will be the way to go is using app-based payment systems to pay for the fare.

Councilor Corran said I focus on the EV's because I don't want us to be investing in new infrastructure that's based on something that probably is not the future.

Councilor Flores said insofar as having EV's, I know that I've been reticent to get one. You can't go very far, and we don't have charging stations up and down Highway 25 or Interstate 10. Do you all attend national or international conferences where there is a real discussion about the possibility of having more charge stations throughout major roadways and are there any incentives from the Federal Government to do this? How can one travel to Albuquerque or Tucson or Phoenix?

Lisa LaRocque said one thing I've discovered is that there are actually more fast chargers than we're aware of. There's one in T or C, there's one in Socorro, there's several in Albuquerque and several in Santa Fe. There's equally some in Deming and further. The Governor has purchased many EV fast chargers and is planning on putting them along those major corridors that you described. El Paso Electric has funding to support the upgrade of the grid and to offset the

cost of installation of the fast chargers, so there is more and more movement in that area. One of the lessons we all have learned here is that this stuff takes time. We just have to realize that this transition is coming and that everyone is plugging in to do their part in this process. One thing I've heard is when the chip problem is solved in another year, everything's going to explode. I'm anticipating that and want to be ready for it.

Councilor Flores asked when will the buses be ready?

Mike Bartholomew said we're anticipating them to be delivered in April of 2023.

Councilor Flores asked will our mechanics be trained by then?

Mike Bartholomew said yes, we're having people come over and we're also wanting to send some over to their Lancaster Facility for training prior to the vehicles arriving here. We're also trying to coordinate the delivery of these vehicles with the completion of the construction of the charging station at the new Transit Operations and Maintenance Facility.

Councilor Flores asked has the City ever considered having trolleys?

Mike Bartholomew said we haven't really considered trolleys per se. We would like to improve the frequency of bus service along the Lohman/Amador Corridor a little bit. Trolleys are about the same price as a bus. We're really trying to focus on improving the fixed routes we have with an overlay of the Microtransit to improve the movement and amount of time that you have to wait to get from Point A to Point B on a bus with the combination of those two systems.

Councilor Flores asked there's no micro/macro type of planning in any of this? We're not linked up with anything else?

Lisa LaRocque said the State has a working committee that is planning the distribution of chargers throughout the State on the corridors and then going out to the rural areas. There is a concerted effort amongst different representatives.

Councilor Abeyta said going back to the green bike lanes, I've just had a public meeting that we're going to do road repairs and waterline replacement on University Avenue, and I'm happy to hear that you're making a list of possible priority areas. I'd love to see that ranking so far so that when we're looking at different types of road repairs I would hope that in the future we would be able to link up those projects and see how we can incorporate it in the budget. University is an area that has a lot of ability to have a high level of bikers and walkers.

Lisa LaRocque said the list that Jenny's put together are ones that are totally suitable for having the paint right now, so you don't have to wait for a road repair.

Councilor Abeyta said one of the main concerns that we had from an individual was that of bike safety, and I know for me even seeing the green lanes was just a visual cue for me to pay more attention to the surroundings as well.

Councilor Bencomo asked can you tell us how many bus drivers you have or are you understaffed? And then for Dial-A-Ride, how many vehicles do you have currently?

Mike Bartholomew said in terms of the staffing, we need about five or six drivers on the fixed-route side and two or three on the Paratransit side. In terms of our Paratransit Dial-A-Ride vehicles there 20 vehicles in the fleet right now; when we have the most out at any one time, 14 to 15 of those vehicles are out at one time out of 20.

Councilor Bencomo asked how often are you looking to recruit drivers in terms of ad placement and those kinds of things?

Mike Bartholomew said we've been pretty much constantly trying to recruit drivers for a couple years; I don't think we've ever been fully staffed. We have our City ad out there, we do occasional Facebook postings that we have positions available. We don't really have an aggressive advertising campaign. There's always turnover.

Councilor Bencomo said given that wages recently went up I think it would be a great idea to try to do another round for bringing on some new drivers. Do you have the numbers for ridership for Dial-A-Ride?

Mike Bartholomew said pre-pandemic it was running about 54,000 to 56,000 trips per year on Dial-A-Ride. The last I looked, it's in the upper 30,000. In the peak of the pandemic, it was down below 30,000 trips.

Councilor Bencomo asked I think the last time you provided numbers for revenue that fare for fixed-routes was 13% of your budget and 7% for Dial-A-Ride?

Mike Bartholomew said that's about right. Actually, for Dial-A-Ride our fare recovery is less than 5%. It's a lot more expensive for those trips.

Mayor Pro Tem Gandara said you're in need of five to six drivers, but you also spoke of not being able to go to zero fare for concern that you may not have the capacity. Have you ever done a study? How do you know that there'll be so many people wanting to ride the bus because it'll be zero fare? Resilience Leaders is coming to you asking for a zero fare for Youth. I'd like for you to be ready for it. How do we mitigate that? How do we ease the tension and concern about not being able to make that happen?

Mike Bartholomew said the problem is more on the Dial-A-Ride side. We have the capacity on the Fixed-Route side. With Youth in particular, there's not many Youth that qualify for Dial-A-Ride so it probably wouldn't have much of an impact. As far as fare-free as I mentioned earlier what we need is to really get a handle on what the demand is going to be. If we go fare-free, we have a situation where we'll have some people that may have been using fixed-route service – which isn't door-to-door – they'll say well, I can schedule a ride to get door-to-door service for free. That's what's going to be pushing more and more people over

to the Dial-A-Ride side. That's why we're looking at mixing this Microtransit in there that's going to have a little bit more efficiency in scheduling people. We'd like to comingle our Paratransit and our Microtransit so that we can do trips with both. We'll always have that requirement for accessibility but the nice thing about Microtransit is that when a client sets up their profile we're going to know if they need an accessible vehicle so we can dedicate an accessible vehicle to that particular trip. We talked about electric buses a lot; there are a lot more electric vehicles on the smaller vehicle side just starting to come into the market. We do have three Paratransit vehicles that we very badly need as replacement vehicles that are on order but they'll probably be the last of the gasoline-powered vehicles that we get, and we'll be looking toward electric vehicles in the future for the Dial-A-Ride side. The biggest problem whether they're gasoline or electric vehicles right now is because we use Federal Funding for purchasing of our revenue vehicles there's a Buy America requirement. Right now, a lot of the smaller vehicles on the market don't meet that requirement of 73% domestic content in the vehicles, so there's a big delay in getting any kind of smaller transit vehicle right now, sometimes two or three years after ordering mainly because the people that build these vehicles can't get enough domestically made parts to meet that 73%.

Mayor Pro Tem Gandara said last is the question about the app, going to the app to purchase tickets. Do you have a timeframe on that?

Mike Bartholomew said we want to experiment with that with our Microtransit. There is a requirement that we do have to vet any type of way money is collected through the IT Process that the City has so we can protect the consumer. There is a process that we have to go through to make sure that everything is compliant, so we're working with IT on that. We hope by January we're going to have an app to at least schedule the trips.

Councilor Bencomo asked I'm hoping that next quarterly update we can discuss Community Solar? Can I make a request?

Lisa LaRocque said sure.

3.3 ECONOMIC DEVELOPMENT PARTNERSHIP UPDATES

Elizabeth Teeters, Economic Development Director introduced the topic.

Jonathan Sepp, Film Liaison for Film Las Cruces gave an overhead presentation.

Councilor Corran said The Next Gen Academy, it was great to see you at the event that the Governor had here. I was wondering if you could just talk a little bit more about what that is. It seems like it's a really big collaborative project and it's going to increase local talent. I know it's a pretty new and exciting development.

Jonathan Sepp said one of the biggest issues we've always faced with attracting film and television productions to our area is the amount of local crew that is available. CMI, CMT, FTTP have done a great job in training these crew

members but there's always more that can be done. In the previous Legislative Session, the New Mexico Film Office assisted to coordinate about $40 million to invest in what they're calling The Next Generation Media Academy. Our Board of Directors and State Senator Jeff Steinborn assisted us in getting involved in those conversations and convincing them to create a southern version of this initiative. In all of these different conversations that we have with the Creative Campus and what's going on currently with Doña Ana Community College, they've been able to work on a joint agreement to have some type of facilities that are next to each other at the Creative Campus on the Arrowhead Center at New Mexico State University. One of the exciting pieces of the Next Gen Media Academy South will be the bilingual training focus.

Councilor Bencomo asked I'm curious if you have any update on how you all at Film Las Cruces are thinking about better coordinating with local businesses and residents in areas where filming is taking place? I had a business owner on Madrid contact me about the street being shut down and there was no access for people to get to her business for quite some time. As we begin to grow and how we better navigate those kinds of circumstances so that we don't negatively impact the folks in the area while we're experiencing such good things. Have you given any thought to that?

Jonathan Sepp said absolutely. One of the things that came out of that conversation was specifically adding that first 30 minutes to the monthly meetings over at the Rio Grande Theatre to allow for these types of conversations to happen in a public forum. In addition to that, I'm using Downtown Las Cruces as a way to flesh out some of the best ideas to get some of that information out. We're working with Downtown Las Cruces Partnership, Chris Faivre, and various other community members who have email lists to start getting this information about the potential use of those areas and how to stay up-to-date with all of the different changes. Recently there was a potential to film in Downtown Las Cruces, road closures, so I'd gotten that potential request and within an hour I notified all of the various people who had these emails lists that could share it out to the Public and to the people and businesses that would be affected. That quickly changed into something that was a much smaller impact, and we were able to solve that issue with notification letters. Speaking of the notification letters, that is something that our office is making sure that it happens in a timely fashion and making sure that they include our Film Office's information on all of the letters that go out. That is an opportunity for community members to reach out to us with any questions that they have or navigating the process on their own, because before the production starts often times there's opportunity to air out these concerns and work together to find what is going to impact these businesses or these community members as little as possible and making sure that they're monetarily compensated for any impact that they do face. But it is very difficult to do that after the fact. As City Councilors in working with your constituents, I would appreciate it if you could share with them reach out to us if you ever get any type of notification or letter or see any type of film activity in the area.

Councilor Bencomo said I just noticed that PD has been involved in some of these, I'm assuming closing down streets and some traffic navigation. I'm curious

how much time is PD spending on some of this? What is our internal policy when it comes to a film set and the use of Officers?

Police Chief Miguel Dominguez said most of the Officers that work these movie sets are doing that as an outside employment so they're being paid individually by the movie production company.

Councilor Graham said I'm really happy to see how much we've improved on our local talent being used. When myself and Councilor Corran first came on, we went over to Chupa and got to hang out behind the scenes. I believe even at that time it was still a Northern New Mexico heavy workforce, and we were talking about how much we were committed to bringing more Southern New Mexicans into the fold. It seems like progress has really picked up on that recently. What are we doing right?

Jonathan Sepp said continue to do what we're doing. Continue to spend as much time as we possibly can, stay involved in these conversations with the decision-makers, so the people who are doing the hiring. Andrew and I are very active in our communications with the producers, with the department heads, all these different people hiring and making sure that they are aware of the resources that we have to plug them into our local talent. So that is absolutely a key driver and seeing some of those percentages increase in the amount of Las Cruces talent as compared to Northern New Mexico or outside of the State of New Mexico. The next driver of that is the education so we can put all of these names in front of these decision-makers as we are able to, but then they have to close the deal. So, there's many different areas like the monthly workshops that we are putting on, or the coordination with Local 480 to bring their workshops down here are efforts to assist the Creative Media Technologies Department, the Creative Media Institute, and just advertising the type of training they have to give these decision-makers in their hiring process an understanding that when they hire our locals they're going to get the work that they need out of these workers.

Councilor Graham said that's so good to hear. This is definitely one of the target industries for the New Mexico Economic Development Department for diversifying the State's economy, and I think it's one of our best opportunities to keep our local talent local.

Councilor Flores said I think that some crew people have to be Union, and so the Union is doing a good job of training people locally and then having them become Union Members. Is that still a practice?

Jonathan Sepp said absolutely. I believe what you're talking about is the process from what they call the Overflow List into getting those Union days to be able to apply for Union Membership. So it's another one of those chicken or the egg things, how do you get Union days to be able to join the Union. For Local 480 specifically you need 30 Union days to be able to ask to join the Union, and the Overflow List is part of that process. One of the things I'm noticing within the Local 480 Union Membership is a greater allowance of accessing that Overflow List when they are in Southern New Mexico.

Mayor Pro Tem Gandara said one of my questions has to do with your office space, did you move?

Jonathan Sepp said yes, we are no longer at the WIA Building across from Pioneer Women's Park. We are off of Griggs, so we are catty-corner to Zeffiro's.

Mayor Pro Tem Gandara said the second question is around the sound stage. We had some money specifically for the sound stage and had some stalls and starts, and I just wanted an update on that.

Jonathan Sepp said I'm not sure how much of an update I'm allowed to give but I guess one thing I can say is there might be some potential to use those funds in the very near future.

Mayor Pro Tem Gandara asked is there a timeframe in terms of when we could hear more?

Elizabeth Teeters said we're hoping to be able to bring something to City Council for approval in the next few months as a use for the funds.

Mayor Pro Tem Gandara asked what are your priorities for the coming year?

Jonathan Sepp said going back to the amount of production days that we see in a year, I certainly would love next year to be able to report 365 days of production days in Las Cruces. That is one of my personal goals within the office. And then, increasing the percentage of the below the line workers and keeping all of our best talent here in Las Cruces, and attracting some back. CMI/CMT for many years has produced some of the best talent in the film and entertainment arts industries that New Mexico sees. In addition to that there's a County initiative that we're working on, and we're trying to steal some of the El Paso crew members to Sunland Park/Santa Teresa and thinking of other ways to increase our crew capacity.

Mayor Pro Tem Gandara said when I first started on Council one of the things that we had really stressed was mitigating the brain drain. The City has really focused on paid internships, the apprenticeships, working with you as you build your scholarship program for the training that happens. I think all those things are really important, especially if we're moving toward diversifying our economy. Did you say anything around that program that you're training up folks? That was something that was happening a few years back. Has that continued and how successful has it been and what more might we do to add to that?

Jonathan Sepp said I think you're asking about our Internship Program within Film Las Cruces.

Mayor Pro Tem Gandara said yes, but there was also a training and I know Senator Steinborn was recruiting people to build a scholarship program for people to participate in that training program. Is that still in effect?

Jonathan Sepp said that is the scholarship that Film Las Cruces sponsored at the Doña Ana Community College specific to the Film Technician's Training Program. As far as I'm aware there is still active funds that are contributing yearly to a set amount which I believe is two scholarships a year with the amount that we initially funded into the Scholarship Program.

Karin Bradshaw, Manager, Farmer's & Crafts Market of Las Cruces gave an overhead presentation.

Councilor Flores asked how is the GRT tracked and how are the sales tracked, especially when it's a cash purchase or sale?

Karin Bradshaw said our vendors are actually individual businesses, so we do not track that type of thing. We are required to ensure that they are compliant; once a year they are required to provide proof of compliance with the State of New Mexico and that they have been paying their Gross Receipts.

Councilor Flores asked they have to show proof of compliance, how do those meet?

Karin Bradshaw said I guess the easiest way to explain it is New Mexico TAP, if you go to their first page and scroll down there's a thing for businesses. You have the ability to check your business tax ID Number status. It'll show whether you're compliant or not. We do not know what their numbers are. We do let them know that we would like when they do report that they use the T.I.D.D. Number and not the City of Las Cruces Number because that money does stay here and helps the Downtown District. But as to exactly how much everyone reports or what they report, we don't know. We don't have access to that.

Councilor Flores said so it's on the honor system.

Karin Bradshaw said correct. But it will show whether they're compliant or not. If they're not in compliance, it's in big red letters NOT IN COMPLIANCE and that means they have not been reporting or there's an issue with their account. Everyone is required to be up-to-date on their Gross Receipts Reporting come January 25th, and it takes the State's website about a week to fully update. So come February 1st through February 28th or 29th if it's a leap year our Vendors are required to provide us with the proof that they're compliant.

Councilor Flores said there's one particular Vendor who does beautiful work and I happened to ask her, you do all of this, and she said I do, and she went on to describe how she does this work. She said there are Vendors that are not entirely truthful. My understanding is that everything at Farmer's Market is produced by the Vendor. She mentioned that someone is not making or producing the items that they're selling.

Karin Bradshaw said all of our Vendors are required to provide proof that they do make it. We actually have photos on file, and if there is any question raised concerning the process or whether they're making it or not, then they're require to submit to a site check. So, if questions come up and they cannot provide us

with the necessary proof that we request, then we will actually schedule a site check where we go to their home, their workshop and we will have them show us that yes, we do make it. We do grow it.

Councilor Abeyta said I was particularly interested in the numbers that you had regarding people using their SNAP benefits. How do you go about choosing who gets to have a space at the market, and how do you balance food versus crafts?

Karin Bradshaw said we actually do not have a limit where Farmers or Crafters are concerned. We do feel that we should not infringe on the promotion of business. Anyone who wants to be a Vendor should have the opportunity to try and the Market will choose who survives and who doesn't. Anyone who's a Farmer, who provides us with produce, agriculture, it's an automatic in. We are a Farmer's Market first. Farmers will always be the priority.

Councilor Abeyta asked if you have 159 Vendors, what is the peak capacity of the Market?

Karin Bradshaw said that's difficult to say because of space size. Most of our Vendors are 10 x 10's. We do have some Vendors that are 10 x 20, we have Food Trucks that are up to 30 feet plus they require 10 feet on either side because of the Fire Marshall clearance that we need to have so it's difficult to say what full capacity would be. We do have areas we have not yet gone into and utilized, but I've still got almost an entire block that has gone unclaimed: the south 200 Block where the America School is. We still have room.

Councilor Abeyta said whenever I'm asked about what's there to do in Las Cruces, the Farmer's Market is the first thing I usually tell them. I know it's highly regarded; it is a great event to go to not only for locals but also for those visiting our City.

Mayor Pro Tem Gandara asked I wanted to ask a question – really Abbie's question – about the Junior Vendors and your relationship with them and how many do you have and where are they located and are they every Saturday?

Karin Bradshaw said Kids Can is there every Saturday, they have two 10 x 10-foot spots where they have up to four Vendors, and they rotate their Vendors. I actually will be receiving this week more applications from them and there will be an orientation for more Junior Vendors next week. It has made it easier for the young ones to join the Market because the State does prohibit if you're not 16 you can't get a Business Tax ID Number. So doing this through Kids Can helps the kids come in and they get to do their art, make some money, so it's nice.

Jennifer Kozlowski, Executive Director of Downtown Las Cruces Partnership gave an overhead presentation.

Susan Cabello, Director of the Arts and Cultural District continued the overhead presentation.

Jennifer Kozlowski continued the overhead presentation.

Susan Cabello continued the overhead presentation.

Jennifer Kozlowski continued the overhead presentation.

Councilor Flores asked do you collaborate with the City Art Board?

Susan Cabello said we have a sitting council which is the Arts & Cultural District Coordinating Council. We have nine open seats, one of those is City Art so Ceci Vasconcellos is our representative for the City on that Council.

Councilor Flores said you mentioned the numbers insofar as the money that is being generated; you said that it includes the Downtown and the Mesquite. Are both of those within the T.I.D.D. District?

Jennifer Kozlowski said yes and no. The ACD ends on Mesquite Street to Water; the T.I.D.D. District comes from Alameda to Campo, so when we overlaid the Arts and Cultural District through the State, they overlaid it and are allowing us as a Main Street Program to call it one District.

Councilor Flores asked is there a breakdown for your internal purposes of what is within the T.I.D.D. in terms of what's reported to the City?

Jennifer Kozlowski said yes.

Councilor Graham said if you're looking for support on the writer's workshops, I really miss teaching writing and working with writers which is what I did a lot more before I was doing this so let me know, hit me up.

Mayor Pro Tem Gandara said really looking forward to the coming year and to the Chile Drop, we talked about that specifically about that at our Economic Development PRC this last month and we're all raring to go and ready to work with you all. I do want to inform you that our Suicide Prevention Task Force is doing Recovery Night, and we always add an Art component to it but they want to add a poetry component. Love to pick your brain and if we could collaborate maybe this could be sort of an initial phase into your next Writer's Lit Workshop. That's in September. We do a big Recovery Night celebration; we had it at the University last year but it's going to come back to the Plaza and so anything that you could do to help us spearhead that, that would be excellent.

Susan Cabello said I would love to help work with that. We are always working to expand our Writing Program. Our Writing Program stemmed out of COVID, we had to think of something that we could do that was Arts-based where people work collaboratively. What we learned is that there is a large Writing Community in Las Cruces, that Writing Community is somewhat underrepresented. There's a lot of opportunities to partner not just with us but with other organizations here.

Jennifer Kozlowski said I want to also say that we're grateful for this year because we've actually worked more collaboratively with our other Economic

Development groups, but this year's been a really banner year and I think pulling Elizabeth in was something that actually helped push that forward. I know we've met with Mr. Pili a couple times, and so I think that as Economic Development Groups that we're all starting to work together a lot more and pushing Economic Development for Las Cruces further together.

Mayor Pro Tem Gandara said that Creative Economy is something that is really taking off and flourishing.

4. ADJOURNMENT

4.1 Councilor Tessa Abeyta moved, seconded by Councilor Yvonne Flores, to Adjourn at 4:21 p.m.

RESULT:	**Carried**
MOVER:	Councilor Tessa Abeyta
SECONDER:	Councilor Yvonne Flores
AYES:	Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Yvonne Flores, Councilor Becki Graham, and Councilor Becky Corran
ABSENT:	Mayor Ken Miyagishima and Councilor Johana Bencomo

Mayor

City Clerk

City of Las Cruces®

MINUTES

City Council

Monday, August 15, 2022 @ 1:00 PM

City Council Chambers, City Hall

PRESENT: Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, and Councilor Yvonne Flores

ABSENT:

1. OPENING CEREMONIES

1.1 PLEDGE OF ALLEGIANCE - COUNCILOR ABEYTA.

1.2 PETS OF THE WEEK.

Jennifer Martinez with the Communications Office Presented the Pets of the Week.

1.3 JOBS OF THE WEEK.

Chris Faivre with the Economic Development Department presented the Jobs of the Week

1.4 PRESENTATION OF CERTIFICATES OF APPRECIATION/PROCLAMATIONS - COUNCILOR ABEYTA.

Councilor Abeyta read the proclamation for "Monuments to Mainstreet Month."

2. CONFLICT OF INTEREST INQUIRY BY MAYOR AS REQUIRED BY LCMC SECTION 2-27 (E)(2)

2.1

Mayor Miyagishima said regarding 8.3 I am a landlord.

3. PUBLIC PARTICIPATION

3.1

Joy Goldbaum, Municipal Judge said I did want to inform you right away that Kieran Ryan is no longer serving as a Municipal Judge. There was some irregularity or misrepresentation about his qualifications. He is no longer licensed to practice law in New Mexico. City Codes Section 17-34(A) states in part that, no person may be elected or appointed Municipal Judge who is not an active member in good standing

of the New Mexico State Bar Association. There was no reason to rush through that appointment and to do so without my input or even my knowledge. I insist that you take no action of any kind involving the court without my knowledge and input.

Brad Douglas, Senior Assistant City Attorney said is it the court's position that Mr. Ryan or Judge Ryan, whichever you prefer is not a member of the New Mexico Bar if he is on inactive status?
Joy Goldbaum said yes, that is my position.

Brad Douglas said I reviewed before I came in Section 902 and its Subsection and I believe it states that no one shall be elected Municipal Judge unless they are an active member of the Bar licensed attorney. Now you cited Section 17-34(A), is that correct?

Joy Goldbaum said yes.

Brad Douglas asked is that your understanding of that? I have not reviewed that full disclosure. Is it your position that ordinance states that no one shall be appointed unless they are an active member of the New Mexico Bar?

Joy Goldbaum said yes.

Paul Borunda, Member of the Public said I have been a resident, and I was born and raised here. Last week or last City Council Meeting on August 1st I touched base on this very issue of Judge Ryan's appointment. I contacted the Governor's Office and Attorney General's Office on this issue. The most important of this is to disclose to the City Council, you voted in favor of the appointment of Judge Ryan without knowing anything about what he is all about. I am ashamed of you and you should be ashamed of yourself for doing it.

Billy Lawrence, Member of the Public said I am here today to discuss a special use permitting process for the halfway house established at 1955 Palm Canyon Drive. I am not here to protest the fact that a halfway house has been established next door to me in September 2021. I am here to discuss what I believe to be procedural error committed by the City of Las Cruces during the establishment of this halfway house and how its arbitrary and capricious decision not to post a special use notice resulting in a procedural error which has caused me, caused severely to diminish my quality of life for me and my family and others affected around the city for this same situation. On or about the 19th of May I called the city planning office and spoke to John. After putting me on a brief hold to confer with his co-worker he advised me that they had discussed the special use permit process for this specific address, and it was decided that this house did not meet the definition of a halfway house. I told him that I did not agree. I sent a letter on the 28th of May and was contacted right away by the planning and zoning lead, I would assume with a hyphenated name that included Rogers. She said they were in the process of updating the ordinance on the definition of a halfway house because it was something to the affect of the ordinance is not clear or ambiguous in the way it is currently written. I specifically asked her what criteria was used on the basis of their decision and she didn't really answer the question. I

specially asked if she could please answer my questions in writing and provide me a written response for my file at her earliest convenience. I called the city manager's office on Friday the 12th and spoke with Annette, who found my email and sent it to all of you again, including you, Councilor Flores. Although I have not discussed this situation with my neighbors or any affected parties, I have discussed with an attorney. My first letter is an inquiry. My next letter I have prepared is a demand letter. Should the city continue to ignore my request as for an explanation. I am available to meet with your legal counsel or anyone in a more private sitting to discuss this matter in greater detail.

Patrick Nolan, Member of the Public said I serve as Executive Director of Friends of Organ Mountains Desert Peaks. I am here to give a thank you to the City of Las Cruces. This year we are co-hosting Danger Bird. This is the yearly route of the monumental loop. It connects all four parts of the National Monument. This year is our first permanent event where folks are registering, and we are able to do this thankfully with the good folks of Visit Las Cruces. I invite you to come out to the backpacking summit which will take place at Klein Park on October 28th. The ride will kick off October 29th from the Downtown Plaza.

Juan Garcia, Member of the Public said I understand using social justice verbiage to up score political points and I find it very troubling and divisive. Seems all issues revolve around identity or racial or victimhood context. I do not believe there should be discrimination against anyone but on the other hand landlords have to make a risk assessment on who they will do business with. Many landlords are small mom and pop, small businesses who are trying to make some supplemental income to survive in a high cost living environment. They count on rent to pay the maintenance or mortgage for their rentals or for their steady stream of income. When a tenant defaults the landlord is stuck at resolving the problem at their own expense. Please stop with the racial divisiveness and class warfare being pushed by the narrative included in this proposed resolution.

Rick Reynaud, Member of the Public said I was a landlord. We are the rich landlords that you guys are seemingly or the resolution you may support. I devise not to support the resolution. It's because you're hitting the small guys. I would say please vote no on the resolution because you're hitting the small guys and it does seem punitive, that law the way it's written.

Peter Goodman, Member of the Public said I am a journalist in town here. I am here to discuss the Judge Ryan situation. Technically I think he is probably practicing law without a license. This situation obviously would not be a felony, and it wouldn't be prosecuted as a misdemeanor.

Councilor Abeyta said point of personal privilege to ask a legal question. As Mr. Goodman stands as an alternate judging, is this the type of public comment that is, since he brought up potential pending litigation, is it ok for an employee?
Mayor Miyagishima said to be clear what your saying is that since Mr. Goodman acts as an alternate judge to the court, should he be espousing certain views detrimental to the city or its employees?

Brad Douglas said the situation that we have here, a judge who was appointed and not elected to fill a vacant seat is being subjected to public comment now and I believe the issue that has been raised by Mr. Goodman, Judge Goodman if you will is whether or not a possible crime has been committed. It seems to me that this is very much a new issue and that it might be something that ought better to be fully investigated first because a judge accusing, even if Judge Goodman is not accusing.

Peter Goodman said I do not even know if that practicing law without a license is a crime here. I have not looked that up. I think its pretty clear, and you practice in the Municipal Court that Judge Ryan would not be allowed to defend anybody or prosecute anybody without being an active member of the bar.

Mayor Miyagishima asked is it your understanding that in New Mexico, that the only authority that can remove a judge is the New Mexico Supreme Court?

Peter Goodman said certainly for misconduct.

4. READ CLOSED MEETING STATEMENT

4.1 READ AUGUST 1, 2022 CLOSED MEETING STATEMENT INTO THE RECORD.

The Las Cruces City Council met in Closed Session and only discussed those limited items as stated in the posted notice. The purpose of the closed meeting is:
1. To discuss pending or threatened litigation regarding New Mexico Public Regulation Commission Case No. 21-00269-UT, In the Matter of the Application of El Paso Electric Company for Approval of a Grid Modernization Project to Implement an Advanced Metering System, which is closed pursuant to NMSA 1978, Section 10-15-1H(7).
2. To discuss pending or threatened litigation regarding Community Solar Rule, Case No. 21-00112-UT, which is closed pursuant to NMSA 1978, Section 10-15-1H(7).
3. To discuss pending or threatened litigation regarding Case No. 21-00177-UT concerning proposed amendments to Rule 17.5.440 NMAC, Line Extensions, which is closed pursuant to NMSA 1978, Section 10-15-1H(7).

5. ACCEPTANCE OF AGENDA

Councilor Yvonne Flores moved, seconded by Councilor Tessa Abeyta, to accept the agenda as presented.

RESULT:	**Carried**
MOVER:	Councilor Yvonne Flores
SECONDER:	Councilor Tessa Abeyta
AYES:	Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, and Councilor Yvonne Flores

6. CITY COUNCIL MINUTES

7. RESOLUTION(S) AND/OR ORDINANCE(S) FOR CONSENT AGENDA

7.1 RESOLUTION NO. 23-018: A RESOLUTION TO AWARD CONTRACTS FOR STRUCTURAL ENGINEERING SERVICES ON AN AS-NEEDED BASIS TO BOHANNON HUSTON, INC., MILLER ENGINEERS, INC. DBA SOUDER, MILLER & ASSOCIATES, AND STUBBS ENGINEERING, INC., IN AN AMOUNT NOT TO EXCEED $500,000.00 ANNUALLY FOR EACH, FOR A PERIOD OF ONE (1) YEAR WITH THE OPTION TO EXTEND FOR THREE (3) ADDITIONAL ONE-YEAR TERMS, SUBJECT TO ANNUAL RENEWALS AND APPROVED BUDGET APPROPRIATIONS (PROCUREMENT NO. 21-22-066).

7.2 RESOLUTION NO. 23-019: A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES (CITY) TO SUBMIT A GRANT APPLICATION AND APPROVE A CASH MATCH COMMITMENT FOR THE FOLLOWING: OUTDOOR RECREATION TRAILS PLUS GRANT COMPETITIVE PROGRAM OPPORTUNITY; PROJECT NAME: DA MOVE TRAIL PROJECT; GRANTING AGENCY: NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT (NMEDD) OUTDOOR RECREATION DIVISION; GRANT REQUEST AMOUNT: UP TO $500,000; CASH MATCH REQUIRED: 1:1 OR UP TO $500,000; TOTAL REQUEST AMOUNT UP TO $1,000,000.

8. RESOLUTION(S) AND/OR ORDINANCE(S) FOR DISCUSSION

8.1 RESOLUTION NO. 23-020: A RESOLUTION TO AWARD CONTRACTS FOR ELECTRICAL ENGINEERING SERVICES ON AN AS-NEEDED BASIS TO BOHANNAN HUSTON, INC. AND MOLZEN-CORBIN & ASSOCIATES, INC., IN AN AMOUNT NOT TO EXCEED $500,000.00 ANNUALLY FOR EACH, FOR A PERIOD OF ONE (1) YEAR WITH THE OPTION TO EXTEND FOR THREE (3) ADDITIONAL ONE-YEAR TERMS, SUBJECT TO ANNUAL RENEWALS AND APPROVED BUDGET APPROPRIATIONS (PROCUREMENT NO. 21-22-068).

Dave Duncan, Senior Buyer gave an overhead presentation.

Councilor Yvonne Flores moved, seconded by Councilor Becky Corran, to Approve Resolution No. 23-020.

RESULT:	**Carried**
MOVER:	Councilor Yvonne Flores
SECONDER:	Councilor Becky Corran
AYES:	Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, and Councilor Yvonne Flores

8.2 RESOLUTION NO. 23-021: A RESOLUTION ADOPTING THE MESILLA VALLEY COMMUNITY OF HOPE CAMPUS MASTER PLAN.

Natalie Green, Housing Neighborhood Service Manager gave and overhead presentation.

Councilor Gandara asked Natalie as it relates to the recommendations that you have outlined for us, is there a time frame and I am looking more specifically at changes to

the lease or lessor and a lot of dialogue around the agencies being familiar with who is doing what. We are not consistent about maintaining it seems like.

Natalie Green said I anticipate that master lease coming prior to March 2023, that is when Casa De Peregrinos will move into their or we anticipate them moving into their new facility. So, they will need to have a lease in place to occupy their new space. The PUD and the survey replat staff has already started that process. We anticipate those happening within the next six months. And then with the capital improvements, the agencies have already met and many of their projects are on the CIP and the ICIP and then we are also meeting with our grants office tomorrow to also evaluate some of these capital improvements.

Councilor Gandara asked more specifically the changes in the maintenance schedule and utilizing software to manage that effectively. I want a time frame; I know I have been talking about this for at least three years. I know there has been transition. Is there someone from facilities willing to tell me what that looks like?

Alex Flores, Facilities Management Administrator said currently we have been working to get a maintenance schedule not just for this facility but for all of them here at the city.

Councilor Gandara said do you have any future plans to look at software to assist you in that process and if so, I don't know what sort of software is out there but I imagine there are some good ones that will help you manage that. So a couple of three months to manage that and come back and an estimate of, if its more than, or pricey to purchase.

Alex Flores said we currently do have the existing software that we use, that does have that capability.

Councilor Gandara said you mentioned the priorities like HVAC, ADA issues. When will staff meet with the lessee to determine what are the priorities moving forward? How will we coordinate our efforts to lobby the Legislature for upcoming capital outlay?

Natalie Green said the city meets with each of the non-profits every year as part of the capital improvement process. Many of the projects identified on this list are already on the ICIP list and some of them are actually moving forward as you will see on a further resolution.

Councilor Gandara said my questions are more specific to Jardin De Los Ninos. I am very concerned about children and safety. Some of the things that I read are concerning to me. Those seem like a priority. Are there any efforts to speak specifically with Dr. Michelle Adames?

Natalie Green said we are looking at two specific options. One is to reorient the entrance and it would have its own space away from campus activities, although the ideal opportunity in this square is to do a potential new building as a further resolution.

Two steps from now to discuss an opportunity that we have to partner with a developer who would then be able to do a daycare facility and a housing complex.

Michelle Adames, CEO of Jardin De Los Ninos said we do find it concerning at times to be located in our specific location, however, we do recognize that as a community we are working together to establish the best plan of action. I do think that what is being proposed today and the steps that the city is taking to address some of the concerns is already in progress and helping us. I do want to commend Natalie and her team, they have actually spent a lot of time meeting with us. They understand our needs and actually listen to the needs that we have. Ideally a new building where we can expand would benefit our community.

Councilor Gandara asked can you talk to me more about the priority, fencing, security, things of that sort? Sort of shielding those children from some of those crises that occur with our unhoused neighbors. Is that the dialogue you're having very specifically to tie you over till you get to that new building?

Michelle Adames said that dialogue has not specifically come up but we are talking about how we can utilize our back area. I think it is the south side of the building to really benefit from some of that space that is not being utilized. Because we are landlocked, we don't have a lot of space to build out.

Councilor Gandara said I just think that as we continue to provide a safe space for the children, that for me is number one priority. Addressing the safety and security with fencing and cameras. I would like to hear a quarterly report back about where we are at with the maintenance and programing.

Councilor Graham said obviously we are discussing one of the biggest challenges we are facing as a city and I think the very good rally and cry is what are you doing? What are the solutions? Here are some of the solutions that work and here are some of the solutions in the making. I recognize that the wheels of bureaucracy turn so slowly but they are turning. It's really great to see the plans for the future. The primary question I have I think has sort of been brought out in the discussion with Mayor Pro Tem and that is if we can jump back to slide 10 please. Natalie, how are we funding all this?

Natalie Green said most of the improvements to the campus have been funded through capital outlay or through grants that the non-profits have gone after. There are two upcoming projects, Cocina De Caldito and Cocina De Peregrinos. Those projects are going after capital outlay projects. Many of the non-profits have also used CDBG funding, so facility improvement projects are also a way to fund these through our CDBG programs. Most of the improvements have been agency led and so with this master plan it gives us the opportunity to not only do agency led projects but also lead as a city as to what we need overall for the overall campus.

Councilor Flores asked Dr. Adames is there a waiting list for children to be cared for? Michelle Adames said that at the moment we are at full capacity. We do have children that are on a wait list. In the actual building because we are a five-star early childhood

program our teacher to child ratio is smaller so we need more classrooms for smaller ratios. Because of that we are at full capacity.

Councilor Flores asked how many children do you have?

Michelle Adames said so our classroom allows us to have eight children in that classroom and we have about a classroom and half. So, about a little over ten children on the wait list.

Councilor Flores asked how many children do you have in the entire program?

Michelle Adames said enrolled as of last week we had sixty children.

Councilor Flores said sixty children and that is not a very big space. I did have another question. You say that there is high mobility, what do you mean by that?

Michelle Adames said so a family could be enrolled in our program for approximately three months and then they might not be there for a month and a half. They may come back. We may get new families in. So, the snapshot is usually on a monthly basis. We do have children where their families are under high mobility circumstances. They might fall under our near homeless designation where they may be with us at one point and then they may move outside county limits. It really just depends on the make up of the family and what the circumstances are.

Councilor Flores asked do you do any follow-up on the children who are high mobility?

Michelle Adames said we do and we often reach out to the families to see if and when they are ready to come back or if we can help them find another location that might be a little closer to wherever they might be residing.

Councilor Flores asked given that your one of the few mental health providers for children in the state with childcare setting, do you work with the entire family?
Michelle Adames said so our infant mental health program does focus on the entire family. We do partner with Amador Health Center, FYI Plus who we actually contract all of our therapist through.

Councilor Flores said I have to thank you from the bottom of my heart for doing this wonderful service.

Michelle Adames said our 0-3 program is primarily families who are in the extremely low poverty level. Our Pre-k and early Pre-k is open to all children because our funding comes from New Mexico Pre-K and then our school aged classroom is going to be children from K-12 grades.

Councilor Flores asked how is old is the youngest? What is the age span?

Michelle Adames said our licensing allows us to service children up to six weeks to ten years on site.

Councilor Bencomo said I just have a couple of questions Natalie, one mostly under Jardin De Los Ninos. There were some condition and concerns that were listed out that I feel like are not necessarily these big ticket items. There are some things that I feel that are more minor, but I'm sure don't feel minor to the staff but are there plans to address those soon, quickly?

Natalie Green said some of those issues are already being addressed. I'm not sure if Public Works wants to speak to any of those. Our facilities and project management staff does meet with the alliance agencies every other month, so we go over some of those issues and make sure that's being reported back to you all.

Councilor Bencomo asked lastly have the non-profits on campus, is there a consensus on priorities and what should be going after first? I know it's all important but I'm curious if there have been those discussions?

Natalie Green said as part of the CIP process they do have to prioritize their CIP projects and let us know every year which ones are their top priorities. They do on the alternate months that they don't meet with city staff they meet with each other, so I do so know that they do have regular alliance meetings and go over some of those items.

Lorenzo Alba, Executive Director of Casa de Peregrinos said when we were looking at this master plan, we had this community in mind and not just the campus. Just so you know we had people in mind, human beings. I think it is really important that we go ahead and adopt this and begin to move forward. Casa De Peregrinos has already gotten on your CIP list to add infrastructure to it. Our goal is to begin to really beautify the campus. You can take full advantage of all the hard work of the NGOs that are right there on the campus really trying to support this community at the very heart of what the problem is here, which is poverty. You have entrusted us with some pretty important responsibilities, and I think we have all really come through for you. It's important to us that we move forward on this plan because we are all excited about the work we can do. We know that this isn't a Casa De Peregrinos project, or a Community of Hope project, or a Jardin De Los Ninos project but this is a community project, City of Las Cruces project. It's to serve the entire community.

Mayor Miyagishima said just something to think about, it's so hard to judge our weather now days that I don't know if we have even looked at getting one of those, when it gets extremely cold. I remember at one time we when it got extremely cold here, we were scrambling to help those in need to provide some type of shelter. I wondered if we could take look at one of those Alaska Structure type tents. If we need to just during that particular time to provide some shelter for our homeless who are out on the street. I would like to in the next month or two have a Work Session and devote it only to this so that not only the council but members of the public can see all the moving parts and all the hard work our NGOs do and provide.

Councilor Tessa Abeyta moved, seconded by Councilor Kasandra Gandara, to Approve Resolution No. 23-021.

RESULT:	**Carried**
MOVER:	Councilor Tessa Abeyta
SECONDER:	Councilor Kasandra Gandara
AYES:	Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, and Councilor Yvonne Flores

8.3 RESOLUTION NO. 23-022: A RESOLUTION IN SUPPORT OF NEW MEXICO LEGISLATION TO PROTECT TENANTS FROM INCOME DISCRIMINATION BY LANDLORDS.

Sergio Ruiz, Policy Analyst gave an overhead presentation.

Mayor Miyagishima asked I take it this was brought up in the Housing PRC?

Sergio Ruiz said it did not go through Housing PRC. It was proposed to go through the Housing PRC however the council member who initiated this decided to bring it to city council instead.

Mayor Miyagishima said when state law conflicts with federal guidelines, you cannot discriminate but you are allowed to ask for their ability to pay. I think is called the supremacy clause and I don't know if Brad wants to look into that. My question is that a lot of these that already exist here in the New Mexico Landlord Tenant Law. I was just wondering how this came about. But I think you answered that. It did not go to the Housing PRC. Typically, resolutions do go to various PRCs for vetting so other council members can see it. But what your saying is that one council member had you just draw this up?

Sergio Ruiz said yes, they had me work on this and do some research on the topic and bring it to you today.

Councilor Flores said that I believe having a resolution like this go up the State Legislature would advance the concept or practice of landlords discriminating against people who are recipients of benefits because that does exist, and it would really be up to the State Legislature to enact this. There is no protection on the source of income and that is what this is addressing. This was discussed in the Housing PRC and I believe that Attorney Vega-Brown was present during those discussions. It would definitely be, as written and presented. There is really no conflict and any resolution that would be submitted to the State Legislature with a request that it be considered for legislation would necessarily have to look at all the language. Some of this may or may not be consistent with the Fair Housing Act, Federal Fair Housing Act. The people of New Mexico need protections. Perhaps Brad, our acting City Attorney can comment on that.

Brad Douglas Senior Assistant City Attorney said to address a few things that have been spoken about with regard to federal law and state law or municipal law that we deal with. The Mayor is correct in one sense that any time there is a state statue and a federal statute directly on point to conflict with one another the supremacy clause would take effect and the federal statute would preempt that state law, as you know Councilor. However, in the case of protected class, protected class is no small deal.

To create a new protected class I know that the council is aware of that, considering that. What we would be doing here today is a resolution. It would be up to our State Legislature and their staff attorneys to review the legalities of a new protected class.

Mayor Miyagishima said Councilor Flores, what I was trying to get at more specific is how would this be handled if a recipient receives $1250 a month from social security but rent was $1000 month.

Councilor Flores said I understand your question Mr. Mayor, but that is not the question. It's a question of someone receiving whatever amount a person receives on social security or any other, maybe a veteran. It would be a question of the landlord specifically saying I need to see a paycheck. I need to see how you are paying me. That is the intent. That is the purpose of this resolution.

Councilor Bencomo said as the chair of the Housing PRC I was approached by Councilor Flores about this type of resolution and sending something to the State Legislature to support some sort of tenant landlord protections. We are absolutely talking about source of income discrimination policy in our Housing PRC. We are working with legal to draft up an ordinance. My hope is when that ordinance is ready it will come to city council for a Work Session and then to City Council for a full vote. There will be an opportunity soon for the entire council to discuss what this means, a lot of the questions that you are asking, hopefully by experts in the field in a Work Session.

Mayor Miyagishima said so if the applicant makes $1250 a month on social security and the rent is $1000 and they get turned down because they don't have enough. The landlord doesn't feel that they can afford that. Then they come to you and say, I just got discriminated because I make more than what the rent is. How are we going to handle that?

Councilor Flores said first of all someone would not come to me. What I've stated, is that someone who is getting a $1200 check from social security or disability, or other governmental assistance and the landlord says you're not going to be able to meet the payment because you don't have. That would be a matter for the courts to decide, whether there was any intent. It would be a fine line without a doubt, and it would be something that would have to be weighed by the trier of fact. Just generally I think just having this kind of language in a resolution to go to the State Legislature to entertain or to consider this sort of a statute. There aren't protections today as we know them. We have been working on this, in fact since first joined the city council back in 2017 and this is 2022. While it may be symbolic it's definitely something that is very important, and I think this is the first step in the right direction and I hope we come up with an ordinance before I leave city council in less than 3.5 years.

Mayor Miyagishima said I will say I find it incredulous that no one counts it, I mean that is automatic. I find it incredulous that a landlord would say I'm not going to count that. You want that. I think it could have been a select few that it may have happened to, regardless.

Councilor Flores said with all due respect Mr. Mayor the practice is prevalent. We have studied this, approached this. It does happen.

Mayor Miyagishima asked is it fair to say that you have testimony of people that came to the PRC Committee and you have the list of some names.

Councilor Flores said we do not have proceeding that we take testimonies, but we did have presentations of practices throughout the state because during our PRCs we do have people throughout the state who are very much concerned about housing, so it isn't testimony they are facts as presented.

Councilor Abeyta said I was not aware that this had not gone through a PRC. I do understand that resolutions are mostly symbolic, we are advocating here and calling for our Legislature to look and develop these reform laws. It does seem appropriate that this would go through the PRC and then if there is an ordinance that is being developed to add specifics to the resolution before January. I don't know if it would be appropriate to table this type of item for it to go through that process and procedure and maybe be able to get more input from the residents and from other interests to come and piece a collaborative statement to send forth.

Councilor Bencomo said I do not think we are having a very responsible discussion about this, given that I won't repeat my earlier statements. This language here, some of it is not in the ordinance. Some of the language about aggressive punitive measure. When I say that we are not having a responsible discussion because we have not brought this through Work Session so the public can fully see and understand. There is a lot of misinformation. I heard it already from some of the folks that came from public comment. This discussion, frankly, was also not appropriate. We will get it through the PRC soon. We are working with legal. We are working with staff. I want not only the public to understand but all of you on the council to fully understand what this ordinance is intended to do, Mayor.

Councilor Flores said I was the one who approached Mr. Ruiz to proceed on this is because there has been a lot of stalling, a lot of railroading and just a lot of things that are not just getting done. If this is something that was not clear, I did run it by you and you did not say no. I ran it by the other PRC member, Mayor Pro Tem Gandara. And a resolution is exactly that. It's symbolic. A lot of our resolutions do get enacted eventually by the State Legislature. There has been a lot of delays, I do not know why in our Housing PRC. Yes, I agree with Councilor Abeyta that this should have gone through the PRC. But if people don't want to vote on it, that's their prerogative.

Michael Potts, Member of the Public said I came to talk a little bit about this resolution. I ask you to look at what I gave you and it talks about the Fair Housing Act, that was implemented in 1988. I am afraid that this might be better for you to turn around and table this and rediscuss it with yourselves and you're not going to be in conflict with HUD about what your doing. This is Congressional Bills and Laws that you're not paying attention to and citizens like myself have to come up here all the time and educate you about what you need to know. This is rules and regulations and has nothing to do with an individual's financial resources.

Stacy Aguirre, Member of the Public said this whole thing is very confusing to me. I am a first-time property owner. If I cannot qualify them, I can't ask for their paychecks in other words. I am not sure they are going to care for my home, the way they would care for their house. It scares me that I cannot qualify a tenant. I have to qualify my tenants. I have to make sure they have a job. I have to make sure they have good credit. I have to make sure they have good landlord references. I just don't understand this whole thing, where it's coming from, where it's going? Maybe I should wait for clarification, I don't know? Its ambiguous and vague to me.

Alfonso Archuleta, Member of the Public said I do see a problem with any resolution. One of the problems we are having right now is rentals. I have three to four people right now looking for houses and they are just not there. The problems we are having right now with resolutions and ordinances, regulations, and everything everybody is turning to Airbnb. So how is this going to affect us in the future? Are we going to have less rentals? We have to address how we are going to take care of individuals because houses are just way up there and you can't sell them. The city at the same time, is it going to affect more our rental problems?

Kevin Cardoza, Member of the Public said on behalf of the Las Cruces Association of Realtors and Home Builders we would very much like to participate in the process of addressing this issue. We know that this is a common concern across the city and different organizations, that is housing affordability. We understand that government alone will not be able to solve the problem and also private sector alone will not be able to solve the problem. So, we would like to work with you all as resolutions are drafted. There are a couple of things that we have been discussing. We strongly believe we are a doing a disservice to Section 8 voucher recipients because we need to advocate on their behalf to have their vouchers adjusted to current market rates. The part is that, as you stated from a political strategic standpoint it would be far more useful if we came to a resolution as a community and not just as a city closer to the Legislative session and allow that time for both the public and private sectors to come together and draft the Legislative proposal and send to state.

Kent Simpson, Member of the Public said I am also a Realtor. The reason I am here today is that I want to offer to the city council, to the PRC, to the City of Las Cruces the realtors support and access to the programs and grants that we have that deal with fair housing, that deal with housing affordability, that deal with housing availability. I want to work with the city and let you have the access to the same information we have at our fingertips. We have grants available to teach and educate the public, the council, as well as our own member and landlords. The PRC can reach out to us and may be able to fund our own particular research just for Las Cruces. Some of these housing vouchers have not be updated so if your If your going to send a resolution to the State Legislature, I would ask that you include in that resolution and urge that our Legislature speak to Washington to urge those federal programs to update their vouchers to today's economy.

Dolores Demers, Member of the Public said I am a realtor and I have been managing properties for others for about 12 years. You do not put tenants in a house that they cannot pay their rent. I cannot imagine any property manager that I know that

purposely discriminate against someone collecting benefits. If they qualify for that house, they are probably going to be a good tenant. Now in regard to people who are on Section 8 Housing, the Mesilla Valley Public Housing Authority needs to get its financial house in order as well. That agency has a lot of turn over.

Maria O'Connor, Member of the Public said I am currently taking care of my mother full time now, she suffers from dementia. We are not asking for a free meal ticket but simply asking just that it not be so difficult to find a place to live in our hometown. We do not want to live in fear of being homeless. My mom was in a situation where someone took advantage of her financially and her credit is no longer up to par. We have tried to find places to live but are denied because of that. We have money, we just don't have good credit scores. It shouldn't be this difficult for people to find somewhere to live.

Zeke Rodriguez, Member of the Public said I am a State Representative candidate. It seems like this is a much complicated issue then just somewhat punishing the landlord. Protecting the landlords, I believe is something we should be focusing on. If you're dictating what they can and can't charge for a deposit, that is essentially utilizing that private property. So, I would be leery about doing something of this caliber without looking at the constitutional ramifications first. Secondly, it's economic like. This is going to get a lot worse everybody. What are our plans to do with housing in the near future? Right now, we are already short on two bedrooms housings, two-bedroom dwellings, townhomes. What are we going to do when it is not just this woman out here that just put her heart out to us and it's more and more people?

Scott Lynch, Member of the Public said I represent multi-family property owners in Las Cruces. I am also a member of the National Apartment Association and Government Affairs Committee. We want to work with you guys to come up with a resolution or ordinance that is going to guarantee that both sides are happy. I do acknowledge that there is a housing crisis. Almost all the credit screening by larger companies is done blindly. The one issue people disagree on is Section 8 because there are so many hoops that people have to jump through. So I think one priority would be to streamline the process for Section 8. I have seen other cities do things to incentivize landlords to participate. My whole point is, instead of trying to threaten a landlord with a prosecution, try to come up with creative solutions that will incentivize people to participate. Incentives work and I think threats of punishment do not.

Councilor Bencomo said that any future ordinance is not going to prevent a landlord from setting your own tenancy procedure, rules or setting your own market rate. That is not what any future ordinance will do. It will simply not allow you to discriminate because someone has a voucher, which is happening.

Councilor Tessa Abeyta moved, seconded by Councilor Becki Graham, to Table Resolution No. 23-022 indefinitely.

RESULT:	**Carried**
MOVER:	Councilor Tessa Abeyta
SECONDER:	Councilor Becki Graham

AYES:	Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, Councilor Johana Bencomo, and Councilor Becky Corran
NAYS:	Councilor Yvonne Flores

8.4 RESOLUTION NO. 23-023: A RESOLUTION SELECTING CHELSEA INVESTMENT CORP. AS THE LIHTC DEVELOPMENT PLANNING PARTNER FOR 1101 W AMADOR.

Natalie Green, Housing and Neighborhood Services Manager gave the overhead presentation.

Councilor Becki Graham moved, seconded by Councilor Tessa Abeyta, to Approve Resolution No. 23-023.

RESULT:	**Carried**
MOVER:	Councilor Becki Graham
SECONDER:	Councilor Tessa Abeyta
AYES:	Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, Councilor Johana Bencomo, and Councilor Yvonne Flores
ABSENT:	Councilor Becky Corran

8.5 RESOLUTION NO. 23-024: A RESOLUTION AMENDING THE FY2023-2028 CAPITAL IMPROVEMENT PROGRAM.

Sarah Cundiff, Management Analyst gave the overhead presentation.

Councilor Kasandra Gandara moved, seconded by Councilor Johana Bencomo, to Approve Resolution No. 23-024.

RESULT:	**Carried**
MOVER:	Councilor Kasandra Gandara
SECONDER:	Councilor Johana Bencomo
AYES:	Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, and Councilor Yvonne Flores

8.6 COUNCIL BILL NO. 23-001; ORDINANCE NO. 3007: AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF LAS CRUCES, NEW MEXICO SUBORDINATE LIEN STATE SHARED GROSS RECEIPTS TAX IMPROVEMENT REVENUE BONDS, SERIES 2022 IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $5,000,000 FOR THE ACQUISITION OF FIRE ENGINES, AERIAL FIRE TRUCKS, AND FIRE EQUIPMENT FOR THE CITY FIRE DEPARTMENT; DELEGATING AUTHORITY TO THE CITY MANAGER AND CITY FINANCIAL SERVICES DIRECTOR TO EXECUTE AND DELIVER A PRICING CERTIFICATE FOR THE SALE OF THE BONDS TO THE PURCHASER.

Erika Jacquez, Treasurer gave an overhead presentation.

Councilor Flores asked what happens to trucks ordinarily?

Mayor Miyagishima said they go to auction, and I think they are sold.

Barbara DeLeon, Chief Administrative Officer said Mayor, you are correct. Our assets have to be disposed of at fair market value.

Councilor Becki Graham moved, seconded by Councilor Tessa Abeyta, to Approve Ordinance No. 3007.

RESULT:	**Carried**
MOVER:	Councilor Becki Graham
SECONDER:	Councilor Tessa Abeyta
AYES:	Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, and Councilor Yvonne Flores

8.7 COUNCIL BILL NO. 23-002; ORDINANCE NO. 3008: AN ORDINANCE APPROVING A ZONE CHANGE FROM R-1A (SINGLE FAMILY MEDIUM DENSITY) TO R-2 (MULTI-DWELLING LOW DENSITY) FOR A PROPERTY ENCOMPASSING 2.68 + ACRES LOCATED AT 5600 MCGUFFEY STREET. SUBMITTED BY THE FORT CONSTRUCTION, REPRESENTATIVE.

Katherine Harrison-Rogers, Senior Planner gave overhead presentation.

Mayor Miyagishima said so is the R2, is that duplexes and triplexes?

Katherine Harrison-Rogers said that is correct.

Counciler Gandara asked you mentioned a TIA, what will trip that if needed you said?

Katherine Harrison-Rogers said that TIAs are triggered when engineering staff, specifically the traffic engineer knows that maybe there are some problems on certain roadways they can request certain information. This particular project may not trigger a need TIA.

Councilor Tessa Abeyta moved, seconded by Councilor Johana Bencomo, to Approve Ordinance No. 3008.

RESULT:	**Carried**
MOVER:	Councilor Tessa Abeyta
SECONDER:	Councilor Johana Bencomo
AYES:	Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, and Councilor Yvonne Flores

9. BOARD APPOINTMENTS

9.1 VINCENT GARCIA-HESS

Councilor Becky Corran moved, seconded by Councilor Tessa Abeyta, to Appoint to the CIAC.

RESULT:	**Carried**
MOVER:	Councilor Becky Corran
SECONDER:	Councilor Tessa Abeyta
AYES:	Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, and Councilor Yvonne Flores

10. NOTICE OF PROPOSED ORDINANCE(S)

1) There will be no public discussion.

2) A Councilor may ask staff for clarification on the proposed ordinance(s).

10.1 <u>COUNCIL BILL NO. 23-003; ORDINANCE NO. 3009</u>: AN ORDINANCE SUPPORTING INVESTMENT OF $235,000 IN AN ECONOMIC DEVELOPMENT PROJECT IN ACCORDANCE WITH THE CITY OF LAS CRUCES LOCAL ECONOMIC DEVELOPMENT PLAN, AUTHORIZING A PROJECT PARTICIPATION AGREEMENT BETWEEN THE CITY AND ELECTRONIC CAREGIVER, INC., AND ENTERING INTO AN AGREEMENT TO SERVE AS FISCAL AGENT FOR THE STATE OF NEW MEXICO'S PARTICIPATION NOT TO EXCEED $1,000,000 IN THE PROJECT.

Council agreed to bring forward.

10.2 <u>COUNCIL BILL NO. 23-004; ORDINANCE NO. 3010</u>: AN ORDINANCE TO REPEAL AND REPLACE NOISE ORDINANCE OF THE LAS CRUCES MUNICIPAL CODE 1998, AS AMENDED, CHAPTER 19, ARTICLE III, DIVISION 2, SECTIONS 19-121 THROUGH 19-136.

Council agreed to bring forward.

11. CITY COUNCIL MEMBER BOARD REPORTS AND COMMENT

11.1 MAYOR MIYAGISHIMA

None

11.2 COUNCILOR GANDARA

I attended Ngage's Karaoke event, it was quaint there at the Community Foundation. They raised a lot of money. The videos were so cute.

I would like to make the announcement that our faith leaders will be meeting with Councilor Bencomo and I and Reverend Carolyn on August 25th at 1:30pm. We have a lot of great presentations requested by the faith leaders. One on the 988 and the other on MIH program.

11.3 COUNCILOR FLORES

The only comment I have is the housing resolution that did not pass today. My only request to the Housing Department or Economic Development and our Housing Committee, not just the chair and members but the entire policy review and whoever might be listening out there. Even with meetings being in person the number of people showing up is a fraction of what we use to have. I hope that the council does address the housing discrimination concerns.

11.4 COUNCILOR CORRAN

The TNR Coordinator position will appear shortly in the HR thing. Thank you all for your ongoing support on TNR. That is one update from the Animal Services side of things.

I have a few notes from the TSI PRC and I want to give a shoutout to the staff that has helped coordinate the TSI PRC committee meetings. I am looking forward to our next conversations where we will be talking about things like defining sustainability in the context of transportation and infrastructure. That conversation will be taking place

the first Tuesday of the month, September 6th at 8:30 am at 2007-A. I want to invite folks.

11.5 COUNCILOR BENCOMO

We have Housing PRC scheduled for this Wednesday at 2 PM on the second floor. We will be talking about income discrimination ordinance.

There is a cannabis townhall on Thursday at 3 PM I will be attending and hopefully some of my other colleagues can attend as well.

We have our third meeting down West Picacho businesses. If folks want to join us that are business owners or residents

11.6 COUNCILOR GRAHAM

I have the honor of speaking to some students at Lynn Middle School coming up on Wednesday. This is one of our amazing community schools.

11.7 COUNCILOR ABEYTA

We will have an Oversight Committee meeting Wednesday at 10 AM.

We are also hosting a Vaccine Taskforce Meeting this Wednesday at 3:30 PM and thank you, Pro Tem Mayor Gandara for leading that. The Taskforce Meeting is just going to give an overview of everything that has been happening.

Councilor Benocomo talked about our Utilities Board Meeting. We are going to have a rate setting training in September. Congratulations to Jeramiah Avery who did his signing last week for his internship. It's such wonderful program.

We are going to have a Quality of Life PRC meeting August 24th at 3 PM

Tomorrow I will be going to a MVEDA Board Meeting. Where we will be looking at some bylaw revisions and going over the stakeholder's survey results.

This last Saturday I had the opportunity to go to Burrell College and look at their medical student research day. It was really wonderful and it's such an impressive facility as well.

I have asked Mr. Pili to help me start working on a public safety meeting for my district. Obviously, a lot of recent events have occurred in my district. I want the public to know that is in the works to talk about.

12. CITY MANAGER REPORT

12.1 ERIC ERIQUEZ, ASSISTANT CITY MANAGER

I am not sure what the schedule is for September 11th but I will make sure we get that out.

We kicked off the block party for Lift Up Las Cruces. We are looking for those tangible items that we can take care of as soon as possible. That starts out with the streets.

There will be a pavement replacement for Calle Sosa and for North Willow. Construction should begin in October. The other big street is Madrid with a bike and pedestrian improvements and those preconstruction negotiations are going on right now with the New Mexico's Department of Transportation and the Federal Government. Parks and Rec is assessing all the landscaping needs in that area as well for Lift Up.

We were just notified as well that today Transit was awarded $7.9 million in grants so we would use $5.7 million to purchase 7 more buses and chargers and $2.2 million will also go to the buildout for the transit facility.

13. ADJOURNMENT

13.1

Councilor Yvonne Flores moved, seconded by Councilor Tessa Abeyta, to Adjourn at 3:58 p.m.

RESULT:	**Carried**
MOVER:	Councilor Yvonne Flores
SECONDER:	Councilor Tessa Abeyta
AYES:	Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, and Councilor Yvonne Flores

Mayor

City Clerk

City of Las Cruces

MINUTES

Work Session

Monday, August 22, 2022 @ 1:00 PM

City Council Chambers, City Hall

PRESENT: Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Johana Bencomo, Councilor Yvonne Flores, Councilor Becki Graham, and Councilor Becky Corran

ABSENT:

1. PETS OF THE WEEK

1.1

Jennifer Martinez, Communications Department introduced the Pets of the Week.

2. JOBS OF THE WEEK

2.1

Chris Faivre, Economic Development introduced the Jobs of the Week.

3. AGENDA ITEM

3.1 THE POLICE AUDITOR SEMI-ANNUAL REPORT PRESENTED BY THE OIR GROUP.

Viola Perea, City Auditor introduced the topic.

Stephen Connolly, OIR Group gave an overhead presentation.

Teresa Magula, OIR Group continued the presentation.

Mayor Miyagishima said in the past when we've had outside police auditors, it was very common to find principals in that company maybe a former Police Chief or a high-ranking Officer, maybe Deputy Chief. But I didn't find any in your company. What's interesting about that is there's been discussions in the past about a citizen's committee. In looking at the backgrounds of many of the people who work in this company, one was a Chief Attorney for the Independent Review for L.A. County, a volunteer attorney for the Independent Review Panel, Director of Use of Force Section of LAPD, volunteer for L.A. County Citizen's Commission, Past President of National Association of Police Oversight of Law Enforcement, Certified Group Crisis Intervention Field Organizer for ACLU, and Director of San Francisco Police Accountability. When one might be geared

towards more Police when talking about police auditors, yours is going to be geared toward what I think the Public wants to hear and see. I think you all provide a whole different set of eyes.

Councilor Flores said what you didn't mention is that Michael Gennaco was with the Civil Rights Division of the Department of Justice. I was President of the Mexican American Bar Association of Los Angeles County, and we were having a lot of problems since the fallout with Rodney King and we met with Michael, and Michael is very well versed in this field. The report on key demographics that you reported on, there was a zip code that I didn't recognize 88047.

Mayor Miyagishima said 46 and that's Mesilla Park.

Councilor Flores asked they're included in this report?

Teresa Magula said correct, by virtue of an internal investigation that occurred in that jurisdiction. It was involving Las Cruces Police Officers but was not a response to a call for service there.

Councilor Flores said the audit was based on reports that are available to you by the Police Department. Do you believe you had a full picture, or did you believe you were presented with a pretty picture of what LCPD does?

Stephen Connolly said our experience of the Department is that everything that is within our Scope of Work are things that we are being provided with without hesitation, we're getting full access and full cooperation, our questions are being answered. Our Scope of Work doesn't encompass everything that the Department does, for example Use of Force Incidents. There are some jurisdictions where we routinely audit the Use of Force Review Process and we don't do that here, it's not part of the Scope of Work. Our experience of Department Management and our experience of the accountability measures that we have been entrusted with is a positive one. We review what's presented to us, but what's presented to us are all the complaints that the Public makes, so to that extent we are getting a full picture. When it comes to the allegation of misconduct arena, we feel we are getting a complete sampling of what's out there.

Councilor Flores said there were a total of 16 complaints. You still believe that that's representative? How?

Teresa Magula said I want to reiterate again that it is related to our Scope. Our particular Scope looks at complaints that rise to the level of a formal investigation. We also review anything that the Department has initiated as an internal investigation. There are certainly complaints that come in that are related to other concerns that the Department determines may not rise to the level of misconduct or a complaintant decides that he or she does not want to do a formal complaint.

Councilor Flores said so those aren't reflected here.

Teresa Magula said that's correct, those are not reflected here.

Councilor Flores said it'd be good to set that, just put it out there so that there is a representative number of complaints coming in. As to philosophy of discipline, you've reported that you've talked to LCPD about this? To whom was this directed and what exactly was directed?

Stephen Connolly said we absolutely have engaged with the Department's Leadership in terms of the individual recommendations or cases where we've said okay, good job catching the policy violation here, but we feel like in our experience this conduct might merit a more significant consequence than what was given. It's not necessarily an extreme thing where it the difference between somebody being suspended for 30 days versus not or being fired versus not, it's really more on the margins. If it's a repeat offense for a particular Officer, we'd like to see that the discipline be ramped up a little bit to reflect the fact that there's some history of this and we want the intervention to be stronger.

Councilor Flores asked so when you do have someone who's not falling into step with the rest, you can see that that's particular to a specific Officer or is it just the pattern of information that's repeated?

Stephen Connolly said there are some allegations that come up repeatedly Department-wide, and Teresa was mentioning a report writing issue and issues with the body worn cameras. Those broader, systemic issues are things that we would absolutely single out on a Department-wide basis. We're talking about individual Officers who might have repeat instances of policy violations.

Councilor Flores asked so do you get those names?

Stephen Connolly said we get the records of those Officers that are involved in the cases, so if there's any relevant disciplinary history that's part of what we review.

Councilor Flores asked policy and training recommendations, what exactly do you mean when something isn't happening more often but not being reported? If it's not happening more often how can you measure that if it wasn't reported?

Teresa Magula said what we hypothesize is that the allegations related to those types of procedural concerns are being caught more often by virtue of the investigative process. So if a complaint is related to, say, a traffic stop and an Officer's unbecoming conduct during that traffic stop, in the course of the investigation the Department may find that the Officer didn't actually appear in Court for that particular traffic stop. So that allegation is framed in addition to the original complaint. So in the course of doing the investigations finding more things to frame allegations and counsel the Officers on.

Councilor Flores said on Page 13 you indicated that you continued to focus on timeliness, and you said that delay is due to communication failures.

Teresa Magula said yes, insofar as any delay in the case, perhaps the complaintant does not know about, so that's where I was speaking to the Department having an opportunity to send a follow-up letter saying, *"we are investigating this, it's taking longer than what we originally thought it might take"*. So that kind of communication with the Member of the Public is very vital so the Public knows what's going on.

Mayor Miyagishima said one thing that I enjoyed reading in here regarding Internal Affairs practice, it says *"since this report in January we found LCPD's Internal Affairs practice to be robust and effective, and the Department has shown its responsiveness to the Auditing process by effectively implementing most of our recommendations in the short six-month timeframe."*

Councilor Bencomo said there were a couple instances where I felt like I was receiving some mixed messaging. One of them being around the transparency issue and the closeout letters. I think in the report it said some of these letters were misleading and today you said the Department's doing an extraordinary job at transparency, so to me those are mixed messages. I'm curious about these closeout letters: who's writing them; what do they look like; is there someone reviewing them for empathy matters, particularly when we're talking about someone who is a victim of a crime and is wanting to get closure. At what point does the Department decide to take on a recommendation that you have made?

Stephen Connolly said we are very interested in the effectiveness of the notification letters to the complaintant because even if the result is not what they wanted they'll be satisfied that the Department took their complaint seriously. I think there is room for the gestures and interactions that you're talking about. In terms of the discrepancy that you noticed, the specific thing we said about the complaint letters being misleading, the reason why they're misleading is often times the Department is going to go beyond the specifics of that person's complaint to look at all aspects of the Officer's behavior. And it might discover that that's not something that the complaintant was upset about but we see this is a performance problem, so we addressed it. And sometimes the wires get crossed in terms of the letter writing, so they will say the allegation was sustained and it's confusing; it's misleading in the sense that the complaintant might be led to believe I was affirmed in my allegation that the Officer was discourteous and that may not be what happened at all. I would defer to the Department about your question about who writes them and who vets them and is there room for more, but we are certainly sympathetic to that approach.

Police Chief Miguel Dominguez said our complaint will come in alleging a violation of a policy, so when we focus the Officer on it this is what we're focusing on. After the investigation is completed, that policy wasn't violated but we found other violations, ancillary issues. What we're doing now is letting the complaintant know exactly what the outcome was, so your complaint did not find that the policy was violated, but we did find this. We welcome this very much not only as much as transparency and being able to speak to the complainant at the end of the investigation but being able to speak to the complainants at the beginning of the investigation is what we're really finding a lot of success in helping our processes.

Councilor Bencomo asked is there something more than just the letter as well? A phone call, a conversation?

Police Chief Miguel Dominguez said that's one of the processes that we're fixing and that we're putting into common practice.

Councilor Bencomo said the other piece around this mixed messaging was around this philosophy of discipline. Straight from the report there was a statement that said, *"an overly lenient disciplinary response runs the risk of diminishing influence of the process on future Officer performance"* noting that there had been leniency. Later in that paragraph it says, *"That being said, we would not advocate for significant increases in discipline in the aforementioned cases."* So, to me I'm hearing there's leniency and you don't really have to change that much about it. To me those are a little bit conflicting, and I'd like to understand better how we should approach disciplinary leniency in situations particularly that call for more significant discipline.

Stephen Connolly said the point that we were trying to make there is the discipline process operates on multiple levels at the same time. One level is, what does this one individual Officer need in order for his or her behavior to be corrected? Because there are a range of individual circumstances the Officers experience, past history, other factors that may influence the way the Department approaches it, it can be appropriate for a consequence to be relatively mild relative to another Officer who's done much the same thing but maybe the aggravating factors are there in terms of the past history that we were referring to, or the failure to cooperate fully with the investigation. I think the Department has taken a very individualized approach; they have said what does this specific Officer need as a result of this, but we also advocate saying you have to have a standard. That's why there's room for the Department to say as much as it's appropriate to take individual circumstances into account, we need to get some baselines here to make this more consistent.

Councilor Bencomo said to be very frank, some of what stood out to me the most in this report was instances of lack of truthfulness and where that should fall in line in terms of priority of discipline. To me it seems pretty significant, it should be top priority. Truthfulness matters. I'd like to understand how we are taking that seriously and what recommendations you are making and how the Department is responding.

Stephen Connolly said we absolutely agree with you about the crucial importance of truthfulness; it is at the heart of Public trust in the Police and credibility at every level. We have communicated that view to the Police, and we look forward to seeing how reforms in that discipline process continue to evolve.

Councilor Bencomo said Chief, I would love to hear from you about what you think of this question and how you're thinking about formalizing this matrix and how you want to handle instances of lack of truthfulness.

Police Chief Miguel Dominguez said let me start by saying that truthfulness to a Police Officer is everything. Most times Police Officers are terminated because of truthfulness. The case that you're referring to was treated with the utmost

attention when we found an inconsistency in the way the questions were being answered which had us compel the Officer to a polygraph examination and it was passed. We don't take those things likely within the LCPD.

Councilor Bencomo asked you are talking about this matrix in terms of the philosophy of discipline, that's something you're working on?

Police Chief Miguel Dominguez said the Chart of Sanctions that we're working on, Attorney Vega brought this to our attention. We're looking at some of the discipline that's handed out. We have a starting point to go off of; it will help us be more consistent. There was some discussion that was had over a discipline recommendation that was made by a Sergeant that called it willful disregard. When I looked at that one specifically, I looked at was there a willful disregard. There was a suspension handed out for that but in looking for ways to find out whether or not it was an intentional act, I could not find it to be intentional or willful in that matter. Because there's some possible subjectiveness to the way our discipline is handed out that's why we're starting to look at this Chart of Sanctions that we're involving a lot of Officers in and we'll be involving Attorney Vega as well so we can make sure that we have a good starting point.

Councilor Bencomo said I know that personnel matters don't belong to the City Council, but I think because we're working towards building trust with the Community transparency that we have somewhat of a public conversation when you get closer to developing this matrix or …

Police Chief Miguel Dominguez said Chart of Sanctions.

Councilor Bencomo said there's a case that involves three officers, some of them are sustained, some are exonerated. I'm curious when it comes to these kinds of cases where you have multiple Officers and multiple outcomes, how do we look at Duty to Intervene in situations like this? Is that within your scope? Are you making recommendations in terms of Duty to Intervene?

Teresa Magula said if the first column there has Transport Officer and there's four related allegations, those are all for the same Officer. If there's multiple Officers, we listed them out Officer 1, Officer 2 and so on. As to your question for Duty to Intervene, typically that type of evaluation would occur in the Use of Force investigation so those particular cases – unless they are directly related to a complaint that rises to the level that our Scope encompasses – we would not be seeing those.

Councilor Bencomo said I hope that when you're coming up with this Chart of Sanctions, I hope that there is a piece in there about a Duty to Intervene. In the Case #2020II004, these are the assault allegation cases that were sustained, I was curious about the timeline in terms of when the allegations were made, the investigation happened, and then the Officer resigned before receiving any disciplinary, to me this was potentially the most concerning case of all of these. I'm wondering what that timeline was. Was it short and that's why the Officer resigned?

Teresa Magula said in this particular one there was not a concern related to timeline; the exception being that the Officer had some leave period and so was unable to receive the notification of discipline. There was an opportunity perhaps for that Officer to have some self-evaluation, but it was not the Department's failure to proactively take this on in a timely way.

Councilor Bencomo said there were two big take-aways for me. There were instances of Officer-involved DUI's and perhaps domestic violence and to me that speaks to a level of mental health assessments within the Department and how we are going about that and taking that very seriously. If there are mental health care needs that are not being addressed within the Department to me that's pretty serious. The second is this pattern that you've mentioned in terms of reporting to domestic violence cases and de-escalation. This is a concern I continue to have. When we're talking about victims of domestic violence, we should be having mental health professionals and social workers respond. I know there's procedure where Police Officers are necessary and I think this Crisis Intervention Team will be able to resolve some of those concerns. I do continue to have concerns about matters of de-escalation and how the Department is addressing those and having the Officers truly own and practice that on the field.

Councilor Abeyta said I would like to recognize that we do have our Chair and former Councilor Eakman in the audience who sits on our Oversight Committee, another area where we have seen a few items come before us. I did want to mention a comment that was submitted by the Chair back in July to the Mayor, and I'll read it because it does deal with Policy and how we review. *"It would be helpful if the Oversight Committee could review the improvements recommended by the OIR through a mechanism of displaying the adoption of the recommendations, how the recommendations were implemented and whether or not improvements are indeed raising the quality of Police actions and behaviors. Without this mechanism for recording improvements and recommendations the Oversight Committee is unable to assure the City Council that the external auditor model is of benefit to the City."* I think it goes a little bit with another policy item on how information gets to you all. Do you see any gaps on if an incident occurs and how it gets to you, what are common gaps that you see within this industry and are we addressing those in your contract?

Stephen Connolly said the observations and recommendations is a very legitimate one. We thank the Oversight Committee for the observation. Within the four corners of our understanding of the City and with the Department, we get everything on a timely basis; they are following the procedure that is in place. When we have an issue or a concern, we get an immediate response when we reach out to Lieutenant Gutierrez or someone else to get some clarification. We only know what we know, and we are working within the parameters of our Scope of Work. As far as other issues that might be of concern to the Council or Community, we may have some gaps there that are relevant.

Councilor Abeyta said just to look at timelines, from the time of your review of all these cases, from the time an incident happens to the point of possible resolution, are we within standards of making sure that is happening?

Teresa Magula said I wanted to jump back to the previous question and do an add-on. The Department is tracking internally each of the recommendations that we provide. To the question of timeliness, in the first report where we spoke to you in January, we were concerned that the timelines were a little lengthy. We've seen the Department tighten that up quite a bit. We've typically been getting the cases resolved within about 90 days and we believe that's an appropriate standard.

Councilor Abeyta said for me, one of the really concerning items is that of the comments about professionalism and how it relates to everything from de-escalation to transparency. Just as we all have to be held to very high standards, this is another area that if you lose that public trust, especially in these areas, that it's very hard to get it back. I hope that we are addressing all of these issues with the seriousness that it deserves.

Mayor Miyagishima said my response to Chairman Eakman is I was going to suggest to my colleagues that that be included as part of Ifo's evaluation.

Viola Perea said I wanted to advise the Council that the current contract does allow for follow-up audits. At that point they could determine implementation of those recommendations. So we have at any point an ability to follow-up on any particular case or all the cases as deemed fit by the Council.

Mayor Pro Tem Gandara said Councilor Flores was leaning in that direction of asking more specifically what the Scope of Work entailed. I'd like to see that you in your presentation, review that with us because there's people new in the audience, people who are viewing that are not familiar. If you can include it in the packet as a one-pager that would be helpful; the Scope of Work, if you could review that with us?

Teresa Magula said our Scope of Work is limited. It is the cases that the Department has determined are external complaints, so from Members of the Public, that rise to the level of potential misconduct. So those would be any cases where the allegations could result in a violation of Department's policies / General Orders. There are other complaints that do not rise to that level of formal investigation, those are outside our Scope. The other area that we review are those internal investigations; those would be the areas where the Department has initiated through the course of their own findings, they've initiated an internal investigation. So that doesn't necessarily require a Member of the Public coming in and saying an Officer did XYZ, but rather the Department learns of potential misconduct, and it investigates internally. Those are also within our Scope.

Mayor Pro Tem Gandara asked did I hear you correctly that the Use of Force is not unless it comes within those two or three guidelines?

Teresa Magula said that's correct. If a Member of the Public alleges that excessive force was used against them, the Department internally does a Use of Force Review. As a result of the complaint, and our seeing that the Excessive Force is one of the allegations, either the Department provides or we request a Use of Force Review, so it's a whole separate stream. We will review those in those very specific cases where an allegation is related.

Mayor Pro Tem Gandara said you do this all over the nation. What in your opinion is the best contract that you have that really helps Council and people get to the crux of what their issues and concerns are?

Stephen Connolly said we have a lot of different arrangements with a lot of different jurisdictions, and we always make the point that it is not our place to say this is what you need, or this is better than this. We try to be responsive to the individual needs and preferences of the community, and one of the things about oversight in general is we've been affiliated with the National Association of Civilian Oversight of Law Enforcement, the NACOLE group that is probably the best resource nationally for all the different oversight groups. NACOLE.org. They do a lot of excellent work in terms of providing resources for communities to just say, this is what's out there and these are the different options that are available. We do have contracts with communities that are extremely robust in terms of real-time monitoring of investigations, and we do Use of Force audits for different agencies, critical incident review is a big part of our practice, obviously those high-profile incidents generate a lot of attention, and we have a lot of experience dealing holistically with those events. It really does vary, and we are very deferential to the preferences of each place that we work in.

Mayor Pro Tem Gandara said LCPD responded to 54,552 Calls for Service. As far as complaints, it was 0.06% of those Calls for Service. Do you find that statistically relevant?

Stephen Connelly said it's absolutely relevant in the sense of giving the Public and giving Council Members and giving folks like us a sense of the incredible high volume of encounters that the Police have on a daily basis, the vast majority of which are resolved effectively, professionally, and without a complaint emerging. When it comes to the number of complaints, we are interested in that, but that number alone is a starting point and not the end of the analysis. It is absolutely worth having the reminder of the very high volume of stuff that the Department's involved in.

Mayor Pro Tem Gandara said I'm interested in this SPIDR Tech. Someone hit me, it happened up here on Campo a few months back, I made the call but then you get a text that says, thank you for your call, these are the things that we are doing. We need to let the Public know that that's something that's automatic; I think it's important that our Public is aware of that. I've been concerned about the kind of training, and I know that our number of reports as it relates to Domestic Violence is on the uptick. The training, I feel like we need to take this very seriously in a number of ways. I want to lean on your expertise and experience of what other communities are doing when they see this kind of Domestic Violence in their community and what are their local PD in terms of training. I'm looking at professionalizing that training and bringing in national speakers, specifically working with our DV partners in town.

Teresa Magula said as far as what the Department is doing, I would like to defer that question to Chief and others that might have more information about the specifics of training because it's something that we do not review as part of this Scope. As far as what is happening nation-wide, much of the items that you

highlighted in your comments are what departments are trying to take on, so bringing in the community that is knowledgeable in this field: crisis intervention practitioners, social workers, others who have this professional expertise and background to potentially better handle the calls.

Mayor Miyagishima said I just sent an email to Ifo asking if the Use of Force could be added to the Scope of Work and if so, then they'll probably contact OIR for a price and then bring back a Resolution if Council wants to add that to it.

Councilor Corran said you did indicate a number of times things that I think allude to this conversation about Use of Force and de-escalation. You mentioned the temperature being increased by human interactions. I've heard from the Chief that this is really part of the conversation of what the evaluation of both discipline and the types of conversations you're having in the Use of Force Cadre. I'm curious to hear if the Chief would be willing to share some of those concrete actions that have been happening especially related to reducing the temperature of interactions.

Police Chief Miguel Dominguez said we review every Use of Force. We have an internal system called Blue Team. If an Officer has to use force at a call he submits it at the end of the day, it's reviewed by the Supervisor, and it goes all the way into IA. We have had Internal Investigations where the Use of Force reviewer would look at it and say, *"This looks like it was excessive, we need to look into it"* and then it would result in an internal investigation. The use of the Cadre puts more eyes on it, so we decided through some recommendations made by OIR to look at each Use of Force in a more robust way.

Councilor Corran said I know that there is a conversation about if there're indicators of a potential progressive interface and progressive discipline, intervening early with any Officers that might have those conditions that raise the temperature and how that works within the Department. I know you all are taking proactive steps to address that.

Police Chief Miguel Dominguez said we just had an interpersonal communications course where we had Officers that are finding themselves in Uses of Force a little more often than other Officers. So we looked at what they are doing wrong or could they de-escalate situations a little bit more effectively, could they communicate a little more effectively. This is something that we want to continue as an ongoing process for the Department.

Councilor Corran said I just want to point out that you really are triangulating your experiences, the data that exists and the feedback that you get, and I think that's really meaningful in terms of this process.

Councilor Graham said we were talking about the modification of language on the Complaint Intake Form. You'd mentioned that you were recommending removing the "*Under penalties as provided by law pursuant to …"*. Is that something that should stay on the Form legally if a complaintant would be subject to charges if they did falsely accuse an Officer? I understand the spirit of making the Form seem as open and cooperative as possible, but would that cause a problem for us if that situation did present itself?

Stephen Connelly said some of it comes down to technicalities, and I will tell you in California Law we have literally been going through this issue with different agencies for 20 years. Case Law has flipped back and forth with people making First Amendment claims and it actually is a good question and a complicated question. We can do some research and get back to you. Our emphasis is on the chilling aspect of it, but you make a very fair point that there should be a fair warning component if they are subject to prosecution for using the System irresponsibly.

Councilor Graham said yes, I'd appreciate follow-up on that. I just want to add my voice to the spirit of collaboration and that we as a City are trying to address this on so many different fronts, because I don't want it to be something that is just pointed at the Police Department when, in fact, they're responding to symptoms of much larger challenges that are going on. I'm happy that the conversation evolved in a way that is recognizing that as well.

3.2 PUBLIC COMMENT REGARDING OIR GROUP AUDIT.

There was no Public Comment.

Councilor Bencomo said I vaguely remember us having a conversation last time about the issue of body worn cameras and them not being turned on. There was some sort of software we had discussed about voice-activated or something. I'm curious if there's follow-up on that.

Police Chief Miguel Dominguez said we're still trying to get the funding put together so we can get that technology. We have some quotes that we're working on. As far as our policies on the body worn cameras, they pretty much got to be on almost all the time. Because of the Legislation and the technology coming together at the same time, newer Officers have no issues. It took a while to get the older Officers used to doing it, but we're seeing the instances where the cameras aren't activated really reduced.

Councilor Bencomo asked the Cadre that is being formed, seven people, all in the Department?

Police Chief Miguel Dominguez said that's correct. They're Use of Force experts that go through specialized training so that they can take a closer look at Uses of Force and match them up to policy, case law, things of that nature.

Councilor Bencomo said I understand that it's highly technical and you'd have to be trained to really understand those pieces. I think it's important for me to note that often where there's lack of trust between Community and the Department in terms of who's overseeing what and it continues to be Police Officers overseeing Use of Force by Police Officers. I'm curious if there's any room on this Cadre for Citizen participation.

Police Chief Miguel Dominguez said we'd have to have that conversation internally. The Cadre looks at it from a Law Enforcement perspective. We have

seen violations and they have led to internal investigations and discipline. So we do have a very good internal system in my opinion.

Councilor Bencomo said there is conversation happening right now in our Community about Citizen Oversight and just wondering where there is room for improvement in terms of communication. On the other side there's a perception that there's very little transparency.

3.3 PROGRESS REPORT ON REALIZE LAS CRUCES

Katherine Harrison-Rogers, Senior Planner introduced the topic.

Erica Craycraft, Freese and Nichols gave an overhead presentation.

3.4 AUTOMATED SPEED ENFORCEMENT.

Lieutenant Sean Mullen, Traffic Section, LCPD gave an overhead presentation.

Councilor Graham asked we had these at some point, right?

Lieutenant Sean Mullen said back 2010 era we had red-light cameras, and that was a red-light and speed enforcement incorporated into one.

Councilor Graham asked I specifically remember one intersection of Lohman and Walnut?

Lieutenant Sean Mullen said yes.

Councilor Graham asked why did we move away from them?

Lieutenant Sean Mullen said in speaking with those who were there before my time, my understanding is that the Program was done away at the request of Council and the Community.

Mayor Miyagishima said it was Redflex, and it was actually working out quite well. Unfortunately, there were some cities that they had found that some of the higher ups in the company were doing some things with some of the elected officials that they weren't supposed to, and the Council didn't think that the company would be around, so we got rid of them. It really changed the behavior of people running red-lights.

Councilor Graham said I'm interested to hear the rest of the conversation. That intersection popped in my mind, that's currently in my District and I know it's an intersection of concern for Lynn Middle School, particularly before and after school when some students need to cross. It's a long intersection.

Mayor Miyagishima said the money didn't go to the General Fund it went to Public Works to help with the roads. A lot of cities use it for generating revenue, but it went to Public Works for Streets and improvements. We didn't do it to raise money, we did it to slow down traffic and avoid accidents. I'm a big supporter of it.

Councilor Bencomo said I have a lot of concerns about these cameras. I'm curious if the Department has a leaning whether you all support something like this.

Deputy Chief Paul Brock, LCPD said I would have to say that the Department is remaining neutral.

Councilor Bencomo said I think there's been plenty of constituents that have reached out to me about speeding down Hoagland or McClure, so I'm not necessarily against this, especially if funds go towards Public Works for traffic calming measures. For me, some of the biggest concerns are around where you place the cameras. Low-income communities are often disproportionately impacted by these kinds of fees and fines, and then they're the folks that have the harder time paying for their tickets that then lead to Driver's License suspension; it causes a ripple effect for low-income individuals, low-income families that I particularly have a concern with. I imagine this will be a pretty expensive endeavor. Do you have analysis of cost?

Lieutenant Sean Mullen said as far as communities that would be disproportionately targeted by the system, the system is intended to look for speed violators, not a specific vehicle type, driver. As far as cost, a tier-based system is one option, also a flat-fee system. My understanding from reading Albuquerque's contract is they pay $7,900 per camera, per month.

Councilor Bencomo said I think this conversation goes hand-in-hand with traffic calming measures. I'd be curious to hear from you all about the kinds of resources that Public Works has in order to implement traffic calming infrastructure and measures. Just curious if you feel like right now what kind of capacity you have, resources, in order to address traffic calming infrastructure.

Lieutenant Sean Mullen said I can take the first half of that question from a Police Department standpoint. When we look at speed in a given area as a problem, we try and monitor that up front and see what we can do with a law enforcement perspective before we turn it over to infrastructure. A great example of how we worked together to accomplish that goal is Alameda Street. Speed was a concern, we had our Traffic Unit out there monitoring it, trying to enforce as peak hours permitted; it wasn't enough. Public Works was able to come and do a road diet on the street and it really brought the speeding down.

David Sedillo, Public Works Director said we do follow a step process, we call them the Three E's: Education first, to educate the Public on those types of issues; Enforcement of that Education; and then lastly the solution is Engineering. That was a perfect example of that working. Budgeted, we have about $60,000 a year to address any traffic calming issues that are reported from the Public that go through the process in our Municipal Code. However, as we do our reconstruction projects we look at those traffic calming measures as we go through and we improve where we do full reconstructions of roadways.

Councilor Bencomo asked you said $60,000 per year for traffic calming? Do you usually go through that?

David Sedillo said typically we do, based on the requests.

Councilor Bencomo said I do feel like there are a number of alternatives to this system that I think we need to get smarter about like traffic calming Infrastructure. I know we have significant issues, I just think that there are alternatives that we need to be looking at or perhaps implementing at the same time as these cameras that can be in hot zones.

Jennifer Vega, City Attorney said this is not a criminal action, it's a civil nuisance abatement action. It would not go on anybody's criminal record, it's a civil nuisance abatement action that would begin at an administrative level and go on to the District Court on appeal. There are several things that we would have to ensure in order to survive a possible constitutional challenge which is the placement in arbitrary and capricious manner. My suggestion would always be to make sure that the technology is placed based on statistical data, crash analysis and that's where you want to focus.

Councilor Flores said my biggest concern is the calibration and I think it would be expensive. I think we should hire more Police Officers on motorcycles. I'm against it.

Councilor Abeyta said I noticed for New Mexico Law, jurisdictions that use red-light cameras must also install signs and yellow flashing beacons or rumble strips to ward drivers the cameras are operating at the intersection. So I'm curious if we'd have to put in something like that too for a speeding one?

Mayor Miyagishima said we actually did have rumble strips on Lohman; you would go over it and you knew a camera was coming up.

Lieutenant Sean Mullen said there was also signs posted that said there was photo enforcement.

Councilor Abeyta asked if we're going to have a cost analysis, will all those elements be included with how much it would take to operate this type of program?

Lieutenant Sean Mullen said in speaking with Rio Rancho, their Program is entirely violator funded. We can do a cost breakdown if you decide that you want to proceed.

Councilor Abeyta asked are there considerations that we still need to take in if we were to install this type of equipment?

Jennifer Vega said there are several things we would have to introduce, an Ordinance that supports it, we would have to invoke Home Rule Authority in abating this nuisance. The important part is to make sure that the funds are dedicated usually to whatever purpose you would like.

Mayor Miyagishima said we're not looking to vote on this right away. I think it would be beneficial at least to see which companies would be willing to do this and how much it would cost. I guess I look back at the old system and it didn't cost us anything and it helped public safety. It did slow down the behavior of running red-lights. Albuquerque, are they using the same that Rio Rancho is because I know Albuquerque just went to this about three months ago.

Lieutenant Sean Mullen said Albuquerque uses a company called NovoaGlobal and Rio Rancho uses Redflex. To speak to your comment about cost, the National Roadway Safety Strategies implemented earlier this year dedicated funding to automated speed safety cameras, and Albuquerque and Rio Rancho both employ a model where if you cannot afford the citation there's community service options.

Councilor Corran said I think my constituents really do wish there were less speeders in their neighborhoods, and I understand that this will actually not change that at all. I think we probably need to come up with some more meaningful solutions for neighborhood traffic calming. If we did continue this conversation, I would hope to see data not just related to the relative safety or the efficacy of reducing crashes, but I would like to see that compared to some other strategies that might exist.

Mayor Miyagishima asked how do you want to continue the conversation?

Councilor Corran said if we were looking at all of the options for how we're reducing speed, I would like to know in the context of how all of the data that was presented related to reducing speed. What are the other things we can do to reduce speed? And I would want a conversation about these to be contextualized with other options for reducing speed or making the streets safer in whatever ways we possibly can and the costs and the benefits to those. I would like to have more context to the conversation. But if someone asked me that in a forum I would say no, I don't support them.

Mayor Pro Tem Gandara said I'd like to move forward with the conversation. I'd like you to address those areas where we are seeing speeding, fatalities, crashes, those things. I think that information is important to us. I'd like some collaboration and coordination on the presentation from Public Works with all the number of things that we have implemented in our Community and some analysis, whether that has reduced the speed overall. Will you please go back to our statistics? We should be very concerned about this. I think the general feeling overall is people would like this to come back. I'd like to see it come back with a number of data points and departments presenting on this, and maybe a national look, a comparison of cities that don't have it and cities that do and has that actually reduced the speeding and the fatalities and such.

Councilor Bencomo said I guess there's two different conversations to be had and that's whether something like this will work at major intersections versus traffic calming within neighborhoods. Maybe that's the next work session on traffic calming, how are we educating the public? How are we working with neighborhoods that have come to us? I just think we're having two separate conversations.

Councilor Flores said I am against having those red lights, I am not against education. It would be education and I think all of us up here are trying to find ways to make our streets safer. I think it's an issue that should be discussed insofar as education. I think everybody's concerned about safety.

Mayor Miyagishima said I'm also concerned about Officer safety. I see where Officers are merely pulling people over are being attacked or shot at. We've got to protect our employees but yet we have to make our streets as safe as possible for the drivers. Regarding traffic calming, I know there was a time where the City didn't like speed humps and I have seen them on occasion. What's been the policy on that lately?

David Sedillo said we've moved away from speed humps on roadways, more specifically residential roadways. Our Code does not allow traffic calming measures that we use on local streets for collectors and arterials. Based on the Municipal Code, we only address those within the residential areas. We have thus moved forward with speed tables and speed cushions. Speed tables are a lot longer, have more of a gradual slope as you come up to them, they top out at a certain height, and they go back down. Speed cushions do allow a gap in between that to allow for emergency vehicles to get through there as they're responding. Those are the types of improvements that we've done as far as going from speed humps to speed tables and speed cushions.

Councilor Flores said I think that we should have a Work Session on safety. I don't think there's a lot of consensus. There had to have been a good reason why the City got rid of it before. When there's a traffic violation now, does some of the money that gets collected go to our City?

Jennifer Vega said several years ago there was a change to the law that required that if you had red-light cameras, that that revenue would have to go to the State. So, it would be deposited into the State's General Fund and the City would only get a portion of that. So a lot of cities started eliminating the red-light cameras because of that. There is a provision in the State Law for the nuisance abatement, so those are mobile vans, and they cannot be placed on State Highways or State Roads, they have to be on local roads and local highways.

Councilor Flores said I don't think that this is going to take care of all the traffic problems that we have in the City, and I would think the money that we would spend on this isn't going to justify that it isn't serving every corner of our City.

Mayor Miyagishima asked so what am I hearing? Do we ask that they bring back information with costs and certain areas where they have crashes? And if we were to move in that direction this is where they would be placed? And this is how much it's going to cost? Just like we did before. They took the five top intersections that had the most crashes. They brought the information to Council and Redflex said we can install these cameras and it was all at their cost; it didn't cost the City anything. That's what I was wanting to at least see.

George Pearson, Volunteer Safe Routes to School said I hope you can look at the mobile options so that you can set these up for reinforcement in school zones

because that is a big problem throughout the City. As I remember with the red-light cameras, the State mandated a $100 maximum and $50 of that went straight to the State. As far as the funding from the Stop Program, I don't remember any street improvements, no new bicycle lanes were built because of the Stop funds but we did purchase Police cars. Part of the discussion that was lightly covered was equity; as you build the Ordinance you should have a consideration maybe income level-based fines. As far as the three E's, it should be Education, Enforcement, and Reengineering. Engineering's already failed.

4. ADJOURNMENT

4.1 Councilor Becki Graham moved, seconded by Councilor Johana Bencomo, to Adjourn at 4:07 p.m.

RESULT:	**Carried**
MOVER:	Councilor Becki Graham
SECONDER:	Councilor Johana Bencomo
AYES:	Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Johana Bencomo, Councilor Yvonne Flores, Councilor Becki Graham, and Councilor Becky Corran

Mayor

City Clerk

23-025

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

City Council Action and Executive Summary

District:	**☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A**		
1st Reading:		**Adopted:**	September 6, 2022
Drafter:	Dave Duncan	**Department:**	Financial Services
Program:	Procure to Pay	**Line of Business:**	Purchasing

Title: **A RESOLUTION TO AWARD CONTRACTS FOR MECHANICAL ENGINEERING SERVICES ON AN AS-NEEDED BASIS TO BOHANNAN HUSTON, INC. AND PIPELINE STRATEGIES & INTEGRITY DBA PSI, LLC, IN AN AMOUNT NOT TO EXCEED $500,000.00 ANNUALLY FOR EACH, FOR A PERIOD OF ONE (1) YEAR WITH THE OPTION TO EXTEND FOR THREE (3) ADDITIONAL ONE-YEAR TERMS, SUBJECT TO ANNUAL RENEWALS AND APPROVED BUDGET APPROPRIATIONS (PROCUREMENT NO. 21-22-067).**

TYPE OF ACTION: **☒ Administrative** **☐ Legislative** **☐ Quasi-Judicial**

PURPOSE(S) OF ACTION:

To award contracts for mechanical engineering services.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

On March 18, 2022, the Project Development Section of the Public Works Department requested proposals for mechanical engineering services. The Purchasing Section received two (2) proposals that were evaluated and scored by the Selection Advisory Committee (SAC). The SAC is recommending award to both rated firms as follows:

1. Bohannon Huston, Inc. – Las Cruces, New Mexico
2. Pipeline Strategies & Integrity dba PSI, LLC – Colorado Springs, Colorado

These services are required to perform design functions that include, but are not limited, to the following: design of HVAC, gas, plumbing, fire protection systems, and energy conservation programs. The purpose of the mechanical engineering services Request for Proposals is to pre-qualify multiple engineering firms that can provide these specialized engineering services.

These proposed service agreements will be used on an as-needed basis for a period of up to four (4) years, subject to annual renewals and approved budget appropriations. It is advantageous for the City to have a pre-qualified list of mechanical engineers from which to select, in order to get budgeted projects completed. All departments from the City will be able to enter into individual Project Assignment Agreements with these engineering firms on an as-needed basis. The Public Works Department has numerous projects budgeted throughout upcoming fiscal years. There are also times when special funding (e.g. Legislative appropriations, New Mexico Department of Transportation, etc.) is made available to the City for specific projects. The funding sources often give strict timeframes within which improvements must be designed and constructed in order to secure the funding. By having pre-qualified engineers, it will not be necessary to go through individual Requests for Proposals in order to contract the necessary work for each individual project. These agreements will allow

Public Works to contract with either of the pre-qualified firms. As a result, valuable time is saved in the design of each project and staff time can be used on other projects and in other capacities.

SUPPORT INFORMATION:

Exhibit A - 21-22-067 Mechanical Engineering Services Bohannon
Exhibit B - 21-22-067 Mechanical Engineering Services PSI

PLAN(S):

Department Strategic Business Plan, Elevate Las Cruces

COMMITTEE/BOARD REVIEW:

SAC

ANNUAL BUDGET APPROVAL:

☒ Yes
☐ No
☐ N/A

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT:	AVAILABLE AMOUNT:	EXPENDITURE AMOUNT:

Additional Budgetary Information:
VARIOUS

Funding Source(s):
Various departments will utilized this contract for different capital improvement projects with funds that have already been budgeted.

Does this action amend the Capital Improvement Plan (CIP)?

☐ Yes
☒ No
☐ N/A

Does this action align with Elevate Las Cruces?

☒ Yes
☐ No
☐ N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution and award contracts to the two (2) selected pre-qualified firms, to provide mechanical engineering services for the City on an as-needed basis, to each firm for an amount up to $500,000.00 annually, for the next four years subject to annual renewals and approved budget appropriations.
2. Vote "No"; this will not approve the Resolution, and City Council will need to provide staff with alternative direction.
3. Vote to "Amend"; this could modify the Resolution based on City Council direction to staff.
4. Vote to "Table"; this could delay awarding contracts for mechanical engineering services and prevent completion of budgeted projects.

REFERENCE INFORMATION:

RESOLUTION 23-025

A RESOLUTION TO AWARD CONTRACTS FOR MECHANICAL ENGINEERING SERVICES ON AN AS-NEEDED BASIS TO BOHANNAN HUSTON, INC. AND PIPELINE STRATEGIES & INTEGRITY DBA PSI, LLC, IN AN AMOUNT NOT TO EXCEED $500,000.00 ANNUALLY FOR EACH, FOR A PERIOD OF ONE (1) YEAR WITH THE OPTION TO EXTEND FOR THREE (3) ADDITIONAL ONE-YEAR TERMS, SUBJECT TO ANNUAL RENEWALS AND APPROVED BUDGET APPROPRIATIONS (PROCUREMENT NO. 21-22-067).

The City Council is informed that:

WHEREAS, the Project Development Section of the Public Works Department requested proposals for mechanical engineering services in March of 2022; and

WHEREAS, these services are required to perform design functions that include, but are not limited, to the following: design of HVAC, gas, plumbing, fire protection systems, and energy conservation programs; and

WHEREAS, the purpose of the mechanical engineering services Request for Proposals is to pre-qualify multiple engineering firms that can provide these specialized engineering services; and

WHEREAS, these agreements will be used on an as-needed basis for a period of up to four (4) years, subject to annual renewals and approved budget appropriations; and

WHEREAS, the Purchasing Section received two (2) proposals that were evaluated and scored by the Selection Advisory Committee (SAC); and

WHEREAS, the SAC is recommending award to both firms as follows: Bohannan Huston, Inc. of Las Cruces, New Mexico, and Pipeline Strategies & Integrity dba PSI, LLC of Colorado Springs, Colorado.

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NOW, THEREFORE, Be it Resolved by the Governing Body of the City of Las Cruces:

(I)

THAT the contracts for mechanical engineering services are hereby awarded to Bohannan Huston, Inc. of Las Cruces, New Mexico, and Pipeline Strategies & Integrity dba PSI, LLC of Colorado Springs, Colorado, as shown in Exhibits “A” and “B”, respectively, attached hereto and made part of this resolution.

(II)

THAT City staff is hereby authorized to do all deeds as necessary in the accomplishment of the herein above.

DONE AND APPROVED this day of

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

Exhibit A

21-22-067
Mechanical Engineering Services

City of Las Cruces®

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into on this ____ day of August, 2022 by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and Bohannon Huston, Inc., of 425 South Telshor Blvd, Suite C-103, Las Cruces, NM 88011, hereinafter called "ENGINEER".

1. PROJECT DESCRIPTION
On Call Mechanical Engineering Services on an as needed basis via Project Assignment Agreements (Attachment A) during the term of this agreement.

2. SCOPE OF SERVICES
In a satisfactory and proper manner, the ENGINEER shall perform SERVICES, as proposed in response to the CITY'S RFP No. 21-22-067, as set forth in Exhibit A, attached hereto and made a part of this Agreement.

The CONTRACTOR is authorized to extend the same terms and conditions of this Agreement to other governmental entities conditioned upon the procurement laws and regulations of those entities. The CITY shall not be a party nor have any liability relating to such extensions.

3. APPROPRIATIONS
The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement shall terminate upon written notice given by the CITY to ENGINEER. The CITY'S decision as to whether sufficient appropriations and authorizations exist shall be accepted by ENGINEER and shall be final.

4. COMPENSATION
The CITY shall compensate ENGINEER for the performance of SERVICES under this Agreement an amount agreed to for each assigned project, plus applicable taxes. ENGINEER shall perform the SERVICES upon receipt of a purchase order or written Notice to Proceed for each assigned project from the CITY. The CITY cannot authorize costs to be incurred prior to such written Notice to Proceed. CITY shall pay invoices Net 30 days upon receipt of undisputed invoice.

ENGINEER is responsible for payment of State of New Mexico Gross Receipts Tax levied on the amounts payable under this Agreement. ENGINEER agrees to comply with all federal and state tax payments and report all items of gross receipts as income from the operations of its business.

5. DEVOTION OF ADEQUATE TIME
ENGINEER will devote the necessary hours each week to the performance of projects that are required by the CITY and it will serve the CITY diligently and faithfully, and according to its best ability in all respects and will promote the best interests of the CITY.

6. TERM AND SCHEDULE
This Agreement shall become effective on August 1, 2022 for a term of one year through July 31, 2023 and, pending mutual written agreement, may be extended annually thereafter for up to three (3) additional one (1)-year terms.

ENGINEER shall perform the SERVICES in accordance with the time set forth as agreed upon by the CITY and ENGINEER in as agreed to for each project assigned under the terms of this Agreement.

7. EXTENSIONS, CHANGES, AND AMENDMENTS
This Agreement shall not be extended, changed, or amended except by instrument in writing executed by the parties. The CITY shall not be liable for payment of any extra services nor shall ENGINEER be obligated to perform any extra services except upon such written agreement. Such written approval shall indicate the date said extension, change, or amendment is effective and shall be signed by the parties to this Agreement. In the event that the parties cannot reach agreement as to a particular change, the issue shall be resolved pursuant to Article 21.

8. CHANGES AND EXTRA SERVICES BY THE CITY
The CITY may make changes within the general scope of the SERVICES plus may also request ENGINEER to perform other extra services not incorporated within the Services set forth in this Agreement. If the ENGINEER is of the opinion that such change causes an increase or decrease in the cost and/or the time required for performing the changes or other services required by the City, ENGINEER shall so notify the CITY of that fact within five (5) business work days from the date of receipt of change by the CITY. The CITY shall provide written response to the ENGINEER within five (5) business work days from the date of receipt of ENGINEER written notification.

9. CHANGES AND EXTRA SERVICES BY THE ENGINEER
In the event a condition is identified by the ENGINEER which, in the opinion of the ENGINEER, changes the services, costs, and/or time required for performance under this Agreement, the ENGINEER shall provide written notification to the CITY within five (5) business work days of such identification. The CITY shall respond in writing to such notification within five (5) business work days from the date of receipt of ENGINEER'S notification.

10. DELAYS
In the event that performance of SERVICES is delayed by causes beyond reasonable control of ENGINEER, and without the fault or negligence of ENGINEER, the time and total compensation for the performance of the SERVICES may be equitably adjusted by

written agreement to reflect the extent of such delay. ENGINEER shall provide the CITY with written notice of delay pursuant to Article 9 including therein a description of the delay and the steps contemplated or actually taken by ENGINEER to mitigate the effect of such delay. The CITY will make the final determination as to reasonableness of delays.

11. TERMINATION

This Agreement may be terminated by either party hereto upon fifteen (15) calendar days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. This Agreement may also be terminated by the CITY for its convenience or because the PROJECT has been permanently abandoned, but only upon fifteen (15) calendar days written notice to ENGINEER.

In the event of termination, ENGINEER shall be compensated for all services performed and costs incurred up to the effective date of termination for which ENGINEER has not been previously compensated.

Upon receipt of notice of termination from the CITY, ENGINEER shall discontinue the SERVICES unless otherwise directed and upon final payment from the CITY deliver to the CITY the required number of copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by ENGINEER in the performance of this Agreement, whether completed or in process.

12. RECORDS AND AUDITS

ENGINEER will maintain records indicating dates, length of time, and services rendered. The CITY has the right to audit billings both before and after payment, and contest any billing or portion thereof. Payment under this Agreement does not foreclose the CITY'S right to recover excessive or illegal payments. ENGINEER will retain records for five (5) years after the completion of the project.

13. DISCLOSURE AND OWNERSHIP OF DOCUMENTS, PRODUCTS, DESIGN, ELECTRONIC FILES

All technical data, electronic files, and other written and oral information not in the public domain or not previously known, and all information, electronic files, and data obtained, developed, or supplied by the CITY will be kept confidential and ENGINEER will not disclose to any other party, directly or indirectly, without the CITY'S prior written consent unless required by lawful order.

All technical data, electronic files, products developed, operational parameters, blueprints, and other information and work of the ENGINEER shall be the sole property of the CITY and shall be delivered to the CITY when requested and at the end of the Agreement.

14. INDEPENDENT CONTRACTOR
ENGINEER represents that it has, or will secure, at its own expense, all personnel required in performing the SERVICES under this Agreement. Such personnel shall not be employees of, nor have any contractual relationship with the CITY. ENGINEER, consistent with its status as an independent contractor, further agrees that its personnel will not hold themselves out as, nor claim to be officers or employees of the CITY by reason of this Agreement.

To the extent that ENGINEER employs any employees, ENGINEER shall be solely responsible for providing its own form of insurance for its employees and in no event shall ENGINEER'S employees be covered under any policy of the CITY.

ENGINEER'S retention hereunder is not exclusive. Subject to the terms and provisions of this Agreement: (i) ENGINEER is able, during the Term hereof, to perform services for other parties; and (ii) ENGINEER may perform for its own account other professional services outside the scope of this Agreement.

ENGINEER is and shall be an Independent Contractor and shall be responsible for the management of its business affairs. In the performance of the work under this Agreement, ENGINEER will at all times be acting and performing as an Independent Contractor, as that term is understood for federal and state law purposes, and not as an employee of the CITY. Without limitation upon the foregoing, ENGINEER shall not accrue sick leave, jury duty pay, retirement, insurance, bonding, welfare benefits, or any other benefits, which may or may not be afforded employees of the CITY. ENGINEER will not be treated as an employee for purposes of: Workers' Compensation benefits; the Federal Unemployment Tax Act; Social Security; other payroll taxes, federal or any state income tax withholding; or the employee benefit provisions described in the Internal Revenue Code of 1986, as amended. Neither the CITY, nor its agents or representatives, shall have the right to control or direct the manner, details or means by which CONTRACTOR accomplishes and performs its services. Nevertheless, ENGINEER shall be bound to fulfill the duties and responsibilities contained in the Agreement.

15. NO JOINT VENTURE OR PARTNERSHIP
Nothing contained in this Agreement shall create any partnership, association, joint venture, fiduciary or agency relationship between ENGINEER and CITY. Except as otherwise specifically set forth herein, neither ENGINEER nor CITY shall be authorized or empowered to make any representation or commitment or to perform any act which shall be binding on the other unless expressly authorized or empowered in writing.

16. ASSIGNMENT
ENGINEER shall perform all the services under this Agreement and shall not assign any interest in this Agreement or transfer any interest in same or assign any claims for money due or to become due under this Agreement without the prior written consent of the CITY.

17. INSURANCE
ENGINEER shall obtain and maintain insurance at its own cost and expense during the life of this Agreement, and shall require Subcontractors, if any, to maintain during the life of his subcontract:

1. General Liability Insurance
   a. $1,000,000 per occurrence / $2,000,000 aggregate
   b. Coverage must include premises and operations, products and completed operations, and personal and advertising injury.
   c. The City of Las Cruces must be named as an Additional Insured for all coverages listed above on endorsements acceptable to the City.
   d. Coverage must be primary and non-contributory.
   e. Coverage must be per project or per location.
   f. Coverage must be on an occurrence form.
   g. Subrogation must be waived.
2. Commercial Auto Liability
   a. $1,000,000 per occurrence
   b. Coverage must be for "owned, leased, hired, and non-owned autos" or "any autos."
3. Workers Compensation and Employers Liability
   a. Statutory Limits
   b. Employer liability – $1,000,000 each accident, $1,000,000 each employee by disease, $1,000,000 policy limit
   c. Subrogation must be waived.
4. Professional Liability: $1,000,000 per claim

Endorsements for additional insured coverage and waivers of subrogation must be provided as a condition of this Agreement and shall be noted on the certificate.

ENGINEER shall furnish the CITY with a certificate(s) of insurance showing ENGINEER and Subcontractors, if any, have complied with this Article. The ENGINEER shall provide insurance certificates before work is to start on the project and shall provide the CITY thirty (30) days written notification of cancellation of such policies.

18. INDEMNITY AND LIMITATION
ENGINEER shall indemnify, defend, and hold harmless the CITY from and against any and all claims, suits, actions, judgments, demands, losses, costs, expenses, damages, and liability caused solely by, resulting solely from, or arising solely out of the negligent acts, errors, or omissions of ENGINEER, its officers, employees, agents, or representatives in the performance of SERVICES under this agreement.

19. APPLICABLE LAW
This Agreement and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico applicable to Agreements between

New Mexico parties made and performed in that state, without regard to conflicts of law principles. Venue shall be in the Third Judicial District, State of New Mexico.

ENGINEER shall abide and be governed by all applicable state law, CITY ordinances, and laws regarding the ENGINEER'S services or any work done pursuant to this Agreement, including anti-discrimination.

20. BREACH
In the event ENGINEER breaches any obligation contained in this Agreement, prior to instituting any action or dispute resolution procedure, the CITY shall give ENGINEER written notice of such breach. In the event ENGINEER fails to remedy the breach within five (5) working days of receiving such written notice, the CITY, at its sole discretion, without any obligation to do so and in addition to other remedies available under applicable law, may remedy ENGINEER'S breach and recover any and all costs and expenses in so doing from ENGINEER.

21. DISPUTE RESOLUTION
In the event that a dispute arises between CITY and ENGINEER under this Agreement or as a result of breach of this Agreement, the parties agree to act in good faith to attempt to resolve the dispute.

22. NOTIFICATION
All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if served by Registered Mail addressed as follows:

TO CITY:	City of Las Cruces PO Box 20000 Las Cruces, NM 88004 ATTENTION: Tony Trevino, PE CFM, Deputy Director PW
With Copies to:	City Attorney Purchasing Manager
TO ENGINEER:	Bohannon Huston, Inc. 425 South Telshor Blvd, Suite C-103 Las Cruces, NM 88011 ATTENTION: Matthew Thompson, PE, Sr. Vice President

23. SCOPE OF AGREEMENT
This Agreement incorporates all of the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof and that all such covenants, agreements, and understandings have been merged into this written agreement. No prior agreement or understanding verbal or otherwise of the parties or their agents shall be valid or enforceable unless embodied in this agreement.

24. SEVERABILITY
The parties agree that each provision of this Agreement is severable and the invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

25. CONFLICT OF INTEREST
ENGINEER represents and warrants that ENGINEER has no business, professional, personal, or other interest, including, but not limited to, the representation of other clients, that would conflict in any manner or degree with the performance of its obligations under this Agreement. If any such actual or potential conflict of interest arises under this Agreement, ENGINEER shall immediately inform the CITY in writing of such conflict. If, in the reasonable judgement of the CITY, such conflict poses a conflict to and with the performance of ENGINEER'S obligations under this Agreement, or is otherwise a violation of the CITY'S current policy or ordinances, then the CITY may terminate the Agreement immediately upon written notice to ENGINEER; such termination of the Agreement shall be effective upon the receipt of such notice by ENGINEER.

BOHANNON HUSTON, INC.

BY: _____
Matthew Thompson, PE
Senior Vice President

_____
Date

CITY OF LAS CRUCES

BY: _____
Alfredo R. Pacheco
Interim Purchasing Manager

_____
Date

APPROVED AS TO FORM

_____ 8/8/22
City Attorney

21-22-067
Mechanical Engineering Services

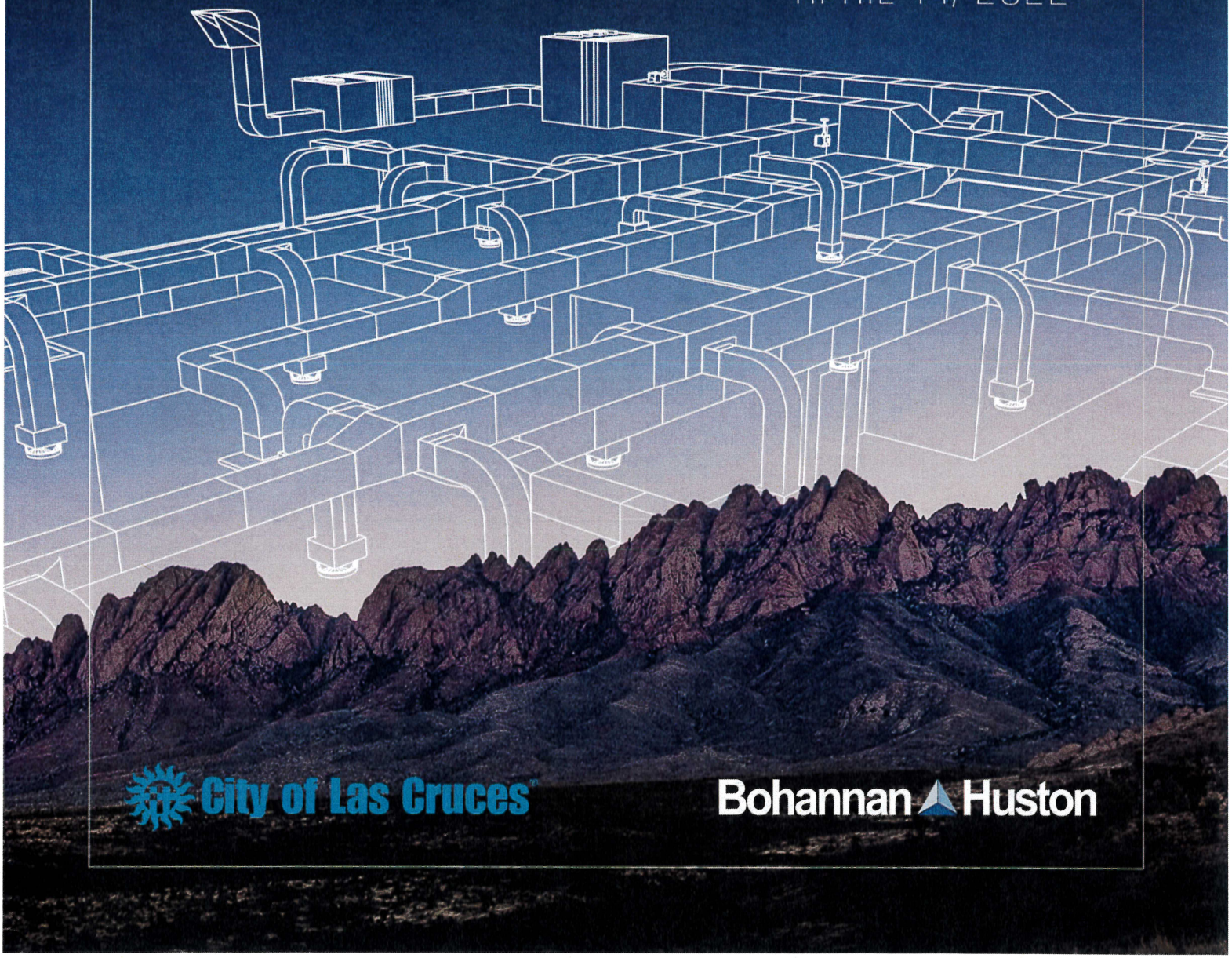
EXHIBIT A

SERVICES

MECHANICAL ENGINEERING SERVICES

COST PROPOSAL

RFP# 21-22-067
APRIL 14, 2022



City of Las Cruces

Bohannan Huston

Bohannan Huston

Cost Proposal

Category	Rate	Unit
1. Direct costs	At Cost	
2. Indirect costs	At Cost	
3. Labor (hours) by major tasks		
a. Principal Engineer	$ 245	Hourly
b. Project Engineer/Project Manager	$ 220	Hourly
c. Senior Engineer	$ 185	Hourly
d. Design Engineer	$ 160	Hourly
e. Engineer Intern	$ 125	Hourly
f. Engineer Technician	$ 120	Hourly
g. Drafting Technician	$ 110	Hourly
h. Survey Crew	TBD	Hourly
i. Construction Inspector/Observer	$ 120	Hourly
j. Administrative/Clerical	$ 100	Hourly
k. Field testing & investigations	TBD	Hourly
l. Subcontractor cost markup (percent)	10%	Hourly
4. Materials/Reimbursable Expenses	At Cost	
Travel (Per Diem – per day)	$ 150	
Vehicle Mileage Rate (per mile)	IRS Std 2WD Rate	
Printing/Reproduction	Invoiced at cost	Per copy
5. Equipment	$ 25	Hourly
6. Subcontractors	TBD if needed	
7. Any other proposed costs on a case by case basis		

ATTACHMENT A

City of Las Cruces

PROJECT ASSIGNMENT AGREEMENT

21-22-066 MECHANICAL ENGINEERING SERVICES

PROJECT NAME

Pursuant to terms and conditions of City of Las Cruces (CITY) Contract No. 21-22-067 dated (insert date of execution), 2022 between the CITY and Bohannon Huston, Inc., (ENGINEER), as amended and incorporated herein by reference, the City and Engineer hereby agree on this _____ day of _____, 20___, as follows:

1. In a satisfactory and proper manner, the ENGINEER shall perform SERVICES as proposed in response to the CITY's RFP No. 21-22-067 and ENGINEER's proposal as set forth in ATTACHMENT A attached hereto.

2. Insurance (select the appropriate clause below, delete the other):
(for non-construction projects)
ENGINEER agrees to maintain a Commercial General Liability policy with limits not less than $1 million per occurrence and $2 million aggregate limits. The City of Las Cruces is to be named as an additional Insured. Evidence of coverage must be on an Acord 25 Certificate of Insurance with attached Additional Insured Endorsement.

   (for construction, maintenance, installation projects)
ENGINEER agrees to maintain a Commercial General Liability policy with limits not less than $1 million per occurrence and $2 million aggregate limits. Coverage must include Premise and Operations, Products and Completed Operation and Personal and Advertising Injury coverage. Aggregate limits must be "per project" or "per location". Coverage must be primary and non-contributory before any other insurance or self-insurance. The City of Las Cruces is to be named as an additional Insured. Evidence of coverage must be on an Acord 25 Certificate of Insurance with attached Additional Insured Endorsement.

3. The estimated completion date is number days after a Notice to Proceed is issued by the CITY to the ENGINEER.

4. In consideration for the satisfactory completion of the work agreed to herein, compensation shall be made in the amount of $ dollars.cents, plus NMGRT. Invoices issued by the ENGINEER shall be made monthly / upon completion of project with payment by the CITY being made within 30 days upon receipt of undisputed invoice.

(SIGNATURE BLOCK FOLLOWS ON NEXT PAGE)

BOHANNON HUSTON, INC.

By: _____
Signature Date

_____
Print Name and Title

Requisition No. XXXXXXXX

CITY OF LAS CRUCES

By: _____
Signature Date

Alfredo R. Pacheco, Interim Purchasing Manager

Exhibit B

21-22-067
Mechanical Engineering Services

City of Las Cruces®

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into on this ____ day of August, 2022 by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and Pipeline Strategies & Integrity dba PSI, LLC, of 110 S. Sierra Madre St., Colorado Springs, CO 80903, hereinafter called "ENGINEER".

1. PROJECT DESCRIPTION
On Call Mechanical Engineering Services on an as needed basis via Project Assignment Agreements (Attachment A) during the term of this agreement.

2. SCOPE OF SERVICES
In a satisfactory and proper manner, the ENGINEER shall perform SERVICES, as proposed in response to the CITY'S RFP No.21-22-067, as set forth in Exhibit A, attached hereto and made a part of this Agreement.

The CONTRACTOR is authorized to extend the same terms and conditions of this Agreement to other governmental entities conditioned upon the procurement laws and regulations of those entities. The CITY shall not be a party nor have any liability relating to such extensions.

3. APPROPRIATIONS
The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement shall terminate upon written notice given by the CITY to ENGINEER. The CITY'S decision as to whether sufficient appropriations and authorizations exist shall be accepted by ENGINEER and shall be final.

4. COMPENSATION
The CITY shall compensate ENGINEER for the performance of SERVICES under this Agreement an amount agreed to for each assigned project, plus applicable taxes. ENGINEER shall perform the SERVICES upon receipt of a purchase order or written Notice to Proceed for each assigned project from the CITY. The CITY cannot authorize costs to be incurred prior to such written Notice to Proceed. CITY shall pay invoices Net 30 days upon receipt of undisputed invoice.

ENGINEER is responsible for payment of State of New Mexico Gross Receipts Tax levied on the amounts payable under this Agreement. ENGINEER agrees to comply with all federal and state tax payments and report all items of gross receipts as income from the operations of its business.

5. DEVOTION OF ADEQUATE TIME
ENGINEER will devote the necessary hours each week to the performance of projects that are required by the CITY and it will serve the CITY diligently and faithfully, and according to its best ability in all respects and will promote the best interests of the CITY.

6. TERM AND SCHEDULE
This Agreement shall become effective on August 1, 2022 for a term of one year through July 31, 2023 and, pending mutual written agreement, may be extended annually thereafter for up to three (3) additional one (1)-year terms.

ENGINEER shall perform the SERVICES in accordance with the time set forth as agreed upon by the CITY and ENGINEER in as agreed to for each project assigned under the terms of this Agreement.

7. EXTENSIONS, CHANGES, AND AMENDMENTS
This Agreement shall not be extended, changed, or amended except by instrument in writing executed by the parties. The CITY shall not be liable for payment of any extra services nor shall ENGINEER be obligated to perform any extra services except upon such written agreement. Such written approval shall indicate the date said extension, change, or amendment is effective and shall be signed by the parties to this Agreement. In the event that the parties cannot reach agreement as to a particular change, the issue shall be resolved pursuant to Article 21.

8. CHANGES AND EXTRA SERVICES BY THE CITY
The CITY may make changes within the general scope of the SERVICES plus may also request ENGINEER to perform other extra services not incorporated within the Services set forth in this Agreement. If the ENGINEER is of the opinion that such change causes an increase or decrease in the cost and/or the time required for performing the changes or other services required by the City, ENGINEER shall so notify the CITY of that fact within five (5) business work days from the date of receipt of change by the CITY. The CITY shall provide written response to the ENGINEER within five (5) business work days from the date of receipt of ENGINEER written notification.

9. CHANGES AND EXTRA SERVICES BY THE ENGINEER
In the event a condition is identified by the ENGINEER which, in the opinion of the ENGINEER, changes the services, costs, and/or time required for performance under this Agreement, the ENGINEER shall provide written notification to the CITY within five (5) business work days of such identification. The CITY shall respond in writing to such notification within five (5) business work days from the date of receipt of ENGINEER'S notification.

10. DELAYS
In the event that performance of SERVICES is delayed by causes beyond reasonable control of ENGINEER, and without the fault or negligence of ENGINEER, the time and total compensation for the performance of the SERVICES may be equitably adjusted by

written agreement to reflect the extent of such delay. ENGINEER shall provide the CITY with written notice of delay pursuant to Article 9 including therein a description of the delay and the steps contemplated or actually taken by ENGINEER to mitigate the effect of such delay. The CITY will make the final determination as to reasonableness of delays.

11. TERMINATION

This Agreement may be terminated by either party hereto upon fifteen (15) calendar days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. This Agreement may also be terminated by the CITY for its convenience or because the PROJECT has been permanently abandoned, but only upon fifteen (15) calendar days written notice to ENGINEER.

In the event of termination, ENGINEER shall be compensated for all services performed and costs incurred up to the effective date of termination for which ENGINEER has not been previously compensated.

Upon receipt of notice of termination from the CITY, ENGINEER shall discontinue the SERVICES unless otherwise directed and upon final payment from the CITY deliver to the CITY the required number of copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by ENGINEER in the performance of this Agreement, whether completed or in process.

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ENGINEER will maintain records indicating dates, length of time, and services rendered. The CITY has the right to audit billings both before and after payment, and contest any billing or portion thereof. Payment under this Agreement does not foreclose the CITY'S right to recover excessive or illegal payments. ENGINEER will retain records for five (5) years after the completion of the project.

13. DISCLOSURE AND OWNERSHIP OF DOCUMENTS, PRODUCTS, DESIGN, ELECTRONIC FILES

All technical data, electronic files, and other written and oral information not in the public domain or not previously known, and all information, electronic files, and data obtained, developed, or supplied by the CITY will be kept confidential and ENGINEER will not disclose to any other party, directly or indirectly, without the CITY'S prior written consent unless required by lawful order.

All technical data, electronic files, products developed, operational parameters, blueprints, and other information and work of the ENGINEER shall be the sole property of the CITY and shall be delivered to the CITY when requested and at the end of the Agreement.

14. INDEPENDENT CONTRACTOR
ENGINEER represents that it has, or will secure, at its own expense, all personnel required in performing the SERVICES under this Agreement. Such personnel shall not be employees of, nor have any contractual relationship with the CITY. ENGINEER, consistent with its status as an independent contractor, further agrees that its personnel will not hold themselves out as, nor claim to be officers or employees of the CITY by reason of this Agreement.

To the extent that ENGINEER employs any employees, ENGINEER shall be solely responsible for providing its own form of insurance for its employees and in no event shall ENGINEER'S employees be covered under any policy of the CITY.

ENGINEER'S retention hereunder is not exclusive. Subject to the terms and provisions of this Agreement: (i) ENGINEER is able, during the Term hereof, to perform services for other parties; and (ii) ENGINEER may perform for its own account other professional services outside the scope of this Agreement.

ENGINEER is and shall be an Independent Contractor and shall be responsible for the management of its business affairs. In the performance of the work under this Agreement, ENGINEER will at all times be acting and performing as an Independent Contractor, as that term is understood for federal and state law purposes, and not as an employee of the CITY. Without limitation upon the foregoing, ENGINEER shall not accrue sick leave, jury duty pay, retirement, insurance, bonding, welfare benefits, or any other benefits, which may or may not be afforded employees of the CITY. ENGINEER will not be treated as an employee for purposes of: Workers' Compensation benefits; the Federal Unemployment Tax Act; Social Security; other payroll taxes, federal or any state income tax withholding; or the employee benefit provisions described in the Internal Revenue Code of 1986, as amended. Neither the CITY, nor its agents or representatives, shall have the right to control or direct the manner, details or means by which CONTRACTOR accomplishes and performs its services. Nevertheless, ENGINEER shall be bound to fulfill the duties and responsibilities contained in the Agreement.

15. NO JOINT VENTURE OR PARTNERSHIP
Nothing contained in this Agreement shall create any partnership, association, joint venture, fiduciary or agency relationship between ENGINEER and CITY. Except as otherwise specifically set forth herein, neither ENGINEER nor CITY shall be authorized or empowered to make any representation or commitment or to perform any act which shall be binding on the other unless expressly authorized or empowered in writing.

16. ASSIGNMENT
ENGINEER shall perform all the services under this Agreement and shall not assign any interest in this Agreement or transfer any interest in same or assign any claims for money due or to become due under this Agreement without the prior written consent of the CITY.

17. INSURANCE
ENGINEER shall obtain and maintain insurance at its own cost and expense during the life of this Agreement, and shall require Subcontractors, if any, to maintain during the life of his subcontract:

1. General Liability Insurance
   a. $1,000,000 per occurrence / $2,000,000 aggregate
   b. Coverage must include premises and operations, products and completed operations, and personal and advertising injury.
   c. The City of Las Cruces must be named as an Additional Insured for all coverages listed above on endorsements acceptable to the City.
   d. Coverage must be primary and non-contributory.
   e. Coverage must be per project or per location.
   f. Coverage must be on an occurrence form.
   g. Subrogation must be waived.
2. Commercial Auto Liability
   a. $1,000,000 per occurrence
   b. Coverage must be for "owned, leased, hired, and non-owned autos" or "any autos."
3. Workers Compensation and Employers Liability
   a. Statutory Limits
   b. Employer liability – $1,000,000 each accident, $1,000,000 each employee by disease, $1,000,000 policy limit
   c. Subrogation must be waived.
4. Professional Liability: $1,000,000 per claim

Endorsements for additional insured coverage and waivers of subrogation must be provided as a condition of this Agreement and shall be noted on the certificate.

ENGINEER shall furnish the CITY with a certificate(s) of insurance showing ENGINEER and Subcontractors, if any, have complied with this Article. The ENGINEER shall provide insurance certificates before work is to start on the project and shall provide the CITY thirty (30) days written notification of cancellation of such policies.

18. INDEMNITY AND LIMITATION
ENGINEER shall indemnify, defend, and hold harmless the CITY from and against any and all claims, suits, actions, judgments, demands, losses, costs, expenses, damages, and liability caused solely by, resulting solely from, or arising solely out of the negligent acts, errors, or omissions of ENGINEER, its officers, employees, agents, or representatives in the performance of SERVICES under this agreement.

19. APPLICABLE LAW
This Agreement and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico applicable to Agreements between

New Mexico parties made and performed in that state, without regard to conflicts of law principles. Venue shall be in the Third Judicial District, State of New Mexico.

ENGINEER shall abide and be governed by all applicable state law, CITY ordinances, and laws regarding the ENGINEER'S services or any work done pursuant to this Agreement, including anti-discrimination.

20. BREACH
In the event ENGINEER breaches any obligation contained in this Agreement, prior to instituting any action or dispute resolution procedure, the CITY shall give ENGINEER written notice of such breach. In the event ENGINEER fails to remedy the breach within five (5) working days of receiving such written notice, the CITY, at its sole discretion, without any obligation to do so and in addition to other remedies available under applicable law, may remedy ENGINEER'S breach and recover any and all costs and expenses in so doing from ENGINEER.

21. DISPUTE RESOLUTION
In the event that a dispute arises between CITY and ENGINEER under this Agreement or as a result of breach of this Agreement, the parties agree to act in good faith to attempt to resolve the dispute.

22. NOTIFICATION
All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if served by Registered Mail addressed as follows:

TO CITY:	City of Las Cruces PO Box 20000 Las Cruces, NM 88004 ATTENTION: Tony Trevino, PE CFM, Deputy Director PW
With Copies to:	City Attorney Purchasing Manager
TO ENGINEER:	Pipeline Strategies & Integrity dba PSI, LLC, 110 S. Sierra Madre St., Colorado Springs, CO 80903 ATTENTION: Michael Humberd, Managing Member

23. SCOPE OF AGREEMENT
This Agreement incorporates all of the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof and that all such covenants, agreements, and understandings have been merged into this written agreement. No prior agreement or understanding verbal or otherwise of the parties or their agents shall be valid or enforceable unless embodied in this agreement.

24. SEVERABILITY
The parties agree that each provision of this Agreement is severable and the invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

25. CONFLICT OF INTEREST
ENGINEER represents and warrants that ENGINEER has no business, professional, personal, or other interest, including, but not limited to, the representation of other clients, that would conflict in any manner or degree with the performance of its obligations under this Agreement. If any such actual or potential conflict of interest arises under this Agreement, ENGINEER shall immediately inform the CITY in writing of such conflict. If, in the reasonable judgement of the CITY, such conflict poses a conflict to and with the performance of ENGINEER'S obligations under this Agreement, or is otherwise a violation of the CITY'S current policy or ordinances, then the CITY may terminate the Agreement immediately upon written notice to ENGINEER; such termination of the Agreement shall be effective upon the receipt of such notice by ENGINEER.

PIPELINE STRATEGIES &
INTEGRITY dba PSI, LLC

BY: _____
Michael Humberd
Managing Member

_____
Date

CITY OF LAS CRUCES

BY: _____
Alfredo R. Pacheco
Interim Purchasing Manager

_____
Date

APPROVED AS TO FORM

8/8/22
City Attorney

21-22-067
Mechanical Engineering Services

EXHIBIT A

SERVICES

Revised: January 2022

Technical Proposal

Prepared For

City of Las Cruces®
MOUNTAINS OF OPPORTUNITY

Mechanical Engineering Services
Cost Proposal
RFP Number 21-22-067

110 S. Sierra Madre Colorado Springs, CO 80903
P: (719) 520-9279 | www.psi-llc.com

Proposal Issued: April 14th, 2022
Revision: 0

Personnel

Exempt:

Project Management	Hourly Rate
Project Manager 1	$105
Project Manager 2	$115
Project Manager 3	$125
Project Manager 4	$135
Sr. Project Manager 1	$145
Sr. Project Manager 2	$155
Sr. Project Manager 3	$165
Project Director	$175
Sr. Project Director	$190

Engineering	
Engineer 1	$95
Engineer 2	$105
Engineer 3	$115
Engineer 4	$125
Sr. Engineer 1	$135
Sr. Engineer 2	$145
Sr. Engineer 3	$155
Sr. Engineer 4	$165
Prof. Engineer 1	$175
Prof. Engineer 2	$190

Cathodic Protection	
Technician 1	$70
Technician 2	$80
Technician 3	$90
Sr. Technician 1	$100
Sr. Technician 2	$115
Sr. Technician 3	$130
NACE Certified CP Tester	$90
NACE Certified CP Technician	$105
NACE Certified CP Technologist	$120
NACE Certified CP Specialist	$135

Right-Of-Way	
Land Tech/Title Analyst	$55
ROW Agent	$70
ROW Supervisor	$80

Surveying*	
1 Person Crew	$150
2 Person Crew	$195
3 Person Crew	$220
Survey Coordinator	$145
Professional Land Surveyor	$175

*Survey Crew Rates include all equipment and vehicle use while in the field.

Non-Exempt:

Design/Drafting	Hourly Rate
Drafter 1	$80
Drafter 2	$90
Drafter 3	$100
Designer 1	$110
Designer 2	$120
Designer 3	$130
Sr. Designer 1	$140
Sr. Designer 2	$150
Sr. Designer 3	$160

Project/Document Controls	
Project Specialist 1	$75
Project Specialist 2	$85
Project Specialist 3	$95
Project Specialist 4	$105
Planner/Scheduler 1	$100
Planner/Scheduler 2	$110
Planner/Scheduler 3	$120
Sr. Planner/Scheduler 1	$135
Sr. Planner/Scheduler 2	$145

Procurement	
Buyer/Expeditor 1	$65
Buyer/Expeditor 2	$80
Buyer/Expeditor 3	$95
Buyer/Expeditor 4	$110
Procurement Manager	$125

Administration	
Project Admin. 1	$40
Project Admin. 2	$50
Project Admin. 3	$60
Project Admin. 4	$70
Office Manager	$80

Construction Management	
Inspector 1	$50
Inspector 2	$55
Inspector 3	$60
Inspector 4	$65
Inspector 5	$70
Assistant Chief Inspector	$80
Chief Inspector	$90
Construction Manager	$120

All rates are in US Dollars. The above rates include all charges for the personnel – including payroll taxes, benefits, insurance, office expense & supplies, local telephone calls, corporate overhead and profit, and other similar costs.

Certain higher-level third-party software's used for simulation, design, and analysis shall be billed at a charge of $15 per hour of use. Software lump sum amounts may be negotiated on a project basis; however, if not specifically detailed, hourly rate shall apply. This includes, but is not limited to Bentley Autopipe, Bluesky, CADworx, Civil3D, Easypower, ETAP, GasWorks, PHA-Pro, Primavera P6, VMGSim, and WinSim.

For Non-Exempt positions that receive overtime and holiday pay, a rate of 1.4 times the standard rate will be billed for all hours after 40 hours in one week and holidays. All personnel on assignment to a project in the field lasting more than two (2) weeks will be guaranteed 60 hours per week.

Equipment and Expenses

Copies	
8 ½ x 11	$0.10 B/W, $0.30 color each
11 x 17	$0.40 B/W, $0.75 color each
24 x 36	$2.00 B/W, $5.00 color each

Pig Tracking Equipment	Daily Rate
Geophone	$100
Trans./Rec.	$250
Survey Equipment	
GPS Equipment	$300
3D Scanner	$1,000

CP/Field Equipment	Daily Rate
Atmospheric Detector	$25
ATV or Side by Side	$150
Cellular Phone	$10
CIPS	$175
Combined CIPS / DCVG	$300
CP Current Interrupter	$50
CP Data Logger	$125
CP Short Locator	$50
DCVG	$175
Dry Mag Particle Inspection	$25
Insulator Tester	$35
Pipe Locator	$40
Pipe to Soil Inspection	$25
Pipeline Current Mapper	$500
Soil Resistance Meter	$50
Thermite Weld: *Shots Charged Extra	$50
UT Inspection- D meter	$25
Wet Mag Particle Inspection	$25

All outside services, rentals, materials, supplies, consumables, equipment, sub-contractors, and costs associated with field offices will be billed at cost plus 15%. All documents, manuals, reports, etc. will be invoiced per labor and reproduction rates.

All expenses associated with travel will be billed at cost + 5%. If requested, receipts will be available for each itemized expense over $35. In some situations, there will be a per diem rate charged for overnight assignments after prior approval by the client. Normal per diem rate based on the IRS allowable high/low rate.

Company and Personal vehicle use will be invoiced at current IRS allowable rates plus 10%. For unique situations requiring special vehicles, a rate will be negotiated. Travel time and expenses will be invoiced from portal to portal both ways at the above rates. Portal is the home office for daily assignments. For field-based assignments, the portal is the employee's living quarters. Stand-by time will be invoiced at full rates. Equipment will be billed for the time it is on the project.

Payment is due upon receipt of invoice and is past due 30 days from invoice date. A finance charge of one and one-half (1½) percent per month, or the maximum rate allowed by law, will be assessed against the unpaid balance.

THESE RATES ARE IN EFFECT UNTIL 12/31/2022

ATTACHMENT A

City of Las Cruces

PROJECT ASSIGNMENT AGREEMENT

21-22-066 MECHANICAL ENGINEERING SERVICES

PROJECT NAME

Pursuant to terms and conditions of City of Las Cruces (CITY) Contract No. 21-22-067 dated (insert date of execution), 2022 between the CITY and Pipeline Strategies & Integrity dba PSI, LLC, (ENGINEER), as amended and incorporated herein by reference, the City and Engineer hereby agree on this _____ day of _____, 20___, as follows:

1. In a satisfactory and proper manner, the ENGINEER shall perform SERVICES as proposed in response to the CITY's RFP No. 21-22-067 and ENGINEER's proposal as set forth in ATTACHMENT A attached hereto.

2. Insurance (select the appropriate clause below, delete the other):
(for non-construction projects)
ENGINEER agrees to maintain a Commercial General Liability policy with limits not less than $1 million per occurrence and $2 million aggregate limits. The City of Las Cruces is to be named as an additional Insured. Evidence of coverage must be on an Acord 25 Certificate of Insurance with attached Additional Insured Endorsement.

   (for construction, maintenance, installation projects)
ENGINEER agrees to maintain a Commercial General Liability policy with limits not less than $1 million per occurrence and $2 million aggregate limits. Coverage must include Premise and Operations, Products and Completed Operation and Personal and Advertising Injury coverage. Aggregate limits must be "per project" or "per location". Coverage must be primary and non-contributory before any other insurance or self-insurance. The City of Las Cruces is to be named as an additional Insured. Evidence of coverage must be on an Acord 25 Certificate of Insurance with attached Additional Insured Endorsement.

3. The estimated completion date is number days after a Notice to Proceed is issued by the CITY to the ENGINEER.

4. In consideration for the satisfactory completion of the work agreed to herein, compensation shall be made in the amount of $ dollars.cents, plus NMGRT. Invoices issued by the ENGINEER shall be made monthly / upon completion of project with payment by the CITY being made within 30 days upon receipt of undisputed invoice.

(SIGNATURE BLOCK FOLLOWS ON NEXT PAGE)

PIPELINE STRATEGIES & INTEGRITY
dba PSI, LLC

By: _____
Signature Date

_____
Print Name and Title

Requisition No. XXXXXXXX

CITY OF LAS CRUCES

By: _____
Signature Date

Alfredo R. Pacheco, Interim Purchasing Manager

3009; Council Bill 23-003

City Council Action and Executive Summary

Type of Action:
☐ **Resolution**
☒ **Ordinance**
☐ **TIDD Resolution**

District:	☐ 1 ☐ 2 ☐ 3 ☒ 4 ☐ 5 ☐ 6 ☐ N/A		
1st Reading:	August 15, 2022	**Adopted:**	September 6, 2022
Drafter:	Elizabeth Teeters	**Department:**	Economic Development
Program:		**Line of Business:**	

Title: **AN ORDINANCE SUPPORTING INVESTMENT OF $235,000 IN AN ECONOMIC DEVELOPMENT PROJECT IN ACCORDANCE WITH THE CITY OF LAS CRUCES LOCAL ECONOMIC DEVELOPMENT PLAN, AUTHORIZING A PROJECT PARTICIPATION AGREEMENT BETWEEN THE CITY AND ELECTRONIC CAREGIVER, INC., AND ENTERING INTO AN AGREEMENT TO SERVE AS FISCAL AGENT FOR THE STATE OF NEW MEXICO'S PARTICIPATION NOT TO EXCEED $1,000,000 IN THE PROJECT.**

TYPE OF ACTION: ☒ **Administrative** ☐ **Legislative** ☐ **Quasi-Judicial**

PURPOSE(S) OF ACTION:

To approve a Local Economic Development Act (LEDA) project for Electronic Caregiver, Inc., with allocations from the City of Las Cruces and State of New Mexico

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Electronic Caregiver, Inc. (ECG), is a privately held, digital health technology and services company headquartered in Las Cruces. Three major HCO partners have contracted with ECG recently to provide enrollment and health coaching services to 87,000 of their patients. To fulfill the initial contracts, ECG will be hiring clinical triage specialists, health coaches, care coordinators, project managers, and program managers. It is anticipated that the company will grow to a headcount in excess of 800 individuals by 2026.

The State of New Mexico (State) via that State's Local Economic Development Act (LEDA) Program is committing $1,000,000 in LEDA funding. The City of Las Cruces (City) has proposed providing LEDA funding of $235,000. This funding will be used for building and infrastructure costs, In exchange, the Company will employ 770 additional full-time persons by December 31, 2027, with a capital investment of approximately $17,592,000 by the same date.

If approved by this proposed Ordinance, the City will enter into a Project Participation Agreement (Exhibit A) with the Company, subject to the LEDA requirements and the adopted LEDA Plan by the City, for its investment in the project. Furthermore, The City will also enter into an Intergovernmental Agreement (Exhibit B) with the State to serve as the fiscal agent for the administration of up to $1,000,000 of LEDA contribution to the project.

A separate resolution will be brought to City Council for a budget adjustment for both City and State when the State funding is received.

SUPPORT INFORMATION:

Exhibit "A", Project Participation Agreement

Exhibit "B", Inter Governmental Agreement
Attachment "A", LEDA Application
Attachment "B", Executive Summary

PLAN(S):

City Council Strategic Plan, Department Strategic Business Plan, Elevate Las Cruces

ANNUAL BUDGET APPROVAL:

☐ Yes
☐ No
☒ N/A

Does this action amend the Capital Improvement Plan (CIP)?

☐ Yes
☐ No
☒ N/A

Does this action align with Elevate Las Cruces?

☐ Yes
☒ No
☐ N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes", this will approve the Ordinance and authorize the City to provide local LEDA funding and to act as fiscal agent for State LEDA Project funds to Electronic Caregiver, Inc.
2. Vote "No", this will not approve the Ordinance and authorize the City to provide local LEDA funding and to act as fiscal agent for State LEDA Project funds to Electronic Caregiver, Inc.
3. Vote to "Amend", this could delay the Ordinance and would require City Council to provide direction to staff.
4. Vote to "Table", this would delay the Ordinance and require City Council to provide direction to staff.

ORDINANCE 3009; COUNCIL BILL 23-003

AN ORDINANCE SUPPORTING INVESTMENT OF $235,000 IN AN ECONOMIC DEVELOPMENT PROJECT IN ACCORDANCE WITH THE CITY OF LAS CRUCES LOCAL ECONOMIC DEVELOPMENT PLAN, AUTHORIZING A PROJECT PARTICIPATION AGREEMENT BETWEEN THE CITY AND ELECTRONIC CAREGIVER, INC., AND ENTERING INTO AN AGREEMENT TO SERVE AS FISCAL AGENT FOR THE STATE OF NEW MEXICO'S PARTICIPATION NOT TO EXCEED $1,000,000 IN THE PROJECT.

The City Council is informed that:

WHEREAS, the City of Las Cruces (City) adopted an updated LEDA Plan in 2018 to encourage economic development; and

WHEREAS, Electronic Caregiver, Inc., (the "Company") has applied for LEDA assistance from the City and the State of New Mexico; and

WHEREAS, the State of New Mexico has committed up to $1,000,000 in LEDA funding and the City has proposed to provide LEDA funding of $235,000; and

WHEREAS, the State of New Mexico conducted an economic impact analysis establishing the benefit of this LEDA project to the community.

NOW, THEREFORE, Be it Ordained by the Governing Body of the City of Las Cruces:

(I)

THAT the City hereby enters into a Project Participation Agreement, as shown in Exhibit "A" attached hereto and made part of this Ordinance, with Electronic Caregiver, Inc., subject to the requirements of LEDA and the adopted LEDA Plan of the City, for its $235,000 in investment in the project.

(II)

THAT the City hereby enters into an Intergovernmental Agreement with the State of New Mexico to serve as fiscal agent for the administration of up to $1,000,000 the State will invest in the project, as shown in Exhibit "B" attached hereto and made part of this Ordinance.

(III)

THAT the City Manager is hereby authorized to sign the Agreements as referenced in this Ordinance on the City's behalf.

(IV)

THAT City staff is hereby authorized to do all deeds as necessary in the accomplishment of the herein above.

DONE AND APPROVED this day of

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

PROJECT PARTICIPATION AGREEMENT

This Project Participation Agreement ("Agreement") is entered into on _____, 2022 by and between **CITY OF LAS CRUCES, NEW MEXICO** (the "City"), a political subdivision of the State of New Mexico (the "State"), and **ELECTRONIC CAREGIVER, INC. (ECG, INC.)** (the "Company").

Recitals.

A. Article 9, Section 14 of the New Mexico Constitution provides counties the ability to create new job opportunities by providing land, buildings or infrastructure for facilities to support new or expanding businesses, provided that adequate safeguards are employed to protect public monies and resources. Pursuant to the Local Economic Development Act, Sections 5-10-1 through 5-10-17 NMSA 1978 (the "Act"), public support for economic development may be provided if the governmental entity has adopted by ordinance an economic development plan and has approved by a second ordinance an application for a project in keeping with such plan.

B. Pursuant to City of Las Cruces Ordinance No. 2873 (the "Las Cruces Local Economic Development Plan"), adopted on September 17, 2018, the City established the City of Las Cruces Economic Development Plan (the "Plan") as the City's economic development plan as required by Section 5-10-6, NMSA 1978.

C. As provided in the Las Cruces Local Economic Development Plan Ordinance, the City considered an application from the Company, which proposed that the City serve as local government conduit for an appropriation of up to $1,000,000 from the Legislature of the State of New Mexico (the "**State Contribution**") and also provide up to $235,000 from City funds (the "**City Contribution**") toward the Company's development of a manufacturing facility in the City of Las Cruces, New Mexico (the "Project"). The company will construct and occupy the facility and will employ a minimum of 770 additional full-time persons by December 31, 2026.

D. The City has adopted Ordinance No._____-2022 ("Project LEDA Ordinance") finding that the Company is a "qualifying entity" and the Project is an "economic development project" as those terms are defined by the Act, and approving this Agreement as meeting the requirements of the Act.

1. Goals and Objectives. The objective of this Agreement is to create and support an economic development project that fosters, promotes and enhances local economic development efforts. The goal is that the Project will provide jobs and career opportunities that will benefit the community and contribute to its long-term economic growth and sustainability.

2. Substantive Contribution from the Company.

a. **Facility.** The Company will increase and expand operations at their facility in Las Cruces, New Mexico (the "Facility").

b. **Investment.** The Company (or one of its subsidiaries, affiliates, investment partners or other related entities) will make capital investments in the Project and costs associated therewith (including, for the acquisition of land, building, equipment, tangible personal property and services associated with the acquisition, construction and equipping of the Project) in the amount of approximately $17,592,000 by December 31, 2026 (the "Project Contribution").

c. **Job Creation.** The Company will directly employ a target of 770 additional full-time employees at the facility by December 31, 2026 (the "Job Target"). "Job" means a permanent, full-time employment position (at least 32 hours per week) offering the employee the full range of benefits offered to other full-time employees of the Company. Full–time employees do not include agency, sub-contracted, temporary employees or independent contractors.

d. **Sustainability.** Although the Company intends to have a long-term presence in the City, for purpose of the contractual obligations of this Agreement, the Company covenants to continue to operate the Project until December 31, 2027.

3. The State Contribution

a. The City anticipates that the State Contribution will be delivered by the State to the City for disbursement to the Company upon enactment of the Project LEDA Ordinance, and execution of this document and the intergovernmental agreement between the State and the City, after which time the City will request transfer of the State Contribution. Upon receipt, the City will place the State Contribution into a separate account established in connection with the Project, as required by law. The City will disburse the State Contribution, if and when it is received, only in the manner described in this Agreement and the Intergovernmental Agreement executed between the City and the State. The City will disburse the State Contribution to the Company as reimbursement for LEDA Eligible Expenditures subject to the Company's satisfaction of the conditions set forth herein. Disbursements shall be paid on a reimbursement basis and the Company shall first incur the LEDA Eligible Expenditures and then submit requests for reimbursement to the City. For purposes of this Agreement, "**LEDA Eligible Expenditures**" shall mean: expenditures including, but not limited to, land, building and infrastructure, including permanently installed and situated physical assets whose cost is born entirely by ECG, Inc. and the design, labor and permitting required to put them in place. Examples include: foundation, drainage improvements, electrical wiring, architecture fees, insulation, landscaping and equipment rentals.

DRAFT

b. The State's contribution is composed of a LEDA award of $1,000,000 for use by the Company for such purposes as set forth in NMSA 1978, § 5-10-3(E), the application of the Company and the agreements entered into between the parties. The Company shall also instruct the contracted construction companies to use the correct **New Mexico Taxation and Revenue Department Location Code of 07-105 for the City of Las Cruces**.

4. The City Contribution.

a. The City will account for receipts and disbursements of the State Contribution and will provide financial documentation to the State pertaining to the State Contribution. The City will contribute $235,000. The City will comply with the Local Economic Development Act ("LEDA") with respect to the acceptance and disbursement of the State and Local Contributions. As required by the LEDA Ordinance and the Act, City will deposit the State Contribution into a clearly identified separate account.

b. The State Contribution will be disbursed to the Company through the City for reimbursement of LEDA Eligible Expenditures.

5. Disbursement of City and State Contributions

a. State and City contributions shall be combined into a single account and disbursed through the City.

Conditions to Disbursement; Performance Milestones. The State Contribution will be disbursed in four (4) separate allotments. The City Contribution will be disbursed in three (3) separate allotments. Each disbursement will be conditioned on (i) the Company's having incurred LEDA Eligible Expenditures prior to the disbursement; (ii) where applicable, the Company meeting minimum employment targets and being in compliance with job reporting requirements; and (iii) the Company's satisfaction of the performance milestones set forth below (the "Disbursement Performance Milestones") for each allotment prior to the disbursement:

State of New Mexico LEDA Disbursement Schedule		
Tranche	*Amount of State Contribution Available for Disbursement/Tranche*	*Disbursement Performance Milestone*
1	$400,000	Certificate of Occupancy, incur LEDA eligible expenses, hire 200 new employees and maintain for 6 months, and current with all reporting
2	$300,000	Hire 300 additional new employees and maintain for 6 months, LEDA eligible expenses and current with all reporting
3	$300,000	Hire 200 additional new employees and maintain for 6 months, LEDA eligible expenses and current with all reporting

City of Las Cruces LEDA Disbursement Schedule		
Tranche	*Amount of State Contribution Available for Disbursement/Tranche*	*Disbursement Performance Milestone*
1	$117,500	Certificate of Occupancy, incur LEDA eligible expenses, and current with all reporting
2	$58,750	Hire 300 new employees and maintain for 6 months, LEDA eligible expenses and current with all reporting
3	$58,750	Hire 400 additional new employees and maintain for 6 months, LEDA eligible expenses and current with all reporting

6. **Disbursement Requests.** From time to time, after the Company has satisfied the conditions for disbursement set forth herein, the Company may submit to the City and the New Mexico Economic Development Department ("EDD") a written request for disbursement of the State Contribution (the "Disbursement Request"). All Disbursement Requests shall be accompanied by (i) documentation substantiating LEDA Eligible Expenses, and (ii) documentation of current employment level in New Mexico pursuant to Section 10c below. The Company will not submit a Disbursement Request for less than $50,000, but may, upon completion of all performance milestones, submit a Disbursement Request for up to the full amount of the State Contribution or City Contribution then available to the Company at any time. The City may, in good faith, object to or require additional information regarding a Disbursement Request to verify compliance with this Agreement.

7. **Review.** EDD will review the Disbursement Request to assure the charges submitted are LEDA Eligible Expenditures. The EDD's review and approval or objection shall not be unreasonably withheld and shall occur within 30 calendar days of receipt of the Disbursement Request. The City will disburse to the Company the full amount requested in the Disbursement Request no later than 30 calendar days after EDD's approval of the Disbursement Request.

8. **No Offset of City costs.** The City may not offset any internal costs or overhead charges for review or processing of the Disbursement Requests against the Disbursement Request or the State Contribution.

9. **Security.** As security for the faithful performance and payment of Company's obligations under this Agreement, prior to the Company's receipt of any part of the State Contribution or City Contribution, Company shall furnish the City with a Letter of Credit or some alternative form of security in a form mutually acceptable to the parties (the "Security"). The maximum obligation secured by the Security (the "Maximum Obligation") will be $1,235,000. The Company shall be permitted to obtain incremental increases in the Security in the amount of each Disbursement

Request and shall not be required to secure the Maximum Obligation before a disbursement will be made.

a. The City may draw on the Security in order to satisfy any unpaid Clawback Penalty which shall become due and payable, but only thirty (30) calendar days following written demand for payment to the Company. Such draw may be initiated without filing a proceeding in any court of competent jurisdiction.
b. Provided that the Company has not been required to pay any Clawback, the Security will terminate on January 31, 2028, unless earlier released in accordance with this Agreement.
c. If the State or the City reduce the amount of LEDA Funds and/or forgivable lien that are made available for the Project and/or if the Company does not draw the entire amount of the LEDA Funds and/or forgivable lien available, the Maximum Obligation will be reduced proportionately to reflect the amount of LEDA Funds and/or forgivable lien actually received by the Company.
d. A mortgage agreement/municipal lien document shall be recorded in Dona Ana County in the amount of the City Contribution. Partial lien releases shall be recorded upon performance of the set performance milestones.

10. Clawbacks. Notwithstanding any other provision of this Agreement, the Company shall be required to pay the Clawback Penalties set forth in this Section (together with forfeiture of the security instrument provided to secure the Company's Clawback obligations), if the Company does not satisfy the conditions set forth herein.

a. **Facility Closure Clawback.** If the Company ceases operations in the City on or before December 31, 2027 the Company will repay to the City all LEDA Funds that the Company actually received from the City as of that date (the "Facility Closure Clawback") and the City shall have the right to execute reimbursement from the Security, but only after thirty (30) calendar days following written demand for payment to the Company. For purposes of this Agreement, a failure to produce product for a period of 90 calendar days or more, after initial startup (initial startup will be considered the date of the first production run or within 180 days of receipt of certificate of occupancy, whichever comes first) or failure to occupy the Facility shall be considered a cessation of operations; provided however cessations for reasonable periods for the repair or replacement of facilities damaged or destroyed, cessations resulting from labor disputes, strikes, riots or acts of God, shortages of materials or supplies or for any other reason beyond the reasonable control of the Company, or under similar circumstances will not constitute a failure by the Company to comply with this Section 10a. If the Company ceases operations for any of the causes set forth in this Section 10a, the Company shall submit a plan for resolving such cessation of operations within 30 calendar days. In the event of a cessation of operations, the Company shall provide written notice thereof and a reason therefore to the City within 10 calendar days.

b. **Performance Clawback.** It is the Company's intent to create, hire and maintain

the number of jobs set forth in the table below under the column captioned "Cumulative Full Time Job Creation Target" on the Job Determination Dates set forth below. If the Company does not meet or exceed the job numbers set forth under the column captioned "Minimum Job Number" in the table below on each of the specified Job Determination Dates (and after expiration of the Cure Periods), then the Company shall be required to pay a Clawback Penalty (as defined below) to the City which will be applied in the percentage set forth in the table below:

Job Creation Commitment and Schedule

Year	*Cumulative Full Time Job Creation Target*	*Minimum Job Number*	*Job Determination Period*	*%-Clawback*	
1	70 + 50 = 120	115	Date of Ord	12/31/2022	100%
2	120 + 100 = 220	205	7/1/2023	12/31/2023	100%
3	220 + 175 = 395	362	7/1/2024	12/31/2024	75%
4	395 + 220 = 615	560	7/1/2025	12/31/2025	50%
5	615 + 225 = 840	763	7/1/2026	12/31/2026	25%
Total	770				
	Addt'l Notes: 70 is beginning job number for ECG for basis of LEDA award Minimum job number represents 90% of new job creation Clawbacks 100% for closure at any point during project duration. Clawback % is based on percentage of shortfall after cure period; all shortfalls are automatically granted a 6 month cure period				

Starting Headcount:	70	*As of*:	*12/31/2021*

For the purposes of this Section:

The "**Clawback Penalty**" is a penalty that the Company will be required to pay the City upon the Company's failure to meet the Minimum Job Target on the applicable Job Determination Date, if such Minimum Job Target is not otherwise reached by the Company during the Cure Period. The Clawback Penalty shall be equal to the product of the Percentage Hiring Shortfall (as defined herein), multiplied by the total State Contribution paid to the Company as of that time. For purposes of this subsection, the "**Percentage Hiring Shortfall**" shall be the quotient of (i) the Minimum Job Number for applicable Job Determination Date, minus the actual number of jobs the Company maintains at the Facility at that time, divided by (ii) the Minimum Job Number for applicable Job Determination Date. See Attachment 1 hereto for examples of Clawback Calculations

"**Cure Period**" is the period of 180 calendar days after each Job Determination Date during which the Company shall have the opportunity to cure any shortfall in meeting the Minimum Job Number. For the avoidance of doubt, if the Company meets the Minimum Job Number at any time during the Cure Period as validated by the job reporting requirements set forth herein, the Company shall have no obligation to pay a Clawback Penalty corresponding to the applicable Job Determination Date. If the Company fails to reach the Minimum Job Number during the Cure Period, the Company shall pay the City a Clawback Penalty determined in accordance with the table set forth above.

The parties hereto recognize certain economic factors generally described as "Business Climate Changes" are beyond the control of any of the parties and may affect the ability of the Company to strictly adhere to the job creation numbers and schedule set forth herein. "Business Climate Changes" means substantial changes, beyond the control of the Company within the industry in which the Company operates, that causes a significant decrease in the Company's ability to perform pursuant to the requirements of this agreement with the City. The Company may request specific modifications to the job creation schedule in writing within ten calendar days of learning of the existence of the "Business Climate Change." Such notification shall include the details of the business climate change, the effect thereon on the Company, and the modification of this agreement the Company requests. If the City and EDD agree that Business Climate Changes have affected the Company's ability to perform, the Performance Clawback may be modified.

c. **Job Reporting.** The Company shall submit quarterly employment reports documenting its quarterly filing of the Department of Workforce Solutions' (DWS) Employment and Wage Detail Reporting as submitted to DWS in the form and manner required by EDD and the City beginning with the October 31, 2022 and continuing every January 31, April 30, and July 31 thereafter until the completion of this agreement. The State will provide copies of all such reports to the City or the State may request a copy of the Company's quarterly employment reports at any time while this Agreement is in effect and the Company agrees to provide such documents. The Company acknowledges this quarterly reporting will be relied upon by the City and the State to ascertain if the Company is in compliance with the job creation provisions of this Agreement and all subsequent and ancillary agreements. The Company will receive no disbursements of State Contribution as stipulated in this Agreement without up-to-date quarterly job reporting as set forth herein.

d. If the Company has been required to pay the Facility Closure Clawback, the Company will not be required to pay any Performance Clawback that may come due after the date of such payment.

11. <u>Fees.</u> Each party shall bear its own costs and expenses in connection with the negotiation, execution and delivery of this Agreement or any amendment or

enforcement of this Agreement.

12. **Annual Performance Review.** To ensure the prudent use of the taxpayer's funds and as required by the LEDA statute and Ordinance, the Project will be subject to an annual performance review conducted by City or EDD staff beginning on June 30, 2023 and every year thereafter until this Agreement terminates. The review will evaluate whether the Project is meeting the requirements set forth in this Agreement and any subsequent agreements or amendments and shall be made available to the State. At this time, the Company may report any difficulties it has experienced under the terms of this Agreement or the LEDA program and may request any assistance it deems necessary. The City or State may request the Company provide data and information to assess the broader economic impact of the Project, but the Company shall not be required to divulge information or documents it considers confidential or proprietary.

    If the requirements are not being met, the City may terminate this assistance to the Project by passage of an ordinance which terminates this Agreement and specifies the disposition of all obligations of the Project. In addition, in accordance with LEDA, the City may enact an ordinance revoking the LEDA Ordinance and terminating any further payments for any or all Projects thereunder. In the event the City terminates the LEDA Ordinance or this Agreement while the Company is in compliance with the terms and requirements of this Agreement, the City will not have a right to clawback any of the payments already made to the Company.

13. **Records and Audits**. The Company will maintain records indicating dates, employment records, and all records related to this agreement. The CITY has the right to audit records before and after payment and contest any reimbursement or portion thereof. Payment under this Agreement does not foreclose the CITY's right to recover excessive or illegal payments.

14. **Termination**. This Agreement shall terminate at the close of business on January 31, 2028 or when otherwise terminated by ordinance.

15. **Request for early release of security.** If the Company achieves and then sustains the Minimum Job Number of 770 employees for six (6) consecutive months prior to December 31, 2027, the Company may request release of the Security and termination of the agreement. Said request shall be made to the City in writing and accompanied by documentation comprising its quarterly job reports demonstrating such employment. In no event shall the security be released until the Company has furnished contemporaneous job reporting documentation and completed the corresponding Annual Performance Review. A request for release of the Security may not be submitted prior to December 31, 2025. Upon receipt of such a request the New Mexico Economic Development Department will work with the Company to gather sufficient documentation of the economic activity directly created by the Company during the period of this agreement and complete an economic impact analysis report. If said report verifies that the State of New Mexico has received

direct tax revenues from the activity of the company said request shall be granted.

16. **Liability.** No party shall be responsible for liability incurred as a result of the other party's acts or omissions. Nothing herein shall operate or be deemed to alter or expand any liabilities or obligations under the applicable provisions of the New Mexico Tort Claims Act (NMSA 1978 §§ 41-4-1, et seq.), or to waive any immunities, limitations or required procedures thereunder. Nothing in this Agreement constitutes a waiver of any party's right to seek judicial relief.

17. **Amendments.** This Agreement shall not be altered, changed or amended, except by instrument in writing executed by all of the Parties hereto and EDD. Any amendments may be subject to the approval of the Governing Body of City of Las Cruces.

18. **Governing Law/Venue.** This Agreement shall be governed by the laws of the State of New Mexico. The venue for any litigation shall be a competent court of jurisdiction located in New Mexico.

19. **Miscellaneous.** This Agreement binds and inures to the benefit of the City and the Company and their respective successors and permitted assigns. This Agreement may not be assigned without the written consent of the non-assigning party and the EDD; provided, however, that with notice to the City and the EDD, the Company may assign this Agreement to any affiliate or other member of the Company that agrees in writing to assume and perform all of the Company's obligations under this Agreement. This Agreement may be executed in any number of counterparts, each of which is an original and all of which taken together constitute one instrument.

19. **Notice.**

All notices or other written communications, including requests for disbursement, that are required or permitted to be given pursuant to this Agreement must be in writing and delivered personally, by a recognized courier service, by a recognized overnight delivery service, by fax, by electronic mail, or by registered or certified mail, postage prepaid, to the parties at the addresses shown below. If notice is mailed, it will be deemed received on the earlier of actual receipt or on the third business day following the date of mailing. If a notice is hand-delivered or sent by overnight delivery service, it will be deemed received upon actual delivery. If any written notice is sent by facsimile or electronic mail, it will be deemed received upon printed or written confirmation of the transmission. A party may change its notice address by written notice to the other party to this Agreement.

The initial notice addresses for the parties are as follows:

If to the City:
City of Las Cruces
Attention: Economic Development
P O Box 20000
Las Cruces, New Mexico 88004

If to the Company:
Electronic Caregiver, Inc. (ECG, Inc.)
506 S. Main St., Ste 100
Las Cruces, NM 88001

Effective Date: _____

DRAFT

Attachment:

1. Example of Clawback Calculations

DRAFT

SIGNATURE PAGE TO PROJECT PARTICIPATION AGREEMENT

CITY OF LAS CRUCES, NEW MEXICO

By _____

Name Ifo Pili

Title City Manager

Electronic Caregiver, Inc. (ECG, Inc.)

By _____

Name: _____

Title: _____

DRAFT

Exhibit "A"

Attachment 1
Example of Clawback Calculations

Clawback Calculations

Clawback Formula = (Job Creation % Shortfall) * (Cumulative LEDA Dollars Distributed)

Job Creation % Shortfall = (1 - (actual jobs / cumulative hiring target))*100%

Example - 1 100%		End of year 1, inclusive of cure period
Actual Employees	(a)	41
Cumulative Hiring Target	(b)	42
Job Creation % Shortfall =	(c) = 1-(a/b)	2.38%
LEDA Dollars Distributed	(d)	$ 150,000.00
Clawback %	(e)	100%
Penalty	(f) = c*d*e	$ 3,571.43

Example - 2 100%		End of year 2, inclusive of cure period
Actual Employees	(a)	57
Cum Hiring Target	(b)	58
Job Creation % Shortfall =	(c) = 1-(a/b)	1.72%
LEDA Dollars Distributed	(d)	$ 200,000.00
Clawback %	(e)	100%
Penalty	(f) = c*d*e	$ 3,448.28

Example - 3 75%		End of year 3, inclusive of cure period
Actual Employees	(a)	57
Cum Hiring Target	(b)	58
Job Creation % Shortfall =	(c) = 1-(a/b)	1.72%
LEDA Dollars Distributed	(d)	$ 200,000.00
Clawback %	(e)	75%
Penalty	(f) = c*d*e	$ 2,586.21

INTERGOVERNMENTAL AGREEMENT BETWEEN THE NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT AND THE CITY OF LAS CRUCES, NEW MEXICO

This Intergovernmental Agreement ("Agreement") is entered into as of the date of the last signature affixed below by and between the New Mexico Economic Development Department ("EDD") and The City of Las Cruces (the "City"), a political subdivision of the State of New Mexico, and collectively referred to as "the Parties" with reference to the following facts.

RECITALS:

WHEREAS, the legislature of the State of New Mexico appropriated funds to the Economic Development Department for economic development projects statewide pursuant to the Local Economic Development Act (the "Appropriation"); and

WHEREAS, the purpose of the Local Economic Development Act, NMSA 1978 §5-10-1 through §5-10-14 (2020) ("LEDA"), is to provide "public support for economic development to foster, promote and enhance local economic development efforts"; and

WHEREAS, the City has adopted LEDA by Ordinance No. 2873, which established the City of Las Cruces Economic Development Plan that promotes economic development within the City; and

WHEREAS, Electronic Caregiver, Inc. (ECG, Inc.). (hereinafter "Qualifying Entity") has entered into a Local Economic Development Project Participation Agreement (hereinafter "PPA") with the City. A copy of the City's Ordinance and PPA are attached hereto and incorporated herein; and

WHEREAS, pursuant to the terms of that PPA, the Qualifying Entity will expand and increase the medical technology facility at 506 S. MAIN STREET, SUITE 100 in Las Cruces, New Mexico (the "Project") and will employ at least 770 full-time persons by December 31, 2027; and

WHEREAS, EDD and the City desire to enter into this Agreement as necessary to facilitate disbursement of funds for the Project.

NOW THEREFORE, the Parties do hereby agree to the following terms and conditions to accomplish the Project.

SECTION 1. PURPOSE OF AGREEMENT:

The purpose of this Agreement is to define the responsibilities of the City and EDD for the oversight and administration of up to $1,000,000 of the Appropriation for the Project. It is the intent of the parties that the City will receive an amount up to one million dollars ($1,000,000) to implement the Project. The Parties agree that any and all State funds received will be accounted for by the City as the fiscal agent for EDD in accordance with the procedures the City will use to account for its own funds and property used to implement the project, or any properties acquired or developed by the City as a result of implementation of the Project will be used by the City for economic development purposes only.

SECTION 2. SCOPE OF WORK:

The City will act as fiscal agent for up to $1,000,000 of the Appropriations for the Project. Pursuant to Section 5-10-3(E) of LEDA, EDD will transfer up to $1,000,000 to the City for costs and expenses associated with the Project. In exchange for the contribution, the Qualifying Entity certifies it will employ at least 770 full-time employees at the facility by December 31, 2027.

All the terms, conditions, and requirements set forth under the PPA are incorporated into this Agreement. EDD and the City agree that failure of the Qualifying Entity to create the number of new full-time jobs described in the PPA or otherwise meet its obligations set forth under the PPA shall require the City to apply the applicable Clawback as provided for by the PPA. In the event that the Qualifying Entity does not remit to the City the monies owned as provided for by the PPA then such violation will require that the City foreclose on the security interest after any cure period granted to the Qualifying Entity. Any monies

recovered by the City as a result of payment made by the Qualifying Entity from the application of the applicable Clawbacks shall be returned to EDD within 30 calendar days. Any foreclosure of the security interest shall be returned to EDD. The Qualifying Entity will deliver to the City contemporaneously with the execution of the PPA a form of security acceptable to all parties, which will be incorporated into this Agreement (the "Security").

SECTION 3. CITY RESPONSIBILITIES:

The City shall:

A. Pay the costs and expenses incurred for the Project from the Appropriation;

B. Provide to EDD supporting documentation in a format acceptable to EDD for activities associated with the Project. Any funds recaptured by the City as the result of enforcing the provisions of the PPA shall be returned to EDD;

C. The City shall notify EDD in writing of any failure to meet requirements (default) of the PPA by the Qualifying Entity within 15 business days of learning of the event of default;

D. Serve as Fiscal Agent for the funds transferred to it under this Agreement;

E. Distribute the funds transferred to the City by EDD to the Project; account for receipts and disbursements of said monies; and provide EDD with the required financial documentation pertaining to this disbursement;

F. Submit all required and reasonably requested documentation to EDD including the endorsed LEDA Ordinance approved by the City Council accepting the Project as qualifying entity for LEDA, with the accompanying endorsed Project Application and PPA entered into by the City and the Qualifying Entity, a fully executed copy of the Security, and copies of invoices and other documentation as required by EDD within the time required;

G. Not impose any obligations on EDD with respect to the administration of this Project, other than the transfer of funds as described herein; and

H. Initiate and prosecute litigation as necessary to enforce the terms of the PPA, at EDD's cost, if necessary.

SECTION 4. CITY CERTIFICATIONS:

As Fiscal Agent, the City hereby assures and certifies that:

A. It will comply with all applicable State laws, regulations, policies, guidelines and requirements with respect to the acceptance and use of the Appropriation;

B. It has the legal authority to receive and expend the Appropriation;

C. It will enforce the provisions of Ordinance No. 2873 and the City's Economic Development Plan;

D. It has exercised due diligence in confirming that the Project is a viable economic development initiative with potential long term economic development benefits based on information provided by EDD;

E. It will provide to EDD upon request all documentation and references to expertise it has relied upon in approving this Project upon receipt thereof or reliance thereupon and also with copies of all reports and documentation City receives from the Qualifying Entity;

F. It has entered into a PPA with the Qualifying Entity and has obtained from the NM EDD all financial documentation necessary to protect the City's and State's investments in the Project;

G. It shall not at any time during the life of this Agreement convert any property acquired or developed pursuant to this Agreement to uses other than those within the Project description as defined herein;

H. It will notify EDD of any default on the part of the Qualifying Entity within 15 business days of learning of any default and shall provide the Qualifying Entity an opportunity to cure any default by in accordance with the PPA prior to termination thereof;

I. No member, officer or employee of the City or its designees or agents, no member of the governing body of the locality of which the Project is situated, and no other public official that exercises any functions or

responsibilities with respect to the Project during his/her tenure, or for one (1) year thereafter, shall have any interests, direct or indirect, in any contract or subcontract, or the process thereof, for work to be performed in connection with the Project that is the subject of this Agreement. The City shall incorporate in all contracts or subcontracts a provision prohibiting such interest pursuant to this certification; and

J. It has complied with Article IX, Section 14, of the New Mexico Constitution known as the "anti-donation clause."

SECTION 5. EDD RESPONSIBILITIES:

EDD shall:

A. Transfer to the City for costs and expenses incurred for the Project an amount not to exceed one million dollars ($1,000,000). The funds shall be used only for the purpose stated in this Agreement;

B. Monitor job creation by the Qualifying Entity and report the number of jobs created to the City each quarter up to December 31, 2028.

C. At its discretion, review and audit the Project if it is deemed to be necessary or desirable; and

D. Reimburse the City for any costs associated with litigation to enforce the terms of the Security and the Clawback provisions.

SECTION 6. TERM OF AGREEMENT:

This Agreement shall become effective on the date it is fully executed and shall terminate on January 31, 2029 or when all of the obligations of the PPA have been fulfilled.

SECTION 7. LIABILITY:

No Party shall be responsible for liability incurred as a result of the other Party's acts or omissions. Any liability incurred in connection with this Agreement is subject to the New Mexico Tort Claims Act. The City and EDD may agree to reimburse one another under these liability provisions, subject to sufficient

appropriation by the New Mexico Legislature or sufficient funds being available to the party, as determined by the Party responsible for payment.

SECTION 8. DISPOSITION OF PROPERTY; RECORDS; RETURN OF SURPLUS FUNDS

A. Property purchased under this Agreement for the Project shall remain with the purchasing party unless otherwise agreed upon.

B. The City shall keep such records as will fully disclose the amount and disposition of the total funds from all sources budgeted for the Project, the purposes for which such funds were used and such other records as EDD may require.

C. If, upon the expiration of the Project or the termination date of this Agreement, any surplus funds are possessed by the City, the City shall return said funds to EDD for disposition in accordance with law.

SECTION 9. STRICT ACCOUNTABILITY:

The City shall be strictly accountable for receipts and disbursements relating hereto and shall make all relevant financial records available to EDD and the New Mexico State Auditor quarterly or upon request, and shall maintain all such records for a period of six (6) years following completion of all the records and any audits.

SECTION 10. REPORTS:

The Qualifying Entity shall submit quarterly reports regarding employment to the EDD during the life of this Agreement and EDD shall share those reports and any other information obtained respecting job retention and creation attributable to the State appropriation with the City. The City shall coordinate with EDD to conduct an annual performance review of the Project.

SECTION 11. NOTICES; REPRESENTATIVES OF THE PARTIES:

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. Mail, either first class or certified, return receipt requested, postage prepaid, as follows. The parties hereby designate the individuals named below as their representative responsible for overall administration of this Agreement.

To EDD:

Finance Development Team Leader
NM Economic Development Department
Joseph Montoya Building
1100 St. Francis Drive
PO Box 20003
Santa Fe, New Mexico 87504

To the CITY:

City Manager
The City of Las Cruces
700 S Main Street
P O Box 20000
Las Cruces, NM 88004

SECTION 12. AMENDMENTS:

This Agreement shall not be altered, changed or amended, except by instrument in writing executed by all of the Parties hereto.

SECTION 13. GOVERNING LAW/VENUE:

This Agreement shall be governed by the laws of the State of New Mexico. The venue for any litigation shall be a competent court of jurisdiction located in New Mexico.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the last date of signature below,

THE CITY OF LAS CRUCES, NEW MEXICO

By: _____

Name: Ifo Pili

Title: City Manager

Date: _____

APPROVED AS TO FORM

By: _____

The City of Las Cruces Attorney

NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

By: _____

Alicia J. Keyes
Cabinet Secretary

Date: _____

APPROVED AS TO FORM

By: _____

Jesika Ulibarri
General Counsel

FY22 LEDA Application

Applicant	Mark Francis
Applicant ID	APP-015764
Company Name	Electronic Caregiver, Inc
Email	mfrancis@ecg-hq.com
Status	Submitted
Application Amount	$0.00
Funded/Approved	☐
LEDA PPA Job Count Target	770

Contact Information

Question: Legal Company Name

Electronic Caregiver, Inc

Question: Trade Name (dba)

Electronic Caregiver, Inc

Question: Project Name

Question: Company Street Address

506 S. Main Street, Suite 1000

Question: Company City

Las Cruces

Question: Company State

NM

Question: Company Zip

88001

Question: Phone

575.649.4604

Question: Website

https://electroniccaregiver.com/

Question: Primary Contact Person First Name

Mark

Question: Primary Contact Person Last Name

Francis

Question: Federal Tax ID #

26-4367432

Question: NM State Tax and Revenue (CRS) #

03-263647-00

Question: City/County Business License Registration will be pursued

- [x] Yes
- [ ] No

Question: NAICS Code(s)

624230-8322

Question: DUNS # (preferred but not required)

078543531

Question: This Business is organized as a:

- [x] C-Corporation
- [ ] S-Corporation
- [ ] LLC
- [ ] Partnership
- [ ] Sole Proprietorship

☐ B-Corporation

Question: Incorporation Papers

Question: Resumes of all principals (owners, partners, directors or officers; required for businesses 1 year or younger)

No Attachments

Question: Company Contact for Project Administration (if different from above)

Electronic Caregiver, Inc

Question: Title

Chief Product Officer

Question: Telephone

575-993-4856

Question: Cell Phone

408-386-6077

Question: Email

mfrancis@ecg-hq.com

Project Information

Please include detailed information such as:

• Executive Summary; Business description and history

• Infrastructure Development/Needs

• Market analysis and strategy

• Summary of competition

• Tax Reporting Status

• Effect on Existing Industry and Commerce during and after Construction

• Land Acquisition

- Local Purchasing
- Water Conservation
- Relocation of Individuals or Businesses
- Construction Schedule
    - Target Close Date
    - General Contract Signed
    - Construction Start
    - Construction End
    - New Facility Operational Date
- Operations plan; Organizational chart
- Any document or record that the local governing body, in its sole discretion, deems necessary.

Question: Description of the Proposed Development, its product and its timeline.

Electronic Caregiver (ECG) is a privately held, digital health technology and services company headquartered in Las Cruces, NM. ECG's mission is to design and deliver innovative, impactful telehealth products and services that bridge the chasm between the doctor's office and patient's home to improve outcomes, expand access, and optimize resource allocation. The company's solutions are available through health care organizations (HCO), physician practices, care management firms, homecare agencies, and senior housing providers to deliver hospital-at-home, chronic care management, and remote patient monitoring programs.

Based upon the quality of services provided by ECG, recently 3 major HCO partners [with over 2 million Medicaid lives under management] have contracted with ECG to provide the enrollment and health coaching services to 87,000 of their patients. These initial contracts [value in excess of $19 million] are the basis of an expansion of staff and facilities to establish a Clinical Triage & Telehealth Services Center. Upon demonstrated success, ECG has an MOU to extend the services to the remainder of the patient population.

To fulfill the initial contracts, ECG will be hiring clinical triage specialists, health coaches, care coordinators, project managers, and a program manager. In addition, support staff across administration, accounting, IT, and finance will be expanded. NMEDD, City of Las Cruces, and MVEDA have awarded ECG $1.6 million in JTIP and Wage + funding to support the hiring, training and retention of 120 new employees. With increased demand for services, ECG will continue to expand by hiring additional clinical staff, graphic designers, software developers, engineering managers, cloud economics analysts, and other roles across the company. It is anticipated that the company will grow to a headcount in excess of 800 individuals by 2026. 90% of ECG headcount is locally based, thus we are creating new jobs to strengthen the Las Cruces, Dona Ana, and New Mexico economies.

This significant growth in business will require expanded staff and additional office space. After assessing options, ECG is seeking to acquire our existing leased space at 506 S Main Street in Las Cruces, NM. In this scenario, ECG would purchase the building, make significantly capital improvements, and build out the rest of the office space throughout the building. Doing so will

make the tallest building in the city a showcase for downtown economic strength, community empowerment, job creation, and technical innovation. The 770 new hires in the LEDA application would fill out the building, creating new jobs as well as new equipment, office build out, and building infrastructure improvements.

Question: Provide a detailed scope of work that is specific to the funding request/award and what the funds will be used for.

The requested LEDA funds would be used towards acquiring the building at 506 South Main Street in Las Cruces, NM. This is a 10 story building in which ECG currently fully occupies the 8, 9, and 10th floors and partially occupies space on the 1st and 7th floors. The other anchor tenant is the US General Services Administration (GSA) which occupies three floors in the building on a long-term lease agreement.

As part of this project, ECG will be hiring 770 new employees through end of 2026. These employees will populate all aspects of the company from engineering, design and production to clinical services, human resources, and finance. Immediately, ECG desires to place the Clinical Triage and Telehealth Services business unit in the building, occupying two full floors, initially, with expansion over time to additional floors. The expanding engineering and design team would occupy another 1-2 floors. Finance, billing, and administration would would require additional space. The marketing, video production, and human resources teams will also be expanded. Job growth is expected to scale as follows: 50 in year 1, 100 in year 2, 175 in year 3, 220 in year 4, and 225 in year 5. In total, 770 new jobs will be created.

LEDA funding would go towards the purchase of the building, required infrastructure (health/safety/code) improvements, tenant improvements, and workspace build-out to meet the business needs of ECG and the team. Year 1 capital investment (land, building, infrastructure, and improvements) is anticipated to be $10.6 million. Through years 2-5, ECG intents to invest an additional $7 million in the building, equipment, and capital improvements. As a 40 year old building, ECG will be planning for significant infrastructure improvements for major systems during the timeline of the LEDA award as well as improvements in the public entrance, elevators, and other public space. As the company hires 770 new staff, the retrofitting, build-out, and equipping numerous floors of the building to enable staff to effectively work will be another important use of funds.

Question: Business Plan (required for businesses 1 year or younger)

Not Answered

Question: Supporting Documentation

2021 Amended Articles (002).pdf (7/13/2022, 8:20 AM)
ECG Leadership Organization Chart final version.pdf (7/12/2022, 4:35 PM)

Financial Information

*Upload sources and uses chart; enter N/A and zero for questions that do not apply to your business

Question: Provide detailed assumptions for your project including three years of projected cash flow income statements. If the applicant has been in business less than one year, you may be requested to provide additional financial information after review.

ECG Three Statement 3 Year Financial Model.xlsx (7/8/2022, 5:11 PM) **CONFIDENTIAL**

Question: Provide financial statements (balance sheet, profit and loss and cash flow) or tax returns for the past three years. Also provide interim statements within 90 days of application date.

Income Statement ECG - Summary 2022 Q1.pdf (7/8/2022, 5:28 PM)
Balance Sheet ECG Q1 2022.pdf (7/8/2022, 5:28 PM)
Income Statement ECG - Summary 2021.pdf (7/8/2022, 5:11 PM)
Income Statement ECG - Summary 2020.pdf (7/8/2022, 5:10 PM)
Income Statement ECG - Summary 2019.pdf (7/8/2022, 5:10 PM) **CONFIDENTIAL**
Balance Sheet ECG 2021.pdf (7/8/2022, 5:10 PM)
Balance Sheet ECG 2020.pdf (7/8/2022, 5:10 PM)
Balance Sheet ECG 2019.pdf (7/8/2022, 5:09 PM)

Question: What is the collateral/security to be pledged to the funds awarded?

- ☐ Letter of Credit
- ☑ Surety Bond
- ☐ Mortgage Security
- ☐ Security Agreement/Escrow
- ☐ Security Agreement/Lien
- ☐ Security Interest/Lien

Question: What is the method of appraisal for stated security (if Security Mortgage or Lien were selected above)?

N/A

Question: What is the equity investment from the applicant?

$3,000,000.00

Question: External Equity Investment Sources

N/A

Question: External Equity Investment Amount

$0.00

Question: City/County Funding Source

City of Las Cruces LEDA

Question: City/ County Funding Amount

$235,000.00

Question: Bank Loan Source (financial institution names), type (commercial, USDA, SBA 504, etc.), and stage (applied or approved)

Pioneer Bank, Commercial loan to purchase the building. Approved!

Question: Bank Loans Amount Total

$7,480,000.00

Question: Other Loans Source

Edward S. Bredniak 2008 Grantor Retained Annuity Trust

Question: Other Loans Amount

$2,500,000.00

Question: Other Sources

Company generated revenues

Question: Other Sources Amount

$4,377,000.00

Question: Total Project Amount (Sum of above)

$17,592,000.00

Question: Supporting financial documentation

Company History and Background

Question: How long has the company been in operation, as of the date of application?

Electronic Caregiver Inc. has been in operation for 13 years. First year of operation was 2009.

Question: At the time of this application, how many full-time employees do you currently employ? Please provide the most recent Department of Workforce Solutions report below. If no employees, disregard report. Enter 0.

274.00

Question: List owners with more than 20% ownership stake in the company. Additionally, please list principal directors and/or officers.

There are no owners with more than 20%. Anthony Dohrmann CEO; Joseph Baffoe, President; Jorge Sanchez, CFO; David Keeley, Chief technology Officer; Mark Francis, Chief Product Officer; Albert Parra, Corporate Director of Human Resources

Question: Are owners and/or officers current with financial obligations/payments to the State of New Mexico or any other Federal or State entity? If no, please explain.

Yes

Question: Does the applicant have any loans or other financial obligations on which payments are not current? If yes, please explain.

No

Question: Please identify any financially affiliated/associated companies in which any of the applicant's owners have a 20% stake.

None

Community Aspects

Question: At the community level, what are the infrastructure needs not yet in place or in process that will affect this project's application?

As ECG is acquiring an existing building, the infrastructure needs are in place. No additional community infrastructure needs exist which would affect the project's application. As the company is acquiring an existing building, there will be capital improvement and build-out expenses that ECG will incur.

Question: What specific incentives are being REQUESTED from the COMMUNITY? Please explain where the applicant is in this process and provide an idea of a timeline for incentives' deployment.

ECG has pursued and will continue to pursue support from the state, city, and community to support the job creation and economic development efforts of the business expansion. The company has received two JTIP awards from the State of New Mexico EDD, WagePlus support from the City of Las Cruces, and funding through MVEDA. We expect to request additional JTIP and WagePlus support for future hiring, training, and retention. ECG is evaluating the opportunity to pursue an Industrial Revenue Bond (IRB) and is in active discussion with stakeholders on this incentive program.

Question: What specific incentives will be PROVIDED from the COMMUNITY?(e.g. parcel of land, building lease, waiver of fees, utility access/extension)?

Two JTIP awards obtained from NM EDD. One WagePlus award received from City of Las Cruces - a second is anticipated to support the recently awarded JTIP2. MVEDA and Community Foundation award received through El Paso Electric community investment. At this time, no additional building related incentives - beyond this LEDA application and a potential IRB -- are being pursued.

Job Creation / Performance

Please download the job creation worksheet to work up the required information for this section.

- Job Creation Worksheet

Question: Outline the number and types of jobs to be created.

770 total jobs will be created. These will be professional jobs across a variety of functional roles. Job roles will include registered nurses, CNAs, medical billers, financial analysts, human resource benefit analysts, recruiters, and trainers. In addition, the engineering and design teams will be expanded through the hiring of design engineers, quality assurance specialists, software developers, software testers, engineering managers, product owners, user experience designers, and user test researchers. The hiring plan is as follows: Year 1 (50), Year 2 (100), Year 3 (175), Year 4 (220), and Year 5 (225).

Question: Outline the proposed pay scale and payroll proposed by the entity.

The attached Job Creation Workshop provides a breakdown of the types of jobs and the pay scale per job. Hourly wage rate ranges from $16 - 78 depending upon role and experience. Entry level positions are on the low end of the range while experienced software managers and executive staff are on the high end of the range. Importantly, ECG has a culture of upskilling and creating career pathways for internal professional development and growth. We are excited to offer such opportunities through these new jobs.

To provide an estimated average annual wage rate/payroll per year - we have taken a weighted average of the jobs to be hired. This information was pulled from the Economic Impact Analysis (EIA) information form which was created. Average salary for the new jobs is $47,000 in year one. Conservatively, this average salary will grow to $53,934 in year five.

Question: Outline the benefits offered to the employees, including but not limited to health care and retirement.

ECG provides Medical, Dental, Vision and EAP services to all full-time employees. Basic Life and AD&D Insurance (Company Paid) Voluntary Life/AD&D (Employee Paid), Voluntary Disability Insurance, Voluntary Benefits Administered by AFLAC, Identity Theft Protection, and Met Law. Other benefits are paid time off for Birthday, Employment Anniversary, Paid Sick Time Off, Bereavement and holiday pay for New Years day, Good Friday, Memorial Day, Independence Day, Labor Day, the day before Thanksgiving, Thanksgiving Day and the Day after, Christmas Eve, Christmas Day and day after. Retirement 401K.

Question: Outline any efforts being made or proposed by the applicant to hire people within the local employment pool.

ECG's focus is to hiring from and development the local employment pool. ECG's jobs are 90%+ Las Cruces based as the company has a strong focus to grow, strengthen, and diversify the Las Cruces, Dona Ana, and New Mexico economy. The company works closely with Dona Ana Community College, New Mexico State University, and Burrell College of Osteopathic Medicine to employ and train clinical professionals. A large number of engineering, design, and business development staff are graduates of NMSU. Later in 2022 the company will launch a telehealth certificate credential available through the NMSU On Demand platform. ECG also works with Workforce Solutions and other local agencies to identify, hire, upskill, and retain local workers.

Question: Attach job creation worksheet

ECG.LEDAJobCreationWorksheet.pdf (7/7/2022, 3:51 AM)

Question: Starting Headcount (from worksheet above)

70.00

Question: Total new jobs to be created Year 1 (from worksheet above)

50.00

Question: Total new payroll Year 1 (from worksheet above)

$2,350,000.00

Question: Total number of new jobs to be created Year 2 (from worksheet above)

100.00

Question: Total new payroll Year 2 (from worksheet above)

$4,864,500.00

Question: Total number of new jobs to be created Year 3 (from worksheet above)

175.00

Question: Total new payroll Year 3 (from worksheet above)

$8,810,900.00

Economic Impact Analysis

NMEDD will perform an Economic Impact Analysis to address the impact to the local tax base, the school system, etc. using the Economic Impact Datasheet provided by the applicant.

Question: Outline any impacts to the environment, positively or negatively.

We are acquiring an existing structure, which will not require any external construction. We anticipate no changes in utility use or major traffic changes to the existing infrastructure and area. Purchasing, renovating, and investing in capital improvements in the tallest building in Las Cruces will have a positive economic impact. It will ensure that the downtown core remains vibrant and that older commercial building stock remains fully utilized. We will turn the most visually prominent building in the city into a showcase for innovation. The physical appearance and mechanical infrastructure of the building will be enhanced. By creating 700+ local jobs, we will be bringing professionals into the downtown area which will support local businesses, increase demand for restaurants, and support service providers. The jobs, wages, and taxes will have a strong economic impact on the region. These benefits have been elaborated upon in the full application.

Question: Status of permitting/regulatory matters needed for project.

None required (obtaining existing building for the project)

Attachments

Please download the authorization for examination and release of information template and the example employer quarterly wage and contribution report.

- Authorization for examination and release of information form
- Employer quarterly wage and contribution report example

If you are a new business, please apply for a NM Tax Identification Number here:

http://www.tax.newmexico.gov/Businesses/wage-witholding-tax.aspx

Please download the LEDA Application Affirmation Template here:

LEDA Application Affirmation Template

Click here to view a filled out sample.

Question: New Mexico Economic Development Department authorization for examination and release of information.

NM Economic Dev Dept Auth ROI Signed.pdf (7/8/2022, 4:58 PM)

Question: Latest New Mexico employer's quarterly wage and contribution report submitted to the Department of Workforce Solutions.

Q122 ES903A_upload.csv (7/8/2022, 5:35 PM)

Question: Affirmation and any other supporting documents

Q122 ES903A print out.pdf (7/15/2022, 3:34 PM)
LEDA Affirmation signed.pdf (7/8/2022, 4:49 PM)
LEDA App signed.pdf (5/11/2022, 12:02 PM)

NINTH AMENDED AND RESTATED ARTICLES OF INCORPORATION OF ELECTRONIC CAREGIVER, INC.

The undersigned, Electronic Caregiver, Inc., a Nevada corporation (the "Corporation"), for the purpose of amending and restating the Articles of Incorporation of the Corporation, in accordance with the provisions of Nevada Revised Statutes, Title 17, Chapter 78, Section 78.402 as from time to time amended (the "Nevada General Corporation Law"), does hereby make and execute these Ninth Amended and Restated Articles of Incorporation and does hereby certify that:

1. The name of the Corporation is Electronic Caregiver, Inc. Its original Articles of Incorporation as were filed with the Secretary of State of Nevada on February 20, 2009.

2. Upon a proposal recommended and adopted by the Board of Directors and submitted to the majority stockholders of the Corporation by the Corporation's directors pursuant to Section 78.315 of the Nevada General Corporation Law, resolutions setting forth the within Ninth Amended and Restated Articles of Incorporation of this Corporation were duly adopted by majority vote of the stockholders of the Corporation by written consent, in accordance with Section 78.320 of the Nevada General Corporation Law.

3. The Ninth Amended and Restated Articles of Incorporation of the Corporation submitted and recommended by the Corporation's directors and approved by the majority stockholders of the Corporation read as follows:

ARTICLE I
NAME

The name of the corporation is Electronic Caregiver, Inc. (hereinafter, the "Corporation").

ARTICLE II
REGISTERED OFFICE

The address of the Corporation's registered office in the State of Nevada is Corporation Service Company, 112 North Curry St., Carson City, NV, 89703, USA. The name of the registered agent at such address is United States Corporation Agents, Inc. The Corporation may, from time to time, in the manner provided by law, change the resident agent and the registered office within the State of Nevada. The Corporation may also maintain an office or offices for the conduct of its business, either within or without the State of Nevada.

ARTICLE III
PURPOSE

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the Nevada General Corporation Law.

ARTICLE IV
EXISTENCE

The Corporation shall have perpetual existence.

ARTICLE V
CAPITAL STOCK

Section 5.01. Authorized Shares. (a) The total number of shares of all classes of stock that the Corporation shall have authority to issue is 150,000,000 shares consisting of:

(i) 90,000,000 shares of Common Stock, par value of $0.001 per share (the "Common Stock");

(ii) 10,000,000 shares of Nonvoting Common, par value of $0.001 per share (the "Nonvoting Common Stock"; and

(iii) 50,000,000 shares of Preferred Stock, par value of $0.001 per share (the "Preferred Stock").

(b) The rights, preferences, privileges and restrictions of the Preferred Stock shall be determined by the board of directors. Authority shall be vested in the board of directors to change the class, the number of each class of stock and the voting powers, designations, preferences, limitations, restrictions, and relative rights of each class of stock.

(c) The following classes of preferred stock are designated as follows:

Series A - 8,775,000 shares

Series B - 3,845,000 shares

Series C - 3,000,000 shares

Series D - 15,750,000 shares

Series E – 5,000,000 shares

(d) The preferences of the designated classes are set forth below:

SERIES A PREFERENCES

Section d.1.1 Unless the context otherwise requires all purposes of these Articles of Incorporation, the meanings herein specified.

Common Stock. The term "Common Stock" shall mean all shares now or hereafter authorized of any class of Common Stock of the Corporation and any other stock of the Corporation, howsoever designated, authorized after the Issue Date, which has the right (subject always to prior rights of any

class or series of Preferred Stock) to participate in the distribution of the assets and earnings of the Corporation without limit as to per share amount.

Conversion Ratio. The term "Conversion Ratio" shall mean the ratio per share of Common Stock used to determine the number of shares of Common Stock deliverable upon conversion of a share of the Series A Preferred Stock, which ratio shall initially be one (1) share of Series A Preferred Stock to one (1) share of Common Stock.

Dividend Payment Date. The term "Dividend Payment Date" shall be December 31 of each year, the day upon which non-cumulative payments shall be payable, when and as declared by the Board of Directors. Each such dividend shall be paid to the holders of record of the Series A Preferred Stock as their names appear on the share register of the Corporation on the corresponding Record Date. As used above, the term "Record Date" means, with respect to the dividends payable on December 31 of each year, the preceding December 15, or such other record date designated by the Board of Directors of the Corporation with respect to the dividend payable on such respective Dividend Payment Date.

Dividend Period. The term "Dividend Period" shall have the meaning of the annual period between consecutive Dividend Payment Dates.

Issue Date. The term "Issue Date" shall mean the date that shares of Series A Preferred Stock are first issued by the Corporation.

Subordinate Stock. The term "Subordinate Stock" shall mean the Common Stock, Nonvoting Common Stock and any other class or series of stock of the Corporation issued after the Issue Date which have rights that are subordinate to the rights and preferences of the Series A Preferred Stock and any class or series of stock of the Corporation issued after the Issue Date not entitled to receive any assets upon the liquidation, dissolution or winding up of the affairs of the Corporation until the Series A Preferred Stock shall have received the entire amount to which such stock is entitled upon such liquidation, dissolution or winding up.

Net Distributable Profit. The term "Net Distributable Profit" shall mean, for the purposes of Section d.1.2.1 below, the difference between revenues and expenses realized by the Company according to Generally Accepted Accounting Principles that the Company, in its sole discretion, elects to distribute to interest holders. Expenses shall include any and all amounts that the Company determines, in its sole discretion, are necessary for the payment of or due provision for (a) the liabilities of the Company to all creditors, and/or (b) additional requirements for funds in connection with the Company's business.

Parity Stock. The term "Parity Stock" shall mean any other class or series of stock of the Corporation issued after the Issue Date entitled to receive assets upon the liquidation, dissolution or winding up of the affairs of the Corporation on parity with the Preferred Stock.

Senior Stock. The term "Senior Stock" shall mean any class or series of stock of the Corporation issued ranking senior to the Series A Preferred Stock in respect of the right to receive dividends, and any class or series of stock of the Corporation issued ranking senior to the Series A Preferred Stock in respect of the right to receive assets upon the liquidation, dissolution or winding up of the affairs of the Corporation.

Section d.1.2 - Series A Preferred Stock. The Corporation is hereby authorized to issue up to eight million, sevent-hundred seventy-five thousand, (8,775,000) shares of Preferred Stock, to be designated "Series A Convertible Preferred Stock" and in accordance with the following preferences:

Section d.1.2.1 - Revenue Distribution Provisions.

(a) The holders of the then outstanding shares of Series A Preferred Stock shall be entitled to a pro rata share of the net distributable profits based on all Common Stock, Nonvoting Common Stock and all Preferred Stock outstanding as a group. Distributions on the Series A Preferred Stock shall not be cumulative and no rights shall accrue to the holders of Series A Preferred Stock by reason of the fact that this Corporation may have failed to declare or pay distributions on the Series A Preferred Stock in any previous fiscal year of the Corporation, whether or not the earnings of this Corporation were sufficient to pay such distributions.

(b) In the event that full cash dividends are not paid or made available to the holders of all outstanding shares of Preferred Stock assets shall be distributed as set forth hereby:

(i) In the event that full cash dividends are not paid or made available to the holders of all outstanding shares of Preferred Stock senior to Series A Preferred Stock, and funds available shall be insufficient to permit payment in full in cash to all such holders of the preferential amounts to which they are then entitled, the entire amount available for payment of cash dividends shall be distributed among the holders of the Preferred Stock senior to Series A Preferred Stock ratably in proportion to the full amount to which they would otherwise be respectively entitled, and any remainder not paid in cash to the holders of the Preferred Stock senior to Series A Preferred Stock shall be distributed among the holders of the Series A Preferred Stock and of any Parity Stock (such as any Preferred Stock so designated) ratably in proportion to the full amount to which they would otherwise be respectively entitled.

(ii) In the event that full cash dividends are paid to Senior Stock, but not paid or made available to the holders of all outstanding shares of Series A Preferred Stock and of any Parity Stock, and funds available shall be insufficient to permit payment in full in cash to all such holders of the preferential amounts to which they are then entitled, the entire amount available for payment of cash dividends shall be distributed among the holders of the Series A Preferred Stock and of any Parity Stock (such as any Preferred Stock so designated) ratably in proportion to the full amount to which they would otherwise be respectively entitled, and any remainder not paid in cash to the holders of the Series A Preferred Stock shall cumulate as provided in Subsection d.1.2.1(c) below.

(c) If, on any Dividend Payment Date, the holders of the Series A Preferred Stock shall not have received the full dividends provided for in the other provisions of this Section d.1.2.1, then such dividends shall cumulate, whether or not earned or

declared, with additional dividends thereon for each succeeding full Dividend Period during which such dividends shall remain unpaid. Unpaid dividends for any period less than a full Dividend Period shall cumulate on a day-to-day basis and shall be computed on the basis of a three hundred sixty (360) day year.

(d) So long as any shares of Series A Preferred Stock shall be outstanding, the Corporation shall not declare or pay on any Subordinate Stock any dividend whatsoever, whether in cash, property or otherwise (other than dividends payable in shares of the class or series upon which such dividends are declared or paid, or payable in shares of Common Stock or Nonvoting Common Stock with respect to Subordinate Stock other than Common Stock and Nonvoting Common, together with cash in lieu of fractional shares), nor shall the Corporation make any distribution on any Subordinate Stock, nor shall any Subordinate Stock be purchased or redeemed by the Corporation or any Subsidiary, nor shall any monies be paid or made available for a sinking fund for the purchase or redemption of any Subordinate Stock, unless all dividends to which the holders of Series A Preferred Stock shall have been entitled for all previous Dividend Periods shall have been paid or declared and a sum of money sufficient for the payment thereof set apart.

(e) Subject to Section (f) of this Section d.1.2.1, no distributions may be paid to holders of shares of Common Stock or Nonvoting Common unless the holders of shares of Series A Preferred Stock participate in such distributions together with holders of shares of Common Stock to the same extent as if their shares of Series A Preferred Stock were converted into shares of Common Stock (as provided in Section d.1.2.1 with respect to shares of Series A Preferred Stock, on the record date for determining the holders of Common Stock entitled to such distributions).

(f) For purposes of this Section d.1.2.1., unless the context otherwise requires, distribution shall mean the transfer of cash or property without consideration, payable other than in Common Stock, or the purchase or redemption of shares of this Corporation (other than repurchases of Common Stock or Nonvoting Common held by employees or consultants of this Corporation upon termination of their employment or services pursuant to agreements providing for such repurchase) for cash or property, including any such transfer, purchase or redemption by a subsidiary of this Corporation. Each holder of shares of Series A Preferred Stock shall be deemed to have consented, for purposes of the Nevada Statutes, to distributions made by the Corporation in connection with the repurchase of shares of Common Stock or Nonvoting Common Stock issued to or held by employees or consultants upon termination of their employment or services pursuant to agreements providing for such repurchase.

Section d.1.2.2 - Liquidation Preference.

(a) In the event of any liquidation, dissolution or winding up of this Corporation, whether voluntary or involuntary, the holders of shares of Series A Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of this Corporation to the holders of the Common Stock or Nonvoting Common Stock by reason of their ownership thereof, an amount per share as may be

fixed for such class (the "Preferential Amount") plus an amount equal to all accrued and unpaid distributions thereon. The Preferential Amount is one dollar ($1.00) for each share of Series A Preferred Stock.

(b) In the event the assets thus distributed among the holders of all the outstanding Series A Preferred Stock and Parity Preferred Stock shall be insufficient to permit the payment to such holders of the full Preferential Amount, then the entire assets of this Corporation legally available for distribution shall be distributed as set forth hereby:

(i) If, upon the occurrence of such event, the assets thus distributed among the holders of the Senior Stock shall be insufficient to permit the payment to such holders of the full Preferential Amount, then the entire assets of this Corporation legally available for distribution shall be distributed ratably among the holders of the Senior Stock in proportion to the full Preferential Amount each such holder is otherwise entitled to receive.

(ii) If, upon the occurrence of such event, the assets thus distributed are sufficient to permit payment to Senior Stock holders of the full Preferential Amount, but insufficient to permit the payment to the holders of the Series A Preferred Stock and Parity Preferred Stock of the full Preferential Amount, then the entire assets of this Corporation legally available for distribution shall be distributed ratably among the holders of the Series A Preferred Stock and Parity Stock in proportion to the full Preferential Amount each such holder is otherwise entitled to receive.

(c) If assets remain in this Corporation after the distributions provided for in Sections (a) and (b) of this Section d.1.2.2 have been fully made, the holders of Common Stock and Nonvoting Common Stock shall be entitled to receive, prior and in preference to any further distribution of any other of the surplus funds or assets of the Corporation to the holders of Series A Preferred Stock by reason of their ownership thereof, an amount equal to five cents ($0.05) per share (subject to adjustment for stock dividends, stock splits, stock combinations or the like). If upon the completion of the distribution required by Sections (a) and (b) of this Section d.1.2.2, the assets and funds available to be distributed among the holders of shares of Common Stock and Nonvoting Common Stock shall be insufficient to permit the payment to such holders of the full aforesaid amounts, then the remaining assets and funds of this Corporation legally available for distribution shall be distributed ratably among the holders of the Common Stock and Nonvoting Common Stock in proportion to the full Preferential Amount each such holder is otherwise entitled to receive.

(d) If upon the completion of the distributions contemplated by Sections (a), (b) and (c) of this Section d.1.2.2, assets remain in the Corporation, the holders of shares of Series A Preferred Stock and the holders of shares of Common Stock and Nonvoting Common Stock shall participate on a pro rata basis in the distribution of all remaining assets of the Corporation legally available for distribution, with the outstanding shares of Series A Preferred Stock treated as though they have been

converted into the number of shares of Common Stock, if any, into which they are convertible as of the date of such distribution.

Section d.1.2.3 - Conversion. The holders of outstanding shares of Series A Preferred Stock shall have conversion rights as follows:

(a) Incidents Causing Conversion.

(i) Optional Conversion. There shall be no voluntary conversion rights.

(ii) Automatic Conversion. Each share of Series A Preferred Stock shall automatically be converted into such number of fully paid and non-assessable shares of Common Stock as is determined pursuant to Section (d) of this Section 1.2.3 upon the closing of the issuance of shares following the effectiveness of a registration statement (other than a registration statement with respect to any securities offered pursuant to any employee purchase, savings, option, bonus, appreciation, profit sharing, thrift, incentive or similar plan of the Corporation) under the Securities Act of 1933, as amended.

(b) Cases Creating Automatic Conversion.

(i) A consolidation, reorganization or merger of this Corporation with or into any other corporation or corporations (1) in which the acquiring company is a public company or (2) in which the stockholders of this Corporation immediately after the transaction own less that fifty percent (50%) of the voting power of the surviving entity;

(ii) A sale, conveyance or other disposition of all or substantially all of this Corporation's property or business;

(iii) A transaction or class of related transactions in which control of this Corporation is transferred (consisting of transfer of at least fifty percent (50%) of the voting power of the Corporation to one (1) person or group of affiliated persons); or,

(iv) The Corporation files a registration statement to register its securities with the Federal Securities and Exchange Commission pursuant to the Securities Act of 1933.

(c) Mechanics of Automatic Conversion. In the event of an automatic conversion of all outstanding shares of Series A Preferred Stock pursuant to Section (a)(ii) of this Section d.1.2.3, the effective date of such conversion shall be the date of the occurrence of the event that triggered such automatic conversion. Notwithstanding the fact that such conversion shall be deemed to have taken place automatically, each holder of outstanding shares of Series A Preferred Stock so converted shall be obligated to surrender to the Corporation all certificates representing his or her shares of Series A Preferred Stock so converted, the satisfaction of which obligation shall be a condition to the Corporation's obligation to issue a certificate representing the shares of Common Stock he received upon such automatic conversion.

(d) Conversion Ratio. Each share of Series A Preferred Stock to be converted into shares of Common Stock shall be converted on the basis of a 1:1 ratio into the number of fully paid and non-assessable shares of Common Stock, with no fractional shares to be issuable upon conversion.

(e) Notices. In the event of any taking by this Corporation of a record of the holders of any class or class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, this Corporation shall mail to each holder of Series A Preferred Stock, at least twenty (20) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right. Any notice required by the provisions of this Section d.1.2.3 to be given to the holders of shares of Series A Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at such holder's address appearing on the books of this Corporation.

(f) Reservation of Common Stock Issuable Upon Conversion. This Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of the Series A Preferred Stock such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series A Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all the outstanding shares of the Series A Preferred Stock, this Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

Section d.1.2.4 - Voting Rights. The holders of the issued and outstanding shares of Series A Preferred Stock shall have no voting rights.

Section d.1.2.5 - Covenants. In addition to any other rights provided by law, so long as any Series A Preferred Stock is outstanding, the Corporation, without first obtaining the affirmative vote or written consent of the holders of not less than a majority of such outstanding shares of each series of Series A Preferred Stock, will not:

(a) Amend or repeal any provision of, or add any provision to, the Corporation's Articles of Incorporation or By-Laws if such action would alter adversely or change the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of, any Series A Preferred Stock, or increase or decrease the number of shares of Series A Preferred Stock authorized hereby;

(b) Pay or declare any dividend on any Subordinate Stock (other than dividends payable in shares of the class or series upon which such dividends are declared or paid, or payable in shares of Common Stock or Nonvoting Common Stock with

respect to Subordinate Stock other than Common Stock or Nonvoting Common Stock , together with cash in lieu of fractional shares and dividends not in excess of dividends paid to the Preferred Stock) while the Series A Preferred Stock remains outstanding, or apply any of its assets to the redemption, retirement, purchase or acquisition, directly or indirectly, through subsidiaries or otherwise, of any Subordinate Stock, except from employees of the Corporation upon termination of employment or otherwise pursuant to the terms of stock purchase or option agreements providing for the repurchase of, or right of first refusal with respect to, such Subordinate Stock entered into with such employees; or

(c) Materially change the principal business of the Corporation.

Section d.1.2.6 - Exclusion of Other Rights. Except as may otherwise be required by law, the shares of Series A Preferred Stock shall not have any preferences or relative, participating, optional or other special rights, and in the Corporation's Certificate of Incorporation. The shares of Series A Preferred Stock shall have no preemptive or subscription rights.

Section d.1.2.7 - Headings of Subdivisions. The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

Section d.1.2.8 - Severability of Provisions. If any right, preference or limitation of the Series A Preferred Stock set forth in this resolution (as such resolution may be amended from time to time) is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other rights, preferences and limitations set forth in this resolution (as so amended) which can be given effect without the invalid, unlawful or unenforceable right, preference or limitation shall, nevertheless, remain in full force and effect, and no right, preference or limitation herein set forth shall be deemed dependent upon any other such right, preference or limitation unless so expressed herein.

Section d.1.2.9 - Status of Reacquired Shares. Shares of Series A Preferred Stock which have been issued and reacquired in any manner shall (upon compliance with any applicable provisions of the laws of the State of Nevada) have the status of authorized and unissued shares of Preferred Stock issuable in series undesignated as to series and may be redesignated and reissued.

Section d.1.2.10 - Adjustments for Stock Splits, Dividends and Combinations. The number of shares of Series A Preferred Stock and the Series A Preferred Stock Conversion Ratio set forth in Section d.1.2.3 (d), as adjusted, shall be appropriately adjusted for any share combination or share split of, or any dividend of Series A Preferred Stock with respect to, the Series A Preferred Stock after the effective date of the Corporation's adoption of this Designation of Rights and Preferences for the Series A Preferred Stock.

SERIES B PREFERENCES

Section d.2.1 - Definitions. Unless the context otherwise requires, the terms defined in this Section d.2.1 shall have, for all purposes of these Articles of Incorporation, the meanings herein specified.

Common Stock. The term "Common Stock" shall mean all shares now or hereafter authorized of any class of Common Stock of the Corporation and any other stock of the Corporation, howsoever designated, authorized after the Issue Date, which has the right (subject always to prior rights of any class or series of Preferred Stock) to participate in the distribution of the assets and earnings of the Corporation without limit as to per share amount.

Conversion Ratio. The term "Conversion Ratio" shall mean the ratio per share of Common Stock used to determine the number of shares of Common Stock deliverable upon conversion of a share of the Series B Preferred Stock, which ratio shall initially be one (1) share of Series B Preferred Stock to one (1) share of Common Stock.

Dividend Payment Date. The term "Dividend Payment Date" shall be December 31 of each year, the day upon which non-cumulative payments shall be payable, when and as declared by the Board of Directors. Each such dividend shall be paid to the holders of record of the Series B Preferred Stock as their names appear on the share register of the Corporation on the corresponding Record Date. As used above, the term "Record Date" means, with respect to the dividends payable on December 31 of each year, the preceding December 15, or such other record date designated by the Board of Directors of the Corporation with respect to the dividend payable on such respective Dividend Payment Date.

Dividend Period. The term "Dividend Period" shall have the meaning of the annual period between consecutive Dividend Payment Dates.

Issue Date. The term "Issue Date" shall mean the date that shares of Preferred Stock are first issued by the Corporation.

Subordinate Stock. The term "Subordinate Stock" shall mean the Common Stock, Nonvoting Common Stock and any other class or series of stock of the Corporation issued after the Issue Date which have rights that are subordinate to the rights and preferences of the Series B Preferred Stock and any class or series of stock of the Corporation issued after the Issue Date not entitled to receive any assets upon the liquidation, dissolution or winding up of the affairs of the Corporation until the Series B Preferred Stock shall have received the entire amount to which such stock is entitled upon such liquidation, dissolution or winding up.

Net Distributable Profit. The term "Net Distributable Profit" shall mean, for the purposes of Section d.2.2.1 (c) below, the difference between revenues and expenses realized by the Company according to Generally Accepted Accounting Principles that the Company, in its sole discretion, elects to distribute to interest holders. Expenses shall include any and all amounts that the Company determines, in its sole discretion, are necessary for the payment of or due provision for (a) the liabilities of the Company to all creditors, and/or (b) additional requirements for funds in connection with the Company's business.

Parity Stock. The term "Parity Stock" shall mean any other class or series of stock of the Corporation issued after the Issue Date entitled to receive assets upon the liquidation, dissolution or winding up of the affairs of the Corporation on a parity with the Series B Preferred Stock.

Senior Stock. The term "Senior Stock" shall mean any class or series of stock of the Corporation issued ranking senior to the Series B Preferred Stock in respect of the right to receive dividends, and any class or series of stock of the Corporation issued ranking senior to the Series B Preferred Stock in respect of the right to receive assets upon the liquidation, dissolution or winding up of the affairs of the Corporation.

Section d.2.2 - Series B Preferred Stock. The Corporation is hereby authorized to issue three million, eight-hundred thousand (3,800,000) shares of Preferred Stock, to be designated "Series B Convertible Preferred Stock" and in accordance with the following preferences:

Section d.2.2.1 - Revenue Distribution Provisions.

(a) The holders of the then outstanding shares of Series B Preferred Stock shall be entitled to a pro rata share of the net distributable profits based on all Common Stock, Nonvoting Common Stock and all Preferred Stock outstanding as a group. Distributions on the Series B Preferred Stock shall not be cumulative and no rights shall accrue to the holders of Series B Preferred Stock by reason of the fact that this Corporation may have failed to declare or pay distributions on the Series B Preferred Stock in any previous fiscal year of the Corporation, whether or not the earnings of this Corporation were sufficient to pay such distributions.

(b) In the event that full cash dividends are not paid or made available to the holders of all outstanding shares of Preferred Stock assets shall be distributed as set forth hereby:

(i) In the event that full cash dividends are not paid or made available to the holders of all outstanding shares of Preferred Stock senior to Series B Preferred Stock, and funds available shall be insufficient to permit payment in full in cash to all such holders of the preferential amounts to which they are then entitled, the entire amount available for payment of cash dividends shall be distributed among the holders of the Preferred Stock senior to Series B Preferred Stock ratably in proportion to the full amount to which they would otherwise be respectively entitled, and any remainder not paid in cash to the holders of the Preferred Stock senior to Series B Preferred Stock shall be distributed among the holders of the Series B Preferred Stock and of any Parity Stock (such as any Preferred Stock so designated) ratably in proportion to the full amount to which they would otherwise be respectively entitled.

(ii) In the event that full cash dividends are paid to Senior Stock, but not paid or made available to the holders of all outstanding shares of Series B Preferred Stock and of any Parity Stock, and funds available shall be insufficient to permit payment in full in cash to all such holders of the preferential amounts to which they are then entitled, the entire amount available for payment of cash dividends shall be

distributed among the holders of the Series B Preferred Stock and of any Parity Stock (such as any Preferred Stock so designated) ratably in proportion to the full amount to which they would otherwise be respectively entitled, and any remainder not paid in cash to the holders of the Series B Preferred Stock shall cumulate as provided in Subsection d.2.2.1(c) below.

(c) If, on any Dividend Payment Date, the holders of the Series B Preferred Stock shall not have received the full dividends provided for in the other provisions of this Section d.2.2.1, then such dividends shall cumulate, whether or not earned or declared, with additional dividends thereon for each succeeding full Dividend Period during which such dividends shall remain unpaid. Unpaid dividends for any period less than a full Dividend Period shall cumulate on a day-to-day basis and shall be computed on the basis of a three hundred sixty (360) day year.

(d) So long as any shares of Series B Preferred Stock shall be outstanding, the Corporation shall not declare or pay on any Subordinate Stock any dividend whatsoever, whether in cash, property or otherwise (other than dividends payable in shares of the class or series upon which such dividends are declared or paid, or payable in shares of Common Stock with respect to Subordinate Stock other than Common Stock, together with cash in lieu of fractional shares), nor shall the Corporation make any distribution on any Subordinate Stock, nor shall any Subordinate Stock be purchased or redeemed by the Corporation or any Subsidiary, nor shall any monies be paid or made available for a sinking fund for the purchase or redemption of any Subordinate Stock, unless all dividends to which the holders of Series B Preferred Stock shall have been entitled for all previous Dividend Periods shall have been paid or declared and a sum of money sufficient for the payment thereof set apart.

(e) Subject to Section (f) of this Section d.2.2.1, no distributions may be paid to holders of shares of Common Stock or Nonvoting Common Stock unless the holders of shares of Series B Preferred Stock participate in such distributions together with holders of shares of Common Stock to the same extent as if their shares of Series B Preferred Stock were converted into shares of Common Stock (as provided in Section d.2.2.1 with respect to shares of Series B Preferred Stock, on the record date for determining the holders of Common Stock entitled to such distributions).

(f) For purposes of this Section d.2.2.1, unless the context otherwise requires, distribution shall mean the transfer of cash or property without consideration, payable other than in Common Stock or Nonvoting Common Stock , or the purchase or redemption of shares of this Corporation (other than repurchases of Common Stock or Nonvoting Common Stock held by employees or consultants of this Corporation upon termination of their employment or services pursuant to agreements providing for such repurchase) for cash or property, including any such transfer, purchase or redemption by a subsidiary of this Corporation. Each holder of shares of Series B Preferred Stock shall be deemed to have consented, for purposes of the Nevada Statutes, to distributions made by the Corporation in connection with the repurchase of shares of Common Stock issued to or held by employees or consultants upon

termination of their employment or services pursuant to agreements providing for such repurchase.

Section d.2.2.2 - Liquidation Preference.

(a) In the event of any liquidation, dissolution or winding up of this Corporation, whether voluntary or involuntary, the holders of shares of each class of Series B Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of this Corporation to the holders of the Common Stock or Nonvoting Common Stock by reason of their ownership thereof, an amount per share as may be fixed for such class (the "Preferential Amount") plus an amount equal to all accrued and unpaid distributions thereon. The Preferential Amount is one dollar ($1.00) for each share of Series B Preferred Stock.

(b) In the event the assets thus distributed among the holders of all the outstanding Series B Preferred Stock and Parity Preferred Stock shall be insufficient to permit the payment to such holders of the full Preferential Amount, then the entire assets of this Corporation legally available for distribution shall be distributed as set forth hereby:

(c) If, upon the occurrence of such event, the assets thus distributed among the holders of the Senior Stock shall be insufficient to permit the payment to such holders of the full Preferential Amount, then the entire assets of this Corporation legally available for distribution shall be distributed ratably among the holders of the Senior Stock in proportion to the full Preferential Amount each such holder is otherwise entitled to receive.

(d) If, upon the occurrence of such event, the assets thus distributed are sufficient to permit payment to Senior Stock holders of the full Preferential Amount, but insufficient to permit the payment to the holders of the Series B Preferred Stock and Parity Preferred Stock of the full Preferential Amount, then the entire assets of this Corporation legally available for distribution shall be distributed ratably among the holders of the Series B Preferred Stock and Parity Stock in proportion to the full Preferential Amount each such holder is otherwise entitled to receive.

(e) If assets remain in this Corporation after the distributions provided for in Sections (a) and (b) of this Section d.2.2.2 have been fully made, the holders of Common Stock and Nonvoting Common Stock shall be entitled to receive, prior and in preference to any further distribution of any other of the surplus funds or assets of the Corporation to the holders of Series B Preferred Stock by reason of their ownership thereof, an amount equal to five cents ($0.05) per share (subject to adjustment for stock dividends, stock splits, stock combinations or the like). If upon the completion of the distribution required by Sections (a) and (b) of this Section d.2.2.2, the assets and funds available to be distributed among the holders of shares of Common Stock shall be insufficient to permit the payment to such holders of the full aforesaid amounts, then the remaining assets and funds of this Corporation legally available for distribution shall be distributed ratably among the holders of the

Common Stock and Nonvoting Common Stock in proportion to the full Preferential Amount each such holder is otherwise entitled to receive.

(f) If upon the completion of the distributions contemplated by Sections (a), (b) and (c) of this Section d.2.2.2, assets remain in the Corporation, the holders of shares of Series B Preferred Stock and the holders of shares of Common Stock and Nonvoting Common Stock shall participate on a pro rata basis in the distribution of all remaining assets of the Corporation legally available for distribution, with the outstanding shares of Series B Preferred Stock treated as though they have been converted into the number of shares of Common Stock, if any, into which they are convertible as of the date of such distribution.

Section d.2.2.3 - Conversion. The holders of outstanding shares of Series B Preferred Stock shall have conversion rights as follows:

(a) Incidents Causing Conversion.

(i) Optional Conversion. There shall be no voluntary conversion rights.

(ii) Automatic Conversion. Each share of Series B Preferred Stock shall automatically be converted into such number of fully paid and non-assessable shares of Common Stock as is determined pursuant to Section (d) of this Section d.2.2.3 upon the closing of the issuance of shares following the effectiveness of a registration statement (other than a registration statement with respect to any securities offered pursuant to any employee purchase, savings, option, bonus, appreciation, profit sharing, thrift, incentive or similar plan of the Corporation) under the Securities Act of 1933, as amended.

(b) Cases Creating Automatic Conversion.

(i) A consolidation, reorganization or merger of this Corporation with or into any other corporation or corporations (1) in which the acquiring company is a public company or (2) in which the stockholders of this Corporation immediately after the transaction own less that fifty percent (50%) of the voting power of the surviving entity;

(ii) A sale, conveyance or other disposition of all or substantially all of this Corporation's property or business;

(iii) A transaction or class of related transactions in which control of this Corporation is transferred (consisting of transfer of at least fifty percent (50%) of the voting power of the Corporation to one (1) person or group of affiliated persons); or,

(iv) The Corporation files a registration statement to register its securities with the Federal Securities and Exchange Commission pursuant to the Securities Act of 1933.

(c) Mechanics of Automatic Conversion. In the event of an automatic conversion of all outstanding shares of Series B Preferred Stock pursuant to Section (a)(ii) of

this Section d.2.2.3, the effective date of such conversion shall be the date of the occurrence of the event that triggered such automatic conversion. Notwithstanding the fact that such conversion shall be deemed to have taken place automatically, each holder of outstanding shares of Series B Preferred Stock so converted shall be obligated to surrender to the Corporation all certificates representing his or her shares of Series B Preferred Stock so converted, the satisfaction of which obligation shall be a condition to the Corporation's obligation to issue a certificate representing the shares of Common Stock he received upon such automatic conversion.

(d) Conversion Ratio. Each share of Series B Preferred Stock to be converted into shares of Common Stock shall be converted on the basis of a 1:1 ratio into the number of fully paid and non-assessable shares of Common Stock, with no fractional shares to be issuable upon conversion.

(e) Notices. In the event of any taking by this Corporation of a record of the holders of any class or class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, this Corporation shall mail to each holder of Series B Preferred Stock, at least twenty (20) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right. Any notice required by the provisions of this Section d.2.2.3 to be given to the holders of shares of Series B Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at such holder's address appearing on the books of this Corporation.

(f) Reservation of Common Stock Issuable Upon Conversion. This Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of the Series B Preferred Stock such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series B Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all the outstanding shares of the Series B Preferred Stock, this Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

Section d.2.2.4 -Voting Rights. The holders of the issued and outstanding shares of Series B Preferred Stock shall have no voting rights.

Section d.2.2.5 - Covenants. In addition to any other rights provided by law, so long as any Series B Preferred Stock is outstanding, the Corporation, without first obtaining the affirmative vote or written consent of the holders of not less than a majority of such outstanding shares of each series of Series B Preferred Stock, will not:

(a) Amend or repeal any provision of, or add any provision to, the Corporation's Articles of Incorporation or By-Laws if such action would alter adversely or change the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of, any Series B Preferred Stock, or increase or decrease the number of shares of Series B Preferred Stock authorized hereby;

(b) Pay or declare any dividend on any Subordinate Stock (other than dividends payable in shares of the class or series upon which such dividends are declared or paid, or payable in shares of Common Stock or Nonvoting Common Stock with respect to Subordinate Stock other than Common Stock or Nonvoting Common Stock, together with cash in lieu of fractional shares and dividends not in excess of dividends paid to the Preferred Stock) while the Series B Preferred Stock remains outstanding, or apply any of its assets to the redemption, retirement, purchase or acquisition, directly or indirectly, through subsidiaries or otherwise, of any Subordinate Stock, except from employees of the Corporation upon termination of employment or otherwise pursuant to the terms of stock purchase or option agreements providing for the repurchase of, or right of first refusal with respect to, such Subordinate Stock entered into with such employees; or

(c) Materially change the principal business of the Corporation.

Section d.2.2.6 - Exclusion of Other Rights. Except as may otherwise be required by law, the shares of Series B Preferred Stock shall not have any preferences or relative, participating, optional or other special rights, and in the Corporation's Articles of Incorporation. The shares of Series B Preferred Stock shall have no preemptive or subscription rights.

Section d.2.2.7 - Headings of Subdivisions. The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

Section d.2.2.8 - Severability of Provisions. If any right, preference or limitation of the Series B Preferred Stock set forth in this resolution (as such resolution may be amended from time to time) is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other rights, preferences and limitations set forth in this resolution (as so amended) which can be given effect without the invalid, unlawful or unenforceable right, preference or limitation shall, nevertheless, remain in full force and effect, and no right, preference or limitation herein set forth shall be deemed dependent upon any other such right, preference or limitation unless so expressed herein.

Section d.2.2.9 - Status of Reacquired Shares. Shares of Series B Preferred Stock which have been issued and reacquired in any manner shall (upon compliance with any applicable provisions of the laws of the State of Nevada) have the status of authorized and unissued shares of Preferred Stock issuable in series undesignated as to series and may be re-designated and reissued.

Section d.2.2.10 - Adjustments for Stock Splits, Dividends and Combinations. The number of shares of Series B Preferred Stock and the Series B Preferred Stock Conversion Ratio set forth in Section d.2.2.5 (d), as adjusted, shall be appropriately adjusted for any share combination

or share split of, or any dividend of Series B Preferred Stock with respect to, the Series B Preferred Stock after the effective date of the Corporation's adoption of this Designation of Rights and Preferences for the Series B Preferred Stock.

Section d.2.2.11 - Common Stock Warrants. For every one (1) shares of Series B Preferred Stock purchased after the filing of these Restated Articles of Incorporation, the purchaser shall receive one (1) warrant to purchase one (1) share of the Corporation's Common Stock that is exercisable for a three (3) year period from the date of purchase. The exercise price shall be one dollar ($1.00.) if exercised within thirty six months (36 months) from the date of the investment until the expiration of the three year (3) period. However, if the Company successfully completes an Initial Public Offering ("IPO") of its securities all warrants must be exercised at the time of the IPO or all rights to warrants will be forfeited.

SERIES C PREFERENCES

Section d.3.1 - Definitions. Unless the context otherwise requires, the terms defined in this Section d.3.1 shall have, for all purposes of these Articles of Incorporation, the meanings herein specified.

Common Stock. The term "Common Stock" shall mean all shares now or hereafter authorized of any class of Common Stock of the Corporation and any other stock of the Corporation, howsoever designated, authorized after the Issue Date, which has the right (subject always to prior rights of any class or series of Preferred Stock) to participate in the distribution of the assets and earnings of the Corporation without limit as to per share amount.

Conversion Ratio. The term "Conversion Ratio" shall mean the ratio per share of Common Stock used to determine the number of shares of Common Stock deliverable upon conversion of a share of the Series C Preferred Stock, which ratio shall initially be one (1) share of Series C Preferred Stock to one (1) share of Common Stock.

Dividend Payment Date. The term "Dividend Payment Date" shall be December 31 of each year, the day upon which non-cumulative payments shall be payable, when and as declared by the Board of Directors. Each such dividend shall be paid to the holders of record of the Series B Preferred Stock as their names appear on the share register of the Corporation on the corresponding Record Date. As used above, the term "Record Date" means, with respect to the dividends payable on December 31 of each year, the preceding December 15, or such other record date designated by the Board of Directors of the Corporation with respect to the dividend payable on such respective Dividend Payment Date.

Dividend Period. The term "Dividend Period" shall have the meaning of the annual period between consecutive Dividend Payment Dates.

Issue Date. The term "Issue Date" shall mean the date that shares of Preferred Stock are first issued by the Corporation.

Subordinate Stock. The term "Subordinate Stock" shall mean the Common Stock, Nonvoting Common Stock and any other class or series of stock of the Corporation issued after the Issue Date which have rights that are subordinate to the rights and preferences of the Series C Preferred Stock

and any class or series of stock of the Corporation issued after the Issue Date not entitled to receive any assets upon the liquidation, dissolution or winding up of the affairs of the Corporation until the Series C Preferred Stock shall have received the entire amount to which such stock is entitled upon such liquidation, dissolution or winding up.

Net Distributable Profit. The term "Net Distributable Profit" shall mean, for the purposes of Section d.3.2.1 below, the difference between revenues and expenses realized by the Company according to Generally Accepted Accounting Principles that the Company, in its sole discretion, elects to distribute to interest holders. Expenses shall include any and all amounts that the Company determines, in its sole discretion, are necessary for the payment of or due provision for (a) the liabilities of the Company to all creditors, and/or (b) additional requirements for funds in connection with the Company's business.

Parity Stock. The term "Parity Stock" shall mean any other class or series of stock of the Corporation issued after the Issue Date entitled to receive assets upon the liquidation, dissolution or winding up of the affairs of the Corporation on a parity with the Series B Preferred Stock.

Senior Stock. The term "Senior Stock" shall mean any class or series of stock of the Corporation issued ranking senior to the Series C Preferred Stock in respect of the right to receive dividends, and any class or series of stock of the Corporation issued ranking senior to the Series C Preferred Stock in respect of the right to receive assets upon the liquidation, dissolution or winding up of the affairs of the Corporation.

Section d.3.2 - Series C Preferred Stock. The Corporation is hereby authorized to issue three million (3,000,000) shares of Preferred Stock, to be designated "Series C Convertible Preferred Stock" and in accordance with the following preferences:

Section d.3.2.1 - Revenue Distribution Provisions

(a) The holders of the then outstanding shares of Series C Preferred Stock shall be entitled to a pro rata share of the net distributable profits based on all Common Stock, Nonvoting Common Stock and all Preferred Stock outstanding as a group. Distributions on the Series C Preferred Stock shall not be cumulative and no rights shall accrue to the holders of Series C Preferred Stock by reason of the fact that this Corporation may have failed to declare or pay distributions on the Series C Preferred Stock in any previous fiscal year of the Corporation, whether or not the earnings of this Corporation were sufficient to pay such distributions.

(b) In the event that full cash dividends are not paid or made available to the holders of all outstanding shares of Preferred Stock assets shall be distributed as set forth hereby:

(i) In the event that full cash dividends are not paid or made available to the holders of all outstanding shares of Preferred Stock senior to Series C Preferred Stock, and funds available shall be insufficient to permit payment in full in cash to all such holders of the preferential amounts to which they are then entitled, the entire amount available for payment of cash dividends shall be distributed among the holders of the Preferred Stock senior to Series C Preferred

Stock ratably in proportion to the full amount to which they would otherwise be respectively entitled, and any remainder not paid in cash to the holders of the Preferred Stock senior to Series C Preferred Stock shall be distributed among the holders of the Series C Preferred Stock and of any Parity Stock (such as any Preferred Stock so designated) ratably in proportion to the full amount to which they would otherwise be respectively entitled.

(ii) In the event that full cash dividends are paid to Senior Stock, but not paid or made available to the holders of all outstanding shares of Series C Preferred Stock and of any Parity Stock, and funds available shall be insufficient to permit payment in full in cash to all such holders of the preferential amounts to which they are then entitled, the entire amount available for payment of cash dividends shall be distributed among the holders of the Series C Preferred Stock and of any Parity Stock (such as any Preferred Stock so designated) ratably in proportion to the full amount to which they would otherwise be respectively entitled, and any remainder not paid in cash to the holders of the Series C Preferred Stock shall cumulate as provided in Subsection d.3.2.1 (c) below.

(c) If, on any Dividend Payment Date, the holders of the Series C Preferred Stock shall not have received the full dividends provided for in the other provisions of this Section d.3.2.1, then such dividends shall cumulate, whether or not earned or declared, with additional dividends thereon for each succeeding full Dividend Period during which such dividends shall remain unpaid. Unpaid dividends for any period less than a full Dividend Period shall cumulate on a day-to-day basis and shall be computed on the basis of a three hundred sixty (360) day year.

(d) So long as any shares of Series C Preferred Stock shall be outstanding, the Corporation shall not declare or pay on any Subordinate Stock any dividend whatsoever, whether in cash, property or otherwise (other than dividends payable in shares of the class or series upon which such dividends are declared or paid, or payable in shares of Common Stock with respect to Subordinate Stock other than Common Stock, together with cash in lieu of fractional shares), nor shall the Corporation make any distribution on any Subordinate Stock, nor shall any Subordinate Stock be purchased or redeemed by the Corporation or any Subsidiary, nor shall any monies be paid or made available for a sinking fund for the purchase or redemption of any Subordinate Stock, unless all dividends to which the holders of Series C Preferred Stock shall have been entitled for all previous Dividend Periods shall have been paid or declared and a sum of money sufficient for the payment thereof set apart.

(e) Subject to Section (f) of this Section d.3.2.1, no distributions may be paid to holders of shares of Common Stock or Nonvoting Common Stock unless the holders of shares of Series C Preferred Stock participate in such distributions together with holders of shares of Common Stock and Nonvoting Common Stock to the same extent as if their shares of Series C Preferred Stock were converted into shares of Common Stock (as provided in Section d.3.2.2.3 with respect to shares of Series C Preferred Stock, on the record date for determining the holders of Common Stock and Nonvoting Common Stock entitled to such distributions).

(f) For purposes of this Section d.3.2.1, unless the context otherwise requires, distribution shall mean the transfer of cash or property without consideration, payable other than in Common Stock, Nonvoting Common Stock or the purchase or redemption of shares of this Corporation (other than repurchases of Common Stock or Nonvoting Common Stock held by employees or consultants of this Corporation upon termination of their employment or services pursuant to agreements providing for such repurchase) for cash or property, including any such transfer, purchase or redemption by a subsidiary of this Corporation. Each holder of shares of Series C Preferred Stock shall be deemed to have consented, for purposes of the Nevada Statutes, to distributions made by the Corporation in connection with the repurchase of shares of Common Stock or Nonvoting Common Stock issued to or held by employees or consultants upon termination of their employment or services pursuant to agreements providing for such repurchase.

Section d.3.2.2 - Liquidation Preference.

(a) In the event of any liquidation, dissolution or winding up of this Corporation, whether voluntary or involuntary, the holders of shares of each class of Series C Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of this Corporation to the holders of the Common Stock and Nonvoting Common Stock by reason of their ownership thereof, an amount per share as may be fixed for such class (the "Preferential Amount") plus an amount equal to all accrued and unpaid distributions thereon. The Preferential Amount is one dollar ($1.00) for each share of Series C Preferred Stock.

(b) In the event the assets thus distributed among the holders of all the outstanding Series C Preferred Stock and Parity Preferred Stock shall be insufficient to permit the payment to such holders of the full Preferential Amount, then the entire assets of this Corporation legally available for distribution shall be distributed as set forth hereby:

(c) If, upon the occurrence of such event, the assets thus distributed among the holders of the Senior Stock shall be insufficient to permit the payment to such holders of the full Preferential Amount, then the entire assets of this Corporation legally available for distribution shall be distributed ratably among the holders of the Senior Stock in proportion to the full Preferential Amount each such holder is otherwise entitled to receive.

(d) If, upon the occurrence of such event, the assets thus distributed are sufficient to permit payment to Senior Stock holders of the full Preferential Amount, but insufficient to permit the payment to the holders of the Series C Preferred Stock and Parity Preferred Stock of the full Preferential Amount, then the entire assets of this Corporation legally available for distribution shall be distributed ratably among the holders of the Series C Preferred Stock and Parity Stock in proportion to the full Preferential Amount each such holder is otherwise entitled to receive.

(e) If assets remain in this Corporation after the distributions provided for in Sections (a) and (b) of this Section d.3.2.2 have been fully made, the holders of

Common Stock and Nonvoting Common Stock shall be entitled to receive, prior and in preference to any further distribution of any other of the surplus funds or assets of the Corporation to the holders of Series C Preferred Stock by reason of their ownership thereof, an amount equal to five cents ($0.05) per share (subject to adjustment for stock dividends, stock splits, stock combinations or the like). If upon the completion of the distribution required by Sections (a) and (b) of this Section d.3.2.2, the assets and funds available to be distributed among the holders of shares of Common Stock and Nonvoting Common Stock shall be insufficient to permit the payment to such holders of the full aforesaid amounts, then the remaining assets and funds of this Corporation legally available for distribution shall be distributed ratably among the holders of the Common Stock and Nonvoting Common Stock in proportion to the full Preferential Amount each such holder is otherwise entitled to receive.

(f) If upon the completion of the distributions contemplated by Sections (a), (b) and (c) of this Section d.3.2.2, assets remain in the Corporation, the holders of shares of Series C Preferred Stock and the holders of shares of Common Stock and Nonvoting Common Stock shall participate on a pro rata basis in the distribution of all remaining assets of the Corporation legally available for distribution, with the outstanding shares of Series C Preferred Stock treated as though they have been converted into the number of shares of Common Stock, if any, into which they are convertible as of the date of such distribution.

Section d.3.2.3 - Conversion. The holders of outstanding shares of Series C Preferred Stock shall have conversion rights as follows:

(a) Incidents Causing Conversion.

(ii) Optional Conversion. There shall be no voluntary conversion rights.

(iii) Automatic Conversion. Each share of Series C Preferred Stock shall automatically be converted into such number of fully paid and non-assessable shares of Common Stock as is determined pursuant to Section (d) of this Section d.3.2.3 upon the closing of the issuance of shares following the effectiveness of a registration statement (other than a registration statement with respect to any securities offered pursuant to any employee purchase, savings, option, bonus, appreciation, profit sharing, thrift, incentive or similar plan of the Corporation) under the Securities Act of 1933, as amended.

(b) Cases Creating Automatic Conversion.

(ii) A consolidation, reorganization or merger of this Corporation with or into any other corporation or corporations (1) in which the acquiring company is a public company or (2) in which the stockholders of this Corporation immediately after the transaction own less that fifty percent (50%) of the voting power of the surviving entity;

(v) A sale, conveyance or other disposition of all or substantially all of this Corporation's property or business;

(vi) A transaction or class of related transactions in which control of this Corporation is transferred (consisting of transfer of at least fifty percent (50%) of the voting power of the Corporation to one (1) person or group of affiliated persons); or,

(vii) The Corporation files a registration statement to register its securities with the Federal Securities and Exchange Commission pursuant to the Securities Act of 1933.

(c) Mechanics of Automatic Conversion. In the event of an automatic conversion of all outstanding shares of Series C Preferred Stock pursuant to Section (a)(ii) of this Section d.3.2.3, the effective date of such conversion shall be the date of the occurrence of the event that triggered such automatic conversion. Notwithstanding the fact that such conversion shall be deemed to have taken place automatically, each holder of outstanding shares of Series C Preferred Stock so converted shall be obligated to surrender to the Corporation all certificates representing his or her shares of Series C Preferred Stock so converted, the satisfaction of which obligation shall be a condition to the Corporation's obligation to issue a certificate representing the shares of Common Stock he received upon such automatic conversion.

(d) Conversion Ratio. Each share of Series C Preferred Stock to be converted into shares of Common Stock shall be converted on the basis of a 1:1 ratio into the number of fully paid and non-assessable shares of Common Stock, with no fractional shares to be issuable upon conversion.

(e) Notices. In the event of any taking by this Corporation of a record of the holders of any class or class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, this Corporation shall mail to each holder of Series C Preferred Stock, at least twenty (20) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right. Any notice required by the provisions of this Section d.3.2.3. to be given to the holders of shares of Series C Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at such holder's address appearing on the books of this Corporation.

(f) Reservation of Common Stock Issuable Upon Conversion. This Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of the Series C Preferred Stock such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series C Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all the

outstanding shares of the Series C Preferred Stock, this Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

Section d.3.2.4 - Voting Rights. The holders of the issued and outstanding shares of Series C Preferred Stock shall have no voting rights.

Section d.3.2.5 - Covenants. In addition to any other rights provided by law, so long as any Series C Preferred Stock is outstanding, the Corporation, without first obtaining the affirmative vote or written consent of the holders of not less than a majority of such outstanding shares of each series of Series C Preferred Stock, will not:

(a) Amend or repeal any provision of, or add any provision to, the Corporation's Articles of Incorporation or By-Laws if such action would alter adversely or change the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of, any Series C Preferred Stock, or increase or decrease the number of shares of Series C Preferred Stock authorized hereby;

(b) Pay or declare any dividend on any Subordinate Stock (other than dividends payable in shares of the class or series upon which such dividends are declared or paid, or payable in shares of Common Stock or Nonvoting Common Stock with respect to Subordinate Stock other than Common Stock or Nonvoting Common Stock, together with cash in lieu of fractional shares and dividends not in excess of dividends paid to the Preferred Stock) while the Series C Preferred Stock remains outstanding, or apply any of its assets to the redemption, retirement, purchase or acquisition, directly or indirectly, through subsidiaries or otherwise, of any Subordinate Stock, except from employees of the Corporation upon termination of employment or otherwise pursuant to the terms of stock purchase or option agreements providing for the repurchase of, or right of first refusal with respect to, such Subordinate Stock entered into with such employees; or

(c) Materially change the principal business of the Corporation.

Section d.3.2.6 - Exclusion of Other Rights. Except as may otherwise be required by law, the shares of Series C Preferred Stock shall not have any preferences or relative, participating, optional or other special rights, and in the Corporation's Certificate of Incorporation. The shares of Series C Preferred Stock shall have no preemptive or subscription rights.

Section d.3.2.7 - Headings of Subdivisions. The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

Section d.3.2.8 -Severability of Provisions. If any right, preference or limitation of the Series C Preferred Stock set forth in this resolution (as such resolution may be amended from time to time) is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other rights, preferences and limitations set forth in this resolution (as so

amended) which can be given effect without the invalid, unlawful or unenforceable right, preference or limitation shall, nevertheless, remain in full force and effect, and no right, preference or limitation herein set forth shall be deemed dependent upon any other such right, preference or limitation unless so expressed herein.

Section d.3.2.9 - Status of Reacquired Shares. Shares of Series C Preferred Stock which have been issued and reacquired in any manner shall (upon compliance with any applicable provisions of the laws of the State of Nevada) have the status of authorized and unissued shares of Preferred Stock issuable in series undesignated as to series and may be re-designated and reissued.

Section d.3.2.10 - Adjustments for Stock Splits, Dividends and Combinations. The number of shares of Series C Preferred Stock and the Series C Preferred Stock Conversion Ratio set forth in Section d.2.2.3 (d), as adjusted, shall be appropriately adjusted for any share combination or share split of, or any dividend of Series C Preferred Stock with respect to, the Series C Preferred Stock after the effective date of the Corporation's adoption of this Designation of Rights and Preferences for the Series C Preferred Stock.

Section d.3.2.11 - Common Stock Warrants. For every one (1) shares of Series C Preferred Stock purchased after the filing of these Restated Articles of Incorporation, the purchaser shall receive one (1) warrant to purchase one (1) share of the Corporation's Common Stock that is exercisable for a two (2) year period from the date of purchase. Up to 6 months (180 days) after the original date of the Series C Preferred investment, the Investor may exercise the right to purchase the warrants at $1.25 per share. If after 6 months and up to 12 months after the original Series C investment the Investor may purchase the warrants at an increased price of $1.50 per share. If after 12 months and up to 18 months after the original Series C Preferred investment, the Investor may purchase the warrants at $1.75 per share. If after 18 months and up to 24 months after the original Series C Preferred investment, the Investor may purchase the warrants at $2.00 per share. After 24 months any remaining warrants may be sold to Series C Private Placement Investors at the sole discretion of the Company. However, if the Company successfully completes an Initial Public Offering ("IPO") of its securities all warrants must be exercised at the time of the IPO or all rights to warrants will be forfeited.

SERIES D PREFERENCES

Section d.4.1 Definitions. Unless the context otherwise requires, the terms defined in this Section d.4.1 shall have, for all purposes of these Articles of Incorporation, the meanings herein specified.

Common Stock. The term "Common Stock" shall mean all shares now or hereafter authorized of any class of Common Stock of the Corporation and any other stock of the Corporation, howsoever designated, authorized after the Issue Date, which has the right (subject always to prior rights of any class or series of Preferred Stock) to participate in the distribution of the assets and earnings of the Corporation without limit as to per share amount.

Conversion Ratio. The term "Conversion Ratio" shall mean the ratio per share of Common Stock used to determine the number of shares of Common Stock deliverable upon conversion of a share of the D Preferred Stock, which ratio shall initially be one (1) share of Series D Preferred Stock to one (1) share of Common Stock.

Dividend Payment Date. The term "Dividend Payment Date" shall be December 31 of each year, the day upon which non-cumulative payments shall be payable, when and as declared by the Board of Directors. Each such dividend shall be paid to the holders of record of the Series D Preferred Stock as their names appear on the share register of the Corporation on the corresponding Record Date. As used above, the term "Record Date" means, with respect to the dividends payable on December 31 of each year, the preceding December 15, or such other record date designated by the Board of Directors of the Corporation with respect to the dividend payable on such respective Dividend Payment Date.

Dividend Period. The term "Dividend Period" shall have the meaning of the annual period between consecutive Dividend Payment Dates.

Issue Date. The term "Issue Date" shall mean the date that shares of Preferred Stock are first issued by the Corporation.

Subordinate Stock. The term "Subordinate Stock" shall mean the Common Stock and any other class or series of stock of the Corporation issued after the Issue Date which have rights that are subordinate to the rights and preferences of the Series D Preferred Stock and any class or series of stock of the Corporation issued after the Issue Date not entitled to receive any assets upon the liquidation, dissolution or winding up of the affairs of the Corporation until the Series D Preferred Stock shall have received the entire amount to which such stock is entitled upon such liquidation, dissolution or winding up.

Net Distributable Profit. The term "Net Distributable Profit" shall mean, for the purposes of Section d.4.1.1 below, the difference between revenues and expenses realized by the Company according to Generally Accepted Accounting Principles that the Company, in its sole discretion, elects to distribute to interest holders. Expenses shall include any and all amounts that the Company determines, in its sole discretion, are necessary for the payment of or due provision for (a) the liabilities of the Company to all creditors, and/or (b) additional requirements for funds in connection with the Company's business.

Parity Stock. The term "Parity Stock" shall mean any other class or series of stock of the Corporation issued after the Issue Date entitled to receive assets upon the liquidation, dissolution or winding up of the affairs of the Corporation on a parity with the Series D Preferred Stock.

Senior Stock. The term "Senior Stock" shall mean any class or series of stock of the Corporation issued ranking senior to the Series D Preferred Stock in respect of the right to receive dividends, and any class or series of stock of the Corporation issued ranking senior to the Series D Preferred Stock in respect of the right to receive assets upon the liquidation, dissolution or winding up of the affairs of the Corporation.

Section d.4.2 Series D Preferred Stock. The Corporation is hereby authorized to issue fifteen million, seven hundred fifty thousand (15,750,000) shares of Preferred Stock, to be designated "Series Convertible Preferred Stock" and in accordance with the following preferences:

Section d.4.2.1 Revenue Distribution Provisions.

(a) The holders of the then outstanding shares of Series D Preferred Stock shall be entitled to a pro rata share of the net distributable profits based on all Common Stock, Nonvoting Common Stock and all Preferred Stock outstanding as a group. Distributions on the Series D Preferred Stock shall not be cumulative and no rights shall accrue to the holders of Series D Preferred Stock by reason of the fact that this Corporation may have failed to declare or pay distributions on the Series D Preferred Stock in any previous fiscal year of the Corporation, whether or not the earnings of this Corporation were sufficient to pay such distributions.

(b) In the event that full cash dividends are not paid or made available to the holders of all outstanding shares of Preferred Stock assets shall be distributed as set forth hereby:

(i) In the event that full cash dividends are not paid or made available to the holders of all outstanding shares of Preferred Stock senior to Series D Preferred Stock, and funds available shall be insufficient to permit payment in full in cash to all such holders of the preferential amounts to which they are then entitled, the entire amount available for payment of cash dividends shall be distributed among the holders of the Preferred Stock senior to Series D Preferred Stock ratably in proportion to the full amount to which they would otherwise be respectively entitled, and any remainder not paid in cash to the holders of the Preferred Stock senior to Series D Preferred Stock shall be distributed among the holders of the Series D Preferred Stock and of any Parity Stock (such as any Preferred Stock so designated) ratably in proportion to the full amount to which they would otherwise be respectively entitled.

(ii) In the event that full cash dividends are paid to Senior Stock, but not paid or made available to the holders of all outstanding shares of Series D Preferred Stock and of any Parity Stock, and funds available shall be insufficient to permit payment in full in cash to all such holders of the preferential amounts to which they are then entitled, the entire amount available for payment of cash dividends shall be distributed among the holders of the Series D Preferred Stock and of any Parity Stock (such as any Preferred Stock so designated) ratably in proportion to the full amount to which they would otherwise be respectively entitled, and any remainder not paid in cash to the holders of the Series D Preferred Stock shall cumulate as provided in Subsection d.4.2.1below.

(c) If, on any Dividend Payment Date, the holders of the Series D Preferred Stock shall not have received the full dividends provided for in the other provisions of this Section d.4.2.1, then such dividends shall cumulate, whether or not earned or declared, with additional dividends thereon for each succeeding full Dividend Period during which such dividends shall remain unpaid. Unpaid dividends for any period

less than a full Dividend Period shall cumulate on a day-to-day basis and shall be computed on the basis of a three hundred sixty (360) day year.

(d) So long as any shares of Series D Preferred Stock shall be outstanding, the Corporation shall not declare or pay on any Subordinate Stock any dividend whatsoever, whether in cash, property or otherwise (other than dividends payable in shares of the class or series upon which such dividends are declared or paid, or payable in shares of Common Stock with respect to Subordinate Stock other than Common Stock, together with cash in lieu of fractional shares), nor shall the Corporation make any distribution on any Subordinate Stock, nor shall any Subordinate Stock be purchased or redeemed by the Corporation or any Subsidiary, nor shall any monies be paid or made available for a sinking fund for the purchase or redemption of any Subordinate Stock, unless all dividends to which the holders of Series D Preferred Stock shall have been entitled for all previous Dividend Periods shall have been paid or declared and a sum of money sufficient for the payment thereof set apart.

(e) Subject to Section (f) of this Section d.4.2.1, no distributions may be paid to holders of shares of Common Stock or Nonvoting Common Stock unless the holders of shares of Series D Preferred Stock participate in such distributions together with holders of shares of Common Stock Nonvoting Common Stock and to the same extent as if their shares of Series D Preferred Stock were converted into shares of Common Stock (as provided in Section d.4.2.3 with respect to shares of Series D Preferred Stock, on the record date for determining the holders of Common Stock entitled to such distributions).

(f) For purposes of this Section d.4.2.1, unless the context otherwise requires, distribution shall mean the transfer of cash or property without consideration, payable other than in Common Stock, Nonvoting Common Stock or the purchase or redemption of shares of this Corporation (other than repurchases of Common Stock held by employees or consultants of this Corporation upon termination of their employment or services pursuant to agreements providing for such repurchase) for cash or property, including any such transfer, purchase or redemption by a subsidiary of this Corporation. Each holder of shares of Series D Preferred Stock shall be deemed to have consented, for purposes of the Nevada Statutes, to distributions made by the Corporation in connection with the repurchase of shares of Common Stock issued to or held by employees or consultants upon termination of their employment or services pursuant to agreements providing for such repurchase.

Section d.4.2.2 Liquidation Preference.

(a) In the event of any liquidation, dissolution or winding up of this Corporation, whether voluntary or involuntary, the holders of shares of each class of Series D Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of this Corporation to the holders of the Common Stock and Nonvoting Common Stock by reason of their ownership thereof, an amount per share as may be fixed for such class (the "Preferential Amount") plus an amount equal to

all accrued and unpaid distributions thereon. The Preferential Amount is one dollar ($1.00) for each share of Series D Preferred Stock.

(b) In the event the assets thus distributed among the holders of all the outstanding Series D Preferred Stock and Parity Preferred Stock shall be insufficient to permit the payment to such holders of the full Preferential Amount, then the entire assets of this Corporation legally available for distribution shall be distributed as set forth hereby:

(c) If, upon the occurrence of such event, the assets thus distributed among the holders of the Senior Stock shall be insufficient to permit the payment to such holders of the full Preferential Amount, then the entire assets of this Corporation legally available for distribution shall be distributed ratably among the holders of the Senior Stock in proportion to the full Preferential Amount each such holder is otherwise entitled to receive.

(d) If, upon the occurrence of such event, the assets thus distributed are sufficient to permit payment to Senior Stock holders of the full Preferential Amount, but insufficient to permit the payment to the holders of the Series D Preferred Stock and Parity Preferred Stock of the full Preferential Amount, then the entire assets of this Corporation legally available for distribution shall be distributed ratably among the holders of the Series D Preferred Stock and Parity Stock in proportion to the full Preferential Amount each such holder is otherwise entitled to receive.

(e) If assets remain in this Corporation after the distributions provided for in Sections (a) and (b) of this Section d.4.2.2 have been fully made, the holders of Common Stock and Nonvoting Common Stock shall be entitled to receive, prior and in preference to any further distribution of any other of the surplus funds or assets of the Corporation to the holders of Series D referred Stock by reason of their ownership thereof, an amount equal to five cents ($0.05) per share (subject to adjustment for stock dividends, stock splits, stock combinations or the like). If upon the completion of the distribution required by Sections (a) and (b) of this Section d.4.2.2, the assets and funds available to be distributed among the holders of shares of Common Stock and Nonvoting Common Stock shall be insufficient to permit the payment to such holders of the full aforesaid amounts, then the remaining assets and funds of this Corporation legally available for distribution shall be distributed ratably among the holders of the Common Stock and Nonvoting Common Stock in proportion to the full Preferential Amount each such holder is otherwise entitled to receive.

(f) If upon the completion of the distributions contemplated by Sections (a), (b) and (c) of this Section d.4.2.2, assets remain in the Corporation, the holders of shares of Series D Preferred Stock and the holders of shares of Common Stock and Nonvoting Common Stock shall participate on a pro rata basis in the distribution of all remaining assets of the Corporation legally available for distribution, with the outstanding shares of Series D Preferred Stock treated as though they have been converted into the number of shares of Common Stock, if any, into which they are convertible as of the date of such distribution.

Section d.4.2.3 Conversion. The holders of outstanding shares of Series D Preferred Stock shall have conversion rights as follows:

(a) Incidents Causing Conversion.

(i) Optional Conversion. There shall be no voluntary conversion rights.

(ii) Automatic Conversion. Each share of Series D Preferred Stock shall automatically be converted into such number of fully paid and non-assessable shares of Common Stock as is determined pursuant to Section (d) of this Section d.4.2.3 upon the closing of the issuance of shares following the effectiveness of a registration statement (other than a registration statement with respect to any securities offered pursuant to any employee purchase, savings, option, bonus, appreciation, profit sharing, thrift, incentive or similar plan of the Corporation) under the Securities Act of 1933, as amended.

(b) Cases Creating Automatic Conversion.

(i) A consolidation, reorganization or merger of this Corporation with or into any other corporation or corporations (1) in which the acquiring company is a public company or (2) in which the stockholders of this Corporation immediately after the transaction own less that fifty percent (50%) of the voting power of the surviving entity;

(ii) A sale, conveyance or other disposition of all or substantially all of this Corporation's property or business;

(iii) A transaction or class of related transactions in which control of this Corporation is transferred (consisting of transfer of at least fifty percent (50%) of the voting power of the Corporation to one (1) person or group of affiliated persons); or,

(iv) The Corporation files a registration statement to register its securities with the Federal Securities and Exchange Commission pursuant to the Securities Act of 1933.

(c) Mechanics of Automatic Conversion. In the event of an automatic conversion of all outstanding shares of Series D Preferred Stock pursuant to Section (a)(ii) of this Section d.4.3.3., the effective date of such conversion shall be the date of the occurrence of the event that triggered such automatic conversion. Notwithstanding the fact that such conversion shall be deemed to have taken place automatically, each holder of outstanding shares of Series D Preferred Stock so converted shall be obligated to surrender to the Corporation all certificates representing his or her shares of Series D Preferred Stock so converted, the satisfaction of which obligation shall be a condition to the Corporation's obligation to issue a certificate representing the shares of Common Stock he received upon such automatic conversion.

(d) Conversion Ratio. Each share of Series D Preferred Stock to be converted into shares of Common Stock shall be converted on the basis of a 1:1 ratio into the number of fully paid and non-assessable shares of Common Stock, with no fractional shares to be issuable upon conversion.

(e) Notices. In the event of any taking by this Corporation of a record of the holders of any class or class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, this Corporation shall mail to each holder of Series D Preferred Stock, at least twenty (20) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right. Any notice required by the provisions of this Section d.4.2.3. to be given to the holders of shares of Series D Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at such holder's address appearing on the books of this Corporation.

(f) Reservation of Common Stock Issuable Upon Conversion. This Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of the D Preferred Stock such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series D Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all the outstanding shares of the Series D Preferred Stock, this Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

Section d.4.2.4 Voting Rights. The holders of the issued and outstanding shares of Series D Preferred Stock shall have no voting rights.

Section d.4.2.5 Covenants. In addition to any other rights provided by law, so long as any Series D Preferred Stock is outstanding, the Corporation, without first obtaining the affirmative vote or written consent of the holders of not less than a majority of such outstanding shares of each series of Series D Preferred Stock, will not:

(a) Amend or repeal any provision of, or add any provision to, the Corporation's Articles of Incorporation or By-Laws if such action would alter adversely or change the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of, any Series D Preferred Stock, or increase or decrease the number of shares of Series D Preferred Stock authorized hereby;

(b) Pay or declare any dividend on any Subordinate Stock (other than dividends payable in shares of the class or series upon which such dividends are declared or paid, or payable in shares of Common Stock with respect to Subordinate Stock other

than Common Stock, together with cash in lieu of fractional shares and dividends not in excess of dividends paid to the Preferred Stock) while the Series D Preferred Stock remains outstanding, or apply any of its assets to the redemption, retirement, purchase or acquisition, directly or indirectly, through subsidiaries or otherwise, of any Subordinate Stock, except from employees of the Corporation upon termination of employment or otherwise pursuant to the terms of stock purchase or option agreements providing for the repurchase of, or right of first refusal with respect to, such Subordinate Stock entered into with such employees; or

(c) Materially change the principal business of the Corporation.

Section d.4.2.7 Exclusion of Other Rights. Except as may otherwise be required by law, the shares of Series D Preferred Stock shall not have any preferences or relative, participating, optional or other special rights, other than those specifically set forth in these Articles (as such Articles may be amended from time to time) and in the Corporation's Articles of Incorporation. The shares of Series D Preferred Stock shall have no preemptive or subscription rights.

Section d.4.2.7 Headings of Subdivisions. The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

Section d.4.2.8 Severability of Provisions. If any right, preference or limitation of the Series D Preferred Stock set forth in this resolution (as such resolution may be amended from time to time) is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other rights, preferences and limitations set forth in this resolution (as so amended) which can be given effect without the invalid, unlawful or unenforceable right, preference or limitation shall, nevertheless, remain in full force and effect, and no right, preference or limitation herein set forth shall be deemed dependent upon any other such right, preference or limitation unless so expressed herein.

Section d.4.2.9 Status of Reacquired Shares. Shares of Series D Preferred Stock which have been issued and reacquired in any manner shall (upon compliance with any applicable provisions of the laws of the State of Nevada) have the status of authorized and unissued shares of Preferred Stock issuable in series undesignated as to series and may be re-designated and reissued.

Section d.4.2.10 Adjustments for Stock Splits, Dividends and Combinations. The number of shares of Series D Preferred Stock and the Series D Preferred Stock Conversion Ratio set forth in Section 4.2.3(d) of these , as adjusted, shall be appropriately adjusted for any share combination or share split of, or any dividend of Series D Preferred Stock with respect to, the Series D Preferred Stock after the effective date of the Corporation's adoption of this Designation of Rights and Preferences for the Series D Preferred Stock.

Section d.4.2.11 Common Stock Warrants. For every two (2) shares of Series D Preferred Stock purchased after the filing of these Restated Articles of Incorporation, the purchaser shall receive one (1) warrant to purchase one (1) share of the Corporation's Common Stock that is exercisable for a one (1) year period from the date of purchase. After 12 months any remaining warrants may be sold to Series D Private Placement Investors at the sole discretion of the Company. However, if the Company successfully completes an Initial Public Offering ("IPO") of

its securities all warrants must be exercised at the time of the IPO or all rights to warrants will be forfeited.

SERIES E PREFERENCES

Section d.5.1 Definitions. Unless the context otherwise requires, the terms defined in this Section d.5.1 shall have, for all purposes of these Articles of Incorporation, the meanings herein specified.

Common Stock. The term "Common Stock" shall mean all shares now or hereafter authorized of any class of Common Stock of the Corporation and any other stock of the Corporation, howsoever designated, authorized after the Issue Date, which has the right (subject always to prior rights of any class or series of Preferred Stock) to participate in the distribution of the assets and earnings of the Corporation without limit as to per share amount.

Conversion Ratio. The term "Conversion Ratio" shall mean the ratio per share of Common Stock used to determine the number of shares of Common Stock deliverable upon conversion of a share of the Series E Preferred Stock, which ratio shall initially be one (1) share of Series E Preferred Stock to one (1) share of Common Stock.

Dividend Payment Date. The term "Dividend Payment Date" shall be December 31 of each year, the day upon which non-cumulative payments shall be payable, when and as declared by the Board of Directors. Each such dividend shall be paid to the holders of record of the Series E Preferred Stock as their names appear on the share register of the Corporation on the corresponding Record Date. As used above, the term "Record Date" means, with respect to the dividends payable on December 31 of each year, the preceding December 15, or such other record date designated by the Board of Directors of the Corporation with respect to the dividend payable on such respective Dividend Payment Date.

Dividend Period. The term "Dividend Period" shall have the meaning of the annual period between consecutive Dividend Payment Dates.

Issue Date. The term "Issue Date" shall mean the date that shares of Preferred Stock are first issued by the Corporation.

Subordinate Stock. The term "Subordinate Stock" shall mean the Common Stock and any other class or series of stock of the Corporation issued after the Issue Date which have rights that are subordinate to the rights and preferences of the Series E Preferred Stock and any class or series of stock of the Corporation issued after the Issue Date not entitled to receive any assets upon the liquidation, dissolution or winding up of the affairs of the Corporation until the Series E Preferred Stock shall have received the entire amount to which such stock is entitled upon such liquidation, dissolution or winding up.

Net Distributable Profit. The term "Net Distributable Profit" shall mean, for the purposes of Section d.5.1.1 below, the difference between revenues and expenses realized by the Company according to Generally Accepted Accounting Principles that the Company, in its sole discretion, elects to distribute to interest holders. Expenses shall include any and all amounts that the Company determines, in its sole discretion, are necessary for the payment of or due provision for (a) the

liabilities of the Company to all creditors, and/or (b) additional requirements for funds in connection with the Company's business.

Parity Stock. The term "Parity Stock" shall mean any other class or series of stock of the Corporation issued after the Issue Date entitled to receive assets upon the liquidation, dissolution or winding up of the affairs of the Corporation on a parity with the Series E Preferred Stock.

Senior Stock. The term "Senior Stock" shall mean any class or series of stock of the Corporation issued ranking senior to the Series E Preferred Stock in respect of the right to receive dividends, and any class or series of stock of the Corporation issued ranking senior to the Series E Preferred Stock in respect of the right to receive assets upon the liquidation, dissolution or winding up of the affairs of the Corporation.

Section d.5.2 Series E Preferred Stock. The Corporation is hereby authorized to issue five million, (5,000,000) shares of Preferred Stock, to be designated "Series E Convertible Preferred Stock" and in accordance with the following preferences:

Section d.4.3.1 Revenue Distribution Provisions.

(g) The holders of the then outstanding shares of Series E Preferred Stock shall be entitled to a pro rata share of the net distributable profits based on all Common Stock, Nonvoting Common Stock and all Preferred Stock outstanding as a group. Distributions on the Series E Preferred Stock shall not be cumulative and no rights shall accrue to the holders of Series E Preferred Stock by reason of the fact that this Corporation may have failed to declare or pay distributions on the Series E Preferred Stock in any previous fiscal year of the Corporation, whether or not the earnings of this Corporation were sufficient to pay such distributions.

(h) In the event that full cash dividends are not paid or made available to the holders of all outstanding shares of Preferred Stock assets shall be distributed as set forth hereby:

(iii) In the event that full cash dividends are not paid or made available to the holders of all outstanding shares of Preferred Stock senior to Series E Preferred Stock, and funds available shall be insufficient to permit payment in full in cash to all such holders of the preferential amounts to which they are then entitled, the entire amount available for payment of cash dividends shall be distributed among the holders of the Preferred Stock senior to Series E Preferred Stock ratably in proportion to the full amount to which they would otherwise be respectively entitled, and any remainder not paid in cash to the holders of the Preferred Stock senior to Series E Preferred Stock shall be distributed among the holders of the Series E Preferred Stock and of any Parity Stock (such as any Preferred Stock so designated) ratably in proportion to the full amount to which they would otherwise be respectively entitled.

(iv) In the event that full cash dividends are paid to Senior Stock, but not paid or made available to the holders of all outstanding shares of Series E Preferred Stock and of any Parity Stock, and funds available shall be insufficient to permit payment in full in cash to all such holders of the preferential amounts to which they are then

entitled, the entire amount available for payment of cash dividends shall be distributed among the holders of the Series E Preferred Stock and of any Parity Stock (such as any Preferred Stock so designated) ratably in proportion to the full amount to which they would otherwise be respectively entitled, and any remainder not paid in cash to the holders of the Series E Preferred Stock shall cumulate as provided in Subsection d.4.3.1below.

(i) If, on any Dividend Payment Date, the holders of the Series E Preferred Stock shall not have received the full dividends provided for in the other provisions of this Section d.4.3.1, then such dividends shall cumulate, whether or not earned or declared, with additional dividends thereon for each succeeding full Dividend Period during which such dividends shall remain unpaid. Unpaid dividends for any period less than a full Dividend Period shall cumulate on a day-to-day basis and shall be computed on the basis of a three hundred sixty (360) day year.

(j) So long as any shares of Series E Preferred Stock shall be outstanding, the Corporation shall not declare or pay on any Subordinate Stock any dividend whatsoever, whether in cash, property or otherwise (other than dividends payable in shares of the class or series upon which such dividends are declared or paid, or payable in shares of Common Stock with respect to Subordinate Stock other than Common Stock, together with cash in lieu of fractional shares), nor shall the Corporation make any distribution on any Subordinate Stock, nor shall any Subordinate Stock be purchased or redeemed by the Corporation or any Subsidiary, nor shall any monies be paid or made available for a sinking fund for the purchase or redemption of any Subordinate Stock, unless all dividends to which the holders of Series E Preferred Stock shall have been entitled for all previous Dividend Periods shall have been paid or declared and a sum of money sufficient for the payment thereof set apart.

(k) Subject to Section (f) of this Section d.4.3.1, no distributions may be paid to holders of shares of Common Stock or Nonvoting Common Stock unless the holders of shares of Series E Preferred Stock participate in such distributions together with holders of shares of Common Stock Nonvoting Common Stock and to the same extent as if their shares of Series E Preferred Stock were converted into shares of Common Stock (as provided in Section d.4.3.3 with respect to shares of Series E Preferred Stock, on the record date for determining the holders of Common Stock entitled to such distributions).

(l) For purposes of this Section d.4.3.1, unless the context otherwise requires, distribution shall mean the transfer of cash or property without consideration, payable other than in Common Stock, Nonvoting Common Stock or the purchase or redemption of shares of this Corporation (other than repurchases of Common Stock held by employees or consultants of this Corporation upon termination of their employment or services pursuant to agreements providing for such repurchase) for cash or property, including any such transfer, purchase or redemption by a subsidiary of this Corporation. Each holder of shares of Series E Preferred Stock shall be deemed to have consented, for purposes of the Nevada Statutes, to distributions made by the Corporation in connection with the repurchase of shares of Common Stock

issued to or held by employees or consultants upon termination of their employment or services pursuant to agreements providing for such repurchase.

Section d.4.3.2 Liquidation Preference.

(g) In the event of any liquidation, dissolution or winding up of this Corporation, whether voluntary or involuntary, the holders of shares of each class of Series E Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of this Corporation to the holders of the Common Stock and Nonvoting Common Stock by reason of their ownership thereof, an amount per share as may be fixed for such class (the "Preferential Amount") plus an amount equal to all accrued and unpaid distributions thereon. The Preferential Amount is one dollar ($1.00) for each share of Series E Preferred Stock.

(h) In the event the assets thus distributed among the holders of all the outstanding Series E Preferred Stock and Parity Preferred Stock shall be insufficient to permit the payment to such holders of the full Preferential Amount, then the entire assets of this Corporation legally available for distribution shall be distributed as set forth hereby:

(i) If, upon the occurrence of such event, the assets thus distributed among the holders of the Senior Stock shall be insufficient to permit the payment to such holders of the full Preferential Amount, then the entire assets of this Corporation legally available for distribution shall be distributed ratably among the holders of the Senior Stock in proportion to the full Preferential Amount each such holder is otherwise entitled to receive.

(j) If, upon the occurrence of such event, the assets thus distributed are sufficient to permit payment to Senior Stock holders of the full Preferential Amount, but insufficient to permit the payment to the holders of the Series E Preferred Stock and Parity Preferred Stock of the full Preferential Amount, then the entire assets of this Corporation legally available for distribution shall be distributed ratably among the holders of the Series E Preferred Stock and Parity Stock in proportion to the full Preferential Amount each such holder is otherwise entitled to receive.

(k) If assets remain in this Corporation after the distributions provided for in Sections (a) and (b) of this Section d.4.3.2 have been fully made, the holders of Common Stock and Nonvoting Common Stock shall be entitled to receive, prior and in preference to any further distribution of any other of the surplus funds or assets of the Corporation to the holders of Series E referred Stock by reason of their ownership thereof, an amount equal to five cents ($0.05) per share (subject to adjustment for stock dividends, stock splits, stock combinations or the like). If upon the completion of the distribution required by Sections (a) and (b) of this Section d.4.3.2, the assets and funds available to be distributed among the holders of shares of Common Stock and Nonvoting Common Stock shall be insufficient to permit the payment to such holders of the full aforesaid amounts, then the remaining assets and funds of this Corporation legally available for distribution shall be distributed ratably among the

holders of the Common Stock and Nonvoting Common Stock in proportion to the full Preferential Amount each such holder is otherwise entitled to receive.

(l) If upon the completion of the distributions contemplated by Sections (a), (b) and (c) of this Section d.4.3.2, assets remain in the Corporation, the holders of shares of Series E Preferred Stock and the holders of shares of Common Stock and Nonvoting Common Stock shall participate on a pro rata basis in the distribution of all remaining assets of the Corporation legally available for distribution, with the outstanding shares of Series E Preferred Stock treated as though they have been converted into the number of shares of Common Stock, if any, into which they are convertible as of the date of such distribution.

Section d.4.2.3 Conversion. The holders of outstanding shares of Series E Preferred Stock shall have conversion rights as follows:

(c) Incidents Causing Conversion.

(iii) Optional Conversion. There shall be no voluntary conversion rights.

(iv) Automatic Conversion. Each share of Series E Preferred Stock shall automatically be converted into such number of fully paid and non-assessable shares of Common Stock as is determined pursuant to Section (d) of this Section d.4.3.3 upon the closing of the issuance of shares following the effectiveness of a registration statement (other than a registration statement with respect to any securities offered pursuant to any employee purchase, savings, option, bonus, appreciation, profit sharing, thrift, incentive or similar plan of the Corporation) under the Securities Act of 1933, as amended.

(d) Cases Creating Automatic Conversion.

(v) A consolidation, reorganization or merger of this Corporation with or into any other corporation or corporations (1) in which the acquiring company is a public company or (2) in which the stockholders of this Corporation immediately after the transaction own less that fifty percent (50%) of the voting power of the surviving entity;

(vi) A sale, conveyance or other disposition of all or substantially all of this Corporation's property or business;

(vii) A transaction or class of related transactions in which control of this Corporation is transferred (consisting of transfer of at least fifty percent (50%) of the voting power of the Corporation to one (1) person or group of affiliated persons); or,

(viii) The Corporation files a registration statement to register its securities with the Federal Securities and Exchange Commission pursuant to the Securities Act of 1933.

(c) Mechanics of Automatic Conversion. In the event of an automatic conversion of all outstanding shares of Series E Preferred Stock pursuant to Section (a)(ii) of this Section d.4.3.3., the effective date of such conversion shall be the date of the occurrence of the event that triggered such automatic conversion. Notwithstanding the fact that such conversion shall be deemed to have taken place automatically, each holder of outstanding shares of Series E Preferred Stock so converted shall be obligated to surrender to the Corporation all certificates representing his or her shares of Series E Preferred Stock so converted, the satisfaction of which obligation shall be a condition to the Corporation's obligation to issue a certificate representing the shares of Common Stock he received upon such automatic conversion.

(g) Conversion Ratio. Each share of Series E Preferred Stock to be converted into shares of Common Stock shall be converted on the basis of a 1:1 ratio into the number of fully paid and non-assessable shares of Common Stock, with no fractional shares to be issuable upon conversion.

(h) Notices. In the event of any taking by this Corporation of a record of the holders of any class or class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, this Corporation shall mail to each holder of Series E Preferred Stock, at least twenty (20) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right. Any notice required by the provisions of this Section d.4.3.3. to be given to the holders of shares of Series E Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at such holder's address appearing on the books of this Corporation.

(i) Reservation of Common Stock Issuable Upon Conversion. This Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of the E Preferred Stock such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series E Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all the outstanding shares of the Series E Preferred Stock, this Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

Section d.4.2.4 Voting Rights. The holders of the issued and outstanding shares of Series E Preferred Stock shall have no voting rights.

Section d.4.2.5 Covenants. In addition to any other rights provided by law, so long as any Series E Preferred Stock is outstanding, the Corporation, without first obtaining the affirmative vote

or written consent of the holders of not less than a majority of such outstanding shares of each series of Series E Preferred Stock, will not:

(d) Amend or repeal any provision of, or add any provision to, the Corporation's Articles of Incorporation or By-Laws if such action would alter adversely or change the preferences, rights, privileges or powers of, or the restrictions provided for the benefit of, any Series E Preferred Stock, or increase or decrease the number of shares of Series E Preferred Stock authorized hereby;

(e) Pay or declare any dividend on any Subordinate Stock (other than dividends payable in shares of the class or series upon which such dividends are declared or paid, or payable in shares of Common Stock with respect to Subordinate Stock other than Common Stock, together with cash in lieu of fractional shares and dividends not in excess of dividends paid to the Preferred Stock) while the Series E Preferred Stock remains outstanding, or apply any of its assets to the redemption, retirement, purchase or acquisition, directly or indirectly, through subsidiaries or otherwise, of any Subordinate Stock, except from employees of the Corporation upon termination of employment or otherwise pursuant to the terms of stock purchase or option agreements providing for the repurchase of, or right of first refusal with respect to, such Subordinate Stock entered into with such employees; or

(f) Materially change the principal business of the Corporation.

Section d.4.3.7 Exclusion of Other Rights. Except as may otherwise be required by law, the shares of Series E Preferred Stock shall not have any preferences or relative, participating, optional or other special rights, other than those specifically set forth in these Restated Articles (as such Restated Articles may be amended from time to time) and in the Corporation's Articles of Incorporation. The shares of Series E Preferred Stock shall have no preemptive or subscription rights.

Section d.4.3.7 Headings of Subdivisions. The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

Section d.4.3.8 Severability of Provisions. If any right, preference or limitation of the Series E Preferred Stock set forth in this resolution (as such resolution may be amended from time to time) is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other rights, preferences and limitations set forth in this resolution (as so amended) which can be given effect without the invalid, unlawful or unenforceable right, preference or limitation shall, nevertheless, remain in full force and effect, and no right, preference or limitation herein set forth shall be deemed dependent upon any other such right, preference or limitation unless so expressed herein.

Section d.4.3.9 Status of Reacquired Shares. Shares of Series E Preferred Stock which have been issued and reacquired in any manner shall (upon compliance with any applicable provisions of the laws of the State of Nevada) have the status of authorized and unissued shares of Preferred Stock issuable in series undesignated as to series and may be re-designated and reissued.

Section d.4.3.10 Adjustments for Stock Splits, Dividends and Combinations. The number of shares of Series E Preferred Stock and the Series E Preferred Stock Conversion Ratio set forth in Section 4.3.3(g) of these Restated Articles, as adjusted, shall be appropriately adjusted for any share combination or share split of, or any dividend of Series E Preferred Stock with respect to, the Series E Preferred Stock after the effective date of the Corporation's adoption of this Designation of Rights and Preferences for the Series E Preferred Stock.

Section d.4.3.11 Common Stock Warrants. For every one Unit of Series E Preferred Stock ($150,000) purchased after the filing of these Restated Articles of Incorporation, the purchaser shall receive a warrant to purchase up to 25,000 shares of voting Common Stock at $2.50 per share that is exercisable for a one (1) year period from the date of purchase. After 12 months any remaining warrants may be sold to Series E Private Placement Investors at the sole discretion of the Company. However, if the Company successfully completes an Initial Public Offering ("IPO") of its securities all warrants must be exercised at the time of the IPO or all rights to warrants will be forfeited.

ARTICLE VI
INDEMNIFICATION

Section 6.01. Limitation on Personal Liability. (a) To the fullest extent permitted by the laws of the State of Nevada, as the same exist or may hereinafter be amended, no director or officer of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director or officer involving any act or omission of any such director or officer; provided, however, that nothing contained herein shall eliminate or limit the liability of a director or officer of the Corporation to the extent provided by applicable laws (i) for acts or omissions which involve intentional misconduct, fraud or knowing violation of law or (ii) for authorizing the payment of dividends in violation of Section 78.300 of the Nevada General Corporation Law. The limitation of liability provided herein shall continue after a director or officer has ceased to occupy such position as to acts or omissions occurring during such director's or officer's term or terms of office. No repeal, amendment or modification of this Article VI, whether direct or indirect, shall eliminate or reduce its effect with respect to any act or omission of a director or officer of the Corporation occurring prior to such repeal, amendment or modification.

(b) Except as may otherwise be specifically provided in these Articles of Incorporation, no provision of these Articles of Incorporation is intended by the Corporation to be construed as limiting, prohibiting, denying or abrogating any of the general or specific powers or rights conferred under the Nevada General Corporation Law upon the Corporation, upon its stockholders, bondholders and security holders, and upon its directors, officers and other corporate personnel, including, in particular, the power of the Corporation to furnish indemnification to directors and officers in the capacities defined and prescribed by the Nevada General Corporation Law and the defined and prescribed rights of said persons to indemnification as the same are conferred under the Nevada General Corporation Law. The Corporation shall, to the fullest extent permitted by the laws of the State of Nevada, including, but not limited to Section 78.751 and Section 78.7502 of the Nevada General Corporation Law, as the same may be amended and

supplemented, indemnify, defend and hold harmless any and all directors and officers of the Corporation and may, in the discretion of the board of directors, indemnify any and all other persons whom it shall have power to indemnify under said Sections or otherwise under Nevada law, from and against any and all of the expenses, claims, damages or liabilities or other matters referred to or covered by said Sections. The indemnification provisions contained in the Nevada General Corporation Law shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any by-law, agreement, resolution of stockholders or disinterested directors, or otherwise, and shall continue as to a person who has ceased to be a director, officer, employee or agent, both as to action in his official capacity and as to action in another capacity while holding such office, and shall inure to the benefit of the heirs, executors and administrators of such person.

ARTICLE VII
BYLAWS

In furtherance and not in limitation of the powers conferred by law, the Board is expressly authorized and empowered to adopt, amend and repeal the Bylaws of the Corporation at any regular or special meeting of the Board or by written consent, subject to the power of the stockholders of the Corporation to adopt, amend or repeal any Bylaws.

ARTICLE VIII
CERTAIN NEVADA LAW PROVISIONS

Section 8.01. Business Combination Provisions. The Corporation hereby expressly elects not to be governed by Section 411 to Section 444 of the Nevada General Corporation Law (NRS 78.411 to 78.444), inclusive, or any successor provisions thereto.

Section 8.02. Control Share Provisions. The provisions of Section 378 to 3793 of the Nevada General Corporation Law (NRS 78.378 to 78.3793), or any successor provisions thereto, shall not apply to the Corporation or to any acquisition of a controlling interest by any current or future holder of Common Stock, Nonvoting Common Stock or Preferred Stock of the Corporation.

ARTICLE IX
AMENDMENTS

The Corporation reserves the right to amend, alter, change or repeal any provision contained in these Articles of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

IN WITNESS WHEREOF, this Ninth Amended and Restated Articles of Incorporation is hereby executed on behalf of the corporation by the undersigned officer this 24th day of February 2021.

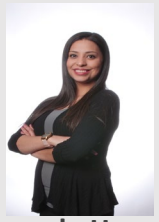
Electronic Caregiver, Inc.

By: _____

Anthony Dohrmann, CEO

ECG Leadership Team 2022

Jen Ross
Director of Care Partner Operations



Amanda Herrera
Executive Administrative Assistant

Jan Hart
Digital Marketing Director

Randall Frye
Controller

Tim Washburn
Chief Clinical Officer

Albert Parra
Chief Human Resources Officer

Dave Keeley
Chief Technology Officer

Abel Salcido
Deputy Chief Technology Officer

Stephanie Guadian
Public Relations Director

Joe Baffoe
President

Tony Dohrmann
Chief Executive Officer

Carol Noel
Vice President

Alan Legarreta
Graphic Design Director

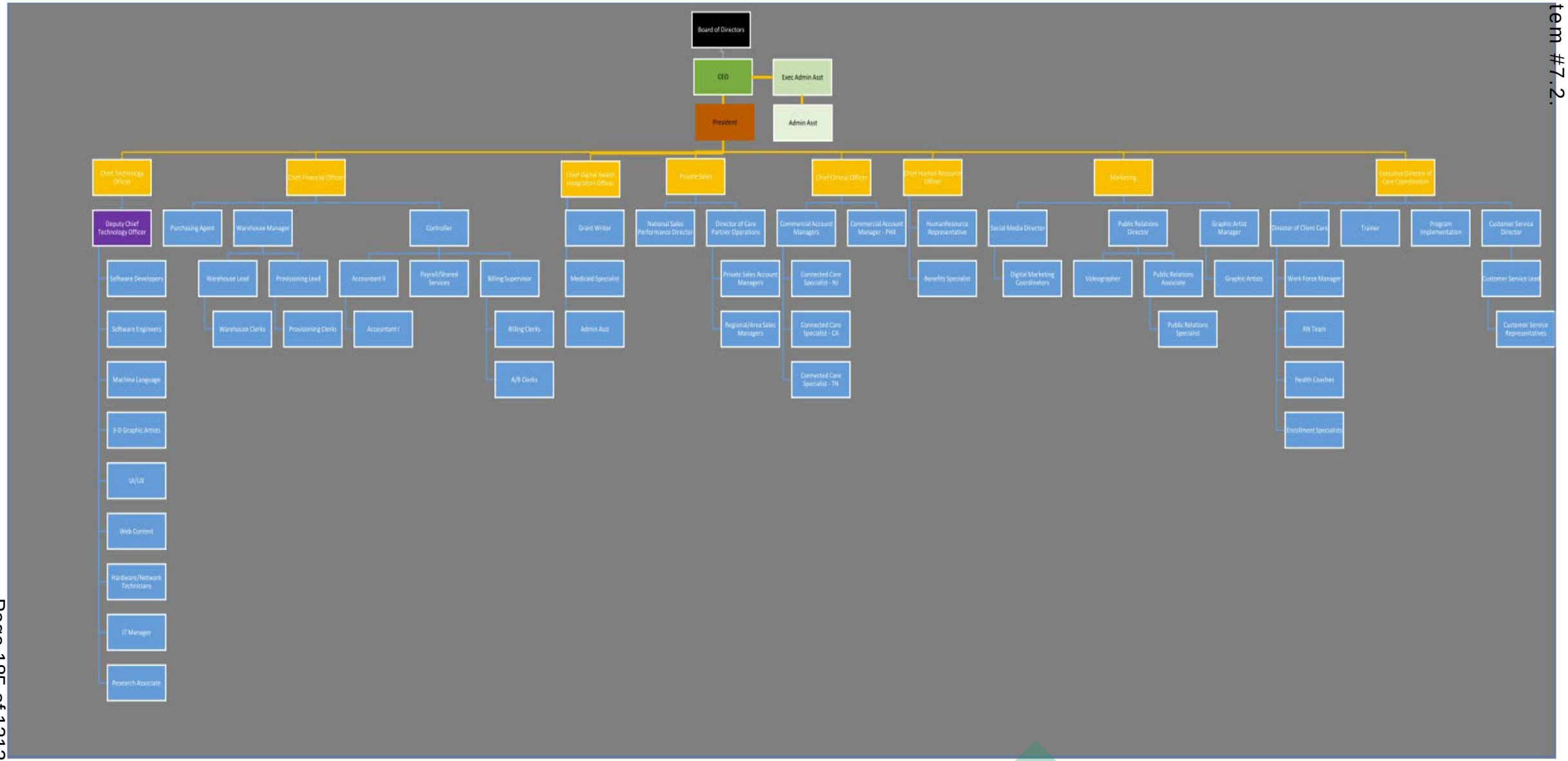
Jorge Sanchez
Chief Financial Officer

Mark Francis
Chief Digital Health Integration Officer

John Munoz
Executive Director of Care Coordination

Mark Sullivan
Clinical Coordinator

electronic caregiver



ECG LEDA Job Creation Worksheet

2022 Application

ECG's LEDA award will facilitate ECG's purchase, capital improvement, build-out and renovation of the Las Cruces Tower building. This acquisition and development project will enable ECG to remain in downtown Las Cruces and grow the business within the existing physical infrastructure – keeping jobs locally and supporting the economic diversification of Las Cruces' downtown core.

Plans are to hire 770 individuals through end of 2026. An overview of hiring plans and timing are noted in the worksheet below. Please note that nearly all jobs will be filled locally. If we do recruit from outside the area, we will be looking to have the new staff work out of Las Cruces. In the table below, we indicate which jobs are anticipated to be filled locally (L), filled by transfer from other facilities (T), or recruit from outside the COMMUNITY (R). BTW – to help recruit and retain local talent, we are developing a telehealth certificate program with NMSU to be offered through the NMSU On Demand program. We are also in discussions with BCOM of more collaboration through the residency and physician training programs. We eagerly welcome other opportunities to strengthen the local employment base through partnership with other community organizations.

Number of new full-time (FT) employees to be hired each year

Year	Number of new FT employees	Source: local (L), transfer (T), recruit (R)
1	50	90%+ local (L)
2	100	90%+ local (L)
3	175	90%+ local (L)
4	220	90%+ local (L)
5	225	90%+ local (L)
	770	90%+ local (L) ECG's intent is to build jobs in New Mexico, mostly Las Cruces and Dona Ana County; individuals transferred (T) or recruited (R) will be encouraged to relocate to the state/region.

To build the business, job retention through robust training programs, upskilling the workforce, and career pathways are key elements of the company's plans. ECG plans to continue to work closely with both NMEDD and the City of Las Cruces via the JTIP and WagePlus programs. These programs provide a foundation for well developed job classifications, training plans, tracking, and auditing. We have seen that such a structure leads to high retention and high employee satisfaction.

While the exact hiring cadence for the new jobs will vary based upon demands of the business, an overview of the hiring plans and types of jobs, wages, etc. can be found in the table below.

Job Title	Estimated Pay Scale (hourly)	Number of Jobs Created		
		Year 1	Year 2	Year 3
Clinical Triage Specialist	$16 – 26	30	26	25
Health Coach	$20 – 28	20	40	35
Care Coordinator (RN)	$28 – 44		5	10
Project Manager	$28 – 42		5	5
Program Director	$34 – 64		3	5
IT Support Specialist	$17 – 32		3	10
Financial Analyst/Controller/Biller	$16 – 38		4	10
SW Developer	$28 – 78		4	20
QA/Testing Engineer	$28 – 64		2	10
Operations/Distribution/Shipping Specialist	$16 – 28		4	20
Commercial Account Managers	$16 - 32		4	10
EMTs	$24 - 46			15
		50	100	175

The above table is for reference purposed only; actual hiring plan TBD.

The below table provides an estimated average salary for the combined new employees. This data is summarized from the EIA Data Collection Form which ECG has submitted. FYI: Benefit rate for all employers is 35%.

Year	Average Salary
1	$ 47,000
2	$ 48,645
3	$ 50,348
4	$ 52,110
5	$ 53,934

Total new payroll annually

Year	Number of new hires	Average Salary	Annual New Payroll
1	50	$ 47,000	$ 2,350,000
2	100	$ 48,645	$ 4,864,500
3	175	$ 50,348	$ 8,810,900
4	220	$ 52,110	$ 11,464,200
5	225	$ 53,934	$12,135,150

Thank you!

*NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT AUTHORIZATION FOR EXAMINATION AND RELEASE OF INFORMATION

Electronic Caregiver, Inc. hereby grants permission to the New Mexico Economic Development Department to conduct a review, full disclosure, and release of any and all information authorized pursuant to federal and state law. The purpose for obtaining and examining the information is to construct a record of the company's personal and professional history, including credit history, to ensure it meet the requirements that the New Mexico Economic Development Department has established for potential recipients of State funds. The company understands an investigation will be conducted by the New Mexico Economic Development Department, the New Mexico Department of Public Safety, or their contractors, and the results of the investigation will only be supplied to the New Mexico Economic Development Department.

Electronic Caregiver, Inc. hereby grants the New Mexico Economic Development Department permission to obtain any information in its background pertaining to any credit (to include obtaining a copy of a commercial credit report), education, bankruptcy, investigation, arrest and/or conviction of it or its principals in any criminal or civil matter. The company also authorizes an employee of the New Mexico Economic Development Department, as its authorized representative, to obtain from the New Mexico Taxation and Revenue Department and/or the Department of Workforce Solutions any tax information that is in any way related to a company Electronic Caregiver Inc. owns or has invested in. Electronic Caregiver, Inc. hereby directs you to release such information upon the request of this bearer. Electronic Caregiver, Inc. hereby releases you as a custodian of such records for any criminal justice, law enforcement or court agency, including its officers and employees, or related personnel, both individually and collectively, from any and all liability for damages of whatever kind, that may at any time result to the New Mexico Economic Development Department or the State of New Mexico because of compliance with this authorization and request to release information; or any attempt to comply with it.

1. The information reviewed, disclosed, and/or released may be used by the New Mexico Economic Development Department for any lawful purpose and/or to determine the company's suitability to receive funds from the State of New Mexico.

2. Electric Caregiver, Inc. hereby releases the providers and users of the information collected pursuant to this authorization from any liability under state or federal privacy laws and further release the New Mexico Economic Development Department, its contractors, agents, and/or employees from any liability which may be incurred as a result of the collection and use of information.

3. Electronic Caregiver, Inc., understands that it may revoke this authorization in writing at any time.

FULL NAME: Anthony Dohrmann

SIGNATURE: _____

TITLE: CEO

COMPANY: Electronic Caregiver, Inc.

The above named certifies that they are authorized to commit to this release on behalf of the company identified.

Please provide below information if company is a sole proprietorship:

SSN: _____

DOB: _____

DATE: 07/08/2022

**** This Document is only valid if notarized***

Scribed and sworn to me on this 8TH day of 2022, of Dona Ana County, New Mexico

Signed Amanda R Herrera

My Commission expires: 10/08/2023

OFFICIAL SEAL
Amanda Renee Herrera
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 10/8/2023

Notary Public

Print Close

Attachment "A"

Thursday, July 14, 2022

Employer Account Number: 10002398 **Employer Name: SameDay Security, Inc.** **Claims Response Method: Email**
DBA Name: **TPA: 500000657**

Employment and Wage Detail Submission History Search

From: (mm/dd/yyyy)
(mm/dd/yyyy)
To: (mm/dd/yyyy)
(mm/dd/yyyy)
Confirmation#:
Submission Type: All
Quarter: January, February, March (Q1)
Year: 2022

Search Results

Submission Date	Year	Qtr	Filing	Method	Confirmation Number	SSNs	Total UI Gross Wages	NM Withholding	WC Fees	Month 1	Month 2	Month 3	Status	Record Errors	Submitter
5/9/2022	2022	1	Original	File Upload		0	$0.00	$0.00	$0.00				Rejected	errors	jsanchez84
5/9/2022	2022	1	Original	File Upload	10002398_ 050922180209	261	$2,093,296.49	$118,475.98	$1,122.30	161	175	225	Processed		jsanchez84

Michelle Lujan Grisham • Governor
Alicia J. Keyes • Cabinet Secretary

Exhibit C – LEDA Application

Affirmation of officer of Company

Declaration of Electronic Caregiver, Inc. **Officer**

I, Anthony Dohrmann, declare as follows:

I am CEO/Owner for Electronic Caregiver, Inc. and I have been employed in this capacity since_____. Except where otherwise noted, I have personal knowledge of the facts set forth in this declaration.

Date: 5/11/2021

I declare under penalty of perjury that the foregoing is true and correct.

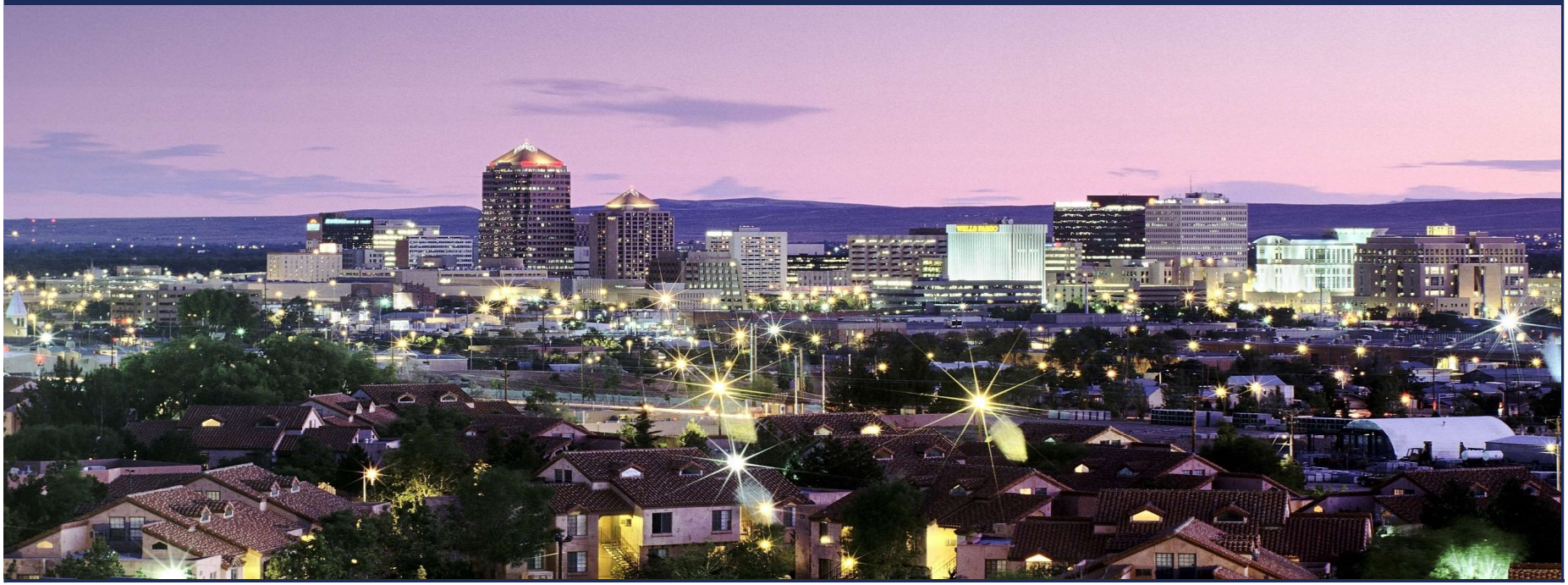
Name
Job Title
Name of Company

EDD Economic Development Department

4/21/2022

FISCAL IMPACT ANALYSIS AND ECONOMIC IMPACT OF THE EXPANSION OF ECG

Prepared by:
New Mexico Economic Development Department
Joseph Montoya Building
1100 S. St. Francis Drive
Santa Fe, New Mexico 87505



Purpose and Limitations:

This report and analysis, provided by the New Mexico Economic Development Department, relies on prospective estimates of business activity. These estimates, which are provided by the company, may not be realized due to unforeseen events that are outside the control of the company and unknown to the New Mexico Economic Development Department.

The New Mexico Economic Development Department made reasonable efforts to ensure that the estimates provided by the company, are realistic estimates of future activity.

The model was created by the New Mexico Economic Development Economists and used assumptions to generate the final report. The report and analysis provided by the New Mexico Economic Development Department is not a guarantee that any of the estimates or results contained in this report will actually be achieved.

Introduction:

This report and analysis presents the results of an economic impact analysis performed using a model developed by the New Mexico Economic Development Department. The report estimates the impact that a potential project may have on the state and local economies and estimates the costs and benefits for the state and local economies over a 10-year period. The report and analysis uses RIMS II Multipliers produced by the U.S. Bureau of Economic Analysis (BEA).

Most projects produce a growth in population and/or a growth in the workforce in a City, County and the State of New Mexico. All growth comes at a cost, the additional economic activity and population growth stimulated by the project will generate additional costs in terms of providing basic infrastructure (roads and utilities) and public services (including public safety and schools). For example, if the applicant hires employees from outside the State, County and City, those workers who end up relocating their residence to within one or all of those areas, the population for which the government must provide services also increases. The costs associated with the expansion are broken down into two categories: 1) New residents to the State, County and City. 2) New Mexican residents hired to work for the company. The analysis assumes that all workers will live in the area of the expansion.

Description of the Company:

Electronic Caregiver is a privately held, 11-year-old digital health technology and services company headquartered in Las Cruces, NM. ECG's mission is to design and deliver innovative, impactful telehealth products and services that bridge the chasm between the doctor's office and patient's home to improve outcomes, expand access, and optimize resource allocation. The company's solutions are available through health care organizations, physician practices, care management firms, homecare agencies, and senior housing providers to deliver hospital-at-home, chronic care management, and remote patient monitoring programs.

ECG has been growing revenue and patient subscribers over the past three years. In the wake of COVID, demand for ECG's telehealth products increased significantly as providers needed to adopt technology and solutions which empowered care-at-a-distance with their patients and the federal government expanded reimbursement coverage for telehealth. In the aftermath, the company signed contracts with 20 health care organizations (HCO) and has been approved to provide services under Medicaid in 8 states. Today, 85% of ECG's business is from reimbursement while 15% is from private pay customers (senior housing providers, home care agencies, direct consumer purchase). The revenue growth is based upon accelerating adoption amongst customers, diversified product offerings, and service expansion into clinical triage and health coaching. The clinical triage and health coaching services are the basis of the LEDA application.

Description of the Project:

Historically, ECG provided equipment used to communicate with a patient in her home as well as to capture vital sign measurements such as blood pressure, blood glucose, weight, and heart rate. This data was collected in the context of a care plan and sent to health providers to manage patients outside of the clinic. The identification of the eligible patient, enrollment of the patient into services, and health coaching or care coordination was conducted by the providers or a 3rd party. Based upon the quality of services provided by ECG, recently 3 major HCO partners [with over 2 million Medicaid lives under management] have contracted with ECG to provide the enrollment and health coaching services to 87,000 of their patients. These initial contracts [value in excess of $19 million] are the basis of an expansion of staff and facilities to establish a Clinical Triage & Telehealth Services Center. Upon demonstrated success, ECG has an MOU to extend the services to the remainder of the patient population.

To fulfill the initial contracts, ECG will be hiring clinical triage specialists, health coaches, care coordinators, project managers, and a program manager. In addition, support staff across admin, accounting, IT, and finance will be expanded. NMEDD, City of Las Cruces, and MVEDA have awarded ECG $1.6 million in JTIP and Wage + funding to support the hiring, training and retention of 120 new employees.

In addition, to support the new hires and new business line, ECG is seeking to acquire and build-out a facility. The company has been approached by parties in New Mexico and Texas to locate the new business in various locations and facilities. After assessing various scenarios, the preferred option is to acquire the building where the company is currently located in downtown Las Cruces. Doing so would result in the least business disruption while also fulfilling the vision of company executives to build jobs and expand the business to contribute to economic expansion within the Dona Ana County region.

Total Impacts

Fiscal Impact of Existing and Expanded Operations Over the Next Ten Years

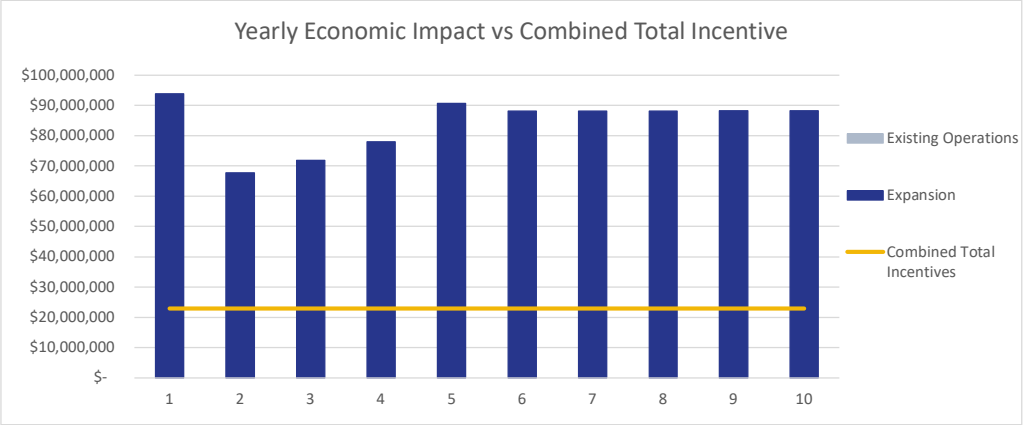
	Cumulative Net Benefits			
	Existing Operations	Expansion	Existing & Expanded Operations	Present Value of Net Benefits*
State of New Mexico	$ -	$ 37,464,904	$ 37,464,904	$ 29,742,776
County	$ -	$ 5,172,119	$ 5,172,119	$ 4,061,135
City	$ -	$ 6,984,706	$ 6,984,706	$ 5,637,407
School District	$ -	$ 100,210	$ 100,210	$ 80,605
Special Taxing District	$ -	$ 20,100	$ 20,100	$ 16,168
Total	**$ -**	**$ 49,742,041**	**$ 49,742,041**	**$ 39,538,090**

* The Present Value of Net Benefits expresses the future stream of net benefits received over several years as a single value in today's dollars. Today's dollar and a dollar to be received at differing times in the future are not comparable because of the time value of money. The time value of money is the interest rate or each taxing entity's discount rate. This analysis uses a discount rate of 5% to make the dollars comparable.

** In the cumulative net benefits of the existing and expanded operations for the State of New Mexico, corporate income tax has been removed from the existing operations total to avoid double counting.

Total Economic Impact

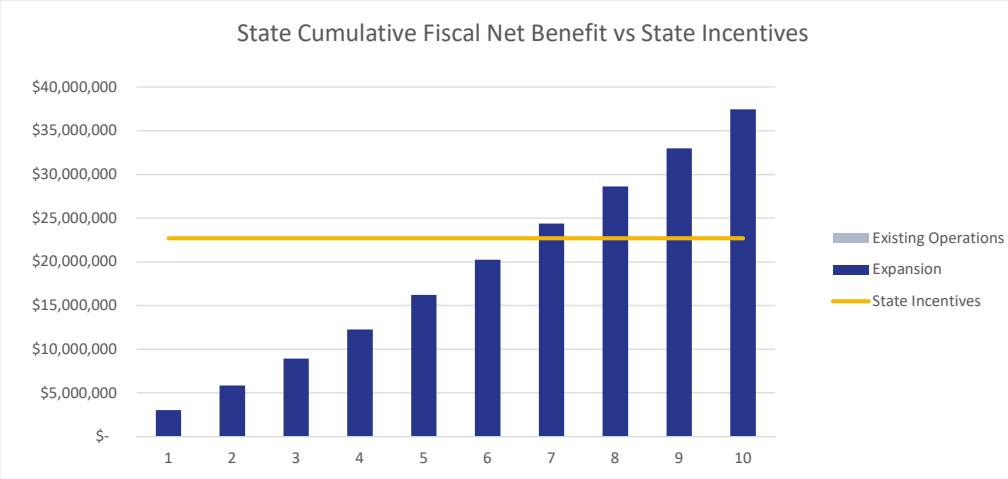
	Total
Estimated Economic Impact Over 10 Years:	$ 842,973,661
Combined Total Incentive Over 10 Years:	$ 22,923,761
Economic Impact Rate of Return:	3,577%



Workers and New Residents over 10 years

	Direct	Indirect and Induced
Number of Jobs Created:	770	715
Estimated Number of Construction Workers:	66	
Estimated Number of New Residents to the State:	116	
Estimated Number of New Residents to the County:	116	
Estimated Number of New Residents to the City:	116	

State Impacts



Incentives

Total State Incentive:	$	22,688,761
State Incentive Per Job:	$	29,466

Combined Payback and Return

State Payback Period Combined:	6.59	Years
State Rate of Return Combined:	31%	

Expansion Only Payback and Return

State Payback Period Expansion:	6.59	Years
State Rate of Return Expansion:	31%	

State Net Benefits Of Current Operations

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ -	$ -	$ -	$ -
2	$ -	$ -	$ -	$ -
3	$ -	$ -	$ -	$ -
4	$ -	$ -	$ -	$ -
5	$ -	$ -	$ -	$ -
6	$ -	$ -	$ -	$ -
7	$ -	$ -	$ -	$ -
8	$ -	$ -	$ -	$ -
9	$ -	$ -	$ -	$ -
10	$ -	$ -	$ -	$ -

State Net Benefits Of Expansion

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ 3,164,619	$ 132,067	$ 3,032,553	$ 3,032,553
2	$ 2,975,457	$ 135,038	$ 2,840,418	$ 5,872,971
3	$ 3,201,303	$ 138,077	$ 3,063,226	$ 8,936,197
4	$ 3,489,424	$ 141,184	$ 3,348,240	$ 12,284,437
5	$ 4,081,456	$ 144,360	$ 3,937,096	$ 16,221,533
6	$ 4,181,002	$ 147,608	$ 4,033,394	$ 20,254,926
7	$ 4,288,278	$ 150,929	$ 4,137,348	$ 24,392,275
8	$ 4,399,250	$ 154,325	$ 4,244,924	$ 28,637,199
9	$ 4,514,047	$ 157,798	$ 4,356,250	$ 32,993,449
10	$ 4,632,804	$ 161,348	$ 4,471,456	$ 37,464,904

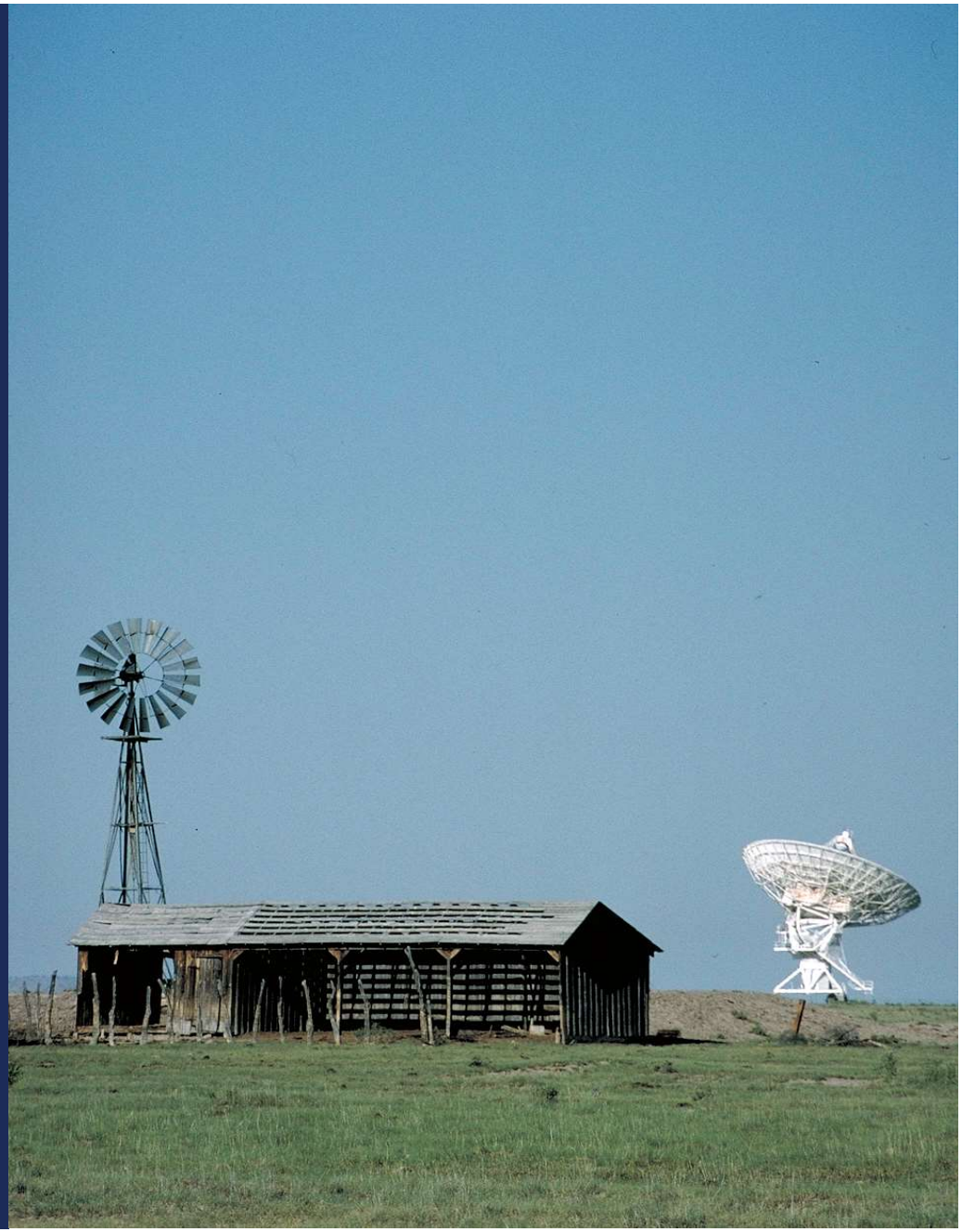
State Combined Net Benefits

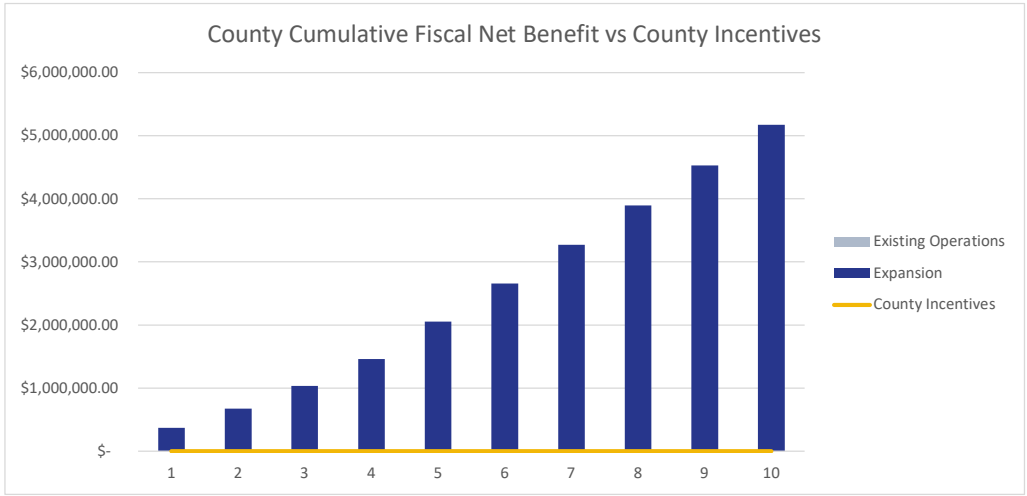
Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ 3,164,619	$ 132,067	$ 3,032,553	$ 3,032,553
2	$ 2,975,457	$ 135,038	$ 2,840,418	$ 5,872,971
3	$ 3,201,303	$ 138,077	$ 3,063,226	$ 8,936,197
4	$ 3,489,424	$ 141,184	$ 3,348,240	$ 12,284,437
5	$ 4,081,456	$ 144,360	$ 3,937,096	$ 16,221,533
6	$ 4,181,002	$ 147,608	$ 4,033,394	$ 20,254,926
7	$ 4,288,278	$ 150,929	$ 4,137,348	$ 24,392,275
8	$ 4,399,250	$ 154,325	$ 4,244,924	$ 28,637,199
9	$ 4,514,047	$ 157,798	$ 4,356,250	$ 32,993,449
10	$ 4,632,804	$ 161,348	$ 4,471,456	$ 37,464,904

State Breakdown of Combined Benefits, Costs, and Net Benefits Over the Next 10 Years

Taxes and Revenue			
	Gross Receipt Taxes	$	16,184,973
	Personal Income Taxes	$	20,457,483
	Corporate Income Taxes	$	-
	Misc. Taxes and Revenue	$	2,285,183
	Subtotal of Benefits	**$**	**38,927,640**
Costs			
	Costs	$	1,462,735
	Subtotal of Costs	**$**	**1,462,735**
Net Benefits			
	Net Benefits	**$**	**37,464,904**
	Present Value	**$**	**29,742,776**

County Impacts





Incentives

Total County Incentive:	$	-
County Incentive Per Job:	$	-

Combined Payback and Return

County Payback Period Combined:	-	Years
County Rate of Return Combined:	N/A	

Expansion Only Payback and Return

County Payback Period Expansion:	-	Years
County Rate of Return Expansion:	N/A	

County Net Benefits Of Current Operations

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ -	$ -	$ -	$ -
2	$ -	$ -	$ -	$ -
3	$ -	$ -	$ -	$ -
4	$ -	$ -	$ -	$ -
5	$ -	$ -	$ -	$ -
6	$ -	$ -	$ -	$ -
7	$ -	$ -	$ -	$ -
8	$ -	$ -	$ -	$ -
9	$ -	$ -	$ -	$ -
10	$ -	$ -	$ -	$ -

County Net Benefits Of Expansion

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ 383,682	$ 15,219	$ 368,463	$ 368,463
2	$ 323,320	$ 15,562	$ 307,758	$ 676,221
3	$ 374,317	$ 15,912	$ 358,406	$ 1,034,627
4	$ 444,680	$ 16,270	$ 428,410	$ 1,463,037
5	$ 611,552	$ 16,636	$ 594,916	$ 2,057,953
6	$ 620,115	$ 17,010	$ 603,105	$ 2,661,059
7	$ 630,020	$ 17,393	$ 612,627	$ 3,273,686
8	$ 640,269	$ 17,784	$ 622,485	$ 3,896,171
9	$ 650,875	$ 18,184	$ 632,691	$ 4,528,862
10	$ 661,851	$ 18,593	$ 643,258	$ 5,172,119

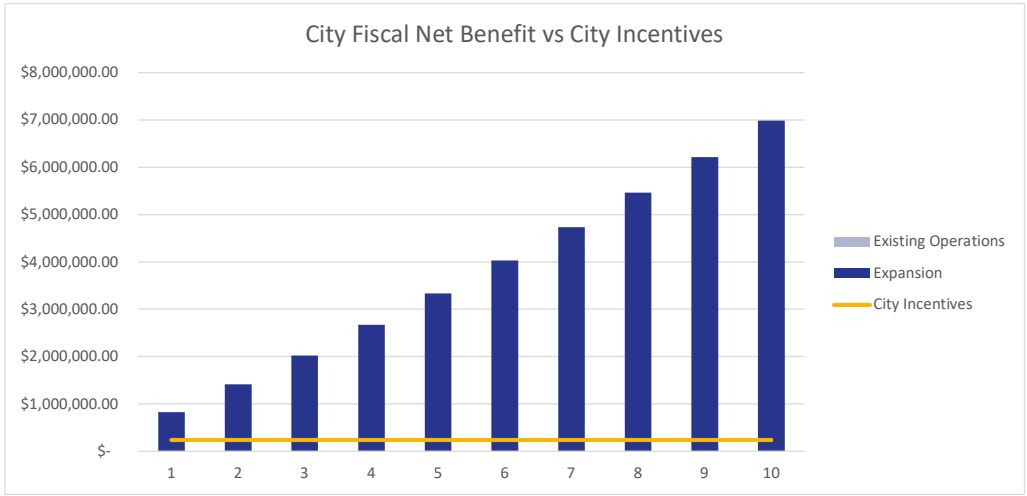
County Combined Net Benefits

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ 383,682	$ 15,219	$ 368,463	$ 368,463
2	$ 323,320	$ 15,562	$ 307,758	$ 676,221
3	$ 374,317	$ 15,912	$ 358,406	$ 1,034,627
4	$ 444,680	$ 16,270	$ 428,410	$ 1,463,037
5	$ 611,552	$ 16,636	$ 594,916	$ 2,057,953
6	$ 620,115	$ 17,010	$ 603,105	$ 2,661,059
7	$ 630,020	$ 17,393	$ 612,627	$ 3,273,686
8	$ 640,269	$ 17,784	$ 622,485	$ 3,896,171
9	$ 650,875	$ 18,184	$ 632,691	$ 4,528,862
10	$ 661,851	$ 18,593	$ 643,258	$ 5,172,119

County Breakdown of Combined Benefits, Costs, and Net Benefits Over the Next 10 Years

Taxes and Revenue			
	Gross Receipt Taxes	$	5,187,491
	Misc. Taxes and Revenue	$	59,278
	Property Taxes	$	93,913
	Subtotal of Benefits	**$**	**5,340,682**
Costs			
	Costs	$	168,562
	Subtotal of Costs	**$**	**168,562**
Net Benefits			
	Net Benefits	**$**	**5,172,119**
	Present Value	**$**	**4,061,135**

City Impacts



Incentives

Total City Incentive:	$	235,000
City Incentive Per Job:	$	305

Combined Payback and Return

City Payback Period Combined:	0.28	Years
City Rate of Return Combined:	2299%	

Expansion Only Payback and Return

City Payback Period Expansion:	0.28	Years
City Rate of Return Expansion:	2299%	

City Net Benefits Of Current Operations

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ -	$ -	$ -	$ -
2	$ -	$ -	$ -	$ -
3	$ -	$ -	$ -	$ -
4	$ -	$ -	$ -	$ -
5	$ -	$ -	$ -	$ -
6	$ -	$ -	$ -	$ -
7	$ -	$ -	$ -	$ -
8	$ -	$ -	$ -	$ -
9	$ -	$ -	$ -	$ -
10	$ -	$ -	$ -	$ -

City Net Benefits Of Expansion

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ 961,617	$ 136,746	$ 824,870	$ 824,870
2	$ 727,836	$ 139,777	$ 588,059	$ 1,412,929
3	$ 756,164	$ 142,873	$ 613,291	$ 2,026,220
4	$ 787,577	$ 146,029	$ 641,548	$ 2,667,768
5	$ 820,530	$ 149,244	$ 671,286	$ 3,339,054
6	$ 840,289	$ 152,517	$ 687,772	$ 4,026,826
7	$ 863,453	$ 155,846	$ 707,607	$ 4,734,433
8	$ 887,499	$ 159,231	$ 728,268	$ 5,462,701
9	$ 912,458	$ 162,667	$ 749,792	$ 6,212,493
10	$ 938,364	$ 166,151	$ 772,213	$ 6,984,706

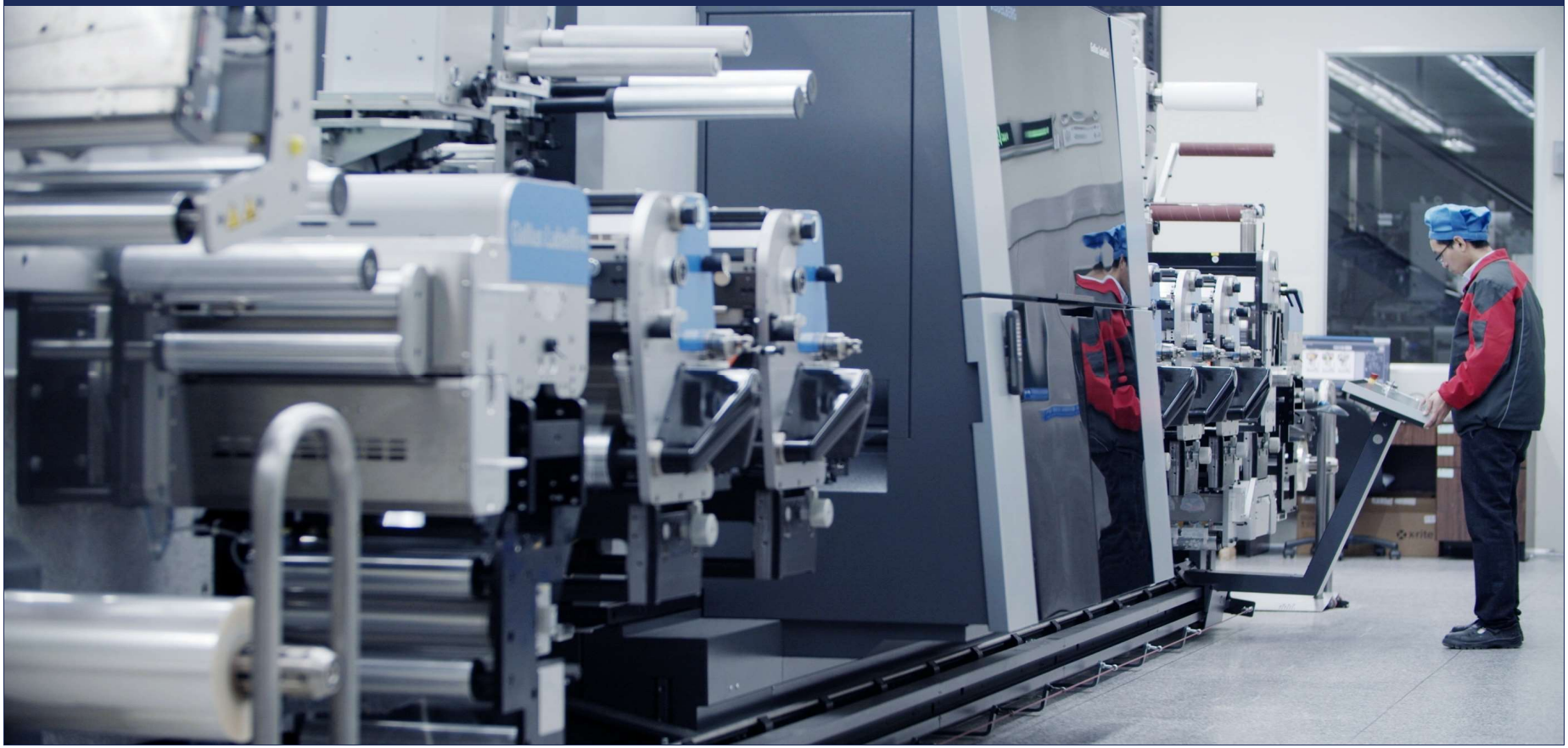
City Combined Net Benefits

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ 961,617	$ 136,746	$ 824,870	$ 824,870
2	$ 727,836	$ 139,777	$ 588,059	$ 1,412,929
3	$ 756,164	$ 142,873	$ 613,291	$ 2,026,220
4	$ 787,577	$ 146,029	$ 641,548	$ 2,667,768
5	$ 820,530	$ 149,244	$ 671,286	$ 3,339,054
6	$ 840,289	$ 152,517	$ 687,772	$ 4,026,826
7	$ 863,453	$ 155,846	$ 707,607	$ 4,734,433
8	$ 887,499	$ 159,231	$ 728,268	$ 5,462,701
9	$ 912,458	$ 162,667	$ 749,792	$ 6,212,493
10	$ 938,364	$ 166,151	$ 772,213	$ 6,984,706

City Breakdown of Combined Benefits, Costs, and Net Benefits Over the Next 10 Years

Taxes and Revenue			
	Gross Receipt Taxes	$	7,566,260
	Misc. Taxes and Revenue	$	453,499
	Property Taxes	$	476,028
	Subtotal of Benefits	**$**	**8,495,787**
Costs			
	Costs	$	1,511,080
	Subtotal of Costs	**$**	**1,511,080**
Net Benefits			
	Net Benefits	**$**	**6,984,706**
	Present Value	**$**	**5,637,407**

Special Taxing District and Public Schools



Special Taxing District

Special Taxing District Net Benefits of Current Operations

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ -	$ -	$ -	$ -
2	$ -	$ -	$ -	$ -
3	$ -	$ -	$ -	$ -
4	$ -	$ -	$ -	$ -
5	$ -	$ -	$ -	$ -
6	$ -	$ -	$ -	$ -
7	$ -	$ -	$ -	$ -
8	$ -	$ -	$ -	$ -
9	$ -	$ -	$ -	$ -
10	$ -	$ -	$ -	$ -

Special District Net Benefits of Expansion

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ 1,836	$ -	$ 1,836	$ 1,836
2	$ 1,872	$ -	$ 1,872	$ 3,708
3	$ 1,910	$ -	$ 1,910	$ 5,618
4	$ 1,948	$ -	$ 1,948	$ 7,566
5	$ 1,987	$ -	$ 1,987	$ 9,553
6	$ 2,027	$ -	$ 2,027	$ 11,580
7	$ 2,067	$ -	$ 2,067	$ 13,647
8	$ 2,109	$ -	$ 2,109	$ 15,756
9	$ 2,151	$ -	$ 2,151	$ 17,907
10	$ 2,194	$ -	$ 2,194	$ 20,100

Special District Combined Net Benefits

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ 1,836	$ -	$ 1,836	$ 1,836
2	$ 1,872	$ -	$ 1,872	$ 3,708
3	$ 1,910	$ -	$ 1,910	$ 5,618
4	$ 1,948	$ -	$ 1,948	$ 7,566
5	$ 1,987	$ -	$ 1,987	$ 9,553
6	$ 2,027	$ -	$ 2,027	$ 11,580
7	$ 2,067	$ -	$ 2,067	$ 13,647
8	$ 2,109	$ -	$ 2,109	$ 15,756
9	$ 2,151	$ -	$ 2,151	$ 17,907
10	$ 2,194	$ -	$ 2,194	$ 20,100

Public Schools

Public Schools Net Benefits of Current Operations

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ -	$ -	$ -	$ -
2	$ -	$ -	$ -	$ -
3	$ -	$ -	$ -	$ -
4	$ -	$ -	$ -	$ -
5	$ -	$ -	$ -	$ -
6	$ -	$ -	$ -	$ -
7	$ -	$ -	$ -	$ -
8	$ -	$ -	$ -	$ -
9	$ -	$ -	$ -	$ -
10	$ -	$ -	$ -	$ -

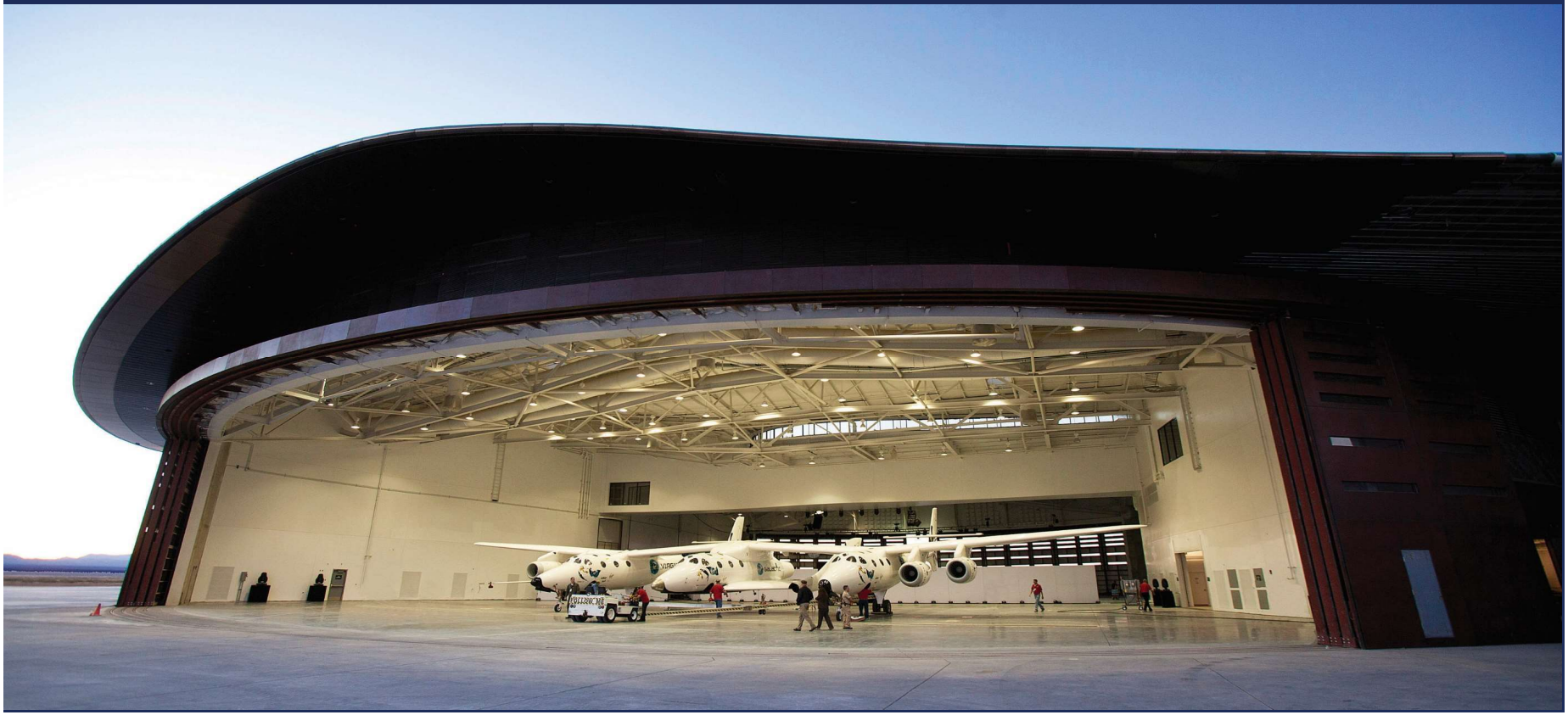
Public Schools Net Benefits of Expansion

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ 9,152	$ -	$ 9,152	$ 9,152
2	$ 9,335	$ -	$ 9,335	$ 18,487
3	$ 9,522	$ -	$ 9,522	$ 28,008
4	$ 9,712	$ -	$ 9,712	$ 37,720
5	$ 9,906	$ -	$ 9,906	$ 47,626
6	$ 10,104	$ -	$ 10,104	$ 57,731
7	$ 10,306	$ -	$ 10,306	$ 68,037
8	$ 10,513	$ -	$ 10,513	$ 78,550
9	$ 10,723	$ -	$ 10,723	$ 89,273
10	$ 10,937	$ -	$ 10,937	$ 100,210

Public Schools Combined Net Benefits

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ 9,152	$ -	$ 9,152	$ 9,152
2	$ 9,335	$ -	$ 9,335	$ 18,487
3	$ 9,522	$ -	$ 9,522	$ 28,008
4	$ 9,712	$ -	$ 9,712	$ 37,720
5	$ 9,906	$ -	$ 9,906	$ 47,626
6	$ 10,104	$ -	$ 10,104	$ 57,731
7	$ 10,306	$ -	$ 10,306	$ 68,037
8	$ 10,513	$ -	$ 10,513	$ 78,550
9	$ 10,723	$ -	$ 10,723	$ 89,273
10	$ 10,937	$ -	$ 10,937	$ 100,210

Property Tax Exemptions and Industrial Revenue Bonds



Property Tax Exemptions and Industrial Revenue Bonds

The City and/or the County is considering abating taxes on the Project's property. Below is a table that identifies the types of property that are under consideration for property tax abatement:

Land:	Yes
Building and Property Improvements:	Yes
Furniture, Fixtures and Equipment:	Yes

Property Tax Percentage Exemptions On Land and Building

County	City	Schools	Special Taxing District
75%	75%	75%	75%

Property Tax Percentage Exemptions On Furniture, Fixtures and Equipment

	County	City	Schools	Special Taxing District
	75%	75%	75%	75%
Value of Exemption Through 10 Years:	**$ 571,421**	**$ 436,564**	**$ 47,901**	**$ 9,470**
*Value of Payment in Lieu of Taxes Through 10 Years:	**$ -**	**$ 387,374**	**$ -**	**$ -**

*The model assumes that the payment in lieu of taxes will be administered to the either the county or city, and the local government will disperse the amounts to the appropriate districts.

Percentage of Gross Receipt Taxes Foregone on Newly Purchased Furniture, Fixtures and Equipment Over 10 Years

Year	State	County	City
1	100%	100%	100%
2	100%	100%	100%
3	100%	100%	100%
4	100%	100%	100%
5	100%	100%	100%
6	100%	100%	100%
7	100%	100%	100%
8	100%	100%	100%
9	100%	100%	100%
10	100%	100%	100%
Value of Exemption Through 10 Years:	**$ 78,507**	**$ 25,163**	**$ 63,661**

23-026

Type of Action:
☒ **Resolution**
☐ **Ordinance**
☐ **TIDD Resolution**

City Council Action and Executive Summary

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A		
1st Reading:		**Adopted:**	September 6, 2022
Drafter:	Rocio Gamboa	**Department:**	Financial Services
Program:	Budget	**Line of Business:**	Fiscal Management

Title: **A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES (CITY) TO ACCEPT VARIOUS GRANT AWARDS FOR VARIOUS CITY DEPARTMENTS THROUGH AN AMENDMENT TO THE CITY'S ADOPTED FY2023 BUDGET AND THE FY2023 CAPITAL IMPROVEMENT PLAN (CIP).**

TYPE OF ACTION: ☒ **Administrative** ☐ **Legislative** ☐ **Quasi-Judicial**

PURPOSE(S) OF ACTION:

To adjust the City budget.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City relies on grant funding for many of the critical programs provided each year for the residents of Las Cruces. Grant funding awards are received throughout the fiscal year and are not budgeted during the normal fiscal year budgeting process. Funds are not budgeted until the City has received a grant award agreement due to the unpredictable nature of funding levels and timing.

Per the City's Grants Administration Program Policy, the City Manager, or his designee, may execute grant agreements with funding agencies. Upon receipt of the fully executed agreement from the funding agency, the Council may adjust the budget.

The request for City Council is to accept budget adjustments to be used by the departments for the scope of work as defined by each grant agreement.

SUPPORT INFORMATION:

Exhibit "A" Fund summary
Exhibit "B" CIP
Attachment "A" Grant Listing
Attchment "B"-G4050 Amador Hotel Reauth Executed
Attachment "C" - 22-G4054 Airport Improv Reauth Executed
Attachment "D"-A20-E5296 Library GOB Executed
Attachment "E" - NMAAA 2022-2023-64014 Executed

PLAN(S):

City Council Strategic Plan, Department Strategic Business Plan, Elevate Las Cruces

COMMITTEE/BOARD REVIEW:

None

ANNUAL BUDGET APPROVAL:

☐ Yes
☒ No
☐ N/A

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT: Exhibit "A"	**AVAILABLE AMOUNT:** Exhibit "A"	**EXPENDITURE AMOUNT:** Exhibit "A"

Additional Budgetary Information:
*Refer to Exhibit “A”, Fiscal Year 2022-2023 Budget Adjustments.

Funding Source(s):

Does this action amend the Capital Improvement Plan (CIP)?

☒ Yes
☐ No
☐ N/A

Does this action align with Elevate Las Cruces?

☒ Yes
☐ No
☐ N/A

OPTIONS / ALTERNATIVES:

1. Vote “Yes”; this will approve the Resolution to accept the budget adjustments as presented and adjust the City’s FY2023 budget and the FY2023 Capital Improvement Plan (CIP).
2. Vote “No”; this will not approve the Resolution to adjust the budget and the Capital Improvement Plan (CIP) as presented and return the funds to the granting agency.
3. Vote to “Amend”; this could delay the Resolution and the process of spending the grant funds within the predetermined grant schedule and require direction to staff.
4. Vote to “Table”; this will delay the Resolution and will impact the implementation of the grant agreement, the City department’s ability to utilize the funds and return the grant funds to the granting agency.

REFERENCE INFORMATION:

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

N/A

RESOLUTION 23-026

A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES (CITY) TO ACCEPT VARIOUS GRANT AWARDS FOR VARIOUS CITY DEPARTMENTS THROUGH AN AMENDMENT TO THE CITY'S ADOPTED FY2023 BUDGET AND THE FY2023 CAPITAL IMPROVEMENT PLAN (CIP).

The City Council is informed that:

WHEREAS, the City has received notice of grant awards for various City departments; and

WHEREAS, the grants will be used as designated in the scope of work and within the specified time period as shown in the grant agreements executed by the City Manager, or his designee; and

WHEREAS, the grant agreements that are the subject of this budget adjustment will be attached to the Resolution with a Summary, as Attachment "A"; and each agreement will be attached as subsequent attachments.

NOW, THEREFORE, Be it Resolved by the Governing Body of the City of Las Cruces:

(I)

THAT the City hereby amends the FY 2023 City Budget to accept all grant awards as shown in the Fund Summary, Exhibit "A", attached hereto and made part of this Resolution.

(II)

THAT the FY 2023 CIP, as applicable, is hereby amended as outlined in Exhibit "B" attached hereto and made part of this Resolution.

(III)

THAT the City staff is hereby authorized to do all deeds necessary in the accomplishment of the hereinabove.

DONE AND APPROVED this day of

APPROVED

_____
Mayor

ATTEST:

_____
City Clerk

Moved by:

Seconded by:

AYES

NAYS

CITY OF LAS CRUCES *Exhibit "A"*

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2022-23

	1000 GENERAL FUND 2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	$ 41,226,738	41,226,738	0	41,226,738
Revenues				
Municipal Gross Receipts Tax	47,475,528	47,475,528	0	47,475,528
Public Safety Gross Receipts Tax	4,263,256	4,263,256	0	4,263,256
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	42,196,909	42,196,909	0	42,196,909
Environmental Gross Receipts Tax	2,131,627	2,131,627	0	2,131,627
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	500,000	500,000	0	500,000
Lodgers Tax	0	0	0	0
Property Taxes	12,648,613	12,648,613	0	12,648,613
Payment In Lieu of Property Tax	842,304	842,304	0	842,304
Franchise Fees	2,771,546	2,771,546	0	2,771,546
Payment In Lieu of Franchise Fees	1,200,000	1,200,000	0	1,200,000
Licenses, Fees & Permits	3,089,711	3,089,711	0	3,089,711
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	321,800	321,800	0	321,800
Charges For Services	2,622,941	2,622,941	0	2,622,941
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	2,681,000	2,681,000	0	2,681,000
Investment Income	100,000	100,000	0	100,000
Miscellaneous Revenues	90,060	90,060	0	90,060
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	**122,935,295**	**122,935,295**	**0**	**122,935,295**
TOTAL RESOURCES	**$ 164,162,033**	**164,162,033**	**0**	**164,162,033**
Expenditures				
General Government	5,332,858	5,332,858	0	5,332,858
Legislative	599,338	599,338	0	599,338
Municipal Court	1,643,979	1,643,979	0	1,643,979
Chief Administrative Officer	2,184,078	2,184,078	0	2,184,078
City Manager	2,514,654	2,514,654	0	2,514,654
Legal	3,400,663	3,400,663	0	3,400,663
Las Cruces Police Department	27,537,727	27,537,727	0	27,537,727
Las Cruces Fire Department	19,484,637	19,484,637	0	19,484,637
Utilities	0	0	0	0
Economic Development	5,130,498	5,130,498	0	5,130,498
Internal Audit	0	0	0	0
Assistant City Manager-400	5,719,983	5,889,683	0	5,889,683
Human Resources	2,076,550	2,076,550	0	2,076,550
Financial Services	6,278,149	6,278,149	0	6,278,149
Information Technology	6,130,713	6,130,713	0	6,130,713
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	17,674,006	17,824,765	0	17,824,765
Community Development	5,781,600	5,781,600	0	5,781,600
Quality of Life	8,313,229	8,313,229	(684,545)	7,628,684
Public Works	10,285,620	10,285,620	0	10,285,620
Legislative Reserve	0	0	0	0
Total Expenditures	**$ 130,088,282**	**130,408,741**	**(684,545)**	**129,724,196**
Other Resources				
Operating Transfers In	9,302,703	9,302,703	0	9,302,703
Operating Transfers Out	(19,039,540)	(19,039,540)	0	(19,039,540)
Total Other Resources	**$ (9,736,837)**	**(9,736,837)**	**0**	**(9,736,837)**
Accrual Adjustments	0	0	0	0
ENDING BALANCE	**$ 24,336,914**	**24,016,455**	**684,545**	**24,701,000**

CITY OF LAS CRUCES

Exhibit "A"

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2022-23

	2100 SPECIAL REVENUE REIMB GRANTS 2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	$ 25,757	25,757	0	25,757
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	4,000	0	4,000
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	0	0	0	0
Miscellaneous Revenues	182,000	182,000	0	182,000
Federal Grants	5,358,203	5,440,811	0	5,440,811
State Grants	1,120,000	2,608,179	228,828	2,837,007
Local Grants	46,440	44,734	0	44,734
Debt Service	0	0	0	0
Total Revenues	**6,706,643**	**8,279,724**	**228,828**	**8,508,552**
TOTAL RESOURCES	**$ 6,732,400**	**8,305,481**	**228,828**	**8,534,309**
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	629,444	676,396	0	676,396
Las Cruces Fire Department	85,478	85,478	0	85,478
Utilities	0	0	0	0
Economic Development	2,798,662	3,498,662	0	3,498,662
Internal Audit	0	0	0	0
Assistant City Manager-400	468,870	756,580	0	756,580
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	11,030	431,520	0	431,520
Community Development	337,981	337,981	0	337,981
Quality of Life	2,375,183	2,493,132	228,828	2,721,960
Public Works	0	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	**$ 6,706,648**	**8,279,749**	**228,828**	**8,508,577**
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	0	0	0	0
Total Other Resources	**$ 0**	**0**	**0**	**0**
Accrual Adjustments	0	0	0	0
ENDING BALANCE	**$ 25,752**	**25,732**	**0**	**25,732**

CITY OF LAS CRUCES *Exhibit "A"*

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2022-23

	4100 CAPITAL PROJECTS REIMB GRANTS 2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	$ 0	0	0	0
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	0	0	0
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	0	0	0	0
Miscellaneous Revenues	0	0	0	0
Federal Grants	5,508,937	5,583,937	0	5,583,937
State Grants	16,541,864	16,541,864	200,000	16,741,864
Local Grants	350,000	350,000	0	350,000
Debt Service	0	0	0	0
Total Revenues	**22,400,801**	**22,475,801**	**200,000**	**22,675,801**
TOTAL RESOURCES	**$ 22,400,801**	**22,475,801**	**200,000**	**22,675,801**
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	370,000	370,000	0	370,000
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	47,000	47,000	0	47,000
Las Cruces Fire Department	74,798	74,798	0	74,798
Utilities	0	0	0	0
Economic Development	2,631,838	2,631,838	0	2,631,838
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	3,816,025	3,891,025	0	3,891,025
Community Development	0	0	0	0
Quality of Life	742,500	742,500	0	742,500
Public Works	14,718,640	14,718,640	200,000	14,918,640
Legislative Reserve	0	0	0	0
Total Expenditures	**$ 22,400,801**	**22,475,801**	**200,000**	**22,675,801**
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	0	0	0	0
Total Other Resources	**$ 0**	**0**	**0**	**0**
Accrual Adjustments	0	0	0	0
ENDING BALANCE	**$ 0**	**0**	**0**	**0**

CITY OF LAS CRUCES *Exhibit "A"*

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2022-23

	5010 AIRPORT 2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	$ 908,601	908,601	0	908,601
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	25,000	25,000	0	25,000
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	0	0	0	0
Miscellaneous Revenues	190,000	190,000	0	190,000
Federal Grants	59,000	59,000	0	59,000
State Grants	1,967,032	5,758,138	632,890	6,391,028
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	**2,241,032**	**6,032,138**	**632,890**	**6,665,028**
TOTAL RESOURCES	**$ 3,149,633**	**6,940,739**	**632,890**	**7,573,629**
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	0	0	0	0
Las Cruces Fire Department	0	0	0	0
Utilities	0	0	0	0
Economic Development	0	0	0	0
Internal Audit	0	0	0	0
Assistant City Manager-400	3,462,338	7,603,444	632,890	8,236,334
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	0	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	**$ 3,462,338**	**7,603,444**	**632,890**	**8,236,334**
Other Resources				
Operating Transfers In	773,000	1,123,000	0	1,123,000
Operating Transfers Out	0	0	0	0
Total Other Resources	**$ 773,000**	**1,123,000**	**0**	**1,123,000**
Accrual Adjustments	0	0	0	0
ENDING BALANCE	**$ 460,295**	**460,295**	**0**	**460,295**

City of Las Cruces
Capital Improvements Program
FY 2023-2028

Amended as of 9/6/2022

Project Title	Funded FY2023	Infrastructure Capital Improvement Plan (Unfunded) FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Funding Source(s)
ECONOMIC DEVELOPMENT							
Economic Development - Newly Funded Projects							
Downtown Callecitas Shade Structure	100,000						**TIDD**
Downtown Parking Lots Renovation 1 - Parking Lot 9/10 2 - Parking Lot at Campo & Hadley	500,000	350,000	255,000	255,000	255,000	255,000	Grants, **TIDD**
Economic Development - Total Newly Funded Projects	**$ 600,000**	**$ 350,000**	**$ 255,000**	**$ 255,000**	**$ 255,000**	**$ 255,000**	
Economic Development - Carryover Projects							
Cinematic Infrastructure & Soundstage *2022 Legislative Appropriation* *2022 Legislative Appropriation*	2,933,085	*511,035* *388,561*					**Bonds, Grants, Taxes**
Downtown Plaza Shade Structures	160,014						**Bonds**
Gateway Entry Points Signage	250,000						**Bonds**
Parking Lot 7 and Bathrooms	417,921						**TIDD**
Economic Development - Total Carryover Projects	**$ 3,761,020**	**$ 899,596**	**$ -**	**$ -**	**$ -**	**$ -**	
Economic Development - Future Projects							
LCIIP Infrastructure Improvements		16,000,000					Bonds, Grants
Santa Teresa to LCIIP Bypass		16,000,000					Bonds, Grants
MV Community of Hope - Campus Extension		5,000,000					Grants
MV Community of Hope - Master Plan Implementation		2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	Grants
Paseos Verdes		2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	Grants
Transit Loop Road		1,661,000	7,800,000	7,800,000			Grants, Taxes
Rocket Drive Expansion		820,000	7,173,000				Grants, Taxes
LCIIP Gateway Signage & Pocket Park		480,000	25,000	25,000	25,000	25,000	Grants, Taxes
Downtown Video Security		100,000					Grants, Taxes, TIDD
Economic Development - Total Future Projects	**$ -**	**$ 44,061,000**	**$ 18,998,000**	**$ 11,825,000**	**$ 4,025,000**	**$ 4,025,000**	
Total Economic Development	**$ 4,361,020**	**$ 45,310,596**	**$ 19,253,000**	**$ 12,080,000**	**$ 4,280,000**	**$ 4,280,000**	
FACILITIES MANAGEMENT							
Facilities Management - Newly Funded Projects							
Facility Parking Lot Program 1 - Munson Center 2 - Henry R Benavidez Community Center 3 - Train Depot	200,000	250,000	250,000	250,000	250,000	250,000	**Taxes**
Facilities Management - Total Newly Funded Projects	**$ 200,000**	**$ 250,000**	**$ 250,000**	**$ 250,000**	**$ 250,000**	**$ 250,000**	
Facilities Management - Carryover Projects							
Energy Efficiency Program - IGA	2,688,182						**Bonds, Taxes**
Gateway Entry Points Signage Maintenance	50,000		50,000	50,000	50,000	50,000	**Taxes**
Facilities Management - Total Carryover Projects	**$ 2,738,182**	**$ -**	**$ 50,000**	**$ 50,000**	**$ 50,000**	**$ 50,000**	

City of Las Cruces
Capital Improvements Program
FY 2023-2028

Amended as of 9/6/2022

Project Title	Funded FY2023	Infrastructure Capital Improvement Plan (Unfunded) FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Funding Source(s)
Facilities Management - Annual Projects							
General Facilities Improvements 1 - La Casa Maintenance 2 - Jardin de Espernazas 3 - WIA Rehabilitation 4 - Arc Flash Plan 5 - City Hall Furnishings 6 - Surveillance Camera Upgrades 7 - Records Center Improvements 8 - Branigan Library Exterior Re-Stucco 9 - Frank O'Brien Papen Community Center 10 - City Hall Building Operations Storage	146,500	500,000	500,000	500,000	500,000	500,000	**Taxes**
Generator Buffer Program Fire Stations	80,000	50,000	50,000	50,000	50,000	50,000	**Taxes**
Refuse & Recycling Buffer Program Henry R Benavidez Community Center	50,000	50,000	50,000	50,000	50,000	50,000	**Taxes**
Roof Replacement Program 1 - Police Department Main Building 2 - Roof Inspections 3 - WIA Building 4 - Police Department Academy 5 - Municipal Court	349,134	375,000	375,000	375,000	375,000	375,000	**Taxes**
Safety, Health, Environmental & Emergency 1 - City Hall Security Upgrades 2 - Parks Sidewalk Replacement 3 - Pool Hoist 4 - Fire Alarm & Security Upgrades 5 - Pigeon Abatement	221,585						**Taxes**
Facilities Management - Total Annual Projects	**$ 847,219**	**$ 975,000**	**$ 975,000**	**$ 975,000**	**$ 975,000**	**$ 975,000**	
Facilities Management - Future Projects							
HVAC Upgrade Program		200,000	200,000	200,000	200,000	200,000	**Taxes**
Generator Replacement Program		35,000	35,000	35,000	35,000	35,000	**Taxes**
ADA Compliance		25,000	25,000	2,500	25,000	25,000	**Taxes**
Facilities Management - Total Future Projects	**$ -**	**$ 260,000**	**$ 260,000**	**$ 237,500**	**$ 260,000**	**$ 260,000**	
Total Facilities Management	**$ 3,785,401**	**$ 1,485,000**	**$ 1,535,000**	**$ 1,512,500**	**$ 1,535,000**	**$ 1,535,000**	
LAS CRUCES AIRPORT							
Las Cruces Airport - Newly Funded Projects							
LRU Pavement Maintenance Program	120,000	125,000	125,000	125,000	125,000	125,000	**Taxes, Other**
Las Cruces Airport - Total Newly Funded Projects	**$ 120,000**	**$ 125,000**	**$ 125,000**	**$ 125,000**	**$ 125,000**	**$ 125,000**	
Las Cruces Airport - Carryover Projects							
LRU Airport Infrastructure Improvements *2022 Legislative Appropriation*	409,774	*500,000*					Grants, **Taxes, Other**
LRU Passenger Terminal	1,032,890		12,500,000		1,850,000	3,500,000	**Grants, Taxes, Other**
LRU Runway 8/26 Extension 1 - Environmental Assessment 2 - Design 3 - Construction	340,700	4,200,000	8,400,000				Grants, **Taxes, Other**

City of Las Cruces
Capital Improvements Program
FY 2023-2028

Amended as of 9/6/2022

Project Title	Funded FY2023	Infrastructure Capital Improvement Plan (Unfunded) FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Funding Source(s)
LRU Runway 12/30 Extension 1 - Environmental Assessment 2 - Design 3 - Construction	434,561			13,500,000			Grants, **Taxes, Other**
LRU Taxilane Improvements	300,000						Grants, **Taxes, Other**
Las Cruces Airport - Total Carryover Projects	**$ 2,517,925**	**$ 4,700,000**	**$ 20,900,000**	**$ 13,500,000**	**$ 1,850,000**	**$ 3,500,000**	
Las Cruces Airport - Annual Projects							
LRU Striping and Marking Maintenance Program	136,000	75,000	75,000	75,000	75,000	75,000	**Taxes, Other**
Las Cruces Airport - Total Annual Projects	**$ 136,000**	**$ 75,000**	**$ 75,000**	**$ 75,000**	**$ 75,000**	**$ 75,000**	
Las Cruces Airport - Future Projects							
LRU Passenger Air Service Infrastructure Revitalization		37,500,000					Grants, Taxes, Other
LRU Maintenance Facility Design-Construct		1,700,000					Grants, Taxes, Other
LRU ARFF Index B Equipment Upgrades		1,600,000					Grants, Taxes, Other
LRU Runway 4/22 Rehabilitation		1,500,000					Grants, Taxes, Other
LRU Passenger Terminal Parking		1,000,000					Grants, Taxes, Other
LRU Airport Maintenance Equipment		850,000					Bonds, Grants, Taxes, Other
LRU Enhanced Broadband Access		450,000					Bonds, Grants, Taxes, Other
LRU Utility Infrastructure Improvements			4,500,000				Bonds, Grants, Taxes, Other
LRU Airline Ground Support Equipment Facilities			750,000				Grants, Taxes, Other
LRU Fuel Farm Relocation and Expansion				1,900,000			Grants, Taxes, Other
LRU Taxilane Extensions					3,400,000		Grants, Taxes, Other
LRU Commercial Hangar Design and Construct					2,800,000		Grants, Taxes, Other
LRU Multi-Modal Public Passenger Transit Facility					2,500,000		Grants, Taxes, Other
LRU East Perimeter Road						11,200,000	Grants, Taxes, Other
LRU Apron West Hangar Rehabilitation						70,000	Grants, Taxes, Other
LRU Apron West Rehabilitation						70,000	Grants, Taxes, Other
Las Cruces Airport - Total Future Projects	**$ -**	**$ 44,600,000**	**$ 5,250,000**	**$ 1,900,000**	**$ 8,700,000**	**$ 11,340,000**	
Total Las Cruces Airport	**$ 2,773,925**	**$ 49,500,000**	**$ 26,350,000**	**$ 15,600,000**	**$ 10,750,000**	**$ 15,040,000**	
NON-PROFIT ORGANIZATIONS							
Non-Profit Organizations - Carryover Projects							
Arts and Cultural District Improvements	1,734,241						**Grants**
Children's Museum Facility	742,500	100,000	400,000	5,500,000			Bonds, **Grants**
La Clinica de Familia - Behavioral Health Facility	943,809						**Grants**
MV Community of Hope - Casa de Peregrinos Food Rescue Warehouse	6,654,736	1,847,000					**Grants, Other**
MV Community of Hope - Flooring	10,317						**Grants**
MV Community of Hope - Health Facility Improvements	826,661						**Grants**
2022 Legislative Appropriation		*760,000*					
2022 Legislative Appropriation		*169,682*					
MV Community of Hope - Solar Parking	30,303						**Grants, Taxes**
Non-Profit Organizations - Total Carryover Projects	**$ 10,942,567**	**$ 2,876,682**	**$ 400,000**	**$ 5,500,000**	**$ -**	**$ -**	

City of Las Cruces
Capital Improvements Program
FY 2023-2028

Amended as of 9/6/2022

Project Title	Funded FY2023	Infrastructure Capital Improvement Plan (Unfunded) FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Funding Source(s)
Non-Profit Organizations - Future Projects							
MV Community of Hope - Cocina de Peregrinos		1,500,000	7,500,000	2,700,000			**Grants**
MV Community of Hope - Jardin de los Niños Re-Roof			250,000				Grants
MV Community of Hope - El Caldito Upgrade			150,000				Grants
MV Community of Hope - Building 1, Solar Project				600,000			Grants
MV Community of Hope - Expansion Remodel				250,000			Grants
MV Community of Hope - Jardin de los Niños Security Improvements				200,000			Grants
MV Community of Hope - Patio to Office Remodel				200,000			Grants
Non-Profit Organizations - Total Future Projects	**$ -**	**$ 1,500,000**	**$ 7,900,000**	**$ 3,950,000**	**$ -**	**$ -**	
Total Non-Profit Organizations	**$ 10,942,567**	**$ 4,376,682**	**$ 8,300,000**	**$ 9,450,000**	**$ -**	**$ -**	
PARKS & RECREATION							
Parks & Recreation - Newly Funded Projects							
JCP Learning Center Exterior Repairs *2022 Legislative Appropriation*	75,000	*220,000*					Grants, **Taxes**
Las Cruces Regional Aquatic Center HVAC & Dehumidifier	75,000						**Taxes**
Meerscheidt Recreation Center Improvements	85,000	110,000					Grants, **Taxes**
Parks & Recreation - Total Newly Funded Projects	**$ 235,000**	**$ 330,000**	**$ -**	**$ -**	**$ -**	**$ -**	
Parks & Recreation - Carryover Projects							
A. Fielder Memorial Safe Haven Renovations	175,000						**Taxes**
Albert Johnson Park Master Plan	23,509						**Taxes**
Apodaca Park Aquatic Playground and Multi-Use Path	750,000	509,479	240,521				**PIF**
Aquatic Center Solar	180,312						**Grants**
Ballfield/Soccer Field Renovations & Upgrades	856,000	834,600	144,000	3,200,000			**Grants**
Burn Lake/Esslinger Community Park Improvements	228,800			3,200,000			Bonds, Grants, **Taxes**
Butterfield Shooting Range ADA Improvements	29,000		200,000	2,000,000			Bonds, Grants, **Taxes**
Chandler Tank Park	641,704						**Bonds, Taxes**
Dona Ana Move Trail	690,000						**Grants, Taxes**
East Mesa Public Safety Area Park	100,000	100,000		100,000		100,000	Grants, **PIF**
Gallagher Park Improvements	150,000						**Taxes**
Highland Park	1,000,000	510,850					Grants,**PIF, Taxes**
Las Cruces Lateral RTP Trail	74,129	483,410					**Grants**
Median Landscaping	1,400,634	200,000	200,000	200,000	200,000	200,000	**Grants, Loans, Taxes**
Metro Verde Neighborhood Parks	602,201	500,000	500,000	500,000	500,000	500,000	**PIF**
New Skate Park - Plan & Design *2022 Legislative Appropriation*	100,000	*450,000*	550,000	250,000			**Grants**
Parks Parking Lots BMX Track Parking Lot & ADA Improvements Paz Ball Field Parking Lot Improvements Tony Gomez Park Parking Lot Improvements	2,125,000						**Bonds**
Parks Security and Lighting	105,700	82,637					**Grants**
Parks Shade Structures	24,000						**Taxes**
Parks Smart Controllers & Pumps	92,954						**Grants, Taxes**
Pioneer Women's Park Gazebo Improvements	194,324	600,000	600,000	600,000	600,000	600,000	**Grants**
Regional Rec & Aquatic Cntr - Ph II - Competitive Pool Construction	6,586,617						**Bonds, PIF, Taxes**
Regional Rec & Aquatic Cntr - Ph II - Competitive Pool Enclosure	9,654,633						**Bonds, Taxes**
Skate Park Renovation & Improvements	1,095,000		836,500	1,650,000	500,000		**Grants, PIF**
Tony Gomez Park Master Plan	40,000						**Taxes**

City of Las Cruces
Capital Improvements Program
FY 2023-2028

Amended as of 9/6/2022

Project Title	Funded FY2023	Infrastructure Capital Improvement Plan (Unfunded) FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Funding Source(s)
Tortugas Trail	75,000						**Grants**
Veterans' Park Parking Lot	301,773						**Bonds**, Grants, **Taxes**
2022 Legislative Appropriation		*250,000*					
Wayfinding Signage	215,000						**Grants, PIF**
Parks & Recreation - Total Carryover Projects	**$ 27,511,290**	**$ 4,520,976**	**$ 3,271,021**	**$ 11,700,000**	**$ 1,800,000**	**$ 1,400,000**	
Parks & Recreation - Annual Projects							
Land Acquisition, Planning, and Design for Parks	100,000	500,000	500,000	500,000	500,000	500,000	**PIF**
Neighborhood Parks	500,000	600,000	500,000	500,000	500,000	500,000	**PIF**
Parks & Recreation - Total Annual Projects	**$ 600,000**	**$ 1,100,000**	**$ 1,000,000**	**$ 1,000,000**	**$ 1,000,000**	**$ 1,000,000**	
Parks & Recreation - Future Projects							
Parks Parking Lot Program: Apodaca Park East Mesa Recreation Center Maag Ball Park Skate Park		907,500	252,500	272,700	272,700	272,700	Bonds, Grants
Veterans' Memorial Park Enhancements		662,500	662,500	662,500	662,500		Bonds, Grants
Trail Renovations		580,000	500,000	500,000	500,000	500,000	Bonds, Grants
Various Park Restroom Replacement/Repairs & Upgrades		360,000					Grants
Meerscheidt Recreation Center - Remodel/Expansion		200,000	1,800,000				Grants, Taxes
Indoor/Outdoor Aquatic Amenities		195,000					Grants, Taxes
East Mesa Bataan Memorial Pool - Shade Structure		195,000					Grants, Taxes
Klein Park Improvements		126,750					Grants, Taxes
East Mesa Bataan Memorial Pool - HVAC Replacement		100,000	700,000				Grants
Albert Johnson Park Electrical Improvements		78,000					Grants, Taxes
Park Drinking Fountains		70,000					Grants, PIF, Taxes
Parks and Recreational Facilities Structural Renovations		55,000					Grants, Taxes
Benavidez Park			685,000	125,000			Grants
Veterans' Memorial Park Restroom Plumbing Repairs and Upgrades			500,000				Grants, PIF
Valley View Park - Heske Garden Lighting Replacement			134,000				Grants, Taxes
Laabs Pool - HVAC Replacement			80,000				Grants, Taxes
Hadley Complex Recreation Rehabilitation			78,000				Grants, Taxes
Multi-Use Recreation Center			31,500	318,500			Bonds, Grants
Four Field Baseball/Softball Complex				10,000,000			Bonds, Grants, PIF
Laabs Pool - Shade Structures				97,500			Bonds, Grants, PIF
New Sand Volleyball Courts					40,000		Grants, PIF
Waterfalls Park						1,200,000	Grants, PIF
Parks & Recreation - Total Future Projects	**$ -**	**$ 3,529,750**	**$ 5,423,500**	**$ 11,976,200**	**$ 1,475,200**	**$ 1,972,700**	
Total Parks & Recreation	**$ 28,346,290**	**$ 9,480,726**	**$ 9,694,521**	**$ 24,676,200**	**$ 4,275,200**	**$ 4,372,700**	

City of Las Cruces
Capital Improvements Program
FY 2023-2028

Amended as of 9/6/2022

Project Title	Funded FY2023	Infrastructure Capital Improvement Plan (Unfunded) FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Funding Source(s)
PUBLIC SAFETY							
Public Safety - Carryover Projects							
Fire Station 2 Replacement 1 - Land Acquisition 2 - Plan, Design, Construct, and FF&E 3 - Demolition	85,000				5,165,000		**Taxes**, Grants
Fire Department Equipment *2022 Legislative Appropriation*	74,798	*330,000*	720,000	500,000	500,000		**Grants**
Police Department Building Renovations *2022 Legislative Appropriation*	13,696	*50,000*	150,000				**Grants, Taxes**
Police Department Evidence Building	271,883						**Taxes**
Public Safety Regional Radio Communication System	515,000						**Grants, Taxes**
Public Safety - Total Carryover Projects	**$ 960,377**	**$ 380,000**	**$ 870,000**	**$ 500,000**	**$ 5,665,000**	**$ -**	
Public Safety - Future Projects							
Downtown Public Safety Complex		57,000,000					Bonds, Grants
Fire Department Station 9		5,165,000					Bonds, Grants, Taxes, Other
Police Department Mobile Operations Command Vehicle		500,000					Grants
Public Safety Vehicles - Bearcat		400,000					Grants
Public Safety Vehicles - Rook		400,000					Grants
Fire Department CIT and MIH Building		365,000	3,420,315				Grants, Taxes, Other
Fire Station 5 North/South Aprons and Parking Lot Replacement		314,000	230,000				Bonds, Grants, Taxes, Other
Police Parking Lot Resurfacing		276,000					Grants, Taxes
Fire Department Training tower		200,000	19,000				Grants, Taxes
Fire Dept. Administration Building Lobby Remodel *2022 Legislative Appropriation*		*200,000*	350,000	193,400			Grants, Other
Police Department Equipment - Mobile Data Terminals *2022 Legislative Appropriation*		*160,000*					Grants
Fire Stations 4 & 5 Security Fencing and Gates		130,000					Grants, Taxes
Public Safety Vehicles - Critical Incident Command Vehicle		100,000					Grants
Fire Station 4 Restroom Remodel		90,000					Grants, Taxes, Other
Fire Station 2 Bay Remodel		45,000					Grants
Police Department Equipment - Axon Body Cameras		40,000					Grants
Police North Parking Lot Fencing		20,000					Grants
Fire Station 6 Repairs			70,000				Grants
Fire-Energy Efficiency and Sustainability				334,000	330,000	270,000	Grants
Police/Fire Training Facility - Design & Construct						6,900,000	Grants
Police/Fire Training Facility - Furniture, Fixtures, & Equipment						2,100,000	Grants
Public Safety - Total Future Projects	**$ -**	**$ 65,405,000**	**$ 4,089,315**	**$ 527,400**	**$ 330,000**	**$ 9,270,000**	
Total Public Safety	**$ 960,377**	**$ 65,785,000**	**$ 4,959,315**	**$ 1,027,400**	**$ 5,995,000**	**$ 9,270,000**	

City of Las Cruces
Capital Improvements Program
FY 2023-2028

Amended as of 9/6/2022

Project Title	Funded FY2023	Infrastructure Capital Improvement Plan (Unfunded) FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Funding Source(s)
PUBLIC WORKS							
Public Works - Carryover Projects							
Amador Hotel	2,344,425		2,950,000	2,950,000	2,950,000		Grants, TIDD
Avenida Blanco - South Valley Drive to Calle del Encanto	450,000						Bonds
Bellamah Drive - Lees Drive to Luna Street	825,000						Taxes
Brown Farm Ponding Improvements	155,675						Bonds
Campo Street Design and Reconstruct	460,026	2,600,000					TIDD
Drainage Infrastructure Improvements EBID Drains & Laterals Land Acquisition Other Improvements	2,837,986						Loans, Taxes
East Mesa Recreation Complex Roads	2,255,825						Bonds
East Mesa Roads and Drainage *2022 Legislative Appropriation*	1,634,000	*100,000*	900,000				Bonds, Grants
GO Bonds - ARPA Funding	4,128,725						ARPA
GO Bond Q1 - Park & Sport Field Improvements & Additions	9,314,230						GO Bonds, PIF
GO Bond Q2 - New Animal Shelter Facility	5,652,897						GO Bonds
GO Bond Q3 - New Fire Station No. 3 Building	1,087,978						GO Bonds
GO Bond Q4 - Walking, Jogging, Biking Trails Improvements & Additions	176,635						GO Bonds
Madrid Ave Extension - Martha Dr to N Triviz Dr	1,900,000						Grants, Taxes
Magdalena Drive Storm Repairs	203,522						Taxes, Other
McClure Drainage Improvements	100,000						Bonds
McFie - Valley to First	1,093,176						Grants, Taxes
Mesquite/Tornillo Drainage Improvements	184,773						Bonds
Picacho Ave HAWK System	249,793						Grants, Taxes
South Main St - Avenida de Mesilla to Boutz	3,300,000						Bonds
Storm Water System Mapping	100,000						Taxes
Tashiro Rd Improvements - Valley Dr to Motel Blvd	190,741						Bonds
Traffic Signals Roadrunner Parkway & Sonora Springs Sonoma Ranch Blvd & Northrise	1,288,155						Bonds
Voluntary Assessment District Phase I Sanitary Sewer Infrastructure Sonoma Ranch Blvd Mile 2: Peachtree to Arroyo Red Hawk Golf Rd: N.Bound Metro Verde S.P1E to Arroyo Rd Regional Drainage Phase 1	236,956						Bonds
Voluntary Assessment District Phase II Peachtree Hills Rd. East & West Regional Drainage Sonoma Ranch Blvd to Engler, Mile 1, Mile 2, Mile 3, & Roundabout Sonoma Ranch Blvd Landscaping to Engler, Mile 1, Mile 2, & Mile 3	7,670,585						Bonds
Villa Mora Dam Park Study	623,000						Grants, Taxes
Walnut-Madrid TAP Bike/Pedestrian Improvements	1,323,660						Bonds, Grants
Public Works - Total Carryover Projects	**$ 49,787,763**	**$ 2,700,000**	**$ 3,850,000**	**$ 2,950,000**	**$ 2,950,000**	**$ -**	

City of Las Cruces
Capital Improvements Program
FY 2023-2028

Amended as of 9/6/2022

Project Title	Funded FY2023	Infrastructure Capital Improvement Plan (Unfunded) FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Funding Source(s)
Public Works - Annual Projects							
Active Transportation Plan - Sidewalk Gaps	173,514	200,000	200,000	200,000	200,000	200,000	**Bonds, Taxes**
ADA Sidewalk Program	110,000	150,000	150,000	150,000	150,000	150,000	**Taxes**
Chip Seal Program	238,750	200,000	200,000	200,000	200,000	200,000	**Taxes**
CO-OP Match	80,000	75,000	75,000	75,000	75,000	75,000	**Taxes**
Land Acquisition - Public Works Flood Control Rights of Way East Mesa Other	200,000	250,000	250,000	250,000	250,000	250,000	**Taxes**
M.A.P. Match	165,000	150,000	150,000	150,000	150,000	150,000	**Taxes**
Materials Testing	240,000	250,000	250,000	250,000	250,000	250,000	**Taxes**
Neighborhood Traffic Calming Program	60,000	60,000	60,000	60,000	60,000	60,000	**Taxes**
Pavement Condition Index Improvements Pavement Overlays Pavement Replacement Pavement Treatment	9,634,703	6,300,000	6,300,000	6,300,000	6,300,000	6,300,000	**Taxes**
Pavement Marking Program	169,000	500,000	250,000	500,000	250,000	500,000	**Taxes**
Roadway Maintenance Program	1,013,819	700,000	700,000	700,000	700,000	700,000	**Taxes**
Street Lighting & Traffic Signal Maintenance Program	1,096,291	500,000	500,000	500,000	500,000	500,000	**Taxes**
Traffic Signal Program	714,334	500,000	500,000	500,000	500,000	500,000	**Taxes**
Transportation System Modernization ITS	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	**Taxes**
Unpaved Roads	250,000	250,000	250,000	250,000	250,000	250,000	**Taxes**
Weed Control & Maintenance Program City Rights of Way Las Cruces Dam Ponds	95,000	100,000	100,000	100,000	100,000	100,000	**Taxes**
Public Works - Total Annual Projects	**$ 15,240,411**	**$ 11,185,000**	**$ 10,935,000**	**$ 11,185,000**	**$ 10,935,000**	**$ 11,185,000**	
Public Works - Future Projects							
HWY 70 and Elks/Triviz Intersection Improvements		25,000,000					Grants
Flood Control Infrastructure		1,500,000					Bonds
Municipal Services Center		1,400,000	7,000,000	7,000,000	11,200,000		Bonds
South Main/Valley Drainage Pond		1,000,000					Bonds
Municipal Court		700,000	6,000,000				Bonds
Telshor Spruce Intersection Improvements *2022 Legislative Appropriation*		*650,000*	850,000				Grants
Midway Ave - Gas Line Rd to Mesa Dr		240,000					Taxes, Grants
Melendres Ave - Hadley to Picacho			750,000				Bonds
Evelyn St - Madrid Ave to Ash Ave			655,000				Taxes
Johnson St - Rouault Ave to Topley Dr			625,000				Bonds
Ethel Ave - Alameda Blvd to Miranda, and Houma			550,000				Taxes
South Valley Dr Reconstruction - Avenida de Mesilla to Boutz				2,920,000			Bonds
Lohman at Walnut and Walton Signal Improvements				1,000,000			Bonds, Grants
Calle de Sol - Avenida Blanco to Avenida de Mesilla				500,000			Bonds
Mountain Ave - Melendres St to Armijo St				475,000			Bonds
Med Park Ave - Idaho to Perkins Ave				390,000			Bonds
Armijo St - Picacho Ave to Parker Rd				260,000			Bonds
Armijo St - Organ Ave to Mountain Ave					675,000		Bonds
Kramer St - Spruce Ave to Ash Ave					500,000		Bonds
Street Lighting Management System					500,000		Taxes
Rigsby Rd - Barker to Valley Dr					295,000		Taxes
Poplar Ave - Mesquite St to Santa Fe St					260,000		Bonds

City of Las Cruces
Capital Improvements Program
FY 2023-2028

Amended as of 9/6/2022

Project Title	Funded FY2023	Infrastructure Capital Improvement Plan (Unfunded) FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Funding Source(s)
Sammy Burke Youth Boxing Center - Rehab Design					250,000		Grants, Taxes
Willow St - Palomas Ave to San Juan					250,000		Bonds
Sweet St - Hadley Ave to Hayner St					207,000		Taxes
Guthrie Place- Thomas Dr to Cul de Sac					200,000		Bonds
Pavement Management System Road Condition Survey					200,000		Taxes
Pittsburg Ave - Melendres to Cul de Sac					120,000		Bonds
Sequoia Ave - Valley Dr to E.O.P.					100,000		Bonds
Spruce Road Diet - N Main to Triviz						500,000	Bonds
Miranda Ave - Picacho Ave to Court Ave						450,000	Bonds
Amis Ave - Madrid Ave to Hoagland Road						330,000	Bonds
Sacramento St - Ash Ave to Oasis Ave						315,000	Taxes
Westgate St - Amador Ave to Cul de Sac						240,000	Bonds
Amador Ave - Archuleta Road to E.O.P.						210,000	Bonds
La Fonda Dr - Idaho Ave to E.O.P.						200,000	Bonds
Oasis Ave - Mesquite St to Solano Dr						185,000	Bonds
Parkview Dr - Espina St to E.O.P.						175,000	Bonds
6th Street - Hayner Ave to Hadley Ave						150,000	Bonds
Mountain Ave - Water St to Alameda Blvd						130,000	Bonds
Conway Road Maintenance - Design						50,000	Bonds
Engler Road - Design						50,000	Bonds
Hacienda Acres Infrastructure Improvements - Design						50,000	Bonds
Sand Hill Trail - Design						50,000	Taxes
Targeted Road and Lighting Improvements - Design						50,000	Taxes
West Mesa Fiber Optics Improvements - Design						50,000	Taxes
Public Works - Total Future Projects	**$ -**	**$ 30,490,000**	**$ 16,430,000**	**$ 12,545,000**	**$ 14,757,000**	**$ 3,185,000**	
Total Public Works	**$ 65,028,174**	**$ 44,375,000**	**$ 31,215,000**	**$ 26,680,000**	**$ 28,642,000**	**$ 14,370,000**	
QUALITY OF LIFE							
Quality of Life - Carryover Projects							
Branigan Cultural Center Improvements	145,568		93,000	2,000,000	1,200,000		Grants, **Taxes**
Branigan Library - Expansion Phase II/Branch	150,000	2,000,000	1,500,000				Bonds, Grants, **Other**
Munson Center Renovations	964,260		1,629,525				**Grants**
2022 Legislative Appropriation		*666,199*					
Sage Café Expansion	920,700	2,145,550					**Grants**
Senior Programs Kitchen Equipment Eastside Senior Center Henry R Benavidez Center Munson Senior Center	122,228						**Taxes**
Quality of Life - Total Carryover Projects	**$ 2,302,756**	**$ 4,811,749**	**$ 3,222,525**	**$ 2,000,000**	**$ 1,200,000**	**$ -**	
Quality of Life - Annual Projects							
Public Art Program	108,506	100,000	100,000	100,000	100,000	100,000	**Taxes**
Quality of Life - Total Annual Projects	**$ 108,506**	**$ 100,000**	**$ 100,000**	**$ 100,000**	**$ 100,000**	**$ 100,000**	
Quality of Life - Future Projects							
Sage Café Backup Generator		325,000					Bonds, Grants, Taxes
Senior Programs Existing Kitchen Expansion Assessment		200,000					Taxes
Museum System On-site Server		115,000					Bonds, Grants, Taxes
Senior Programs Vehicles			110,000	300,000			Grants
2022 Legislative Appropriation		*110,000*					
Munson Center Bathrooms		106,900					Bonds, Grants, Taxes

City of Las Cruces
Capital Improvements Program
FY 2023-2028

Amended as of 9/6/2022

Project Title	Funded FY2023	Infrastructure Capital Improvement Plan (Unfunded) FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Funding Source(s)
Frank O'Brien Papen Center - Dining Room Floor *2022 Legislative Appropriation*		*35,000*	12,800				Grants
Museum of Art Improvements		35,000	95,000	200,000	170,000		Bonds, Grants, Taxes
Museum of Art - Gallery Flooring		15,000	20,000	65,000			Bonds, Grants, Taxes
Railroad Museum Reinterpretation		15,000	60,000	150,000	75,000		Bonds, Grants, Taxes
Benavidez Kitchen Expansion			170,000	2,196,000			Bonds, Grants, Taxes
Munson Center Kitchen Expansion			170,000	2,287,000			Bonds, Grants, Taxes
Munson Center Floor			147,150				Bonds, Grants, Taxes
Benavidez Kitchen Floor			52,400				Bonds, Grants, Taxes
Railroad Museum - Exterior Improvements			35,000	50,000	15,000		Bonds, Grants, Taxes
Branigan Library Renovation				200,000	3,500,000		Bonds, Grants, Taxes
Branigan Library - Security System Upgrade				135,000	155,000		Grants, Taxes
Railroad Museum - Reroof				35,000	65,000		Grants, Taxes
Museums Collection Storage Facility					9,500,000		Grants, Taxes
Museum of Nature and Science - Atrium Redesign					10,000	30,000	Grants, Taxes
Museum of Art Relocation/Remodel						5,000,000	Bonds, Grants, Taxes
Quality of Life - Total Future Projects	**$ -**	**$ 956,900**	**$ 872,350**	**$ 5,618,000**	**$ 13,490,000**	**$ 5,030,000**	
Total Quality of Life	**$ 2,411,262**	**$ 5,868,649**	**$ 4,194,875**	**$ 7,718,000**	**$ 14,790,000**	**$ 5,130,000**	
ROADRUNNER TRANSIT							
RoadRUNNER Transit - Carryover Projects							
Municipal Services Center - Transit	26,940,330	8,383,338					**ARPA, Bonds, Grants, Taxes**
RoadRUNNER Transit - Total Carryover Projects	**$ 26,940,330**	**$ 8,383,338**	**$ -**	**$ -**	**$ -**	**$ -**	
RoadRUNNER Transit - Annual Projects							
Transit Facilities Improvement Program	40,000	75,000	75,000	75,000	80,000	185,000	**Grants, Taxes**
RoadRUNNER Transit - Total Annual Projects	**$ 40,000**	**$ 75,000**	**$ 75,000**	**$ 75,000**	**$ 80,000**	**$ 185,000**	
Total RoadRUNNER Transit	**$ 26,980,330**	**$ 8,458,338**	**$ 75,000**	**$ 75,000**	**$ 80,000**	**$ 185,000**	
SUSTAINABILITY							
Sustainability - Carryover Projects							
Solar Energy Photo Voltaic Projects	794,066						**Taxes**
Sustainability - Total Carryover Projects	**$ 794,066**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	
Sustainability - Future Projects							
DC Fast Chargers for Electric Vehicles		200,000	200,000				Grants, Bonds, Taxes
Public Electric Vehicle Chargers		200,000	200,000				Grants, Bonds, Taxes
Fleet Electric Vehicle Chargers		90,000	90,000	180,000			Grants, Bonds, Taxes
Sustainability - Total Future Projects	**$ -**	**$ 490,000**	**$ 490,000**	**$ 180,000**	**$ -**	**$ -**	
Total Sustainability	**$ 794,066**	**$ 490,000**	**$ 490,000**	**$ 180,000**	**$ -**	**$ -**	

City of Las Cruces
Capital Improvements Program
FY 2023-2028

Amended as of 9/6/2022

Project Title	Funded FY2023	Infrastructure Capital Improvement Plan (Unfunded) FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Funding Source(s)
UTILITIES							
Utilities - Carryover Projects							
East Lohman Landfill - Waste Area 1	1,000,000						Taxes
JHWWTF East Primary Clarifier	143,274						Bonds
Wastewater Bond Projects - 2015A Bonds	45,060						Bonds
Wastewater Development	3,023	100,000					Other
Wastewater Development New Interceptors	391,525						WWIF
Wastewater NMFA Loan	21,352	360,000					Bonds
Wastewater Septic Systems - NMED Grant	1,482,172		1,972,100	1,619,000			Grants
2022 Legislative Appropriation		*200,000*					
Wastewater Utilities Bond Projects 2020A	488,408	375,000					Bonds
Water Bond Projects 2015A	4,004						Bonds
Water Development	2,882	1,000,000					WIF
Water Miscellaneous	1,200						Bonds
Water NMFA Loan	7,034	100,000					Bonds
Water Rehabilitation - 2006 Bonds	13,061						Bonds
Water Rehabilitation - NMFA	108,614	1,551,091					Bonds
Water Street Improvement Projects - 2015 Bond	18,772						Bonds
Water Utilities Bond Projects 2020A	6,132,615	4,939,151					Bonds
Utilities - Total Carryover Projects	**$ 9,862,996**	**$ 8,625,242**	**$ 1,972,100**	**$ 1,619,000**	**$ -**	**$ -**	
Utilities - Annual Projects							
Gas Admin - Building Improvements	321,417	321,667	125,000	125,000	125,000	125,000	Other
Fiberoptic Cable Replacement from Roundtree to JU							
Gas Development - Low & High Pressure	1,647,695	17,152,621	1,700,000	1,500,000	300,000	300,000	Other
Gas Rehabilitation - Low & High Pressure	119,966	3,063,189	110,000	110,000	110,000		Other
Gas Rehabilitation - Street Utility Rehabilitation	494,049	1,767,576	1,725,000	1,725,000	1,725,000	1,725,000	Other
Gas SCADA	200,000	50,000	50,000	50,000	50,000	50,000	Other
Solid Waste Building Improvements	32,141	321,667	125,000	125,000	125,000	125,000	Other
Fiberoptic Cable Replacement from Roundtree to JU							
Wastewater Building Improvements	276,940	75,000	75,000	75,000	75,000	75,000	Other
Fiberoptic Cable Replacement from Roundtree to JU							
Wastewater Jacob Hands Wastewater Treatment Facility	257,432	3,859,161	5,950,000				Other
Wastewater JHWWTF	100,000	100,000	100,000	100,000	100,000	100,000	Other
Wastewater Lift Station Renovations	100,000	50,000	100,000	50,000	100,000	50,000	Other
Wastewater Rehabilitation - East Mesa Water Reclamation Facility	500,000		400,000				Other
Wastewater Street Utility Rehabilitation	1,132,085	1,738,248	166,650				Other
Wastewater East Mesa Water Reclamation	25,000	25,000	25,000	25,000	25,000	25,000	Other
Water Building Improvements	275,838	321,667	125,000	125,000	125,000	125,000	Other
Fiberoptic Cable Replacement from Roundtree to JU							
Water Rehabilitation - Line Extension	852,350	1,387,542					Other
Water Rehabilitation - Reservoir Rehabilitation	200,000	7,972,500					Other
Water Rehabilitation - Street Utility Rehabilitation	1,030,259	8,051,257	650,000	550,000	650,000	5,550,000	Other
Water SCADA	200,000	539,596	589,596	539,596	50,000	30,000	Other
Utilities - Total Annual Projects	**$ 7,765,172**	**$ 46,796,691**	**$ 12,016,246**	**$ 5,099,596**	**$ 3,560,000**	**$ 8,280,000**	

City of Las Cruces
Capital Improvements Program
FY 2023-2028

Amended as of 9/6/2022

Project Title	Funded FY2023	Infrastructure Capital Improvement Plan (Unfunded) FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Funding Source(s)
Utilities - Future Projects							
Gas Rehabilitation - Regulator Stations		600,000					Fees
Wastewater SCADA		279,854	30,000	30,000	30,000	30,000	Fees
Water Rehabilitation - Pump PRV		235,000					Fees
Water Rehabilitation - Pump Station Rehabilitation		175,000	100,000	100,000	100,000	100,000	Fees
Wastewater Development		143,023					Fees
Water NMFA Loan		100,000					Bonds
Wastewater East Mesa Water Reclamation		25,000	25,000	25,000	25,000	25,000	Fees
Gas Rehabilitation Phase I AMR Implementation			250,000	250,000	250,000	250,000	Fees
Utilities - Total Future Projects	**$ -**	**$ 1,557,877**	**$ 405,000**	**$ 405,000**	**$ 405,000**	**$ 405,000**	
Total Utilities	**$ 17,628,168**	**$ 56,979,810**	**$ 14,393,346**	**$ 7,123,596**	**$ 3,965,000**	**$ 8,685,000**	
VISIT LAS CRUCES							
Visit Las Cruces - Carryover Projects							
Convention Center FF&E	150,000						**Taxes**
Visit Las Cruces - Total Carryover Projects	**$ 150,000**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	
Visit Las Cruces - Future Projects							
Convention Center Upgrades and Maintenance		355,000					Grants, Taxes
Visit Las Cruces Building Subflooring		142,000					Taxes
Convention Center Exterior Sign		53,000					Grants, Taxes
Visit Las Cruces - Total Future Projects	**$ -**	**$ 550,000**	**$ -**	**$ -**	**$ -**	**$ -**	
Total Visit Las Cruces	**$ 150,000**	**$ 550,000**	**$ -**	**$ -**	**$ -**	**$ -**	
ALL DEPARTMENTS							
Total Newly Funded Projects	**$ 1,155,000**	**$ 1,055,000**	**$ 630,000**	**$ 630,000**	**$ 630,000**	**$ 630,000**	
Total Carryover Projects	**$ 138,269,272**	**$ 37,897,583**	**$ 34,535,646**	**$ 37,819,000**	**$ 13,515,000**	**$ 4,950,000**	
Total Annual Projects	**$ 24,737,308**	**$ 60,306,691**	**$ 25,176,246**	**$ 18,509,596**	**$ 16,725,000**	**$ 21,800,000**	
Total Future Projects	**$ -**	**$ 193,400,527**	**$ 60,118,165**	**$ 49,164,100**	**$ 43,442,200**	**$ 35,487,700**	
GRAND TOTAL	**$ 164,161,580**	**$ 292,659,801**	**$ 120,460,057**	**$ 106,122,696**	**$ 74,312,200**	**$ 62,867,700**	

Abbreviations and Notes:

Indicates a Change

Pending Legislative Appropriations noted in italic

Current funding sources noted in bold

ARPA - American Rescue Plan Act
Bonds - Includes Bonds and Loans
Grants - Includes Local, State, Federal, or private entity
Other - Includes Fees, State Entitlements, Leases, Developer Contributions, and Donations
PIF - Park Impact Fees
PSIF - Public Safety Impact Fees
TIDD - *Tax Increment Development District*
WIF - *Water Impact Fees*
WWIF - *Wastewater Impact Fees*

ATTACHMENT A

GRANT ACCEPTANCE SUMMARY
COUNCIL MEETING DATE: 9/6/2022

Attachment #: B

Grant Title: **2022 AMADOR HOTEL IMPROVEMENTS**

Department: Public Works Department

Grant/Agreement #: 22-G4050 *Grant Type:* State Capital Outlay

Granting Agency: New Mexico Department of Finance & Administration (NMDFA)

Grant Amount: $200,000.00 *Cash Match Amount:* $ 0.00

Total Grant Project Amount: $200,000.00

Cash Match Source: N/A *Match Fund #:* N/A

Grant Start Date: 8/5/2022 *Grant End Date:* 6/30/2024

Amendment Needed: ***CIP:*** YES ***VAF:*** NO

Project Code #: 12124

Use of Funds Description:

Funding from the 2022 Legislative Session to reauthorize the 2019 Capital Outlay appropriation for the Downtown Parking Garage to the Amador Hotel Improvements. The agreement calls for funds to be used to plan, design, construct, furnish, equip, and install improvements, including related infrastructure, to the Amador Hotel in Las Cruces. The funding reverts in 2024.

ATTACHMENT A

GRANT ACCEPTANCE SUMMARY
COUNCIL MEETING DATE: 9/6/2022

Attachment #: C

Grant Title: **2022 AIRPORT IMPROVEMENTS**

Department: Las Cruces International Airport

Grant/Agreement #: 22-G4054 *Grant Type:* State Capital Outlay

Granting Agency: New Mexico Department of Finance & Administration (NMDFA)

Grant Amount: $632,890.00 *Cash Match Amount:* $0.00

Total Grant Project Amount: $632,890.00

Cash Match Source: N/A *Match Fund #:* N/A

Grant Start Date: 8/5/2022 *Grant End Date:* 6/30/2024

Amendment Needed: ***CIP:*** YES ***VAF:*** NO

Project Code #: 12123

Use of Funds Description:

Funding from the 2022 Legislative Session to reauthorize the 2019 Capital Outlay appropriation for the Downtown Parking Garage to Airport Improvements. The agreement calls for funds to be used to plan, design, construct, furnish, equip, and install improvements, including related infrastructure and landscaping, to the Las Cruces International Airport. The funding reverts in 2024.

ATTACHMENT A

GRANT ACCEPTANCE SUMMARY
COUNCIL MEETING DATE: 9/6/2022

Attachment #: D

Grant Title: **2020 STATE GENERAL OBLIGATION BOND FOR LIBRARIES**

Department: Quality of Life – Thomas Branigan Memorial Library

Grant/Agreement #: A20-E5296 *Grant Type:* State Operating

Granting Agency: NM Cultural Affairs Department, New Mexico State Library Division

Grant Amount: $228,828.09 *Cash Match Amount:* $0.00

Total Grant Project Amount: $228,828.09

Cash Match Source: N/A *Match Fund #:* N/A

Grant Start Date: 7/25/2022 *Grant End Date:* 6/30/2024

Amendment Needed: ***CIP:*** NO ***VAF:*** NO

Project Code #: 12098

Use of Funds Description:

Funding from the 2020 State General Obligation Bond election for Library services and improvements. The funds can be used for equipment, library furniture, fixtures, and supplemental library resource acquisitions, including print, non-print, and electronic resources, collaborative library resources and information technology projects, and for the purchase and installation of broadband internet equipment and infrastructure. The reversion date of these funds is 6/30/2024.

ATTACHMENT A

GRANT ACCEPTANCE SUMMARY
COUNCIL MEETING DATE: 9/6/2022

Attachment #: E

Grant Title: **FY2023 TITLE III FEDERAL & STATE SENIOR SERVICES PROGRAM**

Department: Quality of Life – Senior Programs

Grant/Agreement #: 2022-2023-64014 *Grant Type:* State Operating

Granting Agency: Non-Metro Area Agency on Aging (NMAAA)

Grant Amount: $1,071,301.45 *Cash Match Amount:* $684,545.00

Total Grant Project Amount: $1,755,846.45

Cash Match Source: Sr Programs General Fund *Match Fund #:* 1000

Grant Start Date: 7/1/2022 *Grant End Date:* 6/30/2023

Amendment Needed: ***CIP****:* NO ***VAF:*** NO

Project Code #: 23062, 23063,23064, 23065, 23066

Use of Funds Description:

Annual funding for the City's Quality of Life Senior Programs, this includes funding from the federal Older Americans Act, Title III; the Nutrition Service Incentive Program; and State funding administered by the Non-Metro Area Agency on Aging. Funding will support the following services: food purchase, congregate and home-delivered meals, respite care, homemaker services, and Grandparents Raising Grandchildren. All funds must be expended by June 30, 2023.

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
FUND 93100 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into by the Department of Finance and Administration, State of New Mexico, acting through the Local Government Division, Bataan Memorial Building, Room 202, Santa Fe, New Mexico, 87501 hereinafter called the "Department" or abbreviation such as "DFA/LGD", and **City of Las Cruces**, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the Laws of 2022 Chapter 52, Section 52, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, pursuant to Sections 9-6-5 and 9-6-5.1 NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; (iii) provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iv) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (v) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation;

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

22-G4050 $200,000.00 APPROPRIATION REVERSION DATE: 30-JUN-2024
Laws of 2022, Chapter 52 Section 52, Two Hundred Thousand Dollars $200,000.00 up to Two Hundred Thousand Dollars ($200,000.00) of the unexpended balance of the appropriation to the local government division in Subsection 203 of Section 34 of Chapter 277 of Laws 2019 to plan, design, construct and equip a parking garage in Las Cruces in Dona Ana county shall not be expended for the original purpose but is changed to plan, design, construct, furnish, equip and install improvements, including related infrastructure, to the Amador hotel in Las Cruces. The time of expenditure is extended through fiscal year 2024.

The Grantee's total reimbursements shall not exceed Two Hundred Thousand Dollars **($200,000.00)** (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")[1], if applicable, Zero dollars **($0.00)**, which equals Two Hundred Thousand Dollars **($200,000.00)** (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse[2] Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

(i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and

(ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and

(iii) The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and

(iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and

(v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:

a. must be approved by the applicable oversight entity (if any) in accordance with law; or

[1] The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars ($200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars ($100,000)." Section 13-4A-4 NMSA 1978.

[2] "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

(vi) The Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee.**

b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.

c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.

d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee:	City of Las Cruces
Name:	Amy Johnson Bassford
Title:	Grants Manager
Address:	700 North Main St. Las Cruces NM 88001
Email:	abassford@las-cruces.org
Telephone:	575-541-2281

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee:	City of Las Cruces
Name:	Leeann DeMouche
Title:	Finance Director
Address:	700 North Main St. Las Cruces NM 88001
Email:	ldemouche@las-cruces.org
Telephone:	575-541-2080

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department:	DFA/Local Government Division
Name :	Donna Stewart
Title:	Program Manager
Address:	Bataan Memorial Bldg. Rm 202, Santa Fe, NM 87501
Email:	DonnaJ.Stewart@state.nm.us
Telephone:	505-505-231-2993

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2024** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are ***not*** expended and an expenditure has ***not*** occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement

Early Termination includes:

(i) Termination due to completion of the Project before the Reversion Date; or

(ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or

(iii) Termination for violation of the terms of this Agreement; or

(iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:

(i) The Grantee shall immediately suspend entering into new or further written obligations with third parties; and

(ii) The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and

(iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Database Reporting

The Grantee shall report monthly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (http://cpms.dfa.state.nm.us). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.

Monthly reports shall be due on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of the final request for reimbursement for the Project.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

(i) request such additional information regarding the Project as it deems necessary; and

(ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project.

Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:

(i) The Grantee must submit a Request for Payment; and

(ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.

(iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. **Deadlines**

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

(i) Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or

(ii) Twenty (20) days from date of Early Termination; or

(iii) Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

(i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).

(ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars ($60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

(iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."

(iv) The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.

(v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded

from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

(i) The Grantee has the legal authority to receive and expend the Project's funds.

(ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.

(iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.

(iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.

(v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.

(vi) The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

(vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well

as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the City of Las Cruces may immediately terminate this Agreement by giving Contractor written notice of such termination. The City of Las Cruces's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the City of Las Cruces or the Department of Finance and Administration, Local Government Division (DFA/LGD) or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the City of Las Cruces or the Department"

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under a DFA/LGD Grant Agreement. Should the DFA/LGD early terminate the grant agreement, the City of Las Cruces may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the City of Las Cruces only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

A. Throughout the term of this Agreement, Grantee shall:

1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
3. timely submit all required financial reports to its budgetary oversight agency (if any); and
4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V(A) of this Agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

Signature of Official with Authority to Bind Grantee

City of Las Cruces
Entity Name

By: Ifo Pili
(Type or Print Name)

Its: City Manager
(Type or Print Title)

8/3/22
Date

APPROVED AS TO FORM:
City Attorney 7/26/22

DEPARTMENT OF FINANCE AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION

DocuSigned by:
Donnie Quintana
63DBF5EB9F944AF...
By:

Its: Division Director

8/5/2022
Date

STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
Request for Payment Form
Exhibit 1

I. Grantee Information

(Make sure information is complete & accurate)

A. Grantee: _____

B. Address: _____

(Complete Mailing, including Suite, if applicable)

_____

City State Zip

C. Phone No: _____

D. Grant No: _____

E. Project Title: _____

F. Grant Expiration Date: _____

II. Payment Computation

A. Payment Request No. _____

B. Grant Amount: _____

C. AIPP Amount *(If Applicable)*: _____

D. Funds Requested to Date: _____

E. Amount Requested this Payment: _____

F. Reversion Amount (*If Applicable*): _____

G. Grant Balance: _____

H. ☐ GF ☐ GOB ☐ STB (*attach wire if first draw*)

I. ☐ Final Request for Payment (*if Applicable*)

III. Fiscal Year : _____

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV. ☐ **Reporting Certification:** I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.

V. ☐ **Compliance Certification:** Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

Grantee Fiscal Officer or **Fiscal Agent** (*if applicable*)	**Grantee Representative**
Printed Name	Printed Name
Date:	Date:

(State Agency Use Only)

Vendor Code: _____ **Fund No.:** _____ **Loc No.:** _____

I certify that the State Agency financial and vendor file information agree with the above submitted information.

Division Fiscal Officer	Date	Division Project Manager	Date

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2

Notice of Obligation to Reimburse Grantee [# 1]

DATE: [_____]

TO: Department Representative: [_____]
FROM: Grantee: [_____]
Grantee Official Representative: [_____]

SUBJECT: Notice of Obligation to Reimburse Grantee
Grant Number: [_____]
Grant Termination Date: [_____]

As the designated representative of the Department for Grant Agreement number [_____] entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): [_____]
The Amount of this Notice of Obligation: [_____]
The Total Amount of all Previously Issued Notices of Obligation: [_____]
The Total Amount of all Notices of Obligation to Date: [_____]
Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: [_____]
Title: [_____]
Signature: [_____]
Date: [_____]

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

ATTACHMENT C

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
FUND 93100 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into by the Department of Finance and Administration, State of New Mexico, acting through the Local Government Division, Bataan Memorial Building, Room 202, Santa Fe, New Mexico, 87501 hereinafter called the "Department" or abbreviation such as "DFA/LGD", and **City of Las Cruces**, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the Laws of 2022 Chapter 52, Section 56, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, pursuant to Sections 9-6-5 and 9-6-5.1 NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; (iii) provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iv) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (v) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation;

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

22-G4054 $632,890.00 APPROPRIATION REVERSION DATE: 30-JUN-2024
Laws of 2022, Chapter 52 Section 56, Six Hundred Thirty-Two Thousand Eight Hundred Ninety Dollars ($632,890.00) up to Six Hundred Thirty-Two Thousand Eight Hundred Ninety Dollars ($632,890.00) of the unexpended balance of the appropriation to the local government division in Subsection 203 of Section 34 of Chapter 277 of Laws 2019 to plan, design, construct and equip a parking garage in Las Cruces in Dona Ana county shall not be expended for the original purpose but is changed to plan, design, construct, furnish, equip and install improvements, including related infrastructure and landscaping, to the Las Cruces international airport in Dona Ana county. The time of expenditure is extended through fiscal year 2024.

The Grantee's total reimbursements shall not exceed Six Hundred Thirty-Two Thousand Eight Hundred Ninety Dollars **($632,890.00)** (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")[1], if applicable, zero dollars **($0.00)**, which equals Six Hundred Thirty-Two Thousand Eight Hundred Ninety Dollars **($632,890.00)** (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse[2] Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

(i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and

(ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and

(iii) The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and

(iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and

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[1] The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars ($200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars ($100,000)." Section 13-4A-4 NMSA 1978.

[2] "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

(v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:
   a. must be approved by the applicable oversight entity (if any) in accordance with law; or
   b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

(vi) The Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:
   a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee.**
   b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.
   c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.
   d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee:	City of Las Cruces
Name:	Amy Johnson Bassford
Title:	Grants Manager
Address:	700 North Main St. Las Cruces NM 88001
Email:	abassford@las-cruces.org
Telephone:	575-541-2281

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee:	City of Las Cruces
Name:	Leeann DeMouche
Title:	Finance Director
Address:	700 North Main St. Las Cruces NM 88001
Email:	ldemouche@las-cruces.org
Telephone:	575-541-2080

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department:	DFA/Local Government Division
Name:	Donna Stewart
Title:	Program Manager
Address:	Bataan Memorial Bldg. Rm 202, Santa Fe, NM 87501
Email:	DonnaJ.Stewart@state.nm.us
Telephone:	505-505-231-2993

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the

Department. It shall terminate on **June 30, 2024** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are ***not*** expended and an expenditure has ***not*** occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement

Early Termination includes:

(i) Termination due to completion of the Project before the Reversion Date; or
(ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
(iii) Termination for violation of the terms of this Agreement; or
(iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:

(i) The Grantee shall immediately suspend entering into new or further written obligations with third parties; and

(ii) The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and

(iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Database Reporting

The Grantee shall report monthly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (http://cpms.dfa.state.nm.us). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.

Monthly reports shall be due on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of the final request for reimbursement for the Project.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

(i) request such additional information regarding the Project as it deems necessary; and

(ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project.

Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:

(i) The Grantee must submit a Request for Payment; and

(ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.

(iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. **Deadlines**

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

(i) Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or

(ii) Twenty (20) days from date of Early Termination; or

(iii) Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

(i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).

(ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars ($60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

(iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."

(iv) The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.

(v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded

from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

(i) The Grantee has the legal authority to receive and expend the Project's funds.

(ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.

(iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.

(iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.

(v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.

(vi) The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

(vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well

as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the City of Las Cruces may immediately terminate this Agreement by giving Contractor written notice of such termination. The City of Las Cruces's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the City of Las Cruces or the Department of Finance and Administration, Local Government Division (DFA/LGD) or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the City of Las Cruces or the Department"

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under a DFA/LGD Grant Agreement. Should the DFA/LGD early terminate the grant agreement, the City of Las Cruces may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the City of Las Cruces only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

A. Throughout the term of this Agreement, Grantee shall:

1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
3. timely submit all required financial reports to its budgetary oversight agency (if any); and
4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V(A) of this Agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

Signature of Official with Authority to Bind Grantee

City of Las Cruces
Entity Name

By: Ifo Pili
(Type or Print Name)

Its: City Manager
(Type or Print Title)

7/25/22
Date

DEPARTMENT OF FINANCE AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION

DocuSigned by:
Donnie Quintana
63DBF5EB9F944AF...
By:

Its: Division Director

7/28/2022
Date

STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
Request for Payment Form
Exhibit 1

I. Grantee Information

(Make sure information is complete & accurate)

A. Grantee: _____

B. Address: _____

(Complete Mailing, including Suite, if applicable)

_____

City State Zip

C. Phone No: _____

D. Grant No: _____

E. Project Title: _____

F. Grant Expiration Date: _____

II. Payment Computation

A. Payment Request No. _____

B. Grant Amount: _____

C. AIPP Amount *(If Applicable)*: _____

D. Funds Requested to Date: _____

E. Amount Requested this Payment: _____

F. Reversion Amount (If *Applicable*): _____

G. Grant Balance: _____

H. ☐ GF ☐ GOB ☐ STB (*attach wire if first draw*)

I. ☐ Final Request for Payment (*if Applicable*)

III. Fiscal Year : _____

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV. ☐ **Reporting Certification:** I hereby certify to the best of my know ledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance w ith Article VIII of the Capital Outlay Grant Agreement.

V. ☐ **Compliance Certification:** Under penalty of law , I hereby certify to the best of my know ledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance w ith Article IX, Sec. 14 of the New Mexico Constitution know n as the "anti donation" clause.

Grantee Fiscal Officer or **Fiscal Agent** (*if applicable*)	**Grantee Representative**
Printed Name	Printed Name
Date: _____	Date: _____

(State Agency Use Only)

Vendor Code: _____ **Fund No.:** _____ **Loc No.:** _____

I certify that the State Agency financial and vendor file information agree with the above submitted information.

Division Fiscal Officer Date	Division Project Manager Date

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2

Notice of Obligation to Reimburse Grantee [# 1]

DATE: [_____]

TO: Department Representative: [_____]
FROM: Grantee: [_____]
Grantee Official Representative: [_____]

SUBJECT: Notice of Obligation to Reimburse Grantee
Grant Number: [_____]
Grant Termination Date: [_____]

As the designated representative of the Department for Grant Agreement number [_____] entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): [_____]
The Amount of this Notice of Obligation: [_____]
The Total Amount of all Previously Issued Notices of Obligation: [_____]
The Total Amount of all Notices of Obligation to Date: [_____]
Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: [_____]
Title: [_____]
Signature: [_____]
Date: [_____]

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

Signature: Amy J Bassford

Email: abassford@las-cruces.org

Signature: Matthew Saenz

Email: msaenz@las-cruces.org

22-G4054 Airport Imp Unexecuted

Final Audit Report 2022-07-18

Created:	2022-07-18
By:	Elizabeth Gonzales (suegonzales@las-cruces.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAA4j_PsN-4WWNPTQ7jiurvU7nRzZD4VCen

"22-G4054 Airport Imp Unexecuted" History

Document created by Elizabeth Gonzales (suegonzales@las-cruces.org)
2022-07-18 - 6:16:08 PM GMT

Document emailed to Amy Bassford (abassford@las-cruces.org) for signature
2022-07-18 - 6:17:08 PM GMT

Email viewed by Amy Bassford (abassford@las-cruces.org)
2022-07-18 - 6:31:57 PM GMT

Document e-signed by Amy Bassford (abassford@las-cruces.org)
Signature Date: 2022-07-18 - 6:32:20 PM GMT - Time Source: server

Document emailed to Matthew Saenz (msaenz@las-cruces.org) for signature
2022-07-18 - 6:32:23 PM GMT

Email viewed by Matthew Saenz (msaenz@las-cruces.org)
2022-07-18 - 7:31:27 PM GMT

Document e-signed by Matthew Saenz (msaenz@las-cruces.org)
Signature Date: 2022-07-18 - 7:41:19 PM GMT - Time Source: server

Agreement completed.
2022-07-18 - 7:41:19 PM GMT

Adobe Acrobat Sign

The United States Department of Transportation (USDOT)

Standard Title VI/Non-Discrimination Assurances

The City of Las Cruces (herein referred to as the "Recipient"), **HEREBY AGREES THAT**, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through the **Pipeline and Hazardous Materials Safety Administration** (PHMSA), is subject to, and will comply with, the following:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled *Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation—Effectuation Of Title VI Of The Civil Rights Act Of 1964*);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

The preceding statutory and regulatory cites hereinafter are referred to as the "Acts" and "Regulations," respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

> *"No person in the United States shall, on the grounds of race, color, national origin, gender, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity," for which the Recipient receives Federal financial assistance from DOT, including the* ***Pipeline and Hazardous Materials Safety Administration****.*

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non-discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above General Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted
PHMSA Natural Gas Distribution Infrastructure Safety and Modernization (NGDISM) Grant:

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§ 21.23 (b) and 21.23 (e) of 49 C.F.R. § 21 will be (with regard to an "activity") facilitated or will be (with regard to a "facility") operated, or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.

2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with all (***PHMSA NGDISM Grant***) and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

   "The City of Las Cruces *, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that with respect to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."*

3. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.

4. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.

5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.

6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.

7. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:
   a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
   b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.

8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:

    a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
    b. the period during which the Recipient retains ownership or possession of the property.

9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.

10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the Recipient also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the PHMSA access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by PHMSA. You must keep records, reports, and submit the material for review upon request to PHMSA, or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

The Recipient gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the ***(PHMSA NGDISM Grant)***. This ASSURANCE is binding on City of Las Cruces , other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the ***(PHMSA NGDISM Grant)***. The person(s) signing below is authorized to sign this ASSURANCE on behalf of the Recipient.

City of Las Cruces, Signed by Ifo Pili, City Manger

_____

(Name of Recipient)

by_____

(Signature of Authorized Official)

DATED 7/25/22

these appendices are for your use, you do not need to fill out and return

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, ***Pipeline and Hazardous Materials Safety Administration***, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the ***Pipeline and Hazardous Materials Safety Administration*** to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the ***Pipeline and Hazardous Materials Safety Administration***, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the ***Pipeline and Hazardous Materials Safety Administration*** may determine to be appropriate, including, but not limited to:
    a. withholding payments to the contractor under the contract until the contractor complies; and/or
    b. cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement

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as the Recipient or the ***Pipeline and Hazardous Materials Safety Administration*** may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX B

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the City of Las Cruces will accept title to the lands and maintain the project constructed thereon in accordance with (The Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117-58)), the Regulations for the Administration of (***Natural Gas Distribution Infrastructure Safety and Modernization Grant Program***, and the policies and procedures prescribed by the ***Pipeline and Hazardous Materials Safety Administration*** of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the City of Las Cruces all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto City of Las Cruces and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the City of Las Cruces , its successors and assigns.

The City of Las Cruces , in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* City of Las Cruces
(2) that the City of Las Cruces will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].* (*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

APPENDIX C

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the City of Las Cruces pursuant to the provisions of Assurance 7(a):

A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that: City of Las Cruces

1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, City of Las Cruces will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*

C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the City of Las Cruces will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the City of Las Cruces and its assigns.*(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.

APPENDIX D

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by City of Las Cruces pursuant to the provisions of Assurance 7(b):

A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.

B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non-discrimination covenants, City of Las Cruces will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*

C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, City of Las Cruces will there upon revert to and vest in and become the absolute property of City of Las Cruces and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

STATE OF NEW MEXICO
DEPARTMENT OF CULTURAL AFFAIRS
FUND 89200 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into by and between the Department of Cultural Affairs, New Mexico State Library Division, hereinafter called the "Department" or abbreviation such as "DCA", and the City of Las Cruces hereinafter called the "Grantee" on behalf of the Thomas Branigan Memorial Library. This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in Chapter 84, Section 10, Paragraph B(1)(a) of New Mexico Laws of 2020, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, NMSA 1978, Section 18-2-4 directs the state librarian to make rules and regulations necessary to administer the division and as provided by law, and NMSA 1978, Section 18-2-4(B) directs the state librarian to administer grants-in-aid and encourage local library services and generally promote an effective statewide library system;

WHEREAS, the state librarian promulgated administrative rules to govern the distribution of general obligation bonds, which are compiled as Section 4.5.8 NMAC;

WHEREAS, the Grantee is a library, or fiscal agent for a library, that is eligible for receipt of such funds because it is a local public library, or fiscal agent for a local public library, as defined under Section 4.5.8 NMAC that has filed an approved annual report, or is acting as fiscal agent to a library that has filed an annual report, with the Department;

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, the Department determined the amount of the Grant based on the criteria described in Rule 4.5.8.8 NMAC ("Distribution of Funds").

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

Project No. **A20-E5296** for Three Million dollars ($3,000,000.00)

APPROPRIATION REVERSION DATE: 30-JUN-2024

Laws of 2020, Chapter 84, Section 10, Paragraph B(1)(a), Three Million dollars ($3,000,000), for equipment, library furniture, fixtures and supplemental library resource acquisitions, including print, non-print and electronic resources, and for the purchase and installation of broadband internet equipment and infrastructure at nontribal public libraries statewide.

The Grantee's total reimbursements shall not exceed, Two Hundred Twenty Eight Thousand Eight Hundred Twenty Eight Dollars and Nine Cents ($228,828.09) (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")[1], if applicable, which equals zero dollars ($0.00) which equals, Two Hundred Twenty Eight Thousand Eight Hundred Twenty Eight Dollars and Nine Cents ($228,828.09) (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." Attachment A sets forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If Attachment A imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Attachment A shall prevail, in the event of irreconcilable conflict.

The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's

[1] The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars ($200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars ($100,000). " See, Section 13-4A-4 NMSA 1978.

Obligation to Reimburse[2] Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

(i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and

(ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and

(iii) The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and

(iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and

(v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:

a. must be approved by the applicable oversight entity (if any) in accordance with law; or

b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

(vi) The Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee.**

[1] "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.
c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.
d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official **FINANCIAL representative(s)** concerning all matters related to this Agreement:

Grantee: City of Las Cruces
Name: Amy Johnson Bassford
Title: Grant Administrator
Address: 700 N Main St, Las Cruces, NM, 88001
Email: abassford@las-cruces.org
Telephone: (575) 541-2281

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: City of Las Cruces
Name: Leeann Demouche
Title: Finance Director
Address: 700 N Main St, Las Cruces, NM, 88001
Email: ldemouche@las-cruces.org
Telephone: (575) 541-2080

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: Development Bureau / New Mexico State Library
Name: Patricia Moore
Title: Project Manager for Public Libraries General Obligation Bonds
Address: New Mexico State Library, 1209 Camino Carlos Rey, Santa Fe, NM 87507
Telephone: 505.476.9724 / 800.340.3890
Email: patricia.moore@state.nm.us

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on June 30, 2024 the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are ***not*** expended and an expenditure has ***not*** occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement

Early Termination includes:

(i) Termination due to completion of the Project before the Reversion Date; or
(ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
(iii) Termination for violation of the terms of this Agreement; or
(iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:

(i) The Grantee shall immediately suspend entering into new or further written obligations with third parties; and

(ii) The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and

(iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Database Reporting

The Grantee shall report monthly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (http://cpms.dfa.state.nm.us). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure

to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.

Monthly reports shall be due on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of the final request for reimbursement for the Project.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

(i) request such additional information regarding the Project as it deems necessary; and

(ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project.

Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:

(i) The Grantee must submit a Request for Payment; and

(ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.

(iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. **Deadlines**
Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

(i) Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or

(ii) July 15 of each year for all unreimbursed expenditures incurred during the previous fiscal year; or

(iii) Twenty (20) days from date of Early Termination; or

(iv) NINETY (90) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

(i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).

(ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars ($60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be

based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

(iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."

(iv) The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.

(v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

(i) The Grantee has the legal authority to receive and expend the Project's funds.

(ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.

(iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the

Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.

(iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.

(v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.

(vi) The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

(vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the City of Las Cruces may immediately terminate this Agreement by giving Contractor written notice of such termination. The City of Las Cruces's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract

claim against the City of Las Cruces or the Department of Cultural Affairs or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the City of Las Cruces or the Department"

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under a Department of Cultural Affairs Grant Agreement. Should the Department of Cultural Affairs early terminate the grant agreement, the City of Las Cruces may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the City of Las Cruces only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

A. Throughout the term of this Agreement, Grantee shall:

1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
3. timely submit all required financial reports to its budgetary oversight agency (if any); and
4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;

3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or

4. terminate this Agreement pursuant to Article V(A) of this Agreement.

ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

Signature of Official with Authority to Bind Grantee

By: Ifo Pili
(Type or Print Name)

Its: City Manager
(Type or Print Title)

12/9/21
Date

APPROVED AS TO FORM:
City Attorney

DEPARTMENT OF CULTURAL AFFAIRS

Debra Garcia y Griego
Digitally signed by Debra Garcia y Griego
Date: 2022.07.25 15:23:41 -06'00'
By: Debra Garcia y Griego, Cabinet Secretary

Date

Peter N. Ives
Digitally signed by Peter N. Ives
Date: 2022.06.17 15:52:01 -06'00'
By: Peter Ives, DCA General Counsel

Date

Greg Geisler
Digitally signed by Greg Geisler
Date: 2022.07.13 11:29:43 -06'00'
By: Greg Geisler, CFO/Administrative Services Division

Date

Digitally signed by Eli Guinnee
DN: cn=Eli Guinnee, o, ou=NMSL, email=eli.guinnee@state.nm.us, c=US
Date: 2022.06.15 10:54:19 -06'00'
By: Eli Guinnee, State Librarian

Date

STATE OF NEW MEXICO
2020 GO BOND GRANT PROJECT
PAPER PERIODIC/FINAL REPORT
EXHIBIT 1

☐ PERIODIC REPORT ☐ FINAL REPORT

Grantee: _____ Name of Library: _____

Project Number: A20 – E5296 Reporting Period: _____

1. Please provide a detailed status of project referenced above.

A. *Third Party Obligations*

Purchase Order or Contract # _____

Name of Contractor or Vendor: _____

Amount of Third Party Obligation: _____

Date Executed: _____

Termination Date: _____

2. Original Grant Amount: _____

Total Grant Amount Expended by Grantee to Date: _____

Grant Balance as of this Date: _____

☐ PERIODIC REPORT

I hereby certify that the aforementioned Capital Grant Project funds are being expended in accordance with all requirements of the Grant Agreement, and in compliance with all other applicable requirements.

☐ FINAL REPORT

I hereby certify that the aforementioned Capital Grant Project funds have been completed and funds were expended in accordance with all requirements of the Grant Agreement, and in compliance with all other applicable state/regulatory requirements.

_____ _____

Grantee Representative/Title Date

STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
Request for Payment Form
Exhibit 1

I. Grantee Information

(Make sure information is complete & accurate)

A. Grantee: _____

B. Address: _____

(Complete Mailing, including Suite, if applicable)

_____

City State Zip

C. Phone No: _____

D. Grant No: _____

E. Project Title: _____

F. Grant Expiration Date: _____

II. Payment Computation

A. Payment Request No. _____

B. Grant Amount: _____

C. AIPP Amount *(If Applicable)*: _____

D. Funds Requested to Date: _____

E. Amount Requested this Payment: _____

F. Reversion Amount (If *Applicable*): _____

G. Grant Balance: _____

H. ☐ GF ☐ GOB ☐ STB (*attach wire if first draw*)

I. ☐ Final Request for Payment (*if Applicable*)

III. Fiscal Year : _____

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV. ☐ Reporting Certification:

I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.

V. ☐ Compliance Certification:

Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

Grantee Fiscal Officer or **Fiscal Agent** (*if applicable*)	**Grantee Representative**
Printed Name	Printed Name
Date: _____	Date: _____

(State Agency Use Only)

Vendor Code: _____ **Fund No.:** _____ **Loc No.:** _____

I certify that the State Agency financial and vendor file information agree with the above submitted information.

Division Fiscal Officer Date	Division Project Manager Date

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 3

Notice of Obligation to Reimburse Grantee [# 1]

DATE: [_____]

TO: Department Representative: [_____, _____]
FROM: Grantee: [_____]
Grantee Official Representative: [_____]

SUBJECT: Notice of Obligation to Reimburse Grantee
Grant Number: [_____]
Grant Termination Date: [_____]

As the designated representative of the Department for Grant Agreement number [_____] entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): [_____]
The Amount of this Notice of Obligation: [_____]
The Total Amount of all Previously Issued Notices of Obligation: [_____]
The Total Amount of all Notices of Obligation to Date: [_____]
Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: [_____]
Title: [_____]
Signature: [_____]
Date: [_____]

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

ATTACHMENT A

NMSA 1978, Section 18-2-4(I) directs the state librarian to make rules and regulations necessary to administer the division and as provided by law. Section 18-2-4(B) directs the state librarian to administer grants-in-aid and encourage local library services and generally promote an effective statewide library system. Within these powers, the state librarian passed certain administrative rules to govern the distribution of general obligation bonds. Thus, under Section 4.5.8.8 of the New Mexico Administrative Code, this Agreement includes the following additional terms:

§ 4.5.8.8. DISTRIBUTION OF FUNDS

Money from the library bond program shall be distributed in the following manner:

A. Notification: When the library bond program funds are approved by the voters, the state library shall send a letter of notification and acceptance agreement to all public libraries informing them of their eligibility to receive the funds and the amount of funds they are eligible to receive. The agreement must be signed and returned to the state library one-hundred twenty (120) days before the start of the authorized expenditure period. Libraries that do not return the signed agreement within the required time period shall not be eligible to receive funds. Upon receipt of the agreements, the state library shall calculate the final allocation and the libraries shall be notified of any changes within ninety (90) days before the authorized expenditure period.

B. Allocation: The amount allocated to eligible public libraries is dependant upon the amount of bond funds approved by the state legislature and approved by the voters in a bond election. The state library may publish and make publicly available a list showing the bond fund allocations for each eligible library.

C. Criteria for allocation of funds: The state librarian shall establish the amount of funds to be allocated to each eligible library system using the following criteria.

(1) Library shall be a local public library.

(2) Library shall have filed an approved annual report with the state library.

(3) Library shall return a signed agreement accepting the funds and agreeing to abide by the terms and conditions of this rule.

(4) Non-profit libraries shall have an agreement with a local funding authority to act as their fiscal agent for these funds.

(5) The library's and the local funding authority's accounting records shall be sufficient to document expenditures of library bond program money. At the sole discretion of the state library, such records may be audited annually or as needed by the state library or its designated representative.

(6) County population and the library's legal service area shall be used to determine the amount of library bond program funds that shall be allocated to each eligible library.

D. Distribution of funds: Money from the library bond program funds shall be distributed in the following order:

(1) library system allocation: each eligible local public library system, including rural library services facilities, shall receive a fixed allocation dependent upon the total library bond funds available;

(2) per capita allocation: remaining library bond funds shall be distributed to each county on a per capita basis using the latest U. S. census bureau estimates, as follows: (a) each library shall receive funds based upon the legal service area population and proportional credit for the unassigned population in each county; and, (b) local public libraries that are the only local public library in their county shall receive the entire per capita allocation for the county.

(1) Library's book or materials budget shall not be reduced by the local funding authority as a result of eligibility for library bond program funds.

(2) Upon demonstrated evidence that such a reduction has occurred, the library shall be ineligible to receive funds in the next library bond program.

Signature: Matthew Saenz

Email: msaenz@las-cruces.org

Signature: K. Lynn Gallagher

Email: lgallagher@las-cruces.org

Contract No. 2022-2023-64014

North Central New Mexico Economic Development District
Non-Metro Area Agency on Aging

TITLE III FEDERAL AND STATE SUB-AWARD

This Agreement is made and entered into this 1st day of July 2022, by and between the North Central New Mexico Economic Development District (NCNMEDD) Non-Metro Area Agency on Aging (Non-Metro AAA), hereinafter referred to as the "Agency" and City of Las Cruces, hereinafter referred to as the "Subrecipient Contractor."

The Agency's Senior Citizens Services program is designed to promote the development of a comprehensive and coordinated service delivery system to meet the needs of older individuals (age 60 and older). This agreement provides a mechanism for the creation of an individualized network of community resources on a client-by-client basis through the Older Americans Act, as amended, the State of New Mexico Aging and Long-Term Services Department, and the Agency.

1. **SCOPE OF SERVICES**

A. Services: The Subrecipient Contractor agrees to provide service(s) to eligible consumers as identified in accordance with the Subrecipient Contractor application or Service Delivery Plan, all required assurances, licenses, and certifications, as applicable.

B. Service Area: The Subrecipient Contractor agrees to provide service(s) to eligible consumers in the service area as identified in the Subrecipient Contractor application or Service Delivery Plan attached by reference.

C. Deliverables: The Subrecipient Contractor shall provide services based on the assessed need of the community and individuals receiving services under this Agreement and as identified in the Subrecipient Contractor application or Service Delivery Plan and attached by reference. The service units and consumers detailed in this section are estimates. The following services are to be provided in accordance with the Aging and Long-Term Services Department (ALTSD) Units of Service Definitions; to be monitored through the Subrecipient Contractor's submission of monthly WellSky data, activity reports, and through Agency monitoring reviews. Final determination of service units and consumer performance measures shall be established by the ALTSD, and should the Contractor not meet the established units, reimbursement requests should reflect the same.

D. Targeting: Target populations include persons aged 60 or older and their spouses of any age, younger disabled persons who reside with persons aged 60 or older, caregivers of any age who care for persons aged 60 or older, caregivers aged 60 or older who care for children or younger disabled persons, and the recipients of their care.

Per the Older Americans Act, an effort must be given to serving eligible persons with the greatest social or economic need, with particular attention to minority individuals with low

incomes. Efforts must also be given to targeting individuals residing in rural and frontier areas, individuals with limited English proficiency, and individuals with Alzheimer's disease and related disorders, with severe disabilities or at-risk of institutionalization and their caregivers.

Target populations may include persons aged 50 through 59 for services provided with state funding only. Target populations for each service may vary according to the service provided.

E. Payment for Services: For the services determined by the Agency to be satisfactorily provided by Subrecipient Contractor hereunder, the Agency shall pay the Subrecipient Contractor, during the term, an aggregate amount, including gross receipts tax, not to exceed **$842,572.76**. Said aggregate amount is to be derived from the following sources.

1. **$70,364.55** from Title III-B of the OAA [Assistance Listing Number 93.044];
2. **$155,175.53** from Title III-C1 of the OAA [Assistance Listing Number: 93.045];
3. **$52,261.66** from Title III-C2 of the OAA [Assistance Listing Number: 93.045];
4. **$0** from Title III-D of the OAA [Assistance Listing Number: 93.043];
5. **$91,782.48** from Title III-E of the OAA [Assistance Listing Number: 93.052]; and
6. **$472,988.54** from the NMGAA-State/HB-2

F. An initial payment of 12.5% of State funds will be distributed to the Subrecipient Contractor. This initial payment must be accounted for by the Subrecipient Contractor and expenditures must be allocated to these funds.

G. Payment for services shall be consistent with all applicable federal and state laws and regulations.

H. Payments to the Subrecipient Contractor will be made after receipt of funds by the Agency. Any expenditure made prior to the receipt of funds or pending the Agency's approval shall be made at the Subrecipient Contractor's own risk, and the Agency shall not be liable for such expenditures.

I. Payments to the Subrecipient Contractor may be withheld or denied by the Agency for expenditures which are not authorized by, or are in excess of, the regulations, terms and conditions contained in this Agreement or for expenditures which are not properly documented or substantiated by the Subrecipient Contractor. The Subrecipient Contractor agrees to hold the Agency harmless against all audit exceptions arising from the Subrecipient

Contractor's violation and shall make restitution to the Agency of such amounts of money due to the Subrecipient Contractor's non-compliance.

J. Subrecipient Contractor must submit a detailed statement accounting for all services performed and expenses incurred. Reimbursements shall be made by the Agency on a monthly basis upon receipt of monthly expenditures and reports furnished by the Subrecipient Contractor. If the Agency finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Subrecipient Contractor that payment is requested, it shall provide the Subrecipient Contractor a letter of exception explaining the defect or objection to the services and outlining steps the Subrecipient Contractor may take to provide remedial action. Upon certification by the Agency that the services have been provided and accepted, payment shall be tendered to the Subrecipient Contractor within thirty days after the date of acceptance.

K. Payments to the Subrecipient Contractor will be made electronically through the Automated Clearing House (ACH) Network.

2. TERMS OF AGREEMENT

In addition to the other provisions contained in this Agreement, the parties agree to the following:

A. The Subrecipient Contractor agrees to:

1. Provide services in accordance with current or revised Agency and State of New Mexico Aging and Long-Term Services Department policies and the OAA.
2. Target services to older individuals with greatest economic and social need, including low-income individual, low-income minorities, older individuals at risk of institutional placement, individuals with limited English proficiency, and older individuals residing in rural areas, as applicable.
3. Submit timely and accurate consumer/client tracking service documentation (rosters and transmittals) as required by the Agency by the close of business on the fifth (5^{th}) day of each month following the last day of the month in which services were provided. If the fifth (5^{th}) day falls on a weekend or Agency holiday, the information shall be delivered by the close of business on the next business day.
4. Submit timely and accurate consumer/client assessment and reassessment documentation (including transmittals) on the day conducted.
5. Ensure consumer contact information is accurate in WellSky.
6. Encourage client contributions (program income) on a voluntary and confidential basis. Such contributions will be properly safeguarded and accurately accounted for as receipts and expenditures on its financial reports, if they are not required to be forwarded to the Agency. Client contributions (program income) will be reported fully and in the service category generated, as required, to the Agency. Subrecipient Contractor agrees to expend all program income to expand or enhance the program/service under which it is earned.

7. Provide letters from local City or County governments to the NCNMEDD Non-Metro AAA committing local funds to senior programs. Any changes in local funds (increases or decreases) will be provided in writing to the NCNMEDD Non-Metro AAA.
8. Maintain communication and correspondence concerning clients' status with the Agency.
9. Submit contingency plan to address unforeseen circumstances when service delivery is threatened.
10. At a minimum, attend two (2) Agency training events per year (may include attendance at Non-Metro AAA Advisory Council meetings). Attend required Aging Network Training events and other special meetings of the Aging & Long-Term Services Department.
11. Submit timely and accurate information necessary for reimbursement.
    a. All SAMS data, including COVID-19 data should be verified and reconciled by the Subrecipient Contractor prior to submitting the SAMS Verification Statement and the Agency Summary Report (ASR) to the Non-Metro AAA Santa Fe office by the 10th working day. The signed Agency Summary Report (ASR) is the official document used to initiate reimbursement of services provided by the Subrecipient Contractor.
    b. Subrecipient Contractors shall invoice the Agency on or before the 5th working day of the month for prior month expenditures. The Agency may extend these dates on a case-by-case basis if the Subrecipient Contractor reports a hardship. However, the Agency will not accept, process, or pay invoices submitted fifteen (15) days or more after the deadline(s). The Subrecipient Contractor shall submit expenditure and service delivery information to the Agency utilizing the OAA-SYS system provided by the Agency.
    c. Supporting documentation to validate reported expenses to include general ledger, purchase orders and invoices.
    d. Quarterly financial reports, to include approved budget, year-to-date expenses, year-to-date revenue, by the 15th working day of the month following the end of the quarter.
    e. Quarterly program narrative reports by the 15th working day of the month following the end of the quarter.
12. This agreement does not guarantee a total level of reimbursement other than for individual units/services authorized, contingent upon availability of Federal and State funds.
13. By October 1, 2022, Subrecipient Contractor agrees to bill Medicaid, or contract with the Agency to bill Medicaid, for Medicaid-eligible consumers enrolled in Medicaid-eligible services. Such services will not be eligible for Title III funds after October 1, 2022.
14. Subrecipient Contractor employees shall not solicit nor accept gifts or favors of monetary value by or on behalf of clients as a gift, reward, or payment.

B. The Agency further abides to:

1. Review consumer intake and assessment forms completed by the Subrecipient Contractor, as applicable, to determine eligibility for service provision.
2. Maintain communication and correspondence concerning consumers' status.
3. Provide timely consultation and technical assistance to the Subrecipient Contractor as requested and as available.
4. Conduct quality-assurance procedures, which may include on-site visits, to ensure quality services are being provided.
5. Provide written policy, procedures and standard documents concerning client authorization to release information (both a general and medical/health related release), ability to contribute to the cost of services provided, complaints/grievances and appeals to all consumers.
6. Provide start-up funds at the discretion of NCNMEDD Non-Metro AAA if funding is available.
8. Employ a full-time manager and financial individual to oversee funds contracted through Non-Metro AAA.

3. ASSURANCES

A. *Americans with Disabilities Act of 1990 –*
The Subrecipient Contractor shall comply with the requirements, established under the Americans with Disabilities Act, in meeting statutory deadlines under the Act as they pertain to operation for employment, public accommodations, transportation, state and local government operations and telecommunications.

B. *Section 504 of the Rehabilitation Act of 1973 –*
The Subrecipient Contractor shall provide that each program activity, when viewed in its entirety, is readily accessible to and usable by persons with disabilities in keeping with 45 CFR, Part 84.11, etc. Seq., and as provided for in Section 504 of the Rehabilitation Act of 1974, as amended. When structural changes are required, these changes shall be in keeping with 45 CFR, Part 74. The Subrecipient Contractor shall ensure that benefits and services, available under the agreement, are provided in a non-discriminatory manner as required by the Title VI of the Civil Rights Act of 1964, as amended.

C. *Age Discrimination in Employment Act of 1967 –*
The Subrecipient Contractor shall comply with Age Discrimination in Employment Act of 1967 (29 USC 621, etc. Seq.).

D. *Drug Free Workplace*
The Subrecipient Contractor shall comply with the Drug-Free Workplace Act of 1988.

E. *Certification Regarding Debarment*
The Subrecipient Contractor shall certify annually that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency.

F. *Financial Management*
The Subrecipient Contractor must implement financial management standards in accordance with the Federal standards outlined in the United States Department of Health and Human Services Federal Regulation 45 CFR Part 75, 2 CFR Uniform Grants Guidance Part 200 and New Mexico Fiscal Requirements.

G. *Budget Adjustment*
The Subrecipient Contractor shall submit to the Agency, as necessary, any budget adjustment request(s) for review and approval. Under no circumstances may budget adjustment request(s) be submitted to the Agency later than March 15th unless authorized by the Agency in writing. The Agency shall review and approve or deny budget adjustment request(s) at its sole discretion.

H. *Incentive Compensation*
Use of federal and state funds for incentive compensation to employees based on cost reduction, efficient performance, suggestion awards, safety awards, etc. is un-allowable and will not be recognized by the Agency as a reimbursable expense.

I. *Independent Audit*
The Subrecipient contractor shall provide a financial and compliance audit report(s) to the Agency covering the period of July 1, 2022 through June 30, 2023. The Subrecipient Contractor is considered an independent contractor and is subject to audit requirements under Title 2, Subtitle A, Chapter II, Part 200 of Code of Federal Regulations and Government Audit Standards, regardless of the amount of federal funding the Subrecipient Contractor receives.

1. The Audit report(s) provided to the Agency must include a copy of the Auditor's management letter.
2. The audit report shall include a schedule of administrative and program expenses for each separate federal title or program (Title IIIB, Title IIIC-1, Title IIIC-2, Title IIID, Title IIIE, NSIP, etc.), which facilitates a reconciliation of audited costs to the final report.
3. Submittal of the audit report for government entities shall be within ten (10) working days after release by the New Mexico State Auditor's Office. For non-governmental entities, the audit report is due four (4) months after the end of the entity's fiscal year.

J. *Equal Opportunity Compliance.*
The Subrecipient Contractor agrees to abide by all federal and state laws, rules, regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Subrecipient Contractor agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Subrecipient Contractor is found not to be in compliance with these requirements during the life of this Agreement, Subrecipient Contractor agrees to take appropriate steps to correct these deficiencies.

K. *Compliance with Aging and Long-Term Services Department Functions.*
The Subrecipient Contractor shall perform in accordance with the Federal Older Americans Act (OAA) and directives of the U.S. Administration on Aging; Rules, regulations, State Plan, policies and procedures established by the Aging and Long-Term Services Department, for the provision of services, and administration of programs funded under the OAA and the New Mexico State Legislature; New Mexico Administrative Code, Title 9, Chapter 2, Parts 1-24; The Aging & Long-Term Services Act, NMSA 1978, Sections 9-23-1 et seq.; The New Mexico Environment Department Food Establishment Rules and Regulations; Dietary Guidelines for Americans; Dietary Reference Intakes (DRIs); the approved Agency Area Plan, Agency Policy and Procedures; the approved Service Plan; State and Federal emergencies and public health/emergency orders enacted by the Governor of the State of New Mexico; Title II Part 200 of the Code of Federal Regulations; and the terms and conditions of this Agreement.

L. *Non-Discrimination Service Delivery.*
The Subrecipient Contractor, in determining (a) the services or other benefits provided under this Agreement, (b) the class of individuals to whom, or situation in which such services or other benefits will be provided under this program, or (c) the class of individuals to be afforded an opportunity to participate in the program, will not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, religion, color, national origin, ancestry, sex, sexual preference, age or handicap, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program in respect to individuals of a particular race, religion, color, national origin, ancestry, sex, sexual preferences, age or handicap.

M. *Targeting and Outreach.*
The Subrecipient Contractor shall engage in targeting and outreach activities, as required by the OAA, to all potential recipients of services as referenced in section

2.A.2. The Subrecipient Contractor shall conduct ongoing community outreach to assess needs and inform potential recipients of available services. The Subrecipient Contractor shall report all activities in its quarterly program reports submitted to the Agency.

N. *Consumer Feedback.*
The Subrecipient Contractor shall implement a mechanism for obtaining and evaluating consumer opinions of the quality of services received. Such mechanism must include consumer surveys and documentation of the resolution of service recipient complaints.

O. *Emergency Preparedness Requirements.*
The Subrecipient Contractor shall monitor and notify the Agency of any situation which has the potential to be an emergency in which older adults or adults with disabilities may be adversely affected.

a. Subrecipient Contractor shall provide and update emergency contact information for all emergency management personnel in a format provided by the Agency.
b. Subrecipient Contractor agrees to notify the Agency of service modifications in the event of a holiday, emergency, or other situation as soon as those service modifications are known.
c. Subrecipient Contractor agrees to notify the Agency of emergency situations and events as soon as they are known, regardless of service modification.
d. Subrecipient Contractor shall ensure continuation of services during emergency events to the extent possible and will request assistance from the Agency in the event it cannot perform this requirement.
e. Subrecipient Contractor agrees to perform well-check calls to consumers during emergency events, regardless of the open or closed status of facilities and services. Subrecipient Contractor agrees to utilize well-check call scripts and systems provided by the Agency in this process. Subrecipient Contractor will request assistance from the Agency in the event it cannot perform this requirement.

4. TERM

This Agreement shall begin on July 1, 2022, and terminate on June 30, 2023, unless terminated pursuant to Paragraph 5, below or for any other reason allowed by law.

5. TERMINATION

A. This Agreement may be terminated by the Agency without cause upon written notice delivered to the Subrecipient Contractor at least thirty (30) days prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred for performance prior to the date of termination. This Agreement may be terminated immediately, upon written notice to the Subrecipient Contractor, if the Subrecipient

Contractor becomes unable to perform the services contracted for, as determined by the Agency, or if, during the term of this Agreement, the Subrecipient Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations paragraph herein, or if the Subrecipient Contractor fails to comply with any of the terms contained herein or is in breach of this Agreement as set forth in Paragraph 6, below. This provision is not exclusive and does not waive the Agency's other legal rights and remedies caused by the Subrecipient Contractor's default or breach of this Agreement. This Agreement may also be terminated by the Subrecipient Contractor upon thirty (30) days written notice to the Agency.

B. Termination Management. Immediately upon receipt of notice of termination of this Agreement by either the Agency or the Subrecipient Contractor, the Subrecipient Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the Agency; 2) comply with all directives issued by the Agency in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the Agency shall direct for the protection, preservation, retention or transfer of all property titled to the Agency and client records generated under this Agreement and any non-expendable personal property or equipment purchased by the Subrecipient Contractor with contract funds shall become property of the Agency upon termination. On the date the notice of termination is received, the Subrecipient Contractor shall furnish to the Agency a complete, detailed inventory of non-expendable personal property purchased with funds provided under the existing and previous Agency agreements with the Subrecipient Contractor; the property listed in the inventory report including client records and a final closing of the financial records and books of accounts which were required to be kept by the Subrecipient Contractor under the paragraph of this Agreement regarding financial records.

6. BREACH OF AGREEMENT BY SUBRECIPIENT CONTRACTOR

A. In addition to the breach of any term, provision, covenant, agreement, or obligation of Subrecipient Contractor contained in this Agreement, the following constitute a breach of Subrecipient Contractor's obligations and duties hereunder:

1. The Subrecipient Contractor's failure to provide proof of insurance coverage sufficient to meet the requirements of this Agreement or any applicable federal, state, or local laws, rules, or regulations.
2. The Subrecipient Contractor's failure to adequately safeguard its assets in such a manner that would adversely impact the interests of the intended recipients of the services to be performed, hereunder, and jeopardize their receipt of such services.
3. Unless otherwise duly authorized in writing by the Agency, the Subrecipient Contractor's failure to meet line-item budgetary ceilings set forth in its approved budget for delivering the services contemplated hereunder.

B. Upon a determination by the Agency that the Subrecipient Contractor shall be in breach of this Agreement, the Agency shall provide written notice to the Subrecipient Contractor specifying the facts and circumstances constituting the breach(es) and advising the Subrecipient Contractor that such breach(es) must be cured to the Agency's satisfaction within thirty (30) days from the date of such written notice. If such cure is not timely made, then the Agency may elect to implement one or more of the following intermediate sanctions:

1. The Agency may install a program monitor for a specified time period to closely observe the Subrecipient Contractor's efforts to comply with obligations remaining under this Agreement. Unless otherwise deemed confidential under applicable law, such monitor shall have authority to review any or all the Subrecipient Contractor's records, policies, procedures, and financial records germane to the Subrecipient Contractor's delivery of the services contemplated by this Agreement. Such monitor may also serve as a consultant to the Subrecipient Contractor to advise in the correction of the determined deficiencies. All costs associated with the Agency's selection and installation of such monitor shall be paid from the state and federal funds paid to the Subrecipient Contractor hereunder.
2. The Agency may appoint a temporary manager who shall have primary responsibility to oversee the operation of the Subrecipient Contractor's services contemplated by this Agreement. All costs associated with the Agency's selection and installation of such a temporary manager shall be paid from the compensation paid to Subrecipient Contractor.
3. The Agency may deem the Subrecipient Contractor ineligible for the receipt of any additional funds to be paid to Subrecipient Contractor hereunder.
4. The Agency may cancel, terminate, or suspend this Agreement in whole or in part.
5. In addition to other remedies available to the Agency hereunder, the Agency may, in its discretion, establish a period of probation with specific objectives to be accomplished by the Subrecipient Contractor hereunder, or to be in compliance with applicable policies, procedures, laws, and regulations.
6. The Agency may pursue any other remedy as may be provided under applicable law.

7. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico and utilized by the Agency for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the Agency to the Subrecipient Contractor. The Agency's decision as to whether sufficient appropriations are available shall be accepted by the Subrecipient Contractor and shall be final. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding, the Subrecipient Contractor shall have the option to terminate the Agreement or agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

8. STATUS OF SUBRECIPIENT CONTRACTOR

The Subrecipient Contractor, its agents, and employees are independent contractors performing professional services for the Agency and are not employees of the Agency. The Subrecipient Contractor, its agents and employees shall not accrue leave, retirement, insurance, bonding, use of Agency vehicles, or any other benefits afforded to employees of the Agency as a result of this Agreement. The Subrecipient Contractor acknowledges that all sums received hereunder are reportable for income tax purposes.

9. ASSIGNMENT

The Subrecipient Contractor shall not assign or transfer any interest in this Agreement, assign any claims for money due, or to become due under this Agreement, without the prior written approval of the Agency.

10. SUBCONTRACTING

The Subrecipient Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Agency.

11. RELEASE

Final payment of the amounts due under this Agreement shall operate as a release of the Agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations, whatsoever arising from or under this Agreement. The Subrecipient Contractor agrees not to purport to bind the Agency to any obligation not assumed herein unless the Subrecipient Contractor has express written authority to do so, and then only within the strict limits of that authority.

12. CONFIDENTIALITY

Any information provided to or developed by the Subrecipient Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization, by the Subrecipient Contractor without the prior written approval of the Agency. Disclosure of confidential information shall only be made in accordance with the Inspection of Public Records Act or the applicable state or federal laws or regulations. Subrecipient Contractor shall establish a method to guarantee the confidentiality of all information relating to clients in accordance with applicable federal, state and local laws, rules and regulations, as well as the terms of this Agreement. However, this provision shall not be construed as limiting the rights of the Agency or any other federal or state authorized representative to access client case records or other information relating to clients served under this Agreement.

13. PRODUCT OF SERVICE – COPYRIGHT

All materials developed or acquired, by the Subrecipient Contractor, under this Agreement, shall become the property of the Agency and shall be delivered to the Agency no later than the termination date of this Agreement. Nothing produced, in whole or in part, by the Subrecipient Contractor, under this Agreement, shall be the subject of an application for copyright or other claim of ownership, by or on behalf, of the Subrecipient Contractor.

14. CONFLICT OF INTEREST

The Subrecipient Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree, with the performance or services required under the Agreement. The Subrecipient Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer or state employee or former state employee have been followed.

15. AMENDMENT

This Agreement shall not be altered, changed or amended, except by instrument in writing, executed by the parties hereto.

16. MERGER

This Agreement incorporates all the agreements, covenants and understandings between the parties hereto, concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement. No prior agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

17. PENALTIES FOR VIOLATION OF LAW

The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

18. APPLICABLE LAW

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, Subrecipient Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

19. WORKERS COMPENSATION

The Subrecipient Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Subrecipient Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Agency.

20. RECORDS AND FINANCIAL AUDIT

The Subrecipient Contractor shall maintain detailed time and expenditure records, including, but not limited to, client records, books, supporting documents pertaining to services provided, that indicate the date. time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Agency, the Department of Finance and Administration and the State Auditor. The Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or

illegal payments. If, pursuant to this Agreement, the Subrecipient Contractor receives federal funds subject to the Single Audit Act, the Subrecipient Contractor shall submit to the Agency an audit conducted by a certified public accountant in compliance with the Single Audit Act.

21. INDEMNIFICATION

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitation of the New Mexico Tort Claims Act.

22. INTERNAL DISPUTE MEDIATION

The Subrecipient Contractor shall attempt to resolve all disputes with participants by negotiation in good faith and with such mediators as may be acceptable to the parties involved. The Subrecipient Contractor shall implement an internal grievance policy with procedures in place to effectively and fairly negotiate and resolve disputes with participants. The Subrecipient Contractor must provide all participants with notice, at the commencement of the contract year that disputes may be resolved in this manner. If negotiation and mediation through the grievance procedure fail, any party may submit the dispute to the ALTSD in accordance with the following provisions:

1. In any dispute submitted, the Agency and the Subrecipient Contractor hereby agree and consent to the ALTSD mediation of the dispute.
2. Mediation may only be instituted by written request, which request shall include a statement of the matter in controversy.
3. Initial contacts and negotiation shall be conducted by the appropriate Agency staff.
4. Any resolution of the matter shall be binding and final on the Subrecipient Contractor and the Subrecipient Contractor hereby agrees to be bound by said resolution.
5. Failure of the Subrecipient Contractor to resolve any dispute pursuant to the procedures set forth herein or to comply with a resolution ordered by the ALTSD shall amount to a material breach of Agreement.
6. Internal Dispute Mediation does not supersede the appeal hearing policies and procedures.

23. PARTICIPANT GRIEVANCE

The Subrecipient Contractor will establish a system through which applicants for, and recipients of services, may present grievances about the operation of the service program. The Subrecipient Contractor will advise applicants and recipients of their right to appeal denial of service and their right to a fair hearing of these respects. The Subrecipient Contractor shall notify the Agency of termination of services, to a client, as part of a monthly service report, on any services funded by this Agreement. The Agency reserves the right to perform follow-up investigations with the client to determine adequate performance and adherence to due process.

24. KEY PERSONNEL

The Agency shall be notified of changes in, and must concur with the selection process for, Key Personnel. The Agency considers the following positions as Key Personnel:

1. Program Director

2. Financial Manager

The Subrecipient Contractor will maintain full-time Key Personnel throughout the term of this agreement.

25. INVALID TERM OR CONDITION

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

26. ENFORCEMENT OF AGREEMENT

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless expressed in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

27. NOTICES

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

AGENCY:
NCNMEDD Non-Metro AAA
Neil Segotta, AAA Director
3900 Paseo Del Sol
Santa Fe, NM 87507

SUBRECIPIENT CONTRACTOR:
Amy Johnson Bassfor or Sonia Saldana
Grants Manager Sr Programs Administrator
700 N. Main St.
Las Cruces, NM 88001

28. INSURANCE

The Subrecipient Contractor shall secure and maintain, during the term of this Agreement, at its own expense, comprehensive and general public liability insurance and/or other types of insurance as the Agency may require. The Subrecipient Contractor shall secure and maintain, during the term of this Agreement, at its own expense, workers' compensation insurance in the amounts required by the applicable laws of the State of New Mexico covering the Subrecipient Contractor's employees. All policies of liability insurance that Subrecipient Contractor is obligated to maintain, according to this Agreement, except for any policy of workers' compensation insurance, shall name Agency as an additional insured. The Subrecipient Contractor shall furnish to the Agency, directly from its insurance carrier, a memorandum or certification of all insurance carried before the payment of any monies as consideration for the services rendered hereunder shall be made. Upon such certificates and/or memoranda being furnished to the Agency, the same shall be annexed to this Agreement and by reference made a part hereof.

29. AUTHORITY

The individual(s) signing this Agreement on behalf of Subrecipient Contractor represents and warrants that he or she has the power and authority to bind Subrecipient Contractor, and that no further action, resolution, or approval from Subrecipient Contractor is necessary to enter into a binding contract.

30. SIGNATURES

For the faithful performance of the terms of this agreement, the parties affix their signatures and bind themselves effective July 1, 2022.

City of Las Cruces	NCNMEDD Non-Metro Area Agency on Aging
Legal Name of Subrecipient Contractor	*Name of Area Agency on Aging*
	Monica Abeita
Signature	*Signature*
Ifo Pili, City Manager	Monica Abeita, Executive Director
Printed/Typed Name of Signatory	*Printed/Typed Name of Signatory*
8/9/22	07/01/2022
Date	*Date*

North Central New Mexico Economic Development District
Non-Metro Area Agency on Aging

NUTRITION SERVICE INCENTIVE PROGRAM (NSIP)
SUBRECIPIENT CONTRACTOR SUB-AWARD

This Agreement is made and entered into this 1st day of July 2022, by and between the North Central New Mexico Economic Development District (NCNMEDD) Non-Metro Area Agency on Aging (Non-Metro AAA), hereinafter referred to as the "Agency" and City of Las Cruces, hereinafter referred to as the "Subrecipient Contractor."

PURPOSE

The Nutrition Services Incentive Program (NSIP) provides incentives for the effective delivery of nutritious meals to older individuals. NSIP funds allow nutrition programs to increase the number of meals served.

The purpose of this Agreement is to allocate funds in support of the provision of congregate and home delivered meals provided under Title IIIC of the Older Americans Act (OAA). The Subrecipient Contractor must be a recipient of Title III funding or Title III matching funds.

IT IS AGREED BETWEEN PARTIES:

1. **Scope of Work**
   The subrecipient Contractor will:

   A. Establish procedures to ensure that such cash payments are used solely for the purchase of United States agriculture commodities and other foods produced in the United States for the use in the senior nutrition program. No imported foods, or food items containing imported products, may be purchased with these funds. e.g., coffee, tea, cocoa, and bananas.
   B. Ensure that NSIP funds are used exclusively for the purchase of food, not meal preparation, and may not be used for administrative costs.
   C. Ensure that meals furnished under contractual agreement with food service management companies, caterers, restaurants, or institutions, contain foods or commodities of United States origin; imported foods may not be purchased with these funds.
   D. Encourage the purchase and use of locally sourced farm fresh food products that meet the nutritional standards of the Agency. Subrecipient Contractors must ensure that the farm food products meet the New Mexico Environment Department requirements.
   E. Ensure that each meal complies with the most recent Federal and State nutritional guidelines and requirements.

F. Maintain accounting records for NSIP separate and apart from other accounting records maintained for other nutrition funding sources (i.e., Title IIIC-1 and Title IIIC-2 and other cash used for the purchase of food).

G. Report monthly to the Agency on forms provided by the Agency and submit such other reports deemed necessary by the agency.

   a) Submit timely and accurate consumer/client tracking service documents (rosters and transmittals) as required by the AAA by the close of business on the fifth (5th) workday of each month following the last day of the month in which services were provided. If the fifth (5th) falls on a weekend or AAA holiday, the information will be delivered, recorded or submitted by close of business on the next business day.

H. Submit monthly expenditure reports and supporting backup documentation (receipts or invoices) by the fifth (5th) workday of each month following the last day of the month in which services were provided. If the fifth (5th) falls on a weekend or AAA holiday, the information will be delivered, recorded or submitted by close of business on the next business day. Supporting documents must include:

   a. The vendor's name, address and contact information.
   b. Internal transaction number
   c. The purchased items with a description of each product along with the corresponding quantity.
   d. The price for each item and any applicable discount given and the total amount of the sale items.
   e. NSIP items must be identified with an "N" or "NSIP" on the invoice.
   f. Senior center or meal site to which received the delivery, their full name, address, and contact information.

I. Maintain documented NSIP eligibility for all meals reported. Meal counts, as recorded in the service database, must be accurate, unduplicated and include no meals that do not meet the requirements for NSIP eligibility.

J. Maintain and retain for three (3) years from close of the federal fiscal year to which they pertain, complete and accurate records of all amounts received and disbursed under this Agreement.

K. Allow the Agency to monitor periodically the Subrecipient Contractor's fiscal accountability of NSIP.

L. Be subject to state and federal audit requirements, as the contract of which this scope of work is a part, is funded with federal funds. The Subrecipient Contractor is considered an independent contractor of NSIP federal financial assistance, subject to audit requirements under Title II Part 200 of the Code of Federal Regulations, formerly known as Office of Management and Budget, Circular A-133 and Government Audit Standards.

M. Ensure eligible consumers are assessed and information recorded in the service database.
N. Ensure efforts given to serving eligible persons with the greatest social or economic need, with particular attention to minority individuals with low incomes. Efforts must also be given to targeting individuals with Alzheimer's disease and related disorders, with severe disabilities or at-risk of institutionalization and their caregivers.
O. The Agency recommends these funds be expended prior to Title III-C funds.

2. **Compensation**
   A. The total amount payable under this Agreement shall not exceed **$228,728.69** for the purchase of foods produced in the United States, for use in senior nutrition programs. The Subrecipient Contractor is responsible for notifying the Agency when the services provided under this Agreement reach the total compensation amount. In no event will the Subrecipient Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.
   B. Assistance Listing Number: 93.053

3. **Gross Receipts Tax**
   Not applicable. Tax exempt.

4. **Term**
   This Agreement shall begin on July 1, 2022, and terminate on June 30, 2023, unless terminated pursuant to paragraph 5 or paragraph 6 or for any other reason allowed by law.

5. **Termination**
   A. This Agreement may be terminated by the Agency without cause upon written notice delivered to the Subrecipient Contractor at least thirty days (30) days prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred for performance prior to the date of termination. This Agreement may be terminated immediately upon written notice to the Subrecipient Contractor if the Subrecipient Contractor becomes unable to perform the services contracted for, as determined by the Agency, or if, during the term of this Agreement, the Subrecipient Contractor or any of its officers, employees or agents, is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations paragraph herein, or if the Subrecipient Contractor fails to comply with any of the terms contained herein or is in breach of this Agreement. This provision is not exclusive and does not waive the Agency's other legal rights and remedies caused by the Subrecipient Contractor's default or breach of this Agreement. This Agreement may also be terminated by the Subrecipient Contractor upon thirty (30) days written notice to the Agency.

B. Termination Management: Immediately upon receipt by either the Agency or the Subrecipient Contractor of notice of termination of this Agreement, the Subrecipient Contractor shall: 1) not incur any further obligations for services or any another expenditure of funds under this Agreement without written approval of the Agency; 2) comply with all directives issued by the Agency in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the Agency shall direct for the protection, preservation, retention or transfer of all property and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Subrecipient Contractor with contract funds shall become property of the Agency upon termination and shall be submitted to the Agency as soon as practicable.

6. Appropriations

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the U.S. Congress and/or Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made, the Agreement shall terminate upon written notice being given to the Subrecipient Contractor. The Agency's decisions as to whether sufficient appropriations are available shall be accepted by the Subrecipient Contractor and shall be final.

7. Status of Subrecipient Contractor

The Subrecipient Contractor and its agents and employees are independent subrecipient contractors performing services for the Agency and are not employees of the Agency. The Subrecipient Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of Agency vehicles, or any other benefits afforded to employees of the Agency as a result of this Agreement. The Subrecipient Contractor acknowledges that all sums received hereunder are reportable for income tax purposes.

8. Assignment

The Subrecipient Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Agency.

9. Subcontracting

The Subrecipient Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Agency. No such subcontract shall relieve the primary Subrecipient Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Agency.

10. Records and Audit

A. The Subrecipient Contractor shall maintain detailed records that indicate the date, time, nature, and cost of services rendered during the Agreement's term and effect and retain them

for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Agency, the Aging & Long-Term Services Department (ALTSD), the Department of Finance and Administration, and the State Auditor. The Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive, improper, or illegal payments.

B. The Subrecipient Contractor will provide a financial and compliance audit report to the Agency covering the period July 1, 2022, to June 30, 2023. The audit reports provided to the Agency must include a copy of the Auditor's management letter. The audit report shall be conducted by a certified public accountant in compliance with the Single Audit Act and shall encompass the following provisions.

a) The subrecipient contractor, expending equal to $750,000 but less than or equal to $250,000 in combined federal funds, shall have an audit conducted in accordance with the Code of Federal Regulations, Title 2, Subtitle A, Chapter II, Part 200. The audit report shall include a schedule of administrative and program expenses for each separate title or program (Title IIIB, Title IIIC-1, Title IIIC-2, Title IIID, Title IIIE, NSIP, etc.) which facilitates a reconciliation of audited costs to the final report.

b) Submittal of the audit report for governmental entities shall be within ten (10) working days after release by the New Mexico State Auditor's Office. For non-governmental entities, the audit report is due four (4) months after the end of the entity's fiscal year.

11. Release

Final payment of the amounts due under this Agreement shall operate as a release of the Agency, its officers and employees, and the State of New Mexico from all liabilities, claims, and obligations whatsoever arising from or under this Agreement.

12. Product of Service -- Copyright

All materials developed or acquired by the Subrecipient Contractor under this Agreement shall become the property of the Agency and shall be delivered to the Agency no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Subrecipient Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Subrecipient Contractor.

13. Conflict of Interest

The Subrecipient Contractor warrants that it presently has no interest and shall not acquire any interest direct or indirect, which would conflict in any manner or degree with the performance or services required under this Agreement.

14. Equal Opportunity Compliance

The Subrecipient Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Subrecipient Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation, or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Subrecipient Contractor is found not to be in compliance with these requirements during the life of this Agreement, Subrecipient Contractor agrees to take appropriate steps to correct these deficiencies.

15. Confidentiality

Any confidential information provided to or developed by the Subrecipient Contractor in performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Subrecipient Contractor without the prior written approval of the Agency.

Disclosure of confidential information shall only be made in accordance with the Inspection of Public Records Act or the applicable state or federal law or regulations.

16. Amendment

This Agreement shall not be altered, changed, or amended except by instrument in writing executed by the parties hereto.

17. Merger

This Agreement incorporates all the Agreements, covenants and understandings between the Parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

18. Penalties for Violation of Law

The Procurement Code, Sections 13-1-28 through 13-1-199, N.M.S.A. 1978, imposes civil and criminal penalties for is violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities, and kickbacks.

19. Applicable Laws

This Agreement shall be governed by the laws and regulations of the (a) State of New Mexico (b) Older Americans Act of 1965, as amended, (c) the Agricultural Act of 1949 as amended; and (d) any other applicable laws and regulation of the federal government.

20. Invalid Term or Condition

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

21. Enforcement of Agreement

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

22. Notices

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the Agency:
NCNMEDD – Non-Metro AAA
Attention: Neil Segotta, AAA Director
3900 Paseo del Sol
Santa Fe, New Mexico 87507

To the Subrecipient Contractor:

Amy Johnson-Bassford or Sonia Saldana

Grants Manager Senior Programs Administrator

700 N. Main St.

Las Cruces, NM 88001

23. Indemnification

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitation of the New Mexico Tort Claims Act.

24. Authority

The Individual(s) signing this Agreement on behalf of the Subrecipient Contractor represents and warrants that he or she has the power and authority to bind Subrecipient Contractor, and that no further action, resolution, or approval from Subrecipient Contractor is necessary to enter into a binding contract.

25. Signatures:

For the faithful performance of the terms of this agreement, the parties affix their signatures and bind themselves effective July 1, 2022.

City of Las Cruces	NCNMEDD Non-Metro Area Agency on Aging
Legal Name of Subrecipient Contractor	Name of Area Agency on Aging
Signature	Monica Abeita Signature
Ifo Pili, City Manager	Monica Abeita, Executive Director
Printed/Typed Name of Signatory	Printed/Typed Name of Signatory
Date	07/01/2022 Date

NEW MEXICO AREA AGENCY ON Aging NON-METRO

Commitment of Local Funds

My name is Ifo Pili and I have the authority to represent the City/County of City of Las Cruces as it relates to the contents of this document.

For Fiscal Year 2022-2023 we are committed to contribute a total of:

$ 684,545 to the City of Las Cruces Senior Citizens Program.

This contribution is *not* an in-kind resource.

If for any reason this commitment is not able to be met by the City/County of:

City of Las Cruces. We will submit a letter of justification.

Ifo Pili	City Manager
Print Name	Print Title
Signature	1/12/22
	Date

23-027

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

City Council Action and Executive Summary

District:	**☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A**		
1st Reading:		**Adopted:**	September 6, 2022
Drafter:	Chris Faivre	**Department:**	Economic Development
Program:	Destination Downtown	**Line of Business:**	Economic Development

Title: **A RESOLUTION ADOPTING FUNDING PRIORITIES AND ALLOCATIONS TO VARIOUS LAS CRUCES NON-PROFIT ORGANIZATIONS FOR THE CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS ESTABLISHED BY THE AMERICAN RESCUE PLAN ACT (ARPA).**

TYPE OF ACTION: **☒ Administrative** **☐ Legislative** **☐ Quasi-Judicial**

PURPOSE(S) OF ACTION:
Award Funds

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
The City of Las Cruces (City), as a recipient of American Rescue Plan Act (ARPA)/Coronavirus (COVID-19) State and Local Fiscal Recovery Funds (SLFRF) from the U.S. Department of Treasury (Treasury), implemented a Request for Proposals (RFP) process from the distribution of funds for Community and Economic Development Initiatives. These resources are made available to the City to respond to the COVID-19 public health emergency and/or its negative economic impacts.

Treasury has charged the City with ensuring projects respond to the COVID-19 public health emergency and meet urgent community needs. Treasury recommends a swift and effective implementation process that balances facilitating simple and rapid program access widely across the community and maintaining a robust documentation and compliance regime. The City must ensure proper documentation supporting determinations of costs and applicable compliance requirements, satisfactory award management, internal control, and subrecipient oversight and management.

On February 22, 2022, the ARPA RFP process was tabled indefinitely by the Las Cruces City Council. In an effort to abide by the guidelines set forth by the Treasury, a new ARPA Eligibility and Evaluation Guide has been created to move the 21 applicants forward through the process, and fund them based on the criteria established in that process.

The proposed eligibility process was presented at the April 11, 2022, City Council Work Session, and on May 2, 2022, City Council approved Resolution No. 22-035 thereby adopting the ARPA Eligibility Process and Guide.

The City received 21 proposals requesting approximately $26.3 million dollars in funding for various projects. All applications were reviewed for submittal requirements as outlined in the Final Rule, and the Compliance and Reporting Guidance. After the eligibility review, 11 eligible applications were presented to the ARPA Scoring Committee on May 31, 2022 and of the 11, 10 were recommended for funding.

The ARPA Scoring Committee met on July 21, 2022, and recommended the following projects for funding.

Mesilla Valley Community of Hope; Housing Risk Mitigation Funds	$300,000.00
Community Foundation of Southern NM/Bitwise; Equip Las Cruces	$1,000,000.00
Community Action Agency of SNM; Guaranteed Basic Income Project	$1,700,000.00
Jardin de los Niños; Flourishing Families Infant Mental Health Program	$ 350,000.00
Catholic Charities of Southern New Mexico; COVID-19 Recovery Fund	$550,000.00
New Mexico Housing & Community Development Corp; Peachtree Affordable Housing Project	$2,000,000.00
Boys & Girls Club of Las Cruces; BGCLC New Facility	$1,388,800.00
Cruces Creatives; Economic and Educational Recovery	$1,000,000.00
Mesilla Valley Public Housing Authority; Oak Street Veterans Affordable Housing Project	$305,853.00
Liftfund Revitalize Las Cruces Small Businesses	$1,000,000.00

City Council has the final approval authority on the use of funds. Once approved, the City will proceed with contract negotiations.

Additional resolutions will be required to approve individual performance-based contracts.

SUPPORT INFORMATION:

Exhibit A ARPA Scoring Recommendations
ATTACHMENT "A" ARPA Committees
ATTACHMENT "B" Eligibility and Evaluation Guide
ATTACHMENT "C" Eligibility Requirements
ATTACHMENT "D" ALL Project Summaries
ATTACHMENT "E" MVCH Housing Risk Mitigation Funds
ATTACHMENT "F" Community Foundation of Southern NMBitwise; Equip Las Cruces
ATTACHMENT "G" Community Action Agency of S NM Guaranteed Basic Income Project
ATTACHMENT "H" Jardin de los Niños Flourishing Families Infant Mental Health Program
ATTACHMENT "I" Catholic Charities of Southern New Mexico; COVID-19 Recovery Fund
ATTACHMENT "J" NMHCDC;Peachtree Affordable Housing
ATTACHMENT "K" Boys & Girls Club of Las Cruces, BGCLC New Facility
ATTACHMENT "L" MVPHA Oak Street Apartments Rehabilitation
ATTACHMENT "M" Liftfund Revitalize Las Cruces
ATTACHMENT "N" CrucesCreatives
ATTACHMENT "O" Cruces-Creatives_UPDATED_Budget_Information
ATTACHMENT "P" TDS CROSSTOWN FLATS (Not recommended)
ATTACHMENT "Q" SLFRF-Compliance-and-Reporting-Guidance
ATTACHMENT "R" SLFRF-Final-Rule
ATTACHMENT "S" SLFRF-Final-Rule-Overview

PLAN(S):

City Council Strategic Plan, 2021-2025 Consolidated Plan, Elevate Las Cruces

COMMITTEE/BOARD REVIEW:

None

ANNUAL BUDGET APPROVAL:

☐ Yes
☐ No

☒ N/A

Does this action amend the Capital Improvement Plan (CIP)?

☐ Yes

☐ No

☒ N/A

Does this action align with Elevate Las Cruces?

☒ Yes

☐ No

☐ N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution. Such action would adopt the ARPA funding recommendations.
2. Vote "No"; this will not approved the Resolution and not adopt the ARPA funding recommendations.
3. Vote to "Amend"; this would modify the Resolution based on City Council's discretion and then vote "Yes" on the amended Resolution.
4. Vote to "Table"; this would postpone the Resolution and the City Council would need to provide direction to staff.

REFERENCE INFORMATION:

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachment or exhibits.

1. Resolution No. 22-035

RESOLUTION 23-027

A RESOLUTION ADOPTING FUNDING PRIORITIES AND ALLOCATIONS TO VARIOUS LAS CRUCES NON-PROFIT ORGANIZATIONS FOR THE CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS ESTABLISHED BY THE AMERICAN RESCUE PLAN ACT (ARPA).

The City Council is informed that:

WHEREAS, the City of Las Cruces (City), as a recipient of American Rescue Plan Act (ARPA)/Coronavirus (COVID-19) State and Local Fiscal Recovery Funds (SLFRF) from the U.S. Department of Treasury (Treasury), implemented a Request for Proposals (RFP) process for the distribution of funds for Community and Economic Development Initiatives; and

WHEREAS, these resources are made available to the City to respond to the COVID-19 public health emergency and/or its negative economic impacts; and

WHEREAS, on February 22, 2022, the ARPA RFP process was tabled indefinitely by the Las Cruces City Council; and

WHEREAS, in an effort to abide by the guidelines set forth by the Treasury, a new ARPA Eligibility and Evaluation Guide has been created to move the twenty-one (21) applicants forward through the process, and fund them based on the criteria established in that process; and

WHEREAS, on May 2, 2022, City Council approved Resolution No. 22-035 thereby adopting the ARPA Eligibility Process and Guide; and

WHEREAS, on July 21, 2022, ARPA Scoring Committee met to recommend responsive applications to City Council.

NOW, THEREFORE, Be it Resolved by the Governing Body of the City of Las Cruces:

(I)

THAT Mesilla Valley Community of Hope; Housing Risk Mitigation Funds be awarded $300,000 as shown in Exhibit "A", attached hereto and made part of this Resolution, is hereby adopted.

(II)

THAT Community Foundation of Southern NM/Bitwise; Equip Las Cruces be awarded $1,000,000 as shown in Exhibit "A", attached hereto and made part of this Resolution, is hereby adopted.

(III)

THAT Community Action Agency of SNM; Guaranteed Basic Income Project be awarded $1,700,000 as shown in Exhibit "A", attached hereto and made part of this Resolution, is hereby adopted.

(IV)

THAT Jardin de los Niños; Flourishing Families Infant Mental Health Program be awarded $350,000 as shown in Exhibit "A", attached hereto and made part of this Resolution, is hereby adopted.

(V)

THAT Catholic Charities of Southern New Mexico; COVID-19 Recovery Fund be awarded $550,000 as shown in Exhibit "A", attached hereto and made part of this Resolution, is hereby adopted.

(VI)

THAT New Mexico Housing & Community Development Corp; Peachtree Affordable Housing Project be awarded $2,000,000 as shown in Exhibit "A", attached hereto and made part of this Resolution, is hereby adopted.

(VII)

THAT Boys & Girls Club of Las Cruces; BGCLC New Facility be awarded $1,388,800 as shown in Exhibit "A", attached hereto and made part of this Resolution, is hereby adopted.

(VIII)

THAT Cruces Creatives; Economic and Educational Recovery be awarded $1,000,000 as shown in Exhibit "A", attached hereto and made part of this Resolution, is hereby adopted.

(IX)

THAT Oak Street Apartments Rehabilitation be awarded $305,853 as shown in Exhibit "A", attached hereto and made part of this Resolution, is hereby adopted.

(X)

THAT Liftfund be awarded $1,000,000 as shown in Exhibit "A", attached hereto and made part of this Resolution, is hereby adopted.

(XI)

THAT City staff is hereby authorized to do all deeds necessary in accomplishment of the herein above.

DONE AND APPROVED this day of

APPROVED

_____
Mayor

ATTEST:

_____
City Clerk

Moved by:

Seconded by:

AYES

NAYS

Org/proj	Amount Requested	Recommendations #1	
MVCH Housing Risk Mitigation Funds	$ 300,000.00	$ 300,000.00	better utilization of vouchers and housing vulnerable populations
Community Action Agency of S NM Guaranteed Basic Income Project	$ 1,700,000.00	$ 1,700,000.00	new pilot, address poverty goals
New Mexico Housing & Community Development Corporation; Peachtree	$ 2,000,000.00	$ 2,000,000.00	Needed project activity
Jardin de los Niños: Flourishing Families Infant Mental Health Program	$ 350,000.00	$ 350,000.00	early internvetion address needs of kids most impacted covid
Boys & Girls Club of Las Cruces Capital Campaign	$ 1,388,000.00	$ 1,388,800.00	serves low income kids needed services
Cruces Creatives	$ 1,601,789.35	$ 1,000,000.00	Partial for learning loss obj
Community Foundation of Southern NM/Bitwise; Equip Las Cruces	$ 2,000,000.00	$ 1,000,000.00	Low Match, High misc costs,
Tierra de Sol: Crosstown Flats	$ 2,000,000.00	$ -	Project contingent on competative funding not feasible
LiftFund; Revitalize Las Cruces Small Businesses	$ 2,000,000.00	$ 1,000,000.00	Proposed choices to city, unclear, duplication, no propsed eligbility criteria; option 2 only 1 mil
Catholic Charities of Southern New Mexico; COVID-19 Recovery Fund	$ 550,000.00	$ 550,000.00	Direct financial assitance for COVID recovery; Vacination pieces seem to be no longer needed.
Mesilla Valley Public Housing Authority: Oak Street Apartments Rehabilitation	$ 305,853.00	$ 305,853.00	Poorly written application but results are benfecial and addresses housing crisis
	$ 14,593,853.00	$ 9,594,653.00	
		$ 405,347.00	

ARPA Eligibility Committee

- Barbara de Leon, Chief Administrative Officer
- David Sedillo, Public Works Director
- Katherine Harrison-Rogers, Community Development Senior Planner

ARPA Scoring Committee

- Ifo Pili, City Manager
- Eric Enriquez, Assistance City Manager
- Alfredo Pacheco, Deputy Finance Director
- Irene Parra, Business Development Administrator
- Tony Trevino, Deputy Director of Public Works
- Amber Vaughn, Senior Management Analyst

Eligibility and Evaluation Guide

Overview of Applicants

Background

On September 7, 2021, the Las Cruces City Council approved a submission process for projects to be submitted related to the American Rescue Plan Act (ARPA). The submission process for projects was advertised for a month and the City received twenty-one (21) applications. The applications were then evaluated based on the criteria set in the initial process, and a funding recommendation was taken back to the Las Cruces City Council. On February 22, 2022, they tabled the process indefinitely and asked for a new process to be established to evaluate the applicants.

Requirements for Eligibility and Evaluation

The process to select eligible sub-recipients for ARPA federal funding has been modified by the City Manager from a procurement process, governed by the City's Procurement Code, to a grant application process, governed by the guidelines set forth herein. The previous selection process was cancelled by the City Manager on February 17, 2022, but the original applications submitted will be used moving forward because, while we are modifying the process, the intent stays the same.

Moving forward, the original twenty-one (21) sub-recipients are 501c organizations and will go through the following eligibility and evaluation. Those sub-recipients are:

1. Boys & Girls Club of Las Cruces Capital Campaign
2. Catholic Charities of Southern New Mexico; COVID-19 Recovery Fund
3. Community Action Agency of Southern New Mexico Guaranteed Basic Income Project
4. Community Foundation of Southern New Mexico/Bitwise; Equip Las Cruces
5. Community Options, Inc. Daily Plan It
6. Crosstown Flats
7. Desert Community Wellness; Cultivating Community Wellness
8. Downtown Las Cruces Partnership; Incubator
9. El Calvario United Methodist Church, Casitas del Calvario
10. Economic and Educational Recovery and Renewal via a Community Makerspace
11. Families & Youth, Inc
12. Jardin de los Ninos: Flourishing Families Infant Mental Health Program
13. La Casa, Inc. – Facilitating Access to Health, Social Services and Housing
14. LiftFund; Revitalize Las Cruces Small Businesses
15. Mesilla Valley Habitat for Humanity: "Empower, a Community Collaboration"
16. MVCH Housing Risk Mitigation Funds

17. Ngage New Mexico
18. NMHCDC; Peachtree
19. Oakstreet Apartments Rehabilitation
20. Outdoor Recreation

The funding application established in the initial submission process will be the same application used for eligibility and evaluation. The requirements that will be part of the evaluation for this round are:

Requirement #1: Meet the established ARPA eligibility expenditure category criteria; and be used to respond to the public health emergency or its negative economic impacts.

Requirement #2: Applicants must have the organizational capacity to carry out their proposed activities and meet the record keeping and reporting requirements of the City of Las Cruces.

As stated in 2 CFR 200.206, demonstration of organizational capacity includes:

(1) A copy of the agency's most recent audit or financial statement (preferably within the past six months);
(2) Ability to operate on a reimbursement basis for at least two months, if necessary; and
(3) Must already have an established exemption status and must be able to provide a copy of their most current 501c designation from the Internal Revenue Service

Requirement #3: Provide documented services to residents who live within the City Limits.

Requirement #4: Under City regulations, certain requirements must be met in order to negotiate an agreement and disburse funds. Contractor recipients will be required to obtain adequate insurance covering worker's compensation, bodily injury, property damage, or automobile liability, depending on the nature of the project.

Applicants will be responsible for obtaining any necessary licenses. Applicants will be sub-recipients of a federal grant and are required to comply with all applicable federal, state, and municipal laws, codes and regulations, as well as federal procurement and recordkeeping regulations. Applicants must be able to appropriately implement 2 CFR 200 for the approved project and their agency.

Requirement #5: Projects must be completed by December 31, 2024. Project competition date will be reviewed and finalize with subrecipients during contract phase of process.

Eligibility

Process Overview

The process will begin with Eligibility Committee training between May 1-6. After training, while the committee is reviewing materials important to the ARPA process, the ARPA Program Administrators overseeing the process (Economic Development Department Director Elizabeth Teeters, and Destination Downtown Business Administrator Chris Faivre), will return to City Council on May 2 for formal adoption of the updated process. Following Council approval, the updated process will be forwarded to all twenty-one (21) sub-recipients who applied in 2021.

A virtual meeting will be held on May 5 and 6 to explain the new process to the applicants and to answer questions.

All twenty-one (21) applications will be forwarded to the Evaluation Committee on May 9, and they will have until May 20 to review and evaluate the applications.

Any sub-recipients whose applications were deemed ineligible will have an opportunity to meet with the ARPA Program Administrators on May 23-24 to discuss their application and evaluate the opportunities to make adjustments. A formal appeal document will be provided to the applicant, and they will have until May 27 to return with any necessary documentation. Any new documentation will be turned over to the Evaluation Committee for reconsideration. Sub-recipients will only be given one opportunity to appeal. The committee will review any appeals between May 31-June 3. All eligible applications will be turned over to the Scoring Committee.

Committee Members

The Evaluation Committee is comprised of:

Barbara de Leon, Chief Administrative Officer
David Sedillo, Public Works Director
Katherine Harrison-Rogers, Community Development Senior Planner

The Evaluation Committee's involvement in the process with begin with a training program that will familiarize the committee with all aspects of the evaluation process. It will include an explanation of the various elements of the Final Rule, as well as an explanation of the ARPA Eligibility Requirements and Eligibility Process that will guide them in the review of each area of their evaluation.

The Evaluation Committee will begin their individual evaluations on May 9, and will have until May 20 to complete. Evaluations will be done independently, and after all committee members have done initial scoring, they will meet as a group and discuss the status of all sub-recipients. Throughout the process, the committee will have the opportunity to meet with ARPA Program Administrators and CLC staff

familiar with ARPA and federal grant procedure to ask any questions they may have. In order for an application to be deemed eligible, it must be a unanimous decision by the committee. Any application receiving less than the full support of the committee will not be eligible for funding.

Application Eligibility

Each application will be evaluated for eligibility based on the following criteria: capital expenditure, categories, and compliance and reporting. A complete breakdown can be found in Attachment A, “ARPA Eligibility Requirements”. In addition, Attachment B, “Eligibility Process” is a spreadsheet the Eligibility Committee will use to document each application as they are being reviewed.

Appeal Process

Any sub-recipient whose applications were deemed ineligible will have an opportunity to meet with the ARPA Program Administrators on May 23-24 to discuss their application. Applications may not be amended, but sub-recipients will be afforded an opportunity to provide any necessary documentation that they believe will make their project eligible. A formal appeal document will be provided to the sub-recipient (see Attachment C), and they will have until May 27 to return with any necessary documentation required to demonstrate eligibility. Any new documentation will be turned over to the Evaluation Committee for reconsideration. Sub-recipients will only be given one opportunity to appeal and amend their application. The committee will review any appeals between May 31-June 3.

Internal Audit – Eligibility

After application eligibility has been determined for all sub-recipients, all applications – both approved and denied - along with the necessary documentation from the evaluation process, will be submitted to Internal Audit for review. Internal Audit will be tasked with reviewing the process outlined in this guide to determine whether or not it was followed. Audit will have from May 23-June 17 to conduct an audit of the evaluation process.

Fast Track Process

At the end of the initial selection process, it was recommended that nine (9) of the sub-recipients be funded. If, after the eligibility and internal audit processes are complete, it is determined that the same nine (9) sub-recipients are eligible, the process will be fast tracked. By being fast tracked, the next step will be funding recommendations instead of proceeding to scoring. Funding recommendations will be determined by the Scoring Committee. Funding recommendations from the initial selection process will not be factored into the Fast Track Process. Recommendations will be based on the amounts requested in the applications.

The funding mechanism in place will be the same as outlined below. See **Funding Recommendation** section for funding procedure and details.

Scoring Process

If the eligibility and internal audit processes find that more than the original nine (9) sub-recipients who were recommended for funding last time are eligible, those applications deemed eligible will go to the Scoring Committee. The Scoring Committee is comprised of the following six (6) members:

Eric Enriquez, Assistance City Manager
Alfredo Pacheco, Deputy Finance Director
Irene Parra, Business Development Administrator
Ifo Pili, City Manager,
Tony Trevino, Deputy Director of Public Works
Amber Vaughn, Senior Management Analyst

The Scoring Committee will use the Scoring Matrix attached in Attachment D to do the scoring. The Scoring Committee will begin their individual evaluations on June 1 and will have until July 1 to complete. Evaluations will be done independently, but the committee will have an opportunity to meet with ARPA Program Administrators CLC staff familiar with ARPA and federal grant procedure to ask any questions they may have.

Funding Recommendation

During the week of July 4-8, the Scoring Committee will meet to review scores and make a funding recommendation. No sub-recipient will receive more than the amount they requested in their application. Applications that do not meet a minimum scoring threshold will not be eligible for funding. Threshold will be determined by the scoring committee after all applications have been scored and a minimum baseline can be determined. Regardless of the number of total applications recommended for funding, all applications deemed eligible for funding will be forwarded to the scoring committee. All ineligible costs will be removed from the total requested, as appropriate, and no sub-recipient will receive more than that adjusted total.

Internal Audit – Final Review

After all application deemed eligible have been reviewed and scored, they will again be submitted to Internal Audit for one last audit of the process. Audit will have from July 11-August 5 to conduct a final audit of the process and recommendations.

Approval of Recommended Applicants

Once Internal Audit has signed off on the process and the Scoring Committee is in agreement on funding, a resolution will be taken to the Las Cruces City Council to approve the recommended sub-recipients at the agreed upon amounts. That resolution is estimated to be voted on at the August 15 City Council meeting.

ARPA Eligibility Requirements

BACKGROUND

Applicants may use the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) to support the COVID-19 public health and economic response by addressing COVID-19 and its impact on public health as well as addressing economic harms to households, small businesses, nonprofits, impacted industries, and the public sector.

The eligible use categories to respond to public health and negative economic impacts are organized around the types of assistance a recipient may provide and include several subcategories. One of the following categories needs to be addressed in an application in order to be eligible for funds: Assistance to households, assistance to nonprofits, assistance to small businesses, or impacted industry. Projects need to be designed to respond to the impact. Responses should be related and reasonably proportional to the harm identified and reasonable designed to benefit those impacted.

To identify eligible uses of funds in a category, applicants should:

1. Identify a COVID-19 public health or economic impact on an individual or class
    a. **Directly impacted** classes experienced the general, broad-based impacts of the pandemic. Quantify the impacts.
    OR
    b. **Disproportionately impacted** classes faced meaningfully more severe impacts, often due to preexisting disparities. Quantify the impacts.
2. Design a project that responds to the impact. Responses should be related and reasonably proportional to the harm identified and reasonably designed to benefit those impacted.

STEP ONE

Capital Expenditures

If there are no capital expenditures in the application, **GO TO STEP TWO.**

If there are capital expenditures, do they fit into one of the eligible criteria?

a. Yes – FITS into one of the eligibility criteria – GO TO STEP TWO
b. No – Does NOT fit into one of the eligibility criteria – PROPOSED CAPITAL EXENDITURES ARE INELIGIBLE. MOVE ON TO STEP TWO.

Eligible Criteria

- COVID-19 testing sites and laboratories, and acquisition of related equipment
- COVID-19 vaccination sites

- Medical facilities generally dedicated to COVID-19 treatment and mitigation (e.g., emergency rooms, intensive care units, telemedicine capabilities for COVID-19 related treatment)
- Temporary medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs
- Acquisition of equipment for COVID-19 prevention and treatment, including ventilators, ambulances, and other medical or emergency services equipment
- Emergency operations centers and acquisition of emergency response equipment (e.g., emergency response radio systems)
- Installation and improvement of ventilation systems in congregate settings, health facilities, or other public facilities
- Public health data systems, including technology infrastructure
- Adaptations to congregate living facilities, including skilled nursing facilities, other long-term care facilities, incarceration settings, homeless shelters, residential foster care facilities, residential behavioral health treatment, and other group living facilities, as well as public facilities and schools (excluding construction of new facilities for the purpose of mitigating spread of COVID-19 in the facility)
- Mitigation measures in small businesses, nonprofits, and impacted industries (e.g., developing outdoor spaces)
- Behavioral health facilities and equipment (e.g., inpatient or outpatient mental health or substance use treatment facilities, crisis centers, diversion centers)
- Technology and equipment to allow law enforcement to efficiently and effectively respond to the rise in gun violence resulting from the pandemic
- Affordable housing, supportive housing, or recovery housing development
- Food banks and other facilities primarily dedicated to addressing food insecurity
- Transitional shelters (e.g., temporary residences for people experiencing homelessness)
- Devices and equipment that assist households in accessing the internet (e.g., tablets, computers, or routers)
- Childcare, daycare, and early learning facilities
- Job and workforce training centers
- Improvements to existing facilities to remediate lead contaminants (e.g., removal of lead paint)
- Medical equipment and facilities designed to address disparities in public health outcomes (includes primary care clinics, hospitals, or integrations of health services into other settings)

- Parks, green spaces, recreational facilities, sidewalks, pedestrian safety features like crosswalks, streetlights, neighborhood cleanup, and other projects to revitalize public spaces
- Rehabilitations, renovation, remediation, cleanup, or conversions of vacant or abandoned properties
- Schools and other educational facilities or equipment to address educational disparities
- Technology and tools to effectively develop, execute, and evaluate government programs
- Technology infrastructure to adapt government operations to the pandemic (e.g., video-conferencing software, improvements to case management systems or data sharing resources), reduce government backlogs, or meet increased maintenance needs
- Other (please specify)

STEP TWO

Category: Assistance to Households

For each question, please supply a justification as to why the project is or is not eligible.

1. **Does this project directly impact households and communities?**
    a. **Yes – Fits into one of the eligibility criteria - GO TO #2**
    b. **No – Does NOT fit into one of the eligibility criteria - GO TO #3**

    Eligibility Criteria

    - Low- or -moderate income households or communities
        - *Low-or-moderate-income household and communities are those with (i) income at or below 300 percent of the Federal Poverty Guidelines for the size of the household based on the most recently published poverty guidelines or (ii) income or at or below 65 percent of the area median income for the county and size of household based on the most recently published data.*
    - Households that experienced unemployment
    - Households that experienced increased food or housing insecurity
    - Households that qualify for the Children's Health Insurance Program, Childcare Subsidies through Child Care Development Fund (CCDF) Program, or Medicaid
    - *When providing affordable housing programs*: households that qualify for the National Housing Trust Fund and Home Investment Partnerships Program

- *When providing services to address lost instructional time in K-12 schools*: any student that lost access to in-person instruction for a significant period of time.

2. **Can this project be recognized as one of the projects eligible to respond to impacts of the pandemic on households and communities?**
   a. **Yes – Fits into one of the following eligibility criteria – <u>ELIGIBLE. GO TO STEP THREE</u>**
   b. **No – Does NOT fit into one of the eligibility criteria – <u>GO TO #3</u>**

   Eligibility Criteria

   - Food assistance & food banks
   - Emergency housing assistance: rental assistance, mortgage assistance, utility assistance, assistance paying delinquent property taxes, counseling and legal aid to prevent eviction and homelessness & emergency programs or services for homeless individuals, including temporary residences for people experiencing homelessness
   - Health insurance coverage expansion
   - Benefits for surviving family members of individuals who have died from COVID-19
   - Assistance to individuals who want and are available for work, including job training, public jobs programs and fairs, support for childcare and transportation to and from a jobsite or interview, incentives for newly-employed workers, subsidized employment, grants to hire underserved individuals to start small businesses & development of job and workforce training centers
   - Financial services for the unbanked and underbanked
   - Burials, home repair & home weatherization
   - Programs, devices & equipment for internet access and digital literacy, including subsidies for costs of access
   - Cash assistance
   - Paid sick, medical and family leave programs
   - Assistance in accessing and applying for public benefits or services
   - Childcare and early learning services, home visiting programs, services for child welfare-involved families and foster youth & childcare facilities
   - Assistance to address the impact of learning loss for K-12 students (e.g., high-quality tutoring, differentiated instruction)
   - Programs or services to support long-term housing security: including but not limited to development of affordable housing and permanent supportive housing
   - Certain contributions to an Unemployment Insurance Trust Fund

3. **Does this project assist disproportionately impacted households and communities?**
    a. **Yes – Fits into one of the eligibility criteria - <u>GO TO #4</u>**
    b. **No – Does NOT fit into one of the eligibility criteria – <u>INELIGIBLE. GO TO NEXT CATEGORY</u>**

    Eligibility Criteria

    - Low -income households and communities
        - *Low-or-moderate-income household and communities are those with (i) income at or below 185 percent of the Federal Poverty Guidelines for the size of the household based on the most recently published poverty guidelines or (ii) income or at or below 40 percent of the area median income for the county and size of household based on the most recently published data.*
    - Households residing in Qualified Census Tracts
    - Households that qualify for certain federal benefits
    - Households receiving services provided by Tribal governments
    - Households residing in the U.S. territories or receiving services from these governments

4. **Can this project be recognized as one of the projects eligible to respond to disproportionate impacts of the pandemic on households and communities?**
    a. **Yes – Fits into one of the eligibility criteria – <u>ELIGIBLE. GO TO STEP THREE</u>**
    b. **No – Does NOT fit into one of the eligibility criteria – <u>INELIGIBLE. GO TO NEXT CATEGORY</u>**

    Eligibility Criteria

    - Pay for community health workers to help households access health & social services
    - Remediation of lead paint or other lead hazards
    - Primary care clinics, hospitals, integration of health services into other settings, and other investments in medical equipment & facilities designed to address health disparities
    - Housing vouchers & assistance relocating to neighborhoods with higher economic opportunity
    - Investments in neighborhoods to promote improved health outcomes
    - Improvements to vacant and abandoned properties, including rehabilitation or maintenance, renovation, removal and remediation of

environmental contaminants, demolition or deconstruction, greening/vacant lot cleanup & conversion to affordable housing
- Services to address educational disparities, including assistance to high-poverty school districts & educational and evidence-based services to address student academic, social, emotional, and mental health needs
- Schools and other educational equipment and facilities

Category: Assistance to Nonprofits

For each question, please supply a justification as to why the project is or is not eligible.

1. **Does this project directly impact nonprofits?**
   a. **Yes – Fits into one of the eligibility criteria - GO TO #2**
   b. **No – Does NOT fit into one of the eligibility criteria - GO TO #3**

   Eligibility Criteria

   - Decreased revenue (e.g. form donations and fees)
   - Financial insecurity
   - Increased costs (e.g., uncompensated increases in service need)
   - Capacity to weather financial hardship
   - Challenges covering payroll, rent or mortgage, and other operating costs

2. **Can this project be recognized as one of the projects eligible to respond to impacts of the pandemic on nonprofits?**
   a. **Yes – Fits into one of the following eligibility criteria – ELIGIBLE. GO TO STEP THREE**
   b. **No – Does NOT fit into one of the eligibility criteria – GO TO #3**

   Eligibility Criteria

   - Loans or grants to mitigate financial hardship
   - Technical or in-kind assistance or other services that mitigate negative economic impacts of the pandemic

3. **Does this project assist disproportionately impact nonprofits?**
   a. **Yes – Fits into one of the eligibility criteria - GO TO #4**
   b. **No – Does NOT fit into one of the eligibility criteria – INELIGIBLE. GO TO NEXT CATEGORY**

   Eligibility Criteria

   - Nonprofits operating in Qualified Census Tracts

- Nonprofits operated by Tribal governments or on Tribal lands
- Nonprofits operating in the U.S. territories

4. **Can this project be recognized as one of the projects eligible to respond to disproportionate impacts of the pandemic on nonprofits?**
    a. **Yes – Fits into one of the eligibility criteria – ELIGIBLE. GO TO STEP THREE**
    b. **No – Does NOT fit into one of the eligibility criteria – INELIGIBLE. GO TO NEXT CATEGORY**

    Eligibility Criteria

    - Loans, grants, in-kind assistance, technical assistance or other services, that responds to the negative economic impacts of the COVID-19 public health emergency.

Category: Assistance to Small Businesses

For each question, please supply a justification as to why the project is or is not eligible.

1. **Does this project directly impact small businesses?**
    a. **Yes – Fits into one of the eligibility criteria - GO TO #2**
    b. **No – Does NOT fit into one of the eligibility criteria - GO TO #3**

    Eligibility Criteria

    - Decreased revenue or gross receipts
    - Financial insecurity
    - Increased costs
    - Capacity to weather financial hardship
    - Challenges covering payroll, rent or mortgage, and other cost

2. **Can this project be recognized as one of the projects eligible to respond to impacts of the pandemic on small businesses?**
    a. **Yes – Fits into one of the following eligibility criteria – ELIGIBLE. GO TO STEP THREE**
    b. **No – Does NOT fit into one of the eligibility criteria – GO TO #3**

    Eligibility Criteria

    - Loans or grants to mitigate financial hardship, such as by supporting payroll and benefits, costs to retain employees, and mortgage, rent, utility, and other operating costs
      Technical assistance, counseling, or other services to support business planning.

3. **Does this project assist disproportionately impact small businesses?**
    a. **Yes – Fits into one of the eligibility criteria - GO TO #4**
    b. **No – Does NOT fit into one of the eligibility criteria – INELIGIBLE**

    Eligibility Criteria

    - Small businesses operating in Qualified Census Tracts
    - Small businesses operated by Tribal governments or on Tribal lands
    - Small businesses operating in the U.S. territories

4. **Can this project be recognized as one of the projects eligible to respond to disproportionate impacts of the pandemic on nonprofits?**
    a. **Yes – Fits into one of the eligibility criteria – ELIGIBLE. GO TO STEP THREE**
    b. **No – Does NOT fit into one of the eligibility criteria - INELIGIBLE**

    Eligibility Criteria

    - Rehabilitation of commercial properties, storefront improvements and façade improvements
    - Technical assistance, business incubators & grants for start-up or expansion cost for small businesses
    - Support for microbusinesses, including financial, childcare, and transportation costs

Category: Impacted Industry

For each question, please supply a justification as to why the project is or is not eligible.

1. **Does this project assist a directly impacted industry?**
    a. **Yes – Fits into one of the eligibility criteria - GO TO #2**
    b. **No – Does NOT fit into one of the eligibility criteria - INELIGIBLE**

    Eligibility Criteria

    - If the industry is in the travel, tourism, or hospitality sectors, the industry is impacted
    - If the industry is outside the travel, tourism, or hospitality sectors, the industry is impacted if:
        - The industry experienced at least 8 percent employment loss from pre-pandemic levels, or
        - The industry is experiencing comparable or worse economic impacts as the national tourism, trave, and hospitality industries as of the date of the final rule, based on the totality of economic indicators or qualitative data (if quantitative data is unavailable)

and if the impacts were generally due to the Covid-19 public health emergency.

2. **Can this project be recognized as one of the projects eligible to respond to impacts of the pandemic on industry?**
    a. **Yes – Fits into one of the following eligibility criteria – <u>ELIGIBLE. GO TO STEP THREE</u>**
    b. **No – Does NOT fit into one of the eligibility criteria – <u>INELIGIBLE</u>**

    Eligibility Criteria

    - Aid to mitigate financial hardship, such as supporting payroll costs, lost pay and benefits for returning employees, support of operations and maintenance of existing equipment and facilities.
    - Technical assistance, counseling, or other services to support business planning
    - Covid-19 mitigation and infection prevention measures (see section Public Health)

The descriptions provided in this document summarize key provisions of the final rule but are non-exhaustive, do not describe all terms and conditions associated with the use of SLFRF, and do not describe all requirements that may apply to this funding. Any SLFRF funds received are also subject to the terms and conditions of the agreement entered into by Treasury and the respective jurisdiction, which incorporate the provisions of the final rule and the guidance that implements this program. Additionally, 2 CFR 200 applies to all sub-recipients selected for awards.

<u>STEP THREE</u>

<u>Compliance and Reporting</u>

Funding requested for each project must be evidence-based, so they must describe the goals of the project, and the evidence-based practice for the interventions funded by the project. Applicants must specifically identify the dollar amount of the total project spending that is allocated towards evidence-based interventions for each project in the Public Health (EC 1), Negative Economic Impacts (EC 2), and Public Heath-Negative Economic Impact: Public Sector Capacity (EC 3) Expenditure Categories. Applicants will be required to report on activities quarterly, based on dates set forth in the agreement between the sub-recipient.

1. For each amount requested, designate which Expenditure Category (EC) it fits under. Document why it fits and if it does not fit in any, why not.

Expenditure Category	EC[27]	Previous EC[28]
1: Public Health		
COVID-19 Mitigation & Prevention		
COVID-19 Vaccination^	1.1	1.1
COVID-19 Testing^	1.2	1.2
COVID-19 Contact Tracing^	1.3	1.3
Prevention in Congregate Settings (Nursing Homes, Prisons/Jails, Dense Work Sites, Schools, Child care facilities, etc.)*^	1.4	1.4
Personal Protective Equipment^	1.5	1.5
Medical Expenses (including Alternative Care Facilities)^	1.6	1.6
Other COVID-19 Public Health Expenses (including Communications, Enforcement, Isolation/Quarantine)^	1.7	1.8
COVID-19 Assistance to Small Businesses^	1.8	-
COVID 19 Assistance to Non-Profits^	1.9	-
COVID-19 Aid to Impacted Industries^	1.10	-
Community Violence Interventions		
Community Violence Interventions*^	1.11	3.16
Behavioral Health		
Mental Health Services*^	1.12	1.10
Substance Use Services*^	1.13	1.11
Other		
Other Public Health Services^	1.14	1.12
Capital Investments or Physical Plant Changes to Public Facilities that respond to the COVID-19 public health emergency	-	1.7
2: Negative Economic Impacts		
Assistance to Households		
Household Assistance: Food Programs*^	2.1	2.1
Household Assistance: Rent, Mortgage, and Utility Aid*^	2.2	2.2
Household Assistance: Cash Transfers*^	2.3	2.3

Expenditure Category	EC[27]	Previous EC[28]
Household Assistance: Internet Access Programs*^	2.4	2.4
Household Assistance: Paid Sick and Medical Leave^	2.5	-
Household Assistance: Health Insurance*^	2.6	-
Household Assistance: Services for Un/Unbanked*^	2.7	-
Household Assistance: Survivor's Benefits^	2.8	-
Unemployment Benefits or Cash Assistance to Unemployed Workers*^	2.9	2.6
Assistance to Unemployed or Underemployed Workers (e.g. job training, subsidized employment, employment supports or incentives)*^	2.10	2.7
Healthy Childhood Environments: Child Care*^	2.11	3.6
Healthy Childhood Environments: Home Visiting*^	2.12	3.7
Healthy Childhood Environments: Services to Foster Youth or Families Involved in Child Welfare System*^	2.13	3.8
Healthy Childhood Environments: Early Learning*^	2.14	3.1
Long-term Housing Security: Affordable Housing*^	2.15	3.10
Long-term Housing Security: Services for Unhoused Persons*^	2.16	3.11
Housing Support: Housing Vouchers and Relocation Assistance for Disproportionately Impacted Communities*^	2.17	-
Housing Support: Other Housing Assistance*^	2.18	3.12
Social Determinants of Health: Community Health Workers or Benefits Navigators*^	2.19	3.14
Social Determinants of Health: Lead Remediation*^	2.20	3.15
Medical Facilities for Disproportionately Impacted Communities^	2.21	-
Strong Healthy Communities: Neighborhood Features that Promote Health and Safety^	2.22	-
Strong Healthy Communities: Demolition and Rehabilitation of Properties^	2.23	-
Addressing Educational Disparities: Aid to High-Poverty Districts^	2.24	3.2
Addressing Educational Disparities: Academic, Social, and Emotional Services*^	2.25	3.3
Addressing Educational Disparities: Mental Health Services*^	2.26	3.4
Addressing Impacts of Lost Instructional Time^	2.27	-
Contributions to UI Trust Funds^	2.28	2.8
Assistance to Small Businesses		
Loans or Grants to Mitigate Financial Hardship^	2.29	2.9
Technical Assistance, Counseling, or Business Planning*^	2.30	
Rehabilitation of Commercial Properties or Other Improvements^	2.31	-
Business Incubators and Start-Up or Expansion Assistance*^	2.32	
Enhanced Support to Microbusinesses*^	2.33	
Assistance to Non-Profits		
Assistance to Impacted Nonprofit Organizations (Impacted or Disproportionately Impacted)^	2.34	2.10
Aid to Impacted Industries		
Aid to Tourism, Travel, or Hospitality^	2.35	2.11
Aid to Other Impacted Industries^	2.36	2.12
Other		
Economic Impact Assistance: Other*^	2.37	2.13
Household Assistance: Eviction Prevention*^	-	2.5
Education Assistance: Other*^	-	3.5
Healthy Childhood Environments: Other*^	-	3.9
Social Determinants of Health: Other*^	-	3.13

Expenditure Category	EC[27]	Previous EC[28]
3: Public Health-Negative Economic Impact: Public Sector Capacity		
General Provisions		
Public Sector Workforce: Payroll and Benefits for Public Health, Public Safety, or Human Services Workers	3.1	1.9
Public Sector Workforce: Rehiring Public Sector Staff	3.2	2.14
Public Sector Workforce: Other	3.3	-
Public Sector Capacity: Effective Service Delivery	3.4	7.2
Public Sector Capacity: Administrative Needs	3.5	-
4: Premium Pay		
Public Sector Employees	4.1	4.1
Private Sector: Grants to Other Employers	4.2	4.2
5: Infrastructure		
Water and Sewer		
Clean Water: Centralized Wastewater Treatment	5.1	5.1
Clean Water: Centralized Wastewater Collection and Conveyance	5.2	5.2
Clean Water: Decentralized Wastewater	5.3	5.3
Clean Water: Combined Sewer Overflows	5.4	5.4
Clean Water: Other Sewer Infrastructure	5.5	5.5
Clean Water: Stormwater	5.6	5.6
Clean Water: Energy Conservation	5.7	5.7
Clean Water: Water Conservation	5.8	5.8
Clean Water: Nonpoint Source	5.9	5.9
Drinking water: Treatment	5.10	5.10
Drinking water: Transmission & Distribution	5.11	5.11
Drinking water: Lead Remediation, including in Schools and Daycares	5.12	5.12
Drinking water: Source	5.13	5.13
Drinking water: Storage	5.14	5.14
Drinking water: Other water infrastructure	5.15	5.15
Water and Sewer: Private Wells	5.16	-
Water and Sewer: IIJA Bureau of Reclamation Match	5.17	-
Water and Sewer: Other	5.18	-
Broadband		
Broadband: "Last Mile" projects	5.19	5.16
Broadband: IIJA Match	5.20	-
Broadband: Other projects	5.21	5.17
6: Revenue Replacement		
Provision of Government Services	6.1	6.1
Non-federal Match for Other Federal Programs	6.2	-
7: Administrative		
Administrative Expenses	7.1	7.1
Transfers to Other Units of Government	7.2	7.3
Transfers to Non-entitlement Units (States and territories only)	-	7.4

2. Is it a Direct or Indirect Cost?
    a. Direct Cost – Direct costs are defined as allowable costs that relate to the implementation of the project. These costs can be identified specifically with a particular final cost objective, such as a Federal award, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy. Typical costs charged directly to a Federal award are the compensation of employees who work on that award, their related fringe benefit costs, the costs of materials and other items of expense incurred for the Federal award.
    b. Indirect Cost – Applicants requesting indirect costs must follow the requirement of 2 CFR 200 – Appendix IV for the calculation of such costs. For major non-profits organizations, indirect costs must be classified within two broad categories:

i. Facilities – Depreciation on buildings, equipment and capital improvement, interest on debt associated with certain buildings, equipment and capital improvements, and operations and maintenance expenses.
ii. Administration – General administration and general expenses such as the director's office, accounting, personnel and all other types of expenditures not listed specifically under one of the sub-categories of Facilities.

3. Are the costs reasonable and allocable?
    a. Reasonable costs – A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. In determining reasonableness of a given cost, consideration must be given to:
        i. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the non-Federal entity or the proper and efficient performance of the Federal award
        ii. The restraints or requirements imposed by such factors as: sound business practices; arm's-length bargaining; Federal, state, local, tribal, and other laws and regulations; and terms and conditions of the Federal award.
        iii. Market prices for comparable goods or services for the geographic area
        iv. Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the non-Federal entity, its employees, where applicable its students or membership, the public at large, and the Federal Government.
        v. Whether the non-Federal entity significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the Federal award's cost.
    b. Allocable costs – A cost is allocable to a particular Federal award or other cost objective if the goods or services involved are chargeable or assignable to the Federal award or cost objective in accordance with relative benefits received. The standard is met if the cost:
        i. Is incurred specifically for the Federal award;
        ii. Benefits both the Federal award and other work of the non-Federal entity and can be distributed in proportions that may be approximated using reasonable methods; and
        iii. Is necessary to the overall operation of the non-Federal entity and is assignable in part to the Federal award in accordance with the principles in this subpart.

Applications	Request	Status	PROJECT SUMMARY: As written by the Applicant.
Community Action Agency of S NM Guaranteed Basic Income Project	$1,700,000.00	Recommended for funding	The ultimate objective of the Las Cruces Family Prosperity (LCFP) Demonstration Project is to lift Las Crucens out of poverty through direct cash assistance. One hundred and fifty Las Cruces families who have been disproportionately affected by the pandemic will receive recurring monthly payments of $500 for 18 months. An additional 150 families will receive a total of $450 for their participation in the data collection as a comparison group. Thus, $1,440,000 of the request will go directly to 300 homes with an immediate economic impact on the local economy. LCFP will use the Qualified Census Tracts and Distressed Communities Index (DCI) to target extremely vulnerable areas within the city to ensure funds reach those who can use it most. Cash transfers are time-proven and effective methods to alleviate poverty. The earned income and child tax credits have reduced childhood poverty for decades. Families are empowered to make spending decisions based on family needs. Symptoms of poverty such as food insecurities, poor health outcomes, lack of job opportunities, and unsafe housing are reduced when incomes are increased. LCFP will become another tool in the fight against poverty in addition to resources local nonprofits provide. Although new to Las Cruces, LCFP is conducted in the context of numerous existing cash transfer or Guaranteed Basic Income (GBI) programs and demonstrations nationwide and worldwide. Programs are funded by a wide range of federal, local, state, and private sources, as is evident by the match funding for LCFP.
MVCH Housing Risk Mitigation Funds	$300,000.00	Recommended for increased funding	The purpose of the Housing Risk Mitigation Fund is to support the recruitment and retention of landlords to work with Mesilla Valley Community of Hope (MVCH), a homeless assistance provider, and house clients that may present challenges to remaining stably housed due to complicated rental histories, Fair Market Rent barriers, or other housing and voucher rental concerns. MVCH hopes the fund will help initiate and/or preserve strong partnerships between MVCH and the landlords in their community.
Families & Youth, Inc.	$1,771,102.00	Recommended for partial funding	Families & Youth, Inc. proposes a therapeutically supported recreation and leisure program that focuses on trauma responsive and resilience oriented recovery. COVID-19 has created a traumatic impact on our social, emotional, and mental health.

Applications	Request	Status	PROJECT SUMMARY: As written by the Applicant.
Downtown Las Cruces Partnership; Incubator	$1,764,040.00	Not recommended; ineligible	The Business Accelerator/Incubator Hybrid program is a custom model built to address the unique needs of emerging and newly established small business owners in Las Cruces. While many programs across the county offer one aspect of business assistance, we have not found a model that combines the educational component of an accelerator with the affordable access to commercial space of an incubator. The purpose of the program is to meet the needs of Las Cruceans to economically recover from COVID-19, develop future economic security, build wealth, and gain personal financial autonomy for themselves and their families. To achieve this goal, our tailor-built program combines the classroom learning opportunities of an accelerator with the available retail "lab" space of an incubator. Through the program, Downtown Las Cruces Partnership will offer a hands-on, personalized educational program that will assist clients in establishing the fundamentals of their business such as obtaining an LLC, understanding basic accounting, application for a City business license, and writing and revising a business plan. Additionally, with partnerships with The Arrowhead Center and Cruces Creatives, the program will allow clients access to a wide range of community resources such as BizSprint courses and access to makerspace and kitchen incubation. At the forefront, the hybrid program creates an opportunity for residents of Las Cruces, especially those who are socially or economically disadvantaged, to fully participate in the labor force and attain wealth and for city-wide economic growth, building a stronger community through entrepreneurship, property development, infill utilization, and completing neighborhoods.
Jardin de los Niños: Flourishing Families Infant Mental Health Program	$350,000.00	Recommended for funding	Jardin's Flourishing Families Infant Mental Health Program serve as a preventative approach to addressing trauma from a holistic, strengths-based service delivery model. Jardin serves high risk families who experience generational poverty, trauma, domestic violence, food insecurity, and high mobility. Homeless children and families experience trauma and a greater likelihood that their basic needs, social/emotional and health needs will not be met. Through our service delivery model, children and families at Jardin will receive direct therapy service, social/emotional learning will be supported within the classroom setting, and the parents will be supported through a mentoring program that supports the whole family from a holistic, trauma informed approach.
Crosstown Flats	$2,000,000.00	Not Recommended	The Tierra Del Sol Housing Corporation proposes the construction of Crosstown Flats, a new seventy-two unit affordable apartment community to be located in the Royal Crossing PUD. Royal Crossing will be a master planned community incorporating mixed uses, incomes, and densities along with open green space. The individual units will have open floor plans around a central living area. Two and three bedroom apartment homes have living rooms and kitchens are sized to accommodate families with children. One bedroom units will be available for smaller households including seniors. Kitchens will have abundant cabinet and countertop space . Large windows are designed to admit natural light into all primary living spaces. Each unit will have a private patio or balcony. Nine foot high ceilings will provide thermal comfort for are circulation. Sustainable building will be incorporated into the overall design Crosstown Flats.
Oak Street Apartments Rehabilitation	$305,853.00	Recommended for funding	Oak Street Apartments is currently occupied, and the majority of tenenats are Veterans Assistance Supportive Housing (VASH) recipients. The original property has not been renovated and is in need of site repairs and unit updates. The goal of the project is to complete a moderate rehabilitation of the property, including but not limited to: Improving site accessibility; building with new paint; adding exterior lighting to improve site security; and, remodel kitchens and bathrooms.

Applications	Request	Status	PROJECT SUMMARY: As written by the Applicant.
LiftFund; Revitalize Las Cruces Small Businesses	$2,000,000.00	Not Recommended	LiftFund is providing 2 options for programs that have proved to be very successful in its deployment and to the small businesses who participated in them. Working together with the City of Las Cruces, LiftFund's intention is to provide a program that best suits the needs of the city and small businesses who are still fighting to overcome the challenges of the pandemic. Both options include opportunities for small business owners to access the capital they need as well as receive the technical assistance/business education they require to ensure the health and safety of their staff and their customers.
NMHCDC;Peachtree	$2,000,000.00	Recommended for funding	New Mexico Housing and Community Development Corporation proposes to build Peachtree Flats, a new construction of ninety-six unit affordable housing community located within the Metro Verde South Subdivision of Las Cruces, New Mexico. The size and scale of the development supports the project objective to increase the supply of affordable housing in Las Cruces to meet the critical low supply of affordable options within the community. Metro Verde South is a planned community incorporating mixed uses, mixed densities, and creation of a series of small-town centers amid residential development. The site is bounded by Peachtree Hills Road on the north. Two and Three bedroom units are sized to accommodate households with children, whose income is at or below 60%AMI. Buildings on the site are organized around the green open space of the interior “canyon”. This urban open space compliments the open unbounded space of the desert surrounding the site. This contrast between urban and natural allows for a rich set of experiences when moving through the site. The design of the project presages the oncoming urbanization of the surrounding area and attempts to fit within both the current natural setting and the forthcoming built environment of the city. The commons/community building contains space for management and laundry facilities. This structure marks the entry to the site and establishes the character of the community. A large roof floats lightly on a band of glass above enclosing walls. Sustainable building will be incorporated into the overall design of Peachtree Flats
Catholic Charities of Southern New Mexico; COVID-19 Recovery Fund	$550,000.00	Recommended for funding	Catholic Charities' COVID-19 Recovery Fund will provide direct financial assistance to the poor and less fortunate who have been negatively impacted by the coronavirus. Those Las Cruces individuals and families who meet program eligibility requirements will receive assistance for items such as rent, mortgage, utility, food, and medical care including mental health services and counseling. Using HUD income guide lines, the COVID-19 Recovery Fund will focus on assisting individuals and families who live at or below the federal poverty line.

Applications	Request	Status	PROJECT SUMMARY: As written by the Applicant.
Community Foundation of Southern NM/Bitwise; Equip Las Cruces	$2,000,000.00	Recommended for funding	The Community Foundation of Southern New Mexico (CFSNM), and BW Industries, Inc., ("Bitwise") will accelerate economic recovery and resilience for City of Las Cruces residents, small businesses, and nonprofits most severely impacted by the COVID-19 pandemic. This will be achieved through funding workforce training for in-demand tech careers. Workforce students will support increased citywide technology adoption by offering no-cost digital literacy services for residents, small businesses and nonprofit agencies. Digital literacy includes essential user support to allow newly connected residents and organizations to maximize use of the resources the internet provides. City residents who gain knowledge and experience to more fully utilize the internet will be better equipped to train for tech jobs, conduct business online, and attain durable prosperity as they navigate opportunities in the digital economy. Funding will also support CFSNM led community non-profit capacity building including training, technical assistance and other services to assist with non-profit planning and development needs. This support will amplify community access to social and health services offered by nonprofit agencies in the City. Throughout the pandemic, the CFSNM supported 20+ nonprofit organizations with emergency support while continuing to support capacity building to 60+ local organizations. To achieve advancement in well-being and recovery, the city can invest in projects such as this that become self-sustaining, build residents', small businesses and non-profit organizations' resiliency and capacity, contribute to digital literacy as part of related broadband adoption efforts, and put more long-term income and opportunity in the hands of members of underserved communities.
Boys & Girls Club of Las Cruces Capital Campaign	$1,388,000.00	Recommended for partial funding	BGCLC is requesting ARPA funding from the City of Las Cruces to support the soft costs and preliminary expenses that we will incur as we undergo a capital campaign for a new building. For years, we have dreamt of the day that we can welcome Las Cruces kids and teens to a brand new, state-of-the art facility. This new facility will allow us to triple the amount of youth we are able to serve, fulfilling the same mission we have always worked for – building great futures for young people, but in bigger, more meaningful ways. A few high level facts about the new facility: • BGCLC is currently working with the City of Las Cruces to identify City owned land where the facility will be built. • The facility will be around 22,000 square feet, and include a full size gymnasium, a state of the art STEM Lab, a separate wing for teens, and much more. • The new building will give BGCLC the capacity to serve around 250 kids per day. • BGCLC will also work with the City of Las Cruces Parks and Recreation Department and other community entities to allow after-hours usage of the gymnasium and other Club amenities. The commitment of ARPA funding toward this project, coupled with the city's commitment to provide land for the facility will make a strong statement to our community of the need for this facility, thereby being the driving force to garner community support and the funding needed to complete the entire project.

Applications	Request	Status	PROJECT SUMMARY: As written by the Applicant.
Community Options, Inc. Daily Plan It	$1,592,335.00	Ineligible	Community Options, Inc. proposes to open a social enterprise, called the Daily Plan It (DPI) in Las Cruces, New Mexico. The DPI will employ people with and without disabilities. Community Options will lease office space in a building to small business owners like realtors, psychologists and lawyers, and train and employ people with disabilities who provide custodial, print, copy and concierge services to building tenants. Competitive wages are paid to all DPI employees, which will improve Las Cruces' economy and job opportunities for decades to come. Using an evidence-based approach, the DPI addresses disparity between the percentage of working age people with disabilities who want to work and are employed vs. the percentage of people without disabilities in the workforce. The model also addresses gaps in skills, training and workforce development for an underserved population while improving community integration. The pandemic has created a workforce crisis, with multiple industries in need of employees to fill vacancies. The DPI can train people with disabilities to fill and thrive in these roles. The Daily Plan It is a proven model. Community Options operates five in other regions of the United States. In a twelve-month period, one hundred percent of DPI employees at our existing locations either maintain employment at the DPI or use the skills that they have acquired to move on to more competitive and integrated employment. Through rental income, contract income and business service fees, the Daily Plan It is a sustainable model.
Desert Community Wellness; Cultivating Community Wellness	$442,800.00	Ineligible	Who: Project Cultivating Desert Community Wellness has a mission to create sustainable community partnerships in order to share accessible wellness practices for the benefit of all members of our community. We will be providing services for the youth and impoverished of our community. What: We will share mindfulness, yoga and other wellness practices through on-going classes, workshops, teacher trainings, professional development, and special events that have helped us with everyday frustration that can take a toll on us physically, mentally and emotionally. As a result of these practices we offer, we notice a positive change in our confidence, motivation and productivity. Why: COVID-19 has exacerbated all of our everyday challenges exponentially. As we learn how to navigate and live with the outcomes of COVID-19, taking care of our wellbeing, body and mind is critical now more than ever. How: We will implement wellness programs through virtual and face-to-face contact. Our programing will be at the site of the partner organizations, and also offering some programs at the DDY facility. These wellness programs will be collaboratively designed given the requests of the partner organizations and the expertise of personnel of DCW. The tools of a regular wellness practice will support individuals moving forward on a positive path in life. As we only begin to see and feel the real and lasting impacts that the COVID-19 pandemic will have on our lives it is critical that we provide tools in our community for self-care and self-management to pave a positive path forward.

Applications	Request	Status	PROJECT SUMMARY: As written by the Applicant.
El Calvario United Methodist Church, Casitas del Calvario	$2,000,000.00	Ineligible	El Calvario United Methodist Church's (ECUMC) mission is "to serve the poor, the stranger, and the captive." We accomplish this by providing a platform which helps establish a full, abundant life and restore dignity, capacity, and resilience to the communities we serve. ECUMC is looking to expand our community economic development programing and affordable housing capacity. ECUMC is ready to do our part to address the housing shortage and provide access to affordable housing through our new project Casitas del Calvario. Our unique design allows us to serve the housing needs of a broad segment of the community by including flexible housing options. A major characteristic of Casitas del Calvario is its unique design, which allows our apartment units to double as small business incubator space. Our plan also includes a plaza space for cultural events to continue, green space including shade, and solar panel infrastructure. We see this as an opportunity to make a long-term investment in infrastructure that can be mobilized to help uplift the social and economic condition of populations in the Las Cruces region and we seek support to help build a prototype and implement our housing plan.
Ngage New Mexico	$1,840,653.00	Ineligible	As an essential part of its educational mission, Ngage New Mexico is shepherding the ambitious project of planning and realizing a Children's Museum for southern New Mexico, to be located in Las Cruces. The major goals of the project include: (1) Enhanced access for area families, often underserved, to arts, cultural, and scientific experiences; (2) A focus on early childhood development, specifically ages 0-8; (3) Creation of a resource hub to inform and connect families to early childhood and educational services in the region . This ambitious project has two phases. The first is a mobile children's museum called "Vamos Niños: Play to Learn" (Vamos Niños), which will be housed in a converted recreational vehicle. Vamos Niños will travel the county and present engaging, playful early educational exhibits at area schools, fairs and community gatherings, bringing high quality early childhood experiences to communities throughout Doña Ana County (DAC). Phase two is the design (and construction) of a brick and mortar children's museum, to be located in the City of Las Cruces. Thus far this phase of the project has received a major, six-figure capital outlay allocation of $750,000 from the State of New Mexico for planning and design. This children's museum project is an initiative of the DAC Early Childhood Education Coalition, and falls under the banner of the SUCCESS Partnership, a prenatal-to-career education initiative serving DAC. Ngage is the primary support organization of the SUCCESS Partnership.
Mesilla Valley Habitat for Humanity: "Empower, a Community Collaboration"	$795,533.00	Ineligible	The "Empower" project will involve the development of a building that will provide a variety of critical community resources to mitigate the negative impacts of the COVID-19 public health emergency. Proposed resources include affordable home-ownership opportunities, financial preparedness & life management courses, job placement partnership/ job training, skilled labor training (construction), internet access, assistance in applying for services, and a digital ,library of resources to assist in stabilizing home & work life. Our goal is to empower citizens with the essential tools necessary to build a secure future for themselves and generations to come.
Outdoor Recreation	$250,000.00	Ineligible	Place holder

Applications	Request	Status	PROJECT SUMMARY: As written by the Applicant.
Doña Ana Arts Council; Planning for Artists Live/Work Space	$250,000.00	Ineligible	Feasibility and Markets Studies to be followed by Planning for Artists Live/Work Space in or adjacent to the Las Cruces Arts and Cultural District.
La Casa, Inc. - Facilitating Access to Health, Social Services and Housing	$1,018,544.00	Ineligible	La Casa, Inc. - Facilitating Access to Health, Social Services and Housing
Economic and Educational Recovery and Renewal via a Community Makerspace	$2,000,000.00	Ineligible	By building on the tools, space, and personnel available to the people of Las Cruces through Cruces Creatives, we propose to launch and expand a spectrum of programs that empower Las Cruces residents to address the economic and educational harms of Covid-19, while creating long-term opportunities for our community. To address the adverse educational impacts of Covid-19, we propose to bring the highly effective, engaging practice of project-based learning to students throughout the district, supported by tools, space, and technicians available through Cruces Creatives as well as the involvement of community members. Several programs in support of this goal are already led by Cruces Creatives, reaching 6,000 students annually; with additional tools, space, and technicians to support more projects and more types of projects, we plan to bring the benefits of community-engaged, project-based learning to every student in the district. To address the economic harms of Covid-19, we propose to use the same tools, space, and technicians that support K-12 educational programs to support economic interventions including 21st Century Skills Training and certifications, prototyping and business development, and non-certification skills training that responds to the needs of existing local businesses--all in the context of a multi-use makerspace that brings diverse groups of people together to share ideas and support each other. By providing access to empowering tools, training in how to use them, and a diverse and supportive community, we can help the people of Las Cruces build their own businesses and secure stable employment for themselves and others.
TOTAL REQUEST	**$26,318,860.00**		

Application: Housing Risk Mitigation Funds

Mesilla Valley Community of Hope/ Abode, Inc.
AMERICAN RESCUE PLAN ACT

RFP Application

Completed - Oct 11 2021

Proposal Information

1

ACKNOWLEDGEMENT OF REQUIRED ASSURANCES

This page must be signed and submitted with the application. Applications which do not contain a signed Acknowledgement of Required Assurances are ineligible for consideration.

By submitting the accompanying application and by my signature on this document, I understand and agree that any funding award resulting from this solicitation will require compliance with the signed agreement and with the regulations, requirements, and policies identified below, including but not limited to:

- **Compliance with 2 CFR Part 200 - Uniform Administrative Requirements**, Cost Principles, and Audit Requirements for Federal Awards (as appropriate);
    - Compliance with the requirements of the Americans with Disabilities Act Accessibility Guidelines;
        - Completion of an environmental regulations
        - Equal Employment Opportunity Act;
        - City of Las Cruces Nondiscrimination policy
        - Minority and Women’s Business Enterprise (MBE/WBE);
        - Lead Based Paint;
        - Title VI of the Civil Rights Act of 1964, as amended;
        - The Fair Housing Act;
        - Equal Opportunity in Housing Act;
        - Age Discrimination Act;
        - Americans with Disabilities Act;

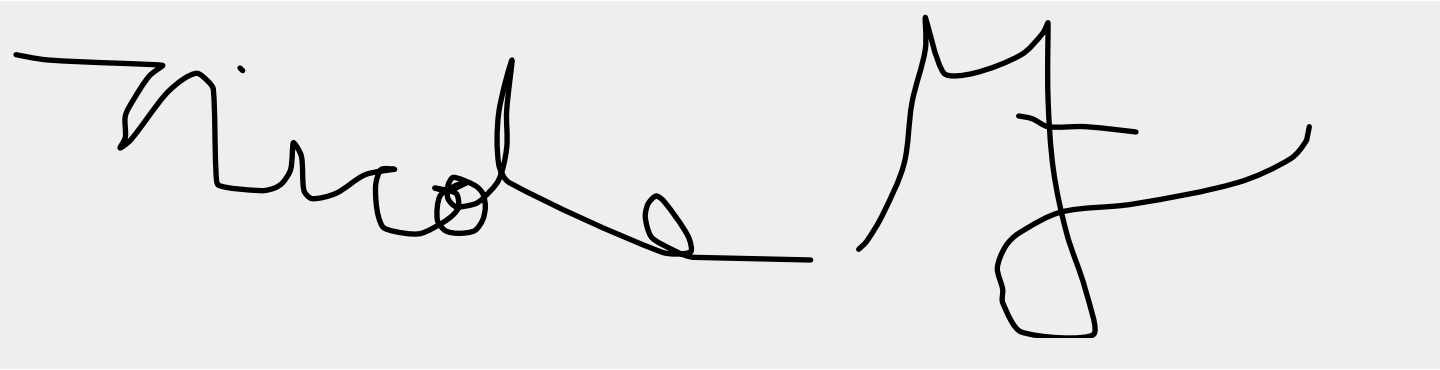
- Section 504 of the Rehabilitation Act;
- Federal Funding Accountability and Transparency Act (FFATA);
- Hatch Act
- Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
- New Restrictions on Lobbying, 31 C.F.R. Part 21.
- Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C.§§ 4601-4655) and implementing regulations.
- Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Recipient should encourage its contractors to adopt and enforce on-thejob seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.
- Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Recipient should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and Recipient should establish workplace safety policies to decrease accidents caused by distracted drivers.
- Compliance with policies of the City of Las Cruces, NM
- Compliance with federal and state laws requiring the safeguarding and disclosure of confidential information.
- Evidence of comprehensive liability insurance and bonding, as required by the City;
- Completion of an annual financial audit, and/or as applicable, providing the City with a copy of the organization’s audited financial statement;
- Completion and subsequent renewal of background checks for all employees, volunteers, or interns who will or may have unsupervised contact with children or vulnerable adults;
- Maintaining program and financial records for audit review, and providing access to documentation upon request by the City;
- Submission of program and financial reports, as required by the City;
- Certification that the firm, association, corporation, or any person in a controlling capacity or any position involving the administration of federal, state, or local funds is not currently under suspension, debarment, voluntary exclusion, or a determination of ineligibility by any agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any agency within the past three (3) years; does not have a proposed debarment pending; has not been indicted, convicted, or has not had a civil judgment rendered against said person, firm, association, or corporation by a court of competent jurisdiction in any matter

involving fraud or misconduct with the past three (3) years.

- Certification that the firm is not bankrupt or under an administration appointed by the Court, or under proceedings leading to a declaration of bankruptcy; and provide any pending or known legal actions against the company.
- Certification that, in the past seven (7) years, the organization has not had any bankruptcy proceedings (closed or not) initiated against the Contractor and that there are no bankruptcy proceedings pending by or against the Contractor regardless of the date of filing;
- All pending or known litigation/court action(s) have been disclosed in the application.
- Certification that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Applicant further covenants that in the performance of this project/application, no person having any conflicting interest will be employed.

Application Approval and Signature: The signatory declares that he/she is an authorized official of the applicant organization, is authorized to make this application, is authorized to commit the organization in financial matters, and will assure that any funds received because of this application are used for the purposes set forth herein.

Please Sign



ARPA Categories:

Pick one (If project does not meet a category, it is ineligible for funding)

Services to Disproportionately Impacted Communities: Housing Support: Other Housing Assistance

Organization Information

Applicant Organization Information:

Name of Organization:	Mesilla Valley Community of Hope/ Abode, Inc.
Address:	999 W. Amador Ave
City:	Las Cruces
State:	NM
Zip code:	88005
Organization DUNS Number:	04-094-4659
Phone:	5755232219
Fax:	5755238684
Organization DUNS Number:	04-094-4659

Primary Contact Information:

Project Manager:	Nicole Martinez
Title:	Executive Director
Phone:	575-523-2219x114
Email:	hope@zianet.com
Fax:	5755238684
Phone:	575-523-2219x114

Alternative Contact Information:

Alternative Contact:	Erin Boyd
Title:	Housing Programs Manager
Phone:	575-523-2219x 112
Email:	erinboyd999@gmail.com
Fax:	5755238684
Phone:	575-523-2219x 112

PROJECT INFORMATION

PROJECT NAME

Housing Risk Mitigation Fund

PROJECT SUMMARY:

PROJECT SUMMARY: Describe the proposed Project. This summary will be used to describe your project in official City documents and media. (Note: The Project Summary is an abstract or summary of your proposal and should be written after completion of the application.)

The purpose of the Housing Risk Mitigation Fund is to support the recruitment and retention of landlords to work with Mesilla Valley Community of Hope (MVCH), a homeless assistance provider, and house clients that may present challenges to remaining stably housed due to complicated rental histories, Fair Market Rent barriers, or other housing and voucher rental concerns. MVCH hopes the fund will help initiate and/or preserve strong partnerships between MVCH and the landlords in their community.

Type of Client Populations & Number of Clients to be served (ESTIMATED)

Select Primary

Homeless: 100

Program Type: * (check one only)

Short Term Shelter/Housing Assistance

Application Information

All questions must be answered, and all forms completed to be eligible for review by staff.

PROJECT JUSTIFICATION

1.Description and Justification of the Project; Provide a detailed description of the proposed project: Include project objectives, target population, major project characteristics, number and type of units, and how it responds to the public health emergency or its negative economic impacts.

This program will allow MVCH to strengthen relationships with local landlords who agree to house people experiencing homelessness who are renting with a voucher provided by the Mesilla Valley Community of Hope. During the COVID-19 pandemic, MVCH housed over 1,050 people, helping to reduce the spread of

COVID and keep people quarantined. Many people lost access to safe and affordable housing due to the loss of income related to COVID. During that time, MVCH saw a large reduction in units that met Fair Market Rent which added a barrier to housing people rapidly. MVCH staff saw an increase in mental health issues that arose in clients because many community services were put on hold during the pandemic and clients went without many of the supportive services that they depended on for their housing stability. MVCH has been paying landlords out of pocket for many of the unit damages.

Additionally, many MVCH clients experiencing homelessness move into units with items that have been donated and sometimes they have bed bugs. MVCH reduces this risk as much as possible, often buying mattress covers and inspecting donated items closely, but on some occasions, the bugs are undetected until the client is residing in the unit. The landlord is then expected to pay to de-infest the complex and MVCH often contributes to this cost out of pocket. In some cases, the MVCH client is the victim of a crime when someone damages their unit. MVCH has been paying landlords out of pocket to cover some of the cost.

MVCH may expect landlords to pay a portion of the damages/costs. In some cases, a deductible will be required if it is determined there is landlord fault.

The Housing Risk Mitigation Funds will serve 100 households (units) with MVCH vouchers, payable to eligible landlords who fill out a claims form. The funds may be used for the following activities/costs:

Extraordinary damages in excess of the security deposit

Extraordinary cleaning and pest infestation

Delinquent rent up to two months

Rent over Fair Market Rent

Other costs required to recruit and/or retain landlords.

In order to efficiently serve Veterans who are housed with a HUD VASH voucher, those units will automatically qualify.

Since this will be a pilot program, MVCH requests the ability to amend payment terms with landlords. Initially, MVCH will place a cap of $3,000 to a landlord. It is possible that MVCH will use FMR to determine the amount of assistance per unit. Funds will be paid directly to landlords, not to program participants. MVCH has over 15 years’ experience in making rent and damage payments to landlords. MVCH has an onsite accountant to assist with the payments and a housing programs manager to oversee the approval of using the mitigation funds with the supervision of the executive director.

Because of the extensive shortage of affordable housing units in Las Cruces, it is unfortunate when MVCH loses a landlord because of a client disruption. These burned bridges affect the housing stock in the community and MVCH’s ability to efficiently streamline housing for people experiencing homelessness. By using housing risk mitigation funds, MVCH hopes to improve landlord/tenant relationships, continue to keep people stably housed, and increase the housing stock available for people transitioning from homelessness to housed.

Objectives:

A. Use HRMF to pay landlords for unit assistance as described

B. Engage landlords in housing recruitment and retention

C. Outreach to landlords about the program

D. Assist 100 households with HRMF

E. Keep 100 households housed that used HRMF

ALIGNMENT WITH CITY PLANS

2. What specific priorities in the City's Strategic Plan, Elevate Las Cruces and/or 2021-2025 Consolidated Plan? (Click on plan links below to view)

City Plans:

ELEVATE PLAN

COUNCIL STRATEGIC PLAN

2021-2025 CON PLAN

The City plans strongly support providing housing, both nontraditional and affordable and especially to underserved and homeless populations.
ELEVATE PLAN:
ELC Goal CP-7: Attainable Housing. Provide affordable, clean and safe housing options for all residents regardless of income.
ELC Goal CP-11: Underserved populations. Develop and support programs that provide assistance to traditionally underserved populations.
ELC Goal CP-8: Special Housing Needs. Ensure that the housing needs of traditionally underserved populations are met.
COUNCIL STRATEGIC PLAN SP-25 Priority Needs-91.215(a)(2); Housing Needs, high priority: Access to Affordable Housing Prevent and reduce homelessness. SP-60 Homelessness Strategy—91.215 (d) Reaching out to homeless persons and assessing their individual needs; addressing the emergency and transitional housing needs of homeless persons. Action Plan; AP—65 Homeless and Other Special Needs Activities --91.220(i)
2021-2025 CON PLAN: Access to health and Safety; enhance economic well-being; "High priority needs identified in the Las Cruces Five-Year Consolidated Plan include both housing and non-housing community development, infrastructure, persons experiencing homelessness and special population needs.
The City will provide public service funding over the next five years to local non-profit agencies that serve special needs populations, primarily to the homeless, victims of domestic violence, and the disabled… The City will continue to coordinate efforts in the areas of homeless services and ending homelessness, including chronic homelessness, veteran homelessness for the Mesilla Valley Community of Hope campus and other homeless providers working in the City (91.215(l)."

COMMUNITY IMPACT

3. What is the anticipated impact of your program on the Las Cruces community? How will you measure the expected outcomes?

The anticipated impact is that MVCH will be able to recruit and retain landlords to affordably house underserved populations: in this case, people who are formerly homeless and transitioning from homelessness to housed. The impact will keep apartments occupied, stimulating the economy and perhaps most importantly, increasing the well-being and housing stability of people experiencing homelessness.
MVCH will measure how many landlords were added as affordable housing partners due to the incentives offered by the HRMF. MVCH will measure how many households benefitted from the HRMF. MVCH will measure how many clients were exited to permanent housing that used HRMF.
MVCH will rely on the Homeless Management Information System (HMIS) to record clients enrolled in various housing programs, to collect client demographics, income and housing stability information.
MVCH will also track landlords acquired and retained in an internal Access database.
The outcomes will tie back to the goals as outline, assisting 100 households with HRMF.

4. BUDGET INFORMATION

PART A

Instructions: Please complete the budget summary. Indicate the amount ARPA funds needed for each expenditure classification. Also include other funds for the project from federal, state and private sources. Columns A, B, C & D must add up to Column E (Total Budget) needed for the project.

Please Enter just numbers no symbols (i.e. $,)

	ARPA FUNDING	OTHER FEDERAL FUNDS	STATE FUNDS	PRIVATE FUNDS	TOTAL BUDGET
Permanent Position, Full Time	25000	150000	120000		340000
Permanent					

Position, Part Time					
Temporary Positions					
Employment Liability Insurance					
Other Employee Benefits *					
Office Supplies	10000	21000	6000	9000	46000
Operating Supplies	15000	4998	3000	7002	15000
Repair & Maintenance Supplies					
Small Tools					
Motor Oil and Fuel					
Library Books and Periodicals					
Magazines and Periodicals					
Audio Visual Aids					
Wearing Apparel					
Postage and Federal Express					
City Service (water, waste, etc.)					
Electricity					

Telephone					
Utility Services – Other					
Legal Services					
Auditing Services					
Engineering Services					
Architectural Services					
Maintenance Agreements					
Fees or Service Charges					
Advertising					
Landscape Maintenance					
Required Building Repair & Maintenance					
Auto or Truck Repair					
Equipment Repair					
Building or Land Rental					
Vehicle Rental					
Equipment Rental					
Liability Insurance					
Property Insurance					

Fidelity Insurance					
Transportation (in-state only)					
Per Diem (in-state only)					
Registration Fees					
Miscellaneous Costs					
Training and Education					
Land-Vacant					
Land-Buildings or Other					
Land-Right of Way					
Land Improvements					
Furniture and Fixtures					
Building Improvements					
Automobiles					
Trucks and Vans					
Heavy Equipment					
Furniture and Fixtures					
Office Equipment					
Data					

Processing					
Shop Equipment					
Client Housing (rent, mortgage, utilities, deposit)	250000				
Client Support (medical, classes)					
Total	300000.0	175998.0	129000.0	16002.0	401000.0

Part B – BUDGET JUSTIFICATION

Briefly and specifically describe each line item listed on Part A (ARPA FUNDS) in a separate paragraph below:

The budget figures are for the life of the grant, not annually.
There will be up to four staff overseeing the grant. The Executive Director, Accountant, Housing Program Manager and the Data Manager. This grant is asking for under 1% of their salaries combined to implement the grant. Their salaries are covered by several housing grants and only the time spent on the HRMF will be invoiced: $25,000.
MVCH will need office supplies to record data such as pens, paper, folders, software: $10,000.
MVCH will need to purchase items for staff to implement the grant such as hazmat suits and bedbug/cleaning supplies for units that qualify for HRMF:$15000.
The majority of the funds will go directly to landlords and cleaning companies for the units $250,000. These funds will include: Extraordinary damages in excess of the security deposit;
Extraordinary cleaning and pest infestation; Delinquent rent up to two months; Rent over Fair Market Rent; Other costs required to recruit and/or retain landlords.

DUPLICATION

5. Is this a new or existing program in the Community? How do ARPA funds makes this project feasible? If existing, describe additional efforts to prevent duplication of services.

This is a new program in the community. When there are excessive damages to a unit occupied by a client of MVCH, MVCH will first use the grant money to cover it, but when the damages are in excess, MVCH pays out of pocket. There has not been funding available to assist with extraordinary damages, rent over FMR, extraordinary cleaning and pest infestation or delinquent rent up to two months. With ARPA funds, MVCH would have the ability to assist partnering landlords who are helping to end homelessness with incentives to keep clients housed. As a pilot program, MVCH believes that this funding can be made available to landlords after ARPA funds are spent by working with the City of Las Cruces staff, the New Mexico Mortgage Finance Authority, and Legislative partners to implement these funds as a permanent program in Las Cruces, and ultimately, for the state of New Mexico.

FEASABILITY/TIMELINE

6. Please provide a detailed timeline or work schedule for implementing this project including anticipated milestone dates.

MVCH is adopting a landlord application and claim form. That should take one day. Because MVCH currently has clients it is assisting with rent, the program is start-up ready. MVCH anticipates it will have its first claim in the first month of the program.

7. Is this project dependent on future funding to fully complete this project? Include specific timelines/dates and funding commitments needed to complete the project and have it fully operational for public benefit. Can this project be phased? Can this project be partially funded?

The project does not rely on future funding to complete the project. Once the funds end, MVCH will still have resources to assist landlords, it just may not be at the same capacity as was utilized during the ARPA fund days. The project is ready to start. The project does not need to be phased, but it can be partially funded.

8. If funded, it is expected that the project will begin within ninety (90) days of being issued a fully executed contract. What potential or known barriers exist to beginning the project within ninety (90) days and completing the project within twenty-four (24) months of being issued a Notice to Proceed from City Staff? Please describe in detail your plan for overcoming the barriers identified and achieving a timely and successful completion of the project.

A barrier would be that there are not any clients or landlords meeting the needs of the program within the first 90 days, but MVCH thinks this is unlikely. To combat this barrier, MVCH plans to advertise to current landlords about the program and to post on the MVCH Facebook page.

ORGANIZATION HISTORY AND CAPACITY

9. History of your organization's TOTAL ANNUAL REVENUES for the past three (3) fiscal years:

	2020	2019	2018
Total Annual Revenues $	2,850,000	2,199,719	1,922,794

10. Applicant Qualifications

Summarize your organization's experience in areas relevant to the proposed project describe at least two most recent projects; if applicable. Describe Organizations capacity to implement proposed project.

MVCH has been operating as a homeless day shelter for 27 years and has been utilizing housing funds for people experiencing homelessness for 16 years. MVCH staff is well versed in collecting client information using coordinated entry and intakes. MVCH has extensive training on housing components such as rental calculations, rental disbursement, housing inspections, landlord agreements and leases, rent reasonableness and Fair Market Rent, as well as grant compliance, especially with the City of Las Cruces. MVCH staff receives annual trainings on Trauma-informed care, harm reduction and housing first models. MVCH operates six Housing and Urban Development grants, seven NM Mortgage Finance Authority grants, a Tenant-based Rental Assistance grant from the CLC, and a Veterans' Services grant for housing and services. MVCH currently expends rental assistance funds and damages and currently recruits landlords; this grant would allow MVCH to implement the amount necessary to better meet the needs of assisting landlords. At this point, MVCH is meeting a fraction of the damages costs to landlords and is turning away many landlords because of Fair Market Rent. Most recently, MVCH assisted in bringing the Desert Hope Apartments to Las Cruces to end homelessness for 40 people while providing onsite supportive services to the residents. There have been a couple of damages incidents onsite and MVCH could have used HRMF to reimburse the property owner for the damages to strengthen the relationship. MVCH has the staff already on hand and the know-how to implement the funding.

Please complete the table below for all key staff members involved in the project. Including executive director, fiscal officer, project manager and any employees to be funded by the project.

	Name	Title	Total Years' Experience	Years with Association
1	Nicole Martinez	Executive Director	15	15
2	Erin Boyd	Housing Programs Manager	7	7
3	Sandra Molina	Accountant	3	35
4	Kevin Virden	Data Manager	3	3
5				
6				
7				
8				
9				
10				

Application: Community Foundation of Southern NM/Bitwise; Equip Las Cruces

Shelby MacNab - Smacnab@bitwiseindustries.com
AMERICAN RESCUE PLAN ACT

RFP Application

Completed - Oct 14 2021

Proposal Information

1

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        - Completion of an environmental regulations
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        - City of Las Cruces Nondiscrimination policy
        - Minority and Women's Business Enterprise (MBE/WBE);
        - Lead Based Paint;
        - Title VI of the Civil Rights Act of 1964, as amended;
        - The Fair Housing Act;
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- Americans with Disabilities Act;
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- Compliance with policies of the City of Las Cruces, NM
- Compliance with federal and state laws requiring the safeguarding and disclosure of confidential information.
- Evidence of comprehensive liability insurance and bonding, as required by the City;
- Completion of an annual financial audit, and/or as applicable, providing the City with a copy of the organization’s audited financial statement;
- Completion and subsequent renewal of background checks for all employees, volunteers, or interns who will or may have unsupervised contact with children or vulnerable adults;
- Maintaining program and financial records for audit review, and providing access to documentation upon request by the City;
- Submission of program and financial reports, as required by the City;
- Certification that the firm, association, corporation, or any person in a controlling capacity or any position involving the administration of federal, state, or local funds is not currently under suspension, debarment, voluntary exclusion, or a determination of ineligibility by any agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any agency within the past three (3) years; does not have a proposed debarment pending; has not been indicted, convicted, or has not had a civil judgment rendered against said person, firm,

association, or corporation by a court of competent jurisdiction in any matter involving fraud or misconduct with the past three (3) years.

- Certification that the firm is not bankrupt or under an administration appointed by the Court, or under proceedings leading to a declaration of bankruptcy; and provide any pending or known legal actions against the company.
- Certification that, in the past seven (7) years, the organization has not had any bankruptcy proceedings (closed or not) initiated against the Contractor and that there are no bankruptcy proceedings pending by or against the Contractor regardless of the date of filing;
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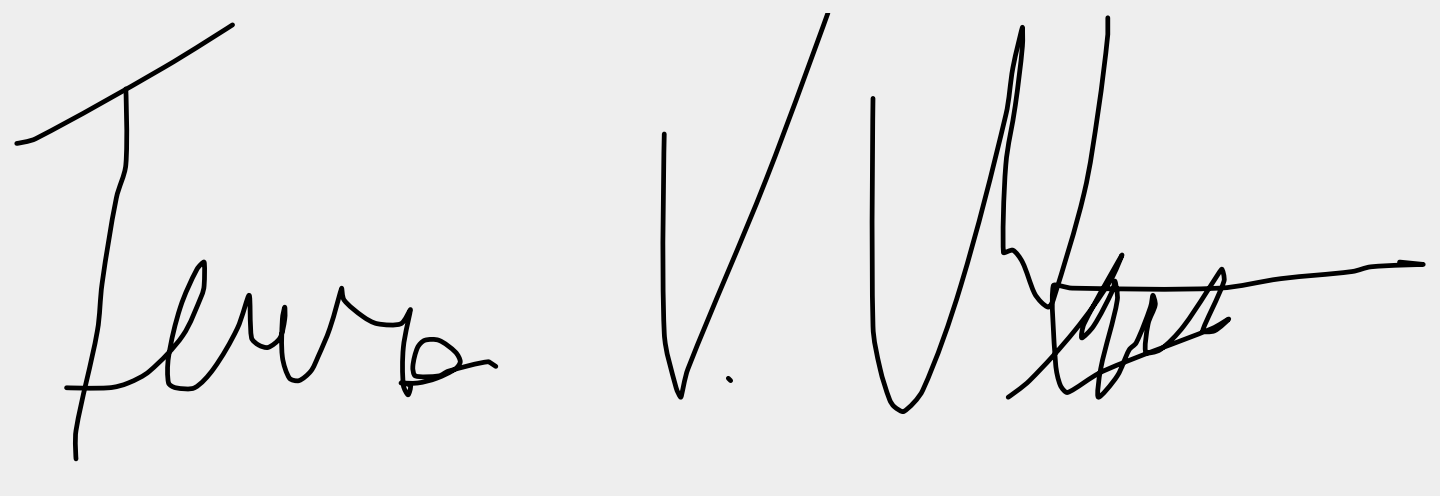
Application Approval and Signature: The signatory declares that he/she is an authorized official of the applicant organization, is authorized to make this application, is authorized to commit the organization in financial matters, and will assure that any funds received because of this application are used for the purposes set forth herein.

Please Sign



ARPA Categories:

Pick one (If project does not meet a category, it is ineligible for funding)

Public Health/Negative Economic Impacts: Job Training Assistance (e.g., Sectoral job-training, Subsidized Employment, Employment Supports or Incentives)

Organization Information

Applicant Organization Information:

Name of Organization:	Community Foundation of Southern New Mexico
Address:	2600 El Paseo Rd
City:	Las Cruces
State:	NM
Zip code:	88001
Organization DUNS Number:	107468730
Phone:	575-521-4794
Fax:	575-521-7325
Organization DUNS Number:	107468730

Primary Contact Information:

Project Manager:	Terra Winter
Title:	CEO
Phone:	575-521-4794
Email:	terra@cfsnm.org
Fax:	575-521-7325
Phone:	575-521-4794

Alternative Contact Information:

Alternative Contact:	Shelby MacNab
Title:	Account Manager
Phone:	559-978-0125
Email:	smacnab@bitwiseindustries.com
Fax:	000000000
Phone:	559-978-0125

PROJECT INFORMATION

PROJECT NAME

Equip Las Cruces: Workforce Development & Capacity Building Program

PROJECT SUMMARY:

PROJECT SUMMARY: Describe the proposed Project. This summary will be used to describe your project in official City documents and media. (Note: The Project Summary is an abstract or summary of your proposal and should be written after completion of the application.)

The Community Foundation of Southern New Mexico (CFSNM), and BW Industries, Inc., ("Bitwise") will accelerate economic recovery and resilience for City of Las Cruces residents, small businesses, and nonprofits most severely impacted by the COVID-19 pandemic. This will be achieved through funding workforce training for in-demand tech careers. Workforce students will support increased citywide technology adoption by offering no-cost digital literacy services for residents, small businesses and nonprofit agencies. Digital literacy includes essential user support to allow newly connected residents and organizations to maximize use of the resources the internet provides. City residents who gain knowledge and experience to more fully utilize the internet will be better equipped to train for tech jobs, conduct business online, and attain durable prosperity as they navigate opportunities in the digital economy.

Funding will also support CFSNM led community non-profit capacity building including training, technical assistance and other services to assist with non-profit planning and development needs. This support will amplify community access to social and health services offered by nonprofit agencies in the City. Throughout the pandemic, the CFSNM supported 20+ nonprofit organizations with emergency support while continuing to support capacity building to 60+ local organizations.

To achieve advancement in well-being and recovery, the city can invest in projects such as this that become self-sustaining, build residents', small businesses and non-profit organizations' resiliency and capacity, contribute to digital literacy as part of related broadband adoption efforts, and put more long-term income and opportunity in the hands of members of underserved communities.

Type of Client Populations & Number of Clients to be served (ESTIMATED)

Select Primary

224

Program Type: * (check one only)

Job Training

Application Information

All questions must be answered, and all forms completed to be eligible for review by staff.

PROJECT JUSTIFICATION

1.Description and Justification of the Project; Provide a detailed description of the proposed project: Include project objectives, target population, major project characteristics, number and type of units, and how it responds to the public health emergency or its negative economic impacts.

The project includes four primary objectives: 1) Kick-starting the creation of an innovative Las Cruces technology hub that generates paid learning and long-term job opportunities in living wage information technology careers for underserved people; 2) Activating residents' digital literacy, tech support and coding skills to equip them to leverage state and local investment in improved access to broadband, and 3) Equipping small business owners and non-profits to more fully adopt broadband to facilitate digital transformation; and 4) Offer technical assistance, training, access to meeting spaces and capacity building to support recovery for non-profits in the City of Las Cruces.These four objectives will be achieved by funding the launch of Bitwise Workforce Training Program pre-apprentice and apprenticeship programming in Las Cruces and CFSMN programming.

The economic impact of COVID-19 on the community has been severe and was compounded by the fact that 23% of residents lived in poverty prior to the pandemic. This poverty rate is more than double the national average. Most recent (2021-Q2) economic indicators in the City of Las Cruces demonstrate that economic recovery is slower than the national average, with the unemployment rate at 6.7%, and SNAP benefit utilization increasing by 8% year over year. As a state, NM has ranked 50th in the nation for the percentage of jobs recovered (32%). Equitable economic prosperity is critical for the City of Las Cruces. The proposed programming was designed with local needs and priorities in mind. It was also designed to serve the most vulnerable and impoverished residents in the community. The target population to be served include low and moderate income residents (as defined by HUD thresholds) and residents living in high poverty census tracts in the city limits who were disproportionately negatively impacted by the Covid-19 pandemic; including but not limited to residents formerly employed in tourism, hospitality and government employment. This project responds to the negative economic impacts of COVID-19 by

retraining some of the most impacted residents into technology careers that provide greater resilience, stability and additional remote work opportunities into the community. Improving employment opportunities for residents who otherwise may need to utilize public support programs allows for reduced reliance on public assistance by program participants, and creates a trajectory into an industry that pays a living wage. It will also support small business, non-profit and community-wide recovery by utilizing workforce students to provide digital literacy support services as part of their tech sector training.

Bitwise Workforce Training was born out of an innovative vision to create a diverse, inclusive pipeline, where anyone can learn and then utilize those skills immediately in the tech industry, leading to development of new economies in underestimated communities. Pandemic conditions have brought into sharp focus the paramount importance of connecting households and businesses to digital tools and achieving universal ability to leverage the internet to conduct business and maintain relationships. New Mexico and Las Cruces in particular show significant need for not just for more reliable and wide-reaching high speed broadband infrastructure, but for the digital literacy and confidence with using hardware and software that people need to benefit from connectivity. For example, in large portions of central and eastern Las Cruces, more than 25 percent of residents have reported to the Census Bureau that they lack access to the internet, computers, tablets, and even smartphones. Services may be available to these individuals, but without further support and education, they are unable to take advantage. A lack of digital literacy limits employment opportunities and prolongs the negative economic impacts of the COVID-19 pandemic. The digital literacy support services proposed, which would transform the possibilities available to the most marginalized residents, include troubleshooting difficulties with equipment, training on the capabilities and dangers of the internet, information on where to find resources online, web-based tools to support business development and individualized support provided using culturally and linguistically appropriate methods.

Specifically, the $2 million requested will enable a partnership between the Community Foundation of Southern New Mexico and Bitwise to offer four custom 14-week courses in Tier 1 tech support, customer service, development and inside sales for 100 pre-apprentices on a rolling basis in 2022 and 2023. Pre-apprentice courses will include skill assessment, computer literacy, and applied learning that will influence community-wide digital literacy through grassroots outreach. Funding will be used to provide equipment, Instruction, curriculum development, student success support for apprentices, and digital literacy outreach to small businesses, nonprofits, and hard to reach communities in Las Cruces.

The funds requested will also fund 24 apprentices, who will be paid a living wage ($17/hour + benefits) to learn as part of our Tier 1 tech support apprenticeship programming to begin on a rolling basis between Q4 2022 to Q4 2023. Tier 1 tech support training will equip apprentices to transition into

technology careers such as Technical Support Representative, IT Help Desk Support, or Customer Support Specialist. These careers are highly in-demand, offer remote work flexibility, and establish foundational experience relevant to employment across both public and private sectors and industries.

The pre-apprentice and apprenticeship workforce development training proposed in this grant are evidence-based and utilize applied-learning methods that have to date resulted in a short-term average increase in income of $41k per year for participants. Programming is led by experts, mostly from underserved communities that have experienced relatively low levels of connectivity and digital literacy. They are skilled at illustrating the benefits of technology adoption, and working through partners' hesitancy about new methods and tools.

The Community Foundation of Southern New Mexico is applying as a fiscal and administrative sponsor to this proposal, with funding to be subcontracted to BW Industries, Inc. for apprenticeship training services. The Community Foundation of Southern New Mexico (CFSNM) will fiscally monitor funds and provide non-profit capacity training with support of 10% of the overall grant fund request, totaling $200,000. These fees will support CFSNM staff time while also assisting with continued support of nonprofit capacity training as part of the CFSNM strategic planning for 2022-2025. Funds will support the nonprofit emergency grant fund while also supporting the increase of staffing by 1 individual to further grow the foundation's support throughout the City of Las Cruces.

Bitwise has a proven track record of connecting eligible consumers with sources of assistance like the Emergency Broadband Benefit program; providing empathetic tech support to families that have received new hot spots and devices through school- and library-based programming; and reaching out to endangered businesses like small restaurants to offer free web-based tools and applications to find new customers and revenue. Services like these, delivered by locally-based pre-apprentice students and apprentices, will ensure that residents and business owners in Las Cruces make the most of broadband expansion as citizens and as engines of the local economy.

ALIGNMENT WITH CITY PLANS

2. What specific priorities in the City's Strategic Plan, Elevate Las Cruces and/or 2021-2025 Consolidated Plan? (Click on plan links below to view)

City Plans:

ELEVATE PLAN

COUNCIL STRATEGIC PLAN

2021-2025 CON PLAN

Equitable economic prosperity is a foundational theme across all three City planning documents; and it's the bedrock on which apprenticeship programming and capacity building efforts are formed. This proposal aligns with Las Cruces' Strategic Plan by bringing to fruition community prosperity goals including: economic equity/employment opportunities that create economic security (goal CP-2), reaching underserved populations (CP-11), readying the workforce to diversify economic opportunities (CP-4) and promote a balanced system of community services (CP-10). Our proposal is also closely in alignment with Elevate Las Cruces which seeks to foster economic prosperity by supporting workforce development to increase resilience in economic downturns. Further, it achieves consolidated plan goals to enhance economic well-being through job skills training and small business support. The goal of the program is to equip underserved community residents, small businesses and nonprofits with the workforce training and capacity to leverage the digital economy and navigate resources available to them, so that the community as a whole can accelerate their vision of economic prosperity. In doing so, the goals of these plans will be actualized.

COMMUNITY IMPACT

3. What is the anticipated impact of your program on the Las Cruces community? How will you measure the expected outcomes?

The anticipated impact of pre-apprentice and apprentice programs on the Las Cruces community is a workforce with demonstrable technology skills and a professional network, well positioned to attain employment in technology careers. The impact is measured both qualitatively and quantitatively through 1:1 interviews that gauge the student's ongoing social-emotional growth, team-building skills, work/life balance, and exponential professional network growth. Quantitative data on achievement of detailed learning goals, skill attainment, employment, demographics, and paid internship attainment rates will be collected using surveys completed every six weeks during training, and following program completion. At completion, students will have a professional portfolio that showcases their level of skills in programming, and thought logic. These portfolios can be used with potential employers, including Bitwise, to demonstrate the quality of work students produce. Funding will allow Bitwise to reach 100 pre-apprentice students, as well as hire and train 24 full time apprentices.

The number of community members, small businesses and nonprofits reached with digital literacy services provided by Bitwise pre-apprentices and apprentices will be tracked and reported, along with qualitative success stories of the impact on economic recovery this outreach has resulted in. It is expected that thousands of residents, businesses and nonprofit organizations will be contacted and receive tech support and broadband adoption services from workforce students during the duration of the program.

CFSNM will increase staffing by one individual while continuing to support more than 60 nonprofit partners in Las Cruces, NM through educational programming, one on one mentorship and support of new facility use for nonprofit growth at 2640 El Paseo Rd. The CFSNM will collect all attendee information for face to face programming including surveys for any continuing educational program as well as continue to track all one to one mentorship activities. In 2021, we tracked 100 one to one mentorship conversations thus far. In 2022 and 2023, it is expected that there will be 10-12 calls each month. CFSMN supports 46 nonprofit sustainability endowments with a goal of reaching 50 by 2024.

4. BUDGET INFORMATION

PART A

Instructions: Please complete the budget summary. Indicate the amount ARPA funds needed for each

expenditure classification. Also include other funds for the project from federal, state and private sources.

Columns A, B, C & D must add up to Column E (Total Budget) needed for the project.

Please Enter just numbers no symbols (i.e. $,)

	ARPA FUNDING	OTHER FEDERAL FUNDS	STATE FUNDS	PRIVATE FUNDS	TOTAL BUDGET
Permanent Position, Full Time	368000			32000	400000
Permanent Position, Part Time					
Temporary Positions	780749			67891	848640
Employment Liability Insurance					
Other Employee Benefits *	201531			17524	219055
Office Supplies					
Operating Supplies					
Repair & Maintenance Supplies					
Small Tools					
Motor Oil and Fuel					
Library Books and Periodicals					
Magazines and					

Periodicals					
Audio Visual Aids					
Wearing Apparel					
Postage and Federal Express					
City Service (water, waste, etc.)					
Electricity					
Telephone					
Utility Services – Other					
Legal Services					
Auditing Services					
Engineering Services					
Architectural Services					
Maintenance Agreements					
Fees or Service Charges	30000				30000
Advertising	23000			2000	25000
Landscape Maintenance					
Required Building Repair & Maintenance					
Auto or Truck					

Repair					
Equipment Repair					
Building or Land Rental					
Vehicle Rental					
Equipment Rental					
Liability Insurance					
Property Insurance					
Fidelity Insurance					
Transportation (in-state only)					
Per Diem (in-state only)					
Registration Fees					
Miscellaneous Costs	297920			25906	323827
Training and Education	170000				170000
Land-Vacant					
Land-Buildings or Other					
Land-Right of Way					
Land Improvements					
Furniture and	36800			3200	40000

Fixtures					
Building Improvements					
Automobiles					
Trucks and Vans					
Heavy Equipment					
Furniture and Fixtures					
Office Equipment	92000			8000	100000
Data Processing					
Shop Equipment					
Client Housing (rent, mortgage, utilities, deposit)					
Client Support (medical, classes)					
Total	2000000.0	0	0	156521.0	2156522.0

Part B – BUDGET JUSTIFICATION

Briefly and specifically describe each line item listed on Part A (ARPA FUNDS) in a separate paragraph below:

Permanent Position, Full Time:
Funding requested on this line item will be used to fund the Bitwise staff positions required for curriculum development, instruction, student success support and teacher assistant services. Resumes for these

staff have been included in the proposal, though local staff with equivalent qualifications will also be hired to facilitate instruction. FTE allocation will be variable, depending on if staffing is allocated for pre-apprentice instruction or apprenticeship instruction, and the phase of the project. For example, the curriculum architect will have more hours during the launch of the program. Matching funds will be provided at a 8% rate.

Temporary Positions:
This funding will go toward paying 24 apprentices $17 per hour for 2080 hours, plus individual health benefits. They will be hired for a one year duration, to earn while they learn Tier 1 tech support. Matching funds will be provided at a 8% rate. It is expected that pre-apprentices and apprentices will reach thousands of city of las cruces residents, small businesses and non-profit organizations.

Fees or service charges:
This request will cover grant and fiscal administration costs for CFSNM.

Advertising:
These funds will be used toward marketing pre-apprentice and apprenticeship programs. They will also fund promotion of digital literacy services available to the community, nonprofits and small businesses. Matching will be provided in-kind, at a 8% rate.

Miscellaneous costs:
These costs are to cover overhead operations for Bitwise, as well as miscellaneous costs associated with: temporary classroom space (while permanent space is being renovated) and the cost of student success supports (ex. transit vouchers or help with child care to be able to attend class). Student supports are determined on a case by case basis to ensure student success. Matching will be provided in-kind, at a 8% rate.

Training and Education:
These funds will be used by CFSNM for providing educational programming, one on one mentorship and support of new facility use for nonprofit growth.

Furniture and Fixtures:
Funding in this line item will allow Bitwise to purchase workstations and seating for pre-apprentice and apprentice use as well as fixtures such as whiteboards for instructional use. Matching funds will be provided at a 8% rate.

Office Equipment:

These costs will cover the purchase of 50 computers to be loaned out for pre-apprentice use, and 24 computers for apprentices. This cost includes projector equipment for instructional use, as well as additional peripheral equipment such as keyboards, headsets, mice, etc.. Matching will be provided at a 8% rate.

Additional information:

The CFSMN is the lead applicant and will sub-contract to BW Industries, Inc., a Delaware corporation ("Bitwise") for all line items excluding fees and service charges and training and education.

DUPLICATION

5. Is this a new or existing program in the Community? How do ARPA funds makes this project feasible? If existing, describe additional efforts to prevent duplication of services.

The programming provided is new to the community as training in Tier 1 tech support and tailored digital literacy outreach is not currently available. Bitwise has coordinated with university partners in the community to ensure no duplication of efforts. ARPA funds will accelerate the creation of pre-apprentice courses in Las Cruces that provide students with the opportunity to be considered for a one-year, paid and benefited apprenticeship program. Without funding from ARPA, the commencement and ramping up of operations in Las Cruces will move more slowly and depend upon growth of our revenue-producing businesses, with the likely result that we wouldn’t reach a transformative scale that has significant community-wide impact until the recovery period has passed. Delays would mean Las Cruces residents miss out on many of the opportunities that'll stem from private sector expansions expected during the ARPA window. Investing ARPA funding positions city residents to be ready during the peak recovery period. The CFSNM fiscally monitoring the project is a current program associated with the foundation. Funding will support continued nonprofit capacity building and increased staffing for CFSNM.

FEASABILITY/TIMELINE

6. Please provide a detailed timeline or work schedule for implementing this project including anticipated milestone dates.

The timeline proposed will adhere to the timeline shared in the RFP. Major milestones are detailed below:

Executed agreement between the City and CFSNM: January 2022
Nonprofit capacity building: January 2022
Executed subcontract between CFSNM and BW Industries, Inc.: March 2022
Workforce training project start date: April 2022
Workforce training program promotion begins: April 2022
Pre-apprentice courses begin: Q3 2022
Pre-apprentice courses offered on a rolling basis through Q3 2023
Apprentice programs offered on a rolling start: Q4 2022-Q4 2023
Apprentice programs complete: October 31, 2024
Sub-contract closed by: November 2024
Project completion date: December 31, 2024
Nonprofit capacity building and workforce development to continue (self sustaining).

7. Is this project dependent on future funding to fully complete this project? Include specific timelines/dates and funding commitments needed to complete the project and have it fully operational for public benefit. Can this project be phased? Can this project be partially funded?

This project is not dependent on any future funding to fully complete. It has been scoped using specific, measurable, time bound goals with attainable reach and achievable outcomes.This proposal leverages the momentum of additional private investments that are going toward launching a Bitwise technology ecosystem in the heart of Las Cruces. The project can be phased and/or partially funded. Phasing or partial funding would require an adjustment to the expected number of pre-apprentice and apprentice participants to be trained in Tier 1 tech support.

8. If funded, it is expected that the project will begin within ninety (90) days of being issued a fully executed contract. What potential or known barriers exist to beginning the project within ninety (90) days and completing the project within twenty-four (24) months of being issued a Notice to Proceed from City Staff? Please describe in detail your plan for overcoming the barriers identified and achieving a timely and successful completion of the project.

The Community Foundation of Southern New Mexico and Bitwise anticipate no issues in beginning work within 90 days of being issued a fully executed contract. The timeline proposed for project delivery is conservative, and includes reach numbers that are achievable based on experience BW Workforce Training has in communities with similar demographics.

Following contract execution between the City of Las Cruces and the foundation, a sub-contract will be issued to BW Industries, Inc. within 45 days. Pre-apprenticeship program promotion will begin in early quarter 2, 2022, followed by courses offered in on a rolling basis beginning in quarter three of 2022.

ORGANIZATION HISTORY AND CAPACITY

9. History of your organization's TOTAL ANNUAL REVENUES for the past three (3) fiscal years:

	2020	2019	2018
Total Annual Revenues $	248,343.94	501,202.75	454,778.00

10. Applicant Qualifications

Summarize your organization's experience in areas relevant to the proposed project describe at least two most recent projects; if applicable. Describe Organizations capacity to implement proposed project.

The Community Foundation of Southern New Mexico will monitor these funds. There is a single fund associated with this grant process. The CFSNM has an annual audit process in place, while also monitoring all funds with weekly bookkeeping, monthly CFO support and detailed audit. We monitor over 315 funds for southern New Mexico, of which all are audited on an annual basis. Our team has a dedicated staff member to support all grants and scholarship programming. This is reviewed weekly in collaboration with our other grantees. This includes our partners with W.K. Kellogg Foundation and New Mexico State University.

Bitwise has experience in providing services with government partners. Examples of these experiences include: The Ignite Innovation Lab at Bitwise Industries, a public-private partnership with the City of Bakersfield and Kern County, and the Patino High School partnership. The Ignite innovation lab provides a cohort of eight students a six month paid entrepreneurship apprenticeship, led by individuals who have experience in founding companies. By the end of the program, cohort members will have founded product companies that are revenue generating. The partnership is funded by Bakersfield and Kern County. The Patino High School Project funded innovative training for students in the area of computer programming, online marketing, analytics, branding, web design and development. By the end of the project, students demonstrated an understanding of each field and developed industry skills to inform their future educational pursuits. In both examples, Bitwise complied with all terms and conditions of government contracts to remain in compliance and successfully complete deliverables.

Bitwise also has experience providing technology education in a variety of subject areas including Tier 1 tech support, web development, salesforce, project management, digital marketing, etc. To date, Bitwise has trained over 5,000 participants.

Please complete the table below for all key staff members involved in the project. Including executive director, fiscal officer, project manager and any employees to be funded by the project.

	Name	Title	Total Years' Experience	Years with Association
1	Terra Winter	CEO	21	4
2	Raquel Garcia	Curriculum Architect	6	3
3	Jason Cooksey	Developer Fellow	25	6
4	Lucas Phan	Instructor	15	7
5	Stephanie Moreno	VP of Student Experience	7	2
6	Cruz Ramirez	Wordpress Developer/ Teacher Assistant	4	2
7	Miguel Hernandez	Online Marketing Analyst/ Teacher Assistant	1.8	1.8
8	Abigail Schoettler	Tech Support Apprentice	4	.8
9	Jimmy Hinojosa	Tech Support Apprentice	11	.6
10				

Application: Community Action Agency of S NM Guaranteed Basic Income Project

Mark Hohnstreiter - markh@caasnm.org
AMERICAN RESCUE PLAN ACT

RFP Application

Completed - Oct 12 2021

Proposal Information

1

ACKNOWLEDGEMENT OF REQUIRED ASSURANCES

This page must be signed and submitted with the application. Applications which do not contain a signed Acknowledgement of Required Assurances are ineligible for consideration.

By submitting the accompanying application and by my signature on this document, I understand and agree that any funding award resulting from this solicitation will require compliance with the signed agreement and with the regulations, requirements, and policies identified below, including but not limited to:

- **Compliance with 2 CFR Part 200 - Uniform Administrative Requirements**, Cost Principles, and Audit Requirements for Federal Awards (as appropriate);
    - Compliance with the requirements of the Americans with Disabilities Act Accessibility Guidelines;
        - Completion of an environmental regulations
        - Equal Employment Opportunity Act;
        - City of Las Cruces Nondiscrimination policy
        - Minority and Women's Business Enterprise (MBE/WBE);
        - Lead Based Paint;
        - Title VI of the Civil Rights Act of 1964, as amended;
        - The Fair Housing Act;
        - Equal Opportunity in Housing Act;
        - Age Discrimination Act;

- Americans with Disabilities Act;
- Section 504 of the Rehabilitation Act;
- Federal Funding Accountability and Transparency Act (FFATA);
- Hatch Act
- Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
- New Restrictions on Lobbying, 31 C.F.R. Part 21.
- Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C.§§ 4601-4655) and implementing regulations.
- Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Recipient should encourage its contractors to adopt and enforce on-thejob seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.
- Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Recipient should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and Recipient should establish workplace safety policies to decrease accidents caused by distracted drivers.
- Compliance with policies of the City of Las Cruces, NM
- Compliance with federal and state laws requiring the safeguarding and disclosure of confidential information.
- Evidence of comprehensive liability insurance and bonding, as required by the City;
- Completion of an annual financial audit, and/or as applicable, providing the City with a copy of the organization’s audited financial statement;
- Completion and subsequent renewal of background checks for all employees, volunteers, or interns who will or may have unsupervised contact with children or vulnerable adults;
- Maintaining program and financial records for audit review, and providing access to documentation upon request by the City;
- Submission of program and financial reports, as required by the City;
- Certification that the firm, association, corporation, or any person in a controlling capacity or any position involving the administration of federal, state, or local funds is not currently under suspension, debarment, voluntary exclusion, or a determination of ineligibility by any agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any agency within the past three (3) years; does not have a proposed debarment pending; has not been indicted, convicted, or has not had a civil judgment rendered against said person, firm,

association, or corporation by a court of competent jurisdiction in any matter involving fraud or misconduct with the past three (3) years.

- Certification that the firm is not bankrupt or under an administration appointed by the Court, or under proceedings leading to a declaration of bankruptcy; and provide any pending or known legal actions against the company.
- Certification that, in the past seven (7) years, the organization has not had any bankruptcy proceedings (closed or not) initiated against the Contractor and that there are no bankruptcy proceedings pending by or against the Contractor regardless of the date of filing;
- All pending or known litigation/court action(s) have been disclosed in the application.
- Certification that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Applicant further covenants that in the performance of this project/application, no person having any conflicting interest will be employed.

Application Approval and Signature: The signatory declares that he/she is an authorized official of the applicant organization, is authorized to make this application, is authorized to commit the organization in financial matters, and will assure that any funds received because of this application are used for the purposes set forth herein.

Please Sign

ARPA Categories:

Pick one (If project does not meet a category, it is ineligible for funding)

Public Health/Negative Economic Impacts: Household Assistance: Cash Transfers

Organization Information

Applicant Organization Information:

Name of Organization:	Community Action Agency of Southern New Mexico
Address:	3880 Foothills Rd. Suite A
City:	Las Cruces
State:	NM
Zip code:	88011
Organization DUNS Number:	968245837
Phone:	5755278799
Fax:	5755279028
Organization DUNS Number:	968245837

Primary Contact Information:

Project Manager:	Dawn Hommer
Title:	Chief Executive Officer
Phone:	5755278799
Email:	dawnh@caasnm.org
Fax:	5275279028
Phone:	5756494670

Alternative Contact Information:

Alternative Contact:	Mark Hohnstreiter
Title:	Development Officer
Phone:	5752027500
Email:	markh@caasnm.org
Fax:	5752027500
Phone:	5752027500

PROJECT INFORMATION

PROJECT NAME

Las Cruces Family Prosperity Demonstration Project

PROJECT SUMMARY:

PROJECT SUMMARY: Describe the proposed Project. This summary will be used to describe your project in official City documents and media. (Note: The Project Summary is an abstract or summary of your proposal and should be written after completion of the application.)

The ultimate objective of the Las Cruces Family Prosperity (LCFP) Demonstration Project is to lift Las Crucens out of poverty through direct cash assistance. One hundred and fifty Las Cruces families who have been disproportionately affected by the pandemic will receive recurring monthly payments of $500 for 18 months. An additional 150 families will receive a total of $450 for their participation in the data collection as a comparison group. Thus, $1,440,000 of the request will go directly to 300 homes with an immediate economic impact on the local economy. LCFP will use the Qualified Census Tracts and Distressed Communities Index (DCI) to target extremely vulnerable areas within the city to ensure funds reach those who can use it most.

Cash transfers are time-proven and effective methods to alleviate poverty. The earned income and child tax credits have reduced childhood poverty for decades. Families are empowered to make spending decisions based on family needs. Symptoms of poverty such as food insecurities, poor health outcomes, lack of job opportunities, and unsafe housing are reduced when incomes are increased. LCFP will become another tool in the fight against poverty in addition to resources local nonprofits provide.

Although new to Las Cruces, LCFP is conducted in the context of numerous existing cash transfer or Guaranteed Basic Income (GBI) programs and demonstrations nationwide and worldwide. Programs are funded by a wide range of federal, local, state, and private sources, as is evident by the match funding for LCFP.

Type of Client Populations & Number of Clients to be served (ESTIMATED)

Select Primary

Qualified Census Tract: 600

Program Type: * (check one only)

Direct Assistance to Households

Application Information

All questions must be answered, and all forms completed to be eligible for review by staff.

PROJECT JUSTIFICATION

1.Description and Justification of the Project; Provide a detailed description of the proposed project: Include project objectives, target population, major project characteristics, number and type of units, and how it responds to the public health emergency or its negative economic impacts.

Description
LCFP will provide 150 families with a cash transfer of $500 a month and study its effect on a number of evaluative criteria including employment and overall family wellness.
LCFP will be led by Community Action Agency of Southern New Mexico (CAASNM) in partnership with Families and Youth, Inc., Jardin de los Ninos, and Catholic Charities. These nonprofits (The Team) have a combined 143 years of experience working with vulnerable populations.

The research partner for this project will be Crimson Research of NMSU, which is tasked with exploring best practices among GBI projects nationwide, as well as project design and evaluation. The LCFP will also be informed and data-driven by the Guaranteed Income Community of Practice, which convenes guaranteed income stakeholders, including policy experts, researchers, community and program leaders, funders, and elected officials to promote learning and collaboration in the arena of GBI.

Because this demonstration project can be expected to achieve national attention, it will also include a communications plan that will detail Las Cruces' unique experience with GBI, the importance of anti-poverty policies, the long-term effects of poverty on families and children, and our City's role in reducing the equity gap.

Justification
The need for an innovative anti-poverty program in the region is well known. In Las Cruces, the poverty rate is over 26.4%. A more alarming statistic is that 38.30% of children under 18 live in poverty and for those under 5, the poverty rate is as high as 39.8%. (U.S. Census. Las Cruces, NM Metro Area).

Families who were already living in poverty have been devastated by the pandemic. This is especially true for families who have lost jobs, had hours reduced, and have been impacted by COVID-19, either directly or indirectly. CAASNM has experience working with households and has heard firsthand the acutely challenging stories shared during the past 18 months. The loss of loved ones, already a tragedy, became a source of economic strain during the pandemic. Family members who had previously served as lifelines and support systems passed away, or became so ill they could no longer be relied upon. Community resources quickly disappeared, as the sheer demand for aid and assistance outpaced the capacity of service providers. The mental and physical toll on families is still palpable.
Even before the pandemic, 40% of Americans could not afford a $400 emergency. Research has shown that when people are given unrestricted cash payments, recipients are able to pull themselves out of poverty, plan for the future, and create stability for themselves and their families (Economic Security Project, 2019). Guaranteed income gives recipients more freedom, dignity and self-determination to make choices for their financial well-being.

Specific, Measurable Project Objectives of LCFP
(additional objectives will be identified as the demonstration project progresses)

- Reduce unemployment rate
- Increase full-time employment
- Improve mental health outcomes and emotional wellbeing
- Increase economic resiliency
- Increase number of individuals making debt payments
- Decrease levels of perceived financial stress
- Increase school attendance among minors
- Increase access to health care/provider visits

Target Population
Recipients will be randomly selected from a pool of qualifying applicants. Recipients will be residents of Las Cruces living within the Qualified Census Tracts (QCT), families at or below 100% of AMI, and households with one or more children younger than 16 years old.
Citizenship status will not be a qualifying factor. The Team will use the Distressed Communities Index (DCI) tool to determine if there are more vulnerable areas within the QCT that should be targeted. As an example, ZIP code 88005 DCI increased from DCI 47 to 69 from last year to this year. 31.1% of adults in 88005 are not working.

Participants will be fairly and equitably recruited to apply through a variety of time-tested methods: phone banking, door-to-door outreach, coordination with schools, social media, flyers, nonprofit outreach, etc.

Project Characteristics

GBI has been widely studied, both in the U.S. and world-wide, as an innovative way to curb or eliminate poverty. Unrestricted cash payments are given monthly to participants. Families determine how to spend the money, but significant research has shown participants tend to pay for such basic needs as food, shelter, healthcare and transportation. The payments help them plan for the future, attaining better employment and education and creating stability for themselves and their families. For the community, a reduction in poverty rates can mean higher grades and graduation rates, increased employment prospects, reductions in crime and homelessness, and other societal and economic impacts.

It is important to note that families are not required to receive CAASNM services in order to receive payments; however, services will be made available to all participants.

Throughout the entirety of the project, Team partners at NMSU Crimson Research will be collecting and analyzing data, a task that will culminate in an exhaustive evaluation at the project's conclusion. Thus, 85% of grant funds would be spent providing direct assistance to families, with the balance needed to plan, administer and evaluate the project.

Economic and societal impact is an important project characteristic. Studies have consistently shown that GBI programs boost the economy given that when people have disposable income, they tend to spend it thoughtfully and locally. Fifty-seven communities in the United States are exploring GBI, and those reaching the end of their initial study period have demonstrated positive economic and societal impact. The most studied projects of this kind are the donor-funded Stockton Economic Empowerment Demonstration (SEED) and The Magnolia Mother's Trust from Jackson, MS, funded by the Economic Security Project. In the Stockton study, as of early 2019, 28% of the recipients had full time employment. One year later, 40% of recipients were employed full time. In contrast, the comparison group saw only a 5% increase in full-time employment in the same one-year period. At the end of 6 months in the Jackson, MS study, no women reported using an emergency lender, and nearly all reported using their monthly payments for children's school supplies, cooking more balanced meals, and more visits to the doctor.

Number and Types of Unit

- 150 families will receive cash payments of $500 a month for 18 months.
- 150-200 families in the comparison group will receive $25 a month for completing surveys - A grand total of $450 over 18 months. These smaller, monthly payments serve as an incentive for families to remain in the comparison group.

Public Health Emergency and Negative Economic Impact
LCFP addresses negative economic impact on families who were disproportionately affected by COVID-19. COVID-19 has intensified the economic insecurity of low-income people in a variety of different ways, from job loss to educational adjustments, to unanticipated costs, to struggles to meet basic needs, and unforeseen medical expenses. Instead of targeting just one of those problems, LCFP seeks to address them all by awarding the funds directly to families. Having access to more income increases family stability and reduces material barriers to seeking employment, education, job training, medical care, and safe and sanitary housing (Economic Security Council).

ALIGNMENT WITH CITY PLANS

2. What specific priorities in the City's Strategic Plan, Elevate Las Cruces and/or 2021-2025 Consolidated Plan? (Click on plan links below to view)

City Plans:

ELEVATE PLAN

COUNCIL STRATEGIC PLAN

2021-2025 CON PLAN

LCFP addresses Elevate Las Cruces' themes of economic prosperity, ready workforce, and especially economic diversity. As a component of ELC's vision, this public private partnership creates economic opportunities for residents. Organizations such as CAASNM and the three other project partners are "funded and mobilized to provide for the daily well-being and long-term personal and professional growth of Las Crucens," by leveraging a social initiative to ensure that "all residents share in the fortune of a positive economic climate." [p. 144] It addresses Goal CP-11 by serving underserved populations and providing assistance to traditionally underserved populations. It also references Goal CP-2 by helping to establish economic opportunities to create economic security for residents.

A cash transfer program is aligned with the Consolidated Plan (CP) in multiple ways. One cannot address housing concerns without including family economic well-being. A cash transfer program could address

SP-70 Anti-Poverty Strategy – 91.215(j) “Building a local wealth program […] to reach low and moderate-income populations''. Additionally, partnerships and services are critical to accomplishing the goals of the CP. CAASNM and its partners are long-time, trusted partners with the city who have over a hundred years of combined experience addressing poverty and reducing barriers for families.

Strategic Plan: As one Community Action Agency that is a part of a federally regulated and evaluated network, all of its work is focused on National Goals that include working with low income and underserved families (ELC Goal CP-11, Strategic Plan (SP) so they are stable and achieve economic security. In addition to increasing accessibility to employment opportunities and providing support services for living wage attainment, cash transfers create Economic Equity (ELC Goal CP-2, SP) and therefore address the many other areas families need to survive and thrive. Unrestricted cash assistance can reduce trauma families experience when they live in a constant state of poverty and worry thus addressing mental and physical health (ELC Goal CL-18, SP).

COMMUNITY IMPACT

3. What is the anticipated impact of your program on the Las Cruces community? How will you measure the expected outcomes?

LCFP is focused on solutions to Las Cruces poverty, and there is well established data from other programs nationwide that demonstrates that this project would have a high likelihood of impacting some of the following quantitative measurements: enhancing employment prospects, lowering debt, establishing savings, stabilizing housing security, and allowing for income-focused goals. In addition, GBI success could be measured by monitoring qualitative factors such as stress reporting, childhood well-being, and other family well being outcomes. CAASNM already monitors and reports annually to the State and ultimately to the federal government outcomes for families. Using case management client software, CAASNM tracts inputs, outputs and outcomes across 7 domains including health, education, employment, housing, and income.

Recently, the W.K. Kellogg Foundation awarded the LCFP Team a $200,000 research, program design, and evaluation grant to study the impacts of this GBI project on Las Cruces families and the Las Cruces economy. This evaluation data would be used to solidify the demonstration effort and be taken to key external funders. The data accumulated and processed will be used to support and justify an expansion effort after this demonstration concludes. The Team will use these funds to contract with research

partner, Crimson Research (CR) at NMSU, who will set up a prototype of a GBI design and develop the selection, implementation, and evaluation processes necessary for a larger-scale demonstration. Thus, the LCFP project will begin with a strong infrastructure already in place and benefit from data-driven lessons learned.

The role of CR will be to research best practices among established programs and design a sound program and research study to effectively test and assess implementation. They will devise fair and equitable selection protocol working with the team of community agency partners. CR will construct surveys and other data collection instruments, collect data, and analyze data quantitatively and qualitatively. They will provide formative evaluation throughout the study, provide summative evaluation and outcomes analysis at the conclusion of the study. CR will present their methodology and findings in a final report.

Survey methodology for both demonstration and comparison groups will be the primary means for evaluating outcomes. Expected outcomes will be measured through monthly structured questionnaires and interviews administered to both demonstration group and comparison group families. Existing, validated measures will be used whenever possible. Household caregivers will respond to a series of items that assess current income, employment status, ability to accommodate unexpected expenses, depression, anxiety, overall well-being, amount of debt, ability to access and utilize health care, health status, educational pursuits, school attendance of children, and other related items. Qualitative interview data will be collected and analyzed as well via content coding.

4. BUDGET INFORMATION

PART A

Instructions: Please complete the budget summary. Indicate the amount ARPA funds needed for each expenditure classification. Also include other funds for the project from federal, state and private sources. Columns A, B, C & D must add up to Column E (Total Budget) needed for the project.

Please Enter just numbers no symbols (i.e. $,)

	ARPA FUNDING	OTHER FEDERAL FUNDS	STATE FUNDS	PRIVATE FUNDS	TOTAL BUDGET

Permanent Position, Full Time	134680			40000	174680
Permanent Position, Part Time				20000	20000
Temporary Positions					
Employment Liability Insurance		4500			4500
Other Employee Benefits *	33875				33875
Office Supplies		2000		5000	7000
Operating Supplies		1000		5000	6000
Repair & Maintenance Supplies					
Small Tools					
Motor Oil and Fuel					
Library Books and Periodicals					
Magazines and Periodicals					
Audio Visual Aids					
Wearing Apparel					
Postage and Federal Express					

City Service (water, waste, etc.)					
Electricity		2000			2000
Telephone		1500			1500
Utility Services – Other		1000			1000
Legal Services					
Auditing Services					
Engineering Services					
Architectural Services					
Maintenance Agreements		5000			5000
Fees or Service Charges	7500				7500
Advertising	1945				1945
Landscape Maintenance					
Required Building Repair & Maintenance					
Auto or Truck Repair					
Equipment Repair					
Building or Land Rental					
Vehicle Rental					
Equipment Rental					

Liability Insurance					
Property Insurance					
Fidelity Insurance					
Transportation (in-state only)		1000			1000
Per Diem (in-state only)					
Registration Fees					
Miscellaneous Costs	2000	10000		154000	166000
Training and Education	5000	2000		16000	23000
Land-Vacant					
Land-Buildings or Other		19000			19000
Land-Right of Way					
Land Improvements					
Furniture and Fixtures					
Building Improvements					
Automobiles					
Trucks and Vans					
Heavy Equipment					

Furniture and Fixtures					
Office Equipment					
Data Processing	75000			30000	105000
Shop Equipment					
Client Housing (rent, mortgage, utilities, deposit)					
Client Support (medical, classes)	1440000	108000		20000	1568000
Total	1700000.0	157000.0	0	290000.0	2147000.0

Part B – BUDGET JUSTIFICATION

Briefly and specifically describe each line item listed on Part A (ARPA FUNDS) in a separate paragraph below:

TWO YEAR BUDGET
TOTAL PROJECT $2,147,000
ARPA Funds: $1,700,000
Other Federal funds: $157,000
Private funds: $290,000
MATCH TOTAL: $447,000
MATCH PERCENTAGE: 26.29%

Approximately 85% of ARPA funds requested will be a direct cash pass through for vulnerable families disproportionately affected by the Pandemic. Approximately 15% will be used for direct program operations. All other costs will be covered by match fund including partner staff time and administration and most of the research and evaluation.

Permanent positions, full time

ARPA funds $134,680

CEO (direct program support and administration), Fiscal Director (fiscal oversight and processing), Development Officer (reporting and sustainability), Senior Fiscal officer (cash transfer processing, fiscal monitoring and support) each @12.5% each year. Program Director (program design and implementation) and 2 frontline program coordinator staff (intake, recruitment, data collection, and other program services) @ 25% each year.

Other employee benefits

ARPA funds $33,875

Taxes and fringe including health, disability insurances, retirement

Fees or service charges

ARPA funds: $7,500

Bank or card fees 150@$50 times for client payments (cash transfers)

Advertising

ARPA funds: $1945

Paid advertising as needed. Includes printing of flyers or advertising materials

Miscellaneous costs

ARPA funds: $2,000

Unanticipated Misc. operating costs

Training and education

ARPA funds: $5,000

Client orientation and staff trainings as needed

Data processing

ARPA funds: $75,000

Internal data processing and IT support

Additional Evaluation by Crimson Research including year 2.

Client support

ARPA funds: $1,440,000

Cash Transfers $500 for 18 months to 150 families. Includes up to $90,000 in stipends for control group, additional 200 families, for up to 18 months.

DUPLICATION

5. Is this a new or existing program in the Community? How do ARPA funds makes this project feasible? If existing, describe additional efforts to prevent duplication of services.

LCFP is an entirely new undertaking for the City of Las Cruces. CAASNM has experience in providing cash assistance including other emergency assistance; however, providing recurring payments over an extended time period would be a new program for CAASNM and The Team. While there are 57 GBI projects underway in the U.S.(including one in the city of Santa Fe), the proposed Las Cruces initiative would be the only program to focus on a border community with such a distinct and diverse ethnic composition.

With research and evaluation funding already in hand, ARPA funds would be used to provide the direct cash transfers of $500 monthly to study participants. (Cash transfers are an allowable use for ARPA funding).

FEASABILITY/TIMELINE

6. Please provide a detailed timeline or work schedule for implementing this project including anticipated milestone dates.

Assigned personnel: CEO, PM (project manager), PC (project coordinators), DO (development officer), FS (fiscal staff), CR (Crimson Research)

Throughout, the project will employ survey methodology and one-on-one interviews, at monthly intervals for both demonstration and comparison groups, with major report-outs at quarterly milestones. (PM, PC, CR)

Project timetable Jan. 1, 2022 to Dec. 31, 2024

Quarter 1, 2022

Review data and best practices of other GBI projects nationwide (CR)

Analyze City Distressed Community Indexes and determine target neighborhoods (PM, CR).

Finalize program design with NMSU Crimson Research including monthly survey methodology: refine selection criteria, finalize application process, and draft program materials. (PM, PC, CR)

Identify and recruit families based on program criteria (PM, PC)

Prospect for additional funders; begin submitting funding requests for continuation of program past 2024. (DO)

Conduct regular discussions with project partners (All)

Define research evaluation criteria, finalize work plan, conduct literature reviews and additional research (CR)

Submit research protocol to Institutional Review Board and obtain approval (CR)

Translate materials into Spanish (other)

Conduct further conversations with Nusenda to manage payment accounts (CEO, PM)

Quarter 2, 2022

Begin payments (cash transfers) to target families (FS, PC)

Maintain accounting of all project expenditures (FS)

Engage comparison group (PM)

Orient clients to understand research expectations (PM)

Encourage/incentivize both demonstration group and comparison group to stay in program and complete surveys (PM, PC)

Prepare quarterly research reports (PM, CR)

Quarter 3, 2022 to December 31, 2023

Make ongoing payments to participants (capped at 18 months) (FS)

Provide continuous evaluation and quarterly activity reports. (CEO, PM, CR)

Dialogue among non-profit partners (CEO, PM)

Complete data entry, compile and clean data, conduct all final quantitative and qualitative analyses, prepare reports of findings and distribute to funders and stakeholders. (PM, PC, CR)

December, 2024 Project with evaluation concludes (All)

7. Is this project dependent on future funding to fully complete this project? Include specific timelines/dates and funding commitments needed to complete the project and have it fully operational for public benefit. Can this project be phased? Can this project be partially funded?

LCFP is a demonstration project and for the families enrolled will be fully completed by December 31, 2024 using current funds and the requested ARPA funds. For the purpose of the demonstration project and to gather meaningful data, this cohort cannot be phased.
The Team would like to continue the program, serving new families for years to come and developing sustainability strategies.. While working in coordination with local partners, other GBI demonstration programs, and support organizations across this country, LCFP will ultimately inform federal, state, and local policies as well as similar new programs across the state and nation. (Legislators are pursuing policies to fund cash transfer programs including making the Advance Child Tax Credit permanent.) All stakeholders understand that GBI is sustainable when a combination of private and public dollars supports meaningful investments into families. That mix is the avenue The Team will explore for future funding.

As of October 2021, LCFP has already attracted investors, including the W.K. Kellogg Foundation, for the research piece. CAASNM is in dialogue with a major regional funder about a significant, six-figure grant toward the project. The funder is looking to provide funding for this effort and beyond the initial demonstration project. CAASNM and the Team secured public and private match funding totaling $447,000 toward this project, or 27.34% of the total program budget. In addition, a complete development study is underway to explore continuation funds to be completed by a certified fundraising professional.
Further, there are private foundations that specialize in this type of funding for project continuation, such as Impact Charitable, a private 501(c)3. Member cities of Mayors for a Guaranteed Income can apply for up to $500,000 in funding to continue a demonstration program.

8. If funded, it is expected that the project will begin within ninety (90) days of being issued a fully executed contract. What potential or known barriers exist to beginning the project within ninety (90) days and completing the project within twenty-four (24) months of being issued a Notice to Proceed from City Staff? Please describe in detail your plan for overcoming the barriers identified and achieving a timely and successful completion of the project.

The project is well underway prior to the actual contract start date with the City. Using CAASNM and partner resources that include funding from the W.K. Kellogg Foundation, the Team has completed several preliminary activities including establishing participant eligibility, conducting extensive research, and securing additional funding. Contract negotiations have been completed with NMSU Crimson Research with an executed contract expected before the end of October 2021. The Team anticipates that in this preceding quarter some essential research evaluation criteria could be finalized, a work plan will be finalized, literature reviews and additional research will be conducted, survey and program materials could be drafted, and discussions with banking institutions will be had for the distribution of monies.

A barrier of note for some recipients is the “benefits cliff”. The benefits cliff is a major barrier to economic mobility and stability for low-income families. It occurs when a family begins to receive more income and thus no longer qualifies for certain public benefits because they are now over the income limits set by these benefit programs. The Team will address this barrier in multiple ways.

1. Research has already been conducted by CAPLAW, a legal resource for CAAs, to determine how various benefit programs define “income”.
2. The Team met with New Mexico Human Services Department (HSD) Undersecretary Medrano to obtain a waiver for participants. HSD has agreed to research the waivers and supports the work.
3. A one-on-one orientation will be created to discuss the cliff with participants as modeled after other GBI programs in the county.

The benefits cliff will not be a barrier for very low income participants.

ORGANIZATION HISTORY AND CAPACITY

9. History of your organization’s TOTAL ANNUAL REVENUES for the past three (3) fiscal years:

	2020	2019	2018
Total Annual Revenues $	5,228,747	5,288,000	4,006,384

10. Applicant Qualifications

Summarize your organization's experience in areas relevant to the proposed project describe at least two most recent projects; if applicable. Describe Organizations capacity to implement proposed project.

A trusted local leader for 56 years, CAASNM has been working to lift Southern New Mexicans out of poverty through programs that build family strength, self-empowerment, and resilience. One of the agency’s strengths is this innovative, unified network of programs that help people face and rise above the many economic, family, and life adversities they may encounter. Last year, CAASNM served over 12,000 individuals and families. CAASNM prides itself on having assembled a diverse, multicultural and bilingual team to interpret and address the needs of vulnerable families in the community in a culturally sensitive manner. The overall vision of CAASNM is to see southern New Mexicans live in thriving, equitable communities.

CAASNM has decades of experience successfully administering large-scale grant projects related to family financial empowerment, child wellness and nutrition education, home visiting services, and family welfare. Many of these grants, drawn from public and private sources alike, range into the hundreds of thousands of dollars to millions. CAASNM’s annual budget is currently in excess of $5 million and it receives rigorous annual reviews by funding agencies including the federal government.

In addition to its programs that help advance family wellness and a whole-family approach, CAASNM administers programs of financial literacy, free tax preparation, small business development, youth entrepreneurship, and child and adult savings programs.
Three recent projects include Thriving Families, a whole-family approach to managing area families through intensive case management funded by the Kellogg Foundation for two years, Thriving Kids, a home visiting program awarded funding and renewal funding by the State of New Mexico for three years, and Kids Can, a youth entrepreneur program supported by the Paso del Norte Health Foundation for two years after having a presence in Las Cruces for four.

Please complete the table below for all key staff members involved in the project. Including executive director, fiscal officer, project manager and any employees to be funded by the project.

	Name	Title	Total Years' Experience	Years with Association
1	Dawn Hommer	CEO	16	10
2	Kim Daisley	Finance Director	45	29
3	Jennifer Stewart	Sr. Fiscal Officer	31	17
4	Isabel Dominguez	Project Manager	12	6
5	Mark Hohnstreiter	Development Officer	40	4
6	Brian Kiser	Project coordinator	5	1
7	Amber Dominguez	Project coordinator	4	1
8				
9				
10				

Application: Jardin de los Niños: Flourishing Families Infant Mental Health Program

Michelle Adames - michelle.adames@jardinlc.org
AMERICAN RESCUE PLAN ACT

RFP Application

Completed - Oct 14 2021

Proposal Information

1

ACKNOWLEDGEMENT OF REQUIRED ASSURANCES

This page must be signed and submitted with the application. Applications which do not contain a signed Acknowledgement of Required Assurances are ineligible for consideration.

By submitting the accompanying application and by my signature on this document, I understand and agree that any funding award resulting from this solicitation will require compliance with the signed agreement and with the regulations, requirements, and policies identified below, including but not limited to:

- **Compliance with 2 CFR Part 200 - Uniform Administrative Requirements**, Cost Principles, and Audit Requirements for Federal Awards (as appropriate);
    - Compliance with the requirements of the Americans with Disabilities Act Accessibility Guidelines;
        - Completion of an environmental regulations
        - Equal Employment Opportunity Act;
        - City of Las Cruces Nondiscrimination policy
        - Minority and Women's Business Enterprise (MBE/WBE);
        - Lead Based Paint;
        - Title VI of the Civil Rights Act of 1964, as amended;
        - The Fair Housing Act;
        - Equal Opportunity in Housing Act;
        - Age Discrimination Act;

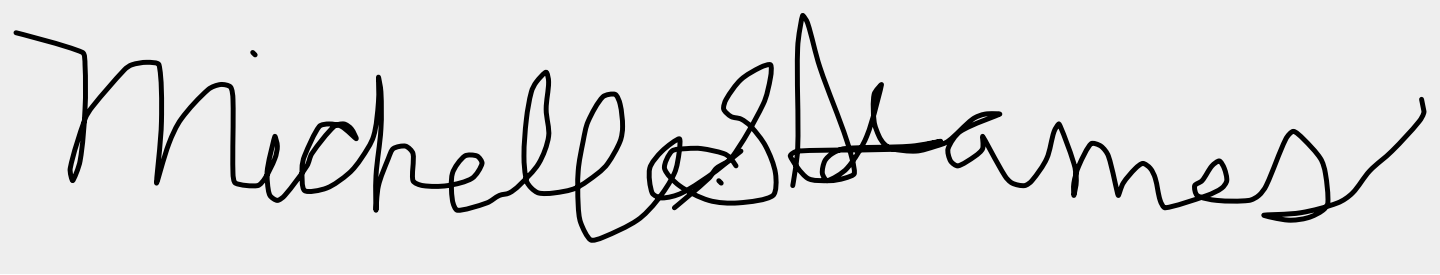
- Americans with Disabilities Act;
- Section 504 of the Rehabilitation Act;
- Federal Funding Accountability and Transparency Act (FFATA);
- Hatch Act
- Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
- New Restrictions on Lobbying, 31 C.F.R. Part 21.
- Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C.§§ 4601-4655) and implementing regulations.
- Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Recipient should encourage its contractors to adopt and enforce on-thejob seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.
- Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Recipient should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and Recipient should establish workplace safety policies to decrease accidents caused by distracted drivers.
- Compliance with policies of the City of Las Cruces, NM
- Compliance with federal and state laws requiring the safeguarding and disclosure of confidential information.
- Evidence of comprehensive liability insurance and bonding, as required by the City;
- Completion of an annual financial audit, and/or as applicable, providing the City with a copy of the organization’s audited financial statement;
- Completion and subsequent renewal of background checks for all employees, volunteers, or interns who will or may have unsupervised contact with children or vulnerable adults;
- Maintaining program and financial records for audit review, and providing access to documentation upon request by the City;
- Submission of program and financial reports, as required by the City;
- Certification that the firm, association, corporation, or any person in a controlling capacity or any position involving the administration of federal, state, or local funds is not currently under suspension, debarment, voluntary exclusion, or a determination of ineligibility by any agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any agency within the past three (3) years; does not have a proposed debarment pending; has not been indicted, convicted, or has not had a civil judgment rendered against said person, firm,

association, or corporation by a court of competent jurisdiction in any matter involving fraud or misconduct with the past three (3) years.

- Certification that the firm is not bankrupt or under an administration appointed by the Court, or under proceedings leading to a declaration of bankruptcy; and provide any pending or known legal actions against the company.
- Certification that, in the past seven (7) years, the organization has not had any bankruptcy proceedings (closed or not) initiated against the Contractor and that there are no bankruptcy proceedings pending by or against the Contractor regardless of the date of filing;
- All pending or known litigation/court action(s) have been disclosed in the application.
- Certification that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Applicant further covenants that in the performance of this project/application, no person having any conflicting interest will be employed.

Application Approval and Signature: The signatory declares that he/she is an authorized official of the applicant organization, is authorized to make this application, is authorized to commit the organization in financial matters, and will assure that any funds received because of this application are used for the purposes set forth herein.

Please Sign



ARPA Categories:

Pick one (If project does not meet a category, it is ineligible for funding)

Services to Disproportionately Impacted Communities: Education Assistance: Social, Emotional, and Mental Health Services

Organization Information

Applicant Organization Information:

Name of Organization:	Jardin de los Niños
Address:	999 W. Amador Ave, Suite E
City:	Las Cruces
State:	NM
Zip code:	88005
Organization DUNS Number:	023018315
Phone:	575-522-2111
Fax:	575-522-3595
Organization DUNS Number:	023018315

Primary Contact Information:

Project Manager:	Michelle S. Adames
Title:	Chief Executive Officer
Phone:	575-522-2111
Email:	michelle.adames@jardinlc.org
Fax:	575-522-3595
Phone:	575-639-0652

Alternative Contact Information:

Alternative Contact:	Diana O'Brien
Title:	Director of Development & Community Engagement (Infant Mental Health Coordinator)
Phone:	575-522-2111
Email:	diana.obrien@jardinlc.org
Fax:	575-522-3595
Phone:	575-522-2111

PROJECT INFORMATION

PROJECT NAME

Flourishing Families Infant Mental Health Program

PROJECT SUMMARY:

PROJECT SUMMARY: Describe the proposed Project. This summary will be used to describe your project in official City documents and media. (Note: The Project Summary is an abstract or summary of your proposal and should be written after completion of the application.)

Jardin’s Flourishing Families Infant Mental Health Program serve as a preventative approach to addressing trauma from a holistic, strengths-based service delivery model. Jardin serves high risk families who experience generational poverty, trauma, domestic violence, food insecurity, and high mobility. Homeless children and families experience trauma and a greater likelihood that their basic needs, social/emotional and health needs will not be met. Through our service delivery model, children and families at Jardin will receive direct therapy service, social/emotional learning will be supported within the classroom setting, and the parents will be supported through a mentoring program that supports the whole family from a holistic, trauma informed approach.

Type of Client Populations & Number of Clients to be served (ESTIMATED)

Select Primary

Children & Youth: 200

Program Type: * (check one only)

Homeless Services

Application Information

All questions must be answered, and all forms completed to be eligible for review by staff.

PROJECT JUSTIFICATION

1.Description and Justification of the Project; Provide a detailed description of the proposed project: Include project objectives, target population, major project characteristics, number and type of units, and how it responds to the public health emergency or its negative economic impacts.

Children and families who face challenges of homelessness are often plagued with social issues such as food insecurity, low literacy skills, developmental delays, lack of access to medical and behavioral health care, high mobility, domestic violence, and child neglect. The child abuse rate (the number of substantiated child victims of abuse or neglect per 1,000 children) was approximately 15 children in every 1,000 children under the age of 18 (Kids Count, 2020). Although every effort is made to end childhood homelessness in America, New Mexico, and Doña Ana County continue to experience a rise in homelessness. According to the 2020 Kids Count Report, New Mexico ranks 50th for overall child well-being in education, health and family and community development. According to the 2020 Kids Count Report, 26% of NM children live in poverty as opposed to 18% nationwide; in Doña Ana County 43% of children 0-4 live in poverty compared to 28% in New Mexico; and in addition, 42% of Doña Ana County children live in high poverty areas as opposed to 19.7% in NM. The children and families that we serve are homeless/near homeless. Homeless children are at higher risk of abuse, neglect, poor health, hunger, chaos, and trauma. One in ten homeless child misses more than a month of school annually, have lower math scores, enter the juvenile justice system by the age of eight, and one in three have a major mental health disorder. As we grapple with the spread of COVID-19 our families are asked to stay home either to quarantine or as a result of job loss. Unfortunately, for victims of domestic violence and children who are exposed to abuse and violence, this situation is not ideal. For children who are homeless or near homeless there is a higher risk for experiencing abuse and neglect (Voices for Children, 2018). According to the American Psychological Association in a recent article titled How COVID-19 may increase domestic violence and child abuse, “the unprecedented stress of the pandemic could breed unsafety in homes where violence may not have been an issue before” (Abramson, April 8, 2020). Abramson describes how children are experiencing their own stress and uncertainty about the pandemic. Jardin de los Niños serves as a safety-net for the homeless/near homeless families that we serve. During this pandemic, our high-risk families are at greater risk as they have been challenged with uncertainty of direct access to resources that they greatly rely on.

The following goals and objectives guide this program: Goal 1: Advance the health, safety and well-being of homeless/near homeless and abused/neglected children and their families; Goal 2: Strengthen and stabilize the family to quickly minimize ill effects of homelessness on children.

These goals will be met through the following objectives: a) Provide behavioral health services to all children, youth, parents/caregivers/guardians who are enrolled at Jardin de los Niños; b) Increase opportunities for children and parents to interact in a positive/supportive environment to impact the well-being of the family and minimize Adverse Childhood Experiences (ACEs); c) Provide high-quality early learning activities in a supportive, caring educational environment and maintain a 5-Star NM FOCUS

rating through the Early Childhood Education and Care Department (ECECD); d) Provide opportunities for parents/caregivers/guardians to participate in the Parent Mentoring Program, which fosters a support network to elevate the families of Jardin de los Niños from a holistic, strengths-based approach so that they will see their full potential through mentoring, career exploration, and a growth mindset; e) Increase capacity and training of Jardin staff through the Infant Mental Health Endorsement and maintain a Trauma-Informed Care Center designation through the New Mexico Association for Infant Mental Health (NMAIMH).

The target population is 200 children, youth, parents/caregivers/guardians who are experiencing homelessness/near homelessness who live/reside within Title I school zones and reside in distressed communities (according to the Distressed Communities Index-DCI) within Las Cruces. This program supports the continued educational success of the children enrolled at Jardin. This program also provides ongoing training and professional development to Jardin's educators and family services staff through the Infant Mental Health Endorsement and the delivery of the Conscious Discipline curriculum within the classroom setting to maintain a Trauma-Informed Care Center designation through the New Mexico Association for Infant Mental Health.

The request for funding serves to address trauma that is present in the lives of children who experience homelessness. Jardin's Flourishing Families Infant Mental Health Program addresses the heightened level of trauma as a result of the challenges that have been experienced due to the public health emergency and the negative impact on high-risk families who experience homelessness and child maltreatment.

ALIGNMENT WITH CITY PLANS

2. What specific priorities in the City's Strategic Plan, Elevate Las Cruces and/or 2021-2025 Consolidated Plan? (Click on plan links below to view)

City Plans:

ELEVATE PLAN

COUNCIL STRATEGIC PLAN

2021-2025 CON PLAN

The Flourishing Families Infant Mental Health Program addresses Elevate Las Cruces' themes of creating access and support to underserved populations through education and human services. Jardin de los Niños is a 5-Star Early Childhood Education Program that provides high quality early learning opportunities to underserved population and high-risk children, which aligns to CP-5: Education for all ages. Elevate Las Cruces promotes "Community Health through comprehensive and holistic social services that are centered on individuals with mental health or behavioral challenges and their families" (p. 172). The Flourishing Families Infant Mental Health Program aligns directly with CP-10.1 &10.2 as this program is modeled from a holistic, strengths-based approach with a Trauma Informed focus that provides infant mental and behavioral health services, wrap-around services including mentoring to elevate the whole family and address the basic needs in order to create stability in the lives of children and adults who are experiencing homelessness. Through this direct service model, families who would otherwise not seek to receive mental and behavioral health services can access them within the childcare center.

Strategic Plan: The Flourishing Families Infant Mental Health Program aligns to the Strategic Theme: Education and Community Services (ELC Goal CP-11 & ELC Goal CL-18). Jardin de los Niños is designated as the first Trauma-Informed Care Center in the state of New Mexico by the New Mexico Association for Infant Mental Health. This designation allows Jardin to increase its capacity to serve homeless and near homeless children and their families through a Trauma-Informed approach, which supports the desired outcome of enhanced physical and mental health resources. While also addressing community prosperity.

Consolidated Plan: In order to address poverty, addressing the needs of homeless children and their families is key. Jardin’s Flourishing Families Infant Mental Health Program addresses stressors that impact families who are experiencing homelessness in addition to experiencing domestic violence, substance use disorders, child abuse, food insecurity, transportation challenges, mental illness, housing issues, disabilities-91.205 (b,d). “Special needs communities often encounter financial barriers and access/availability of appropriate housing and services”(p. 77). To help support this need, Jardin addresses this gap from a holistic, strengths-based, trauma-informed focus through wrap-around services. Jardin de los Niños has provided support to homeless/near homeless children and their families for 26 years and is a reputable partner within the community when addressing poverty and social determinants of health that impact our community.

COMMUNITY IMPACT

3. What is the anticipated impact of your program on the Las Cruces community? How will you measure the expected outcomes?

Goal 1: Advance the health, safety and well-being for homeless/near homeless and abused/neglected children.

Jardin aligns all of its curriculum to the NM FOCUS Metrics that are researched based to meet the annual certification and accreditation requirements. Jardin will continue to maintain its 5-star rating and will recertify for the accreditation annually. Therapeutic services are continually supported through assessments that monitor developmental milestones, which will improve as the result of Early Childhood Education and Intervention Services. Initial assessments are conducted on each child upon admission to the program. Children identified as needing services will be matched with appropriate therapeutic practitioners. An Individualized Education Program (IEP) will be put into place to support the child's growth, and services from therapists will occur during regular classroom activities. Multidisciplinary Evaluations will be conducted to screen children for developmental delays and social emotional milestones. A team of professionals evaluate the child's progress and provide reviews for parents to assure that they are aware of the child's progress and developmental milestone achievements. The Ages and Stages Questionnaire assesses children from 2 months to 60 months (ASQ-3). Through the support of the parents an ASQ-SE will be utilized to assess Social Emotional milestones. Progress is measured monthly through case management meetings and weekly parenting classes to support strengthening and stabilization of the families. Ongoing communication and social support will occur. The appropriate referrals will be conducted to support the family. Parental relationships with their children will improve, their knowledge base, skills and abilities through weekly class participation with their children will also improve.

Goal 2: Strengthen and stabilize the family to quickly minimize ill effects of homelessness on children.

Direct Therapy services will be provided to the children and families who are enrolled at Jardin within the Pediatric Clinic through the partnership with Families and Youth, Inc we are able to provide therapy and meet the needs of our bilingual families as well. Therapy services will align to the Family Success Plan that encompasses a holistic approach with wrap-around services that promotes education, health and wellness, therapeutic services, and access to resources within the community. Jardin staff will continue to maintain the Infant Mental Health Endorsement through the NM Association for Infant Mental Health.

Through this ongoing training and professional development, Jardin is designated as a Trauma-Informed Care Center. This holistic approach to serving the families at Jardin within the Flourishing Families Infant Mental Health Program, will provide ongoing mental health therapy, access to mentors, basic needs support and opportunities to build and expand their social network increasing the likelihood of accessing a job, maintaining a steady household, increasing literacy skills, minimizing the negative effects of Adverse Childhood Experiences (ACEs). Jardin's services have long-term benefits to the community. Through our service delivery model of wrap-around services the children and families at Jardin receive support, which impacts a decreased cost for health care, mental health services, child welfare services, juvenile delinquency, unemployment, special education, emergency care, transitional housing, and early intervention.

4. BUDGET INFORMATION

PART A

Instructions: Please complete the budget summary. Indicate the amount ARPA funds needed for each expenditure classification. Also include other funds for the project from federal, state and private sources. Columns A, B, C & D must add up to Column E (Total Budget) needed for the project.

Please Enter just numbers no symbols (i.e. $,)

	ARPA FUNDING	OTHER FEDERAL FUNDS	STATE FUNDS	PRIVATE FUNDS	TOTAL BUDGET
Permanent Position, Full Time	172500.00	25000.00	25000.00	25000.00	247500.00
Permanent Position, Part Time	100000.00		25000.00		125000.00
Temporary Positions					
Employment Liability Insurance					

Other Employee Benefits *					
Office Supplies	5000.00	5000.00	2500.00		12500.00
Operating Supplies	5000.00	5000.00	2500.00	2500.00	15000.00
Repair & Maintenance Supplies					
Small Tools					
Motor Oil and Fuel	2500.00	2500.00	2500.00		7500.00
Library Books and Periodicals					
Magazines and Periodicals					
Audio Visual Aids					
Wearing Apparel					
Postage and Federal Express					
City Service (water, waste, etc.)	5000.00	5000.00	5000.00		15000.00
Electricity	5000.00	4000.00	3000.00		12000.00
Telephone					
Utility Services – Other					
Legal Services					
Auditing Services	5000.00	10000.00	10000.00		25000.00

Engineering Services					
Architectural Services					
Maintenance Agreements					
Fees or Service Charges					
Advertising					
Landscape Maintenance					
Required Building Repair & Maintenance					
Auto or Truck Repair					
Equipment Repair					
Building or Land Rental					
Vehicle Rental					
Equipment Rental	5000.00		12000.00		17000.00
Liability Insurance					
Property Insurance					
Fidelity Insurance					
Transportation (in-state only)					
Per Diem (in-state only)					

Registration Fees	10000.00	4500.00	2500.00	2000.00	19000.00
Miscellaneous Costs	8000.00	5000.00		2500.00	15500.00
Training and Education	7000.00	2500.00	2500.00		12000.00
Land-Vacant					
Land-Buildings or Other					
Land-Right of Way					
Land Improvements					
Furniture and Fixtures					
Building Improvements					
Automobiles					
Trucks and Vans					
Heavy Equipment					
Furniture and Fixtures					
Office Equipment					
Data Processing					
Shop Equipment					
Client Housing (rent, mortgage,					

utilities, deposit)					
Client Support (medical, classes)	20000.00	2500.00		2500.00	25000.00
Total	350000.0	71000.0	92500.0	34500.0	548000.0

Part B – BUDGET JUSTIFICATION

Briefly and specifically describe each line item listed on Part A (ARPA FUNDS) in a separate paragraph below:

TWO YEAR BUDGET:
Total Project: $548,000

ARPA Funds Requested: $350,000

Other Federal Funds: $71,000
State Funds: $92,500
Private Funds: $34,500
Match Total: $198,000

Permanent Position, Full Time
ARPA Funds: $172,500.00

CEO Salary—Direct Program Support and Administration @ 15% of salary

Fiscal Manager/Accountant—Fiscal oversight and processing @15% of contracted fees

Licensed Clinical Social Worker Salary—Direct Therapy Services and Delivery of Social Emotional Learning Curriculum within the classroom setting @ 65% of salary

Director of Development & Community Engagement—Coordinates the Infant Mental Health Program and the Parent Mentoring Program @ 25% salary

Family Services Coordinator—Provides direct case management, serves as the liaison to FYI and

community partners for all referrals and oversees all communication between ECECD, CYFD and other programs that provide benefits to the families @25% salary

Permanent Position, Part Time
ARPA Funds: $100,000

Licensed Mental Health Counselor Salary—Will provide Bilingual Therapy to families requesting bilingual services and PD/Consultation to Educators related to Trauma-Informed Best Practices @70% of salary

Office Supplies
ARPA Funds: $5,000
Office supplies to support the direct therapy services; program delivery @40% of total line budget

Operating Supplies
ARPA Funds: $5,000
Operating Supplies to address the cleaning and sanitization and PPE required during COVID-19 @33% of total line budget

Motor Oil and Fuel
ARPA Funds: $2,500
Jardin provides transportation to the children and families to ensure that they can access the resources that they are seeking @34% of total line budget

City Services
ARPA Funds: $5,000
Fees paid to the City of Las Cruces for water, waste, etc. @33% of total line budget

Electricity
ARPA Funds: $5,000
Electricity fees paid to El Paso Electric to operate the program within the building @42% of total line budget

Auditing Services
ARPA Funds: $5,000
An annual financial audit is completed to comply with all federal, state and private funding guidelines @20% of total line budget

Equipment Rental

ARPA Funds: $5,000

Equipment Rental fees for printers, telephones; touchless sign-in software for children, parents, and staff, etc. @29% of total line budget

Registration Fees

ARPA Funds: $10,000

Fees to support staff in attending conferences, local, state, regional and national to obtain training with up-to-date best practices and current trends related to Infant Mental Health and Early Childhood Education. @52% of total line budget

Miscellaneous Costs

ARPA Funds: $8,000

Unanticipated Misc. operating costs @50% of total line budget

Training and Education

ARPA Funds: $7,000

Professional Development training and Continuing Education Units are required to to maintain the Infant Mental Health Endorsement and to continue to maintain a Trauma-Informed Care Center designation. @58% of total line budget

Client Support

ARPA Funds: $20,000

Families experiencing homelessness will often require support to maintain stability. The funding will serve in the capacity of preventing homelessness or stabilizing the family while addressing their basic needs. Parents who participate in the Flourishing Families Parent Mentoring Program will receive a $500 Cash Transfer upon successfully completing the program. @80% of total line budget

DUPLICATION

5. Is this a new or existing program in the Community? How do ARPA funds makes this project feasible? If existing, describe additional efforts to prevent duplication of services.

The Flourishing Families Infant Mental Health Program is an existing program that began as a pilot in July of 2020. Within the pilot phase, Jardin de los Niños staff completed the required trainings to earn the Infant Mental Health Endorsement and to be designated as the first Trauma-Informed Care Center by the New Mexico Association for Infant Mental Health. Jardin is considered at the forefront of addressing Infant Mental Health within Las Cruces and the State of New Mexico within early childhood education settings. And through our partnership with Families and Youth, Inc. (FYI) Jardin has established an appropriate service delivery model that addresses trauma, and services are delivered within the pediatric clinic that include bilingual services. Services to the children, and their families have already seen positive outcomes within the classroom setting and the success that is noted within the Family Success Plans, which identify goals to stabilize the family. Within the classroom setting, the educators have increased their ability to address trauma, to impact a changed climate, and to deliver the curriculum from a trauma-informed approach. Jardin staff are receiving training under the conscious discipline curriculum, which is a trauma-informed, Evidence-Based Program that transforms social-emotional learning and classroom management. Our educators are empowered to address the needs of every child while maintaining a trauma-informed lens with every interaction. Jardin is currently the only Non-profit organization and childcare center with an Infant Mental Health Program that provides a Trauma-Informed Care service delivery model.

FEASABILITY/TIMELINE

6. Please provide a detailed timeline or work schedule for implementing this project including anticipated milestone dates.

This project is a continuation of a pilot that was launched in July of 2020. The partnership between Jardin and Families and Youth, Inc. is well established and the model is already in progress.

Year One and Two Funding Cycle: Jardin will continue to partner with FYI to provide direct therapy services to the children, siblings, parents, and family members/caregivers who are a part of the family unit. Jardin staff will also have access to therapy if requested. As new families enroll at Jardin, referrals will be processed to ensure that all children and families have access to infant mental health services. Jardin’s Family Services Coordinator works directly with FYI’s referral manager to initiate the referrals, intakes, and schedule the initial therapy sessions. The Therapists provide the services on-site at Jardin.

Ongoing evaluation of the treatment plan will be conducted and when additional support is warranted including additional referrals, Jardin and FYI staff will work closely to initiate the additional support. Additionally, a therapist also provides Social Emotional Learning activities daily within the classroom setting and monitors the progress of the children through the conscious discipline curriculum, which is a trauma-informed, Evidence-Based Program. The therapist also supports the educators in a consultation format as the educators become trained within the curriculum and deliver it within the classroom setting.

Jardin's Director of Development and Community Engagement coordinates the Infant Mental Health Program and the Parent Mentoring Program. Jardin's staff complete trainings and professional development to support their infant mental health endorsement through the NM Association for Infant Mental Health. Jardin's staff will prepare for recertification within year two of this funding cycle and to maintain our Trauma-Informed Care Center designation. Parents will have the opportunity to participate in the Parent Mentoring Program, which is a support network that elevates the families from a holistic-strengths-based approach so that they will see their full potential through mentoring, career exploration and a growth mindset. Cohort three and four will graduate during this grant cycle.

Ongoing assessments are conducted within the classroom setting to support the children's social emotional learning, therapeutic intervention and early learning milestones are ongoing. The Children's Services Coordinator oversees this process to prepare for annual recertification to maintain our 5-Star Rating. Documentation of progress is noted within the Continuous Quality Improvement (CQI) binders that the educators maintain.

Jardin's CEO and FYI's Clinical Director work in tandem to evaluate the partnership and the delivery of the Infant Mental Health Services. When adjustments are warranted, the two organizations work closely to address the needs of the families and align the support of the therapists and Jardin staff to respond immediately and provide the necessary support to maintain stability within the family unit assuring that all of the families basic needs continue to be met and that they continue to attend their therapy sessions.

Jardin's staff continually document both qualitative and quantitative data to support the family success plan and to maintain our 5-Star Accreditation and Trauma-Informed Care Center designation.

7. Is this project dependent on future funding to fully complete this project? Include specific timelines/dates and funding commitments needed to complete the project and have it fully operational for public benefit. Can this project be phased? Can this project be partially funded?

The continuation and success of the Flourishing Families Infant Mental Health Program is a priority of Jardin de los Niños. The ARPA funding will support the partnership between Jardin and FYI to provide the direct therapy services and the ongoing training to maintain our Trauma-Informed Care Designation within this grant cycle. This funding will also provide support to leverage additional funding to continue this program. Additionally, the goal of this program is to also provide outcomes and the partnership between Jardin and FYI to share with the Early Childhood Education and Care Department (ECECD) to request more permanent funding, to support not only Jardin de los Niños' Infant Mental Health Program, but also to impact other early childhood education programs in implementing an Infant Mental Health Program within other centers across the state of New Mexico. Jardin has secured additional funding sources to fund the pilot phase and will continue seek funding to support the program. This program has no end date as the services are so crucial to supporting well-being and stabilizing homeless/near homeless families.

8. If funded, it is expected that the project will begin within ninety (90) days of being issued a fully executed contract. What potential or known barriers exist to beginning the project within ninety (90) days and completing the project within twenty-four (24) months of being issued a Notice to Proceed from City Staff? Please describe in detail your plan for overcoming the barriers identified and achieving a timely and successful completion of the project.

The partnership between Jardin de los Niños and Families and Youth, Inc. is already established and through the initial pilot the service delivery model has been put into action. As new families enroll at Jardin, different barriers arise. However, Jardin staff work closely with FYI staff to mitigate any challenges that may exist in getting the families setup to receive therapy. Jardin is prepared to continue this program and expand the services from the initial pilot. The makeup of each family can range between three family members to ten family members. If this project is funded Jardin, in partnership with FYI, will be prepared to provide the proposed services to meet the timeline of the fully executed contract.

ORGANIZATION HISTORY AND CAPACITY

9. History of your organization’s TOTAL ANNUAL REVENUES for the past three (3) fiscal years:

	2020	2019	2018
Total Annual Revenues $	836585.00	744062.00	791073.00

10. Applicant Qualifications

Summarize your organization's experience in areas relevant to the proposed project describe at least two most recent projects; if applicable. Describe Organizations capacity to implement proposed project.

Jardin de los Niños has been providing services to homeless/near homeless and abused children for over 25 years. All of the services focus on reducing the ill effects and negative impact of poverty, crisis and instability within the family unit, which are vital to the long-term stabilization of the homeless and near homeless child and his/her family. Additionally, the whole family is served through a number of programs within the organization. All of our programs are fluid and address the needs of our families through best practices and by staying current with the trends that we are observing.

Jardin has most notably maintained a 5-Star accreditation rating since 2016. Jardin is one of five original organizations that serve homeless/near homeless children and their families across the United States and one of two programs within the state of New Mexico. In 2019, Jardin launched its Flourishing Families Parent Mentoring Program, which has demonstrated great success with a 96% completion rate of parents who participated within the first cohort and strong indicators to demonstrate job attainment, business development, and enrollment in higher education or certification programs to support parents with job attainment. Jardin will graduate its second cohort in October of 2021. In May 2021, Jardin was designated as the first Trauma-Informed Care Center in the State of New Mexico by the New Mexico Association for Infant Mental Health. Jardin’s Children’s Services and Families Services staff have completed the Infant Mental Health endorsement and continue to work toward maintaining the required trainings to meet the requirements for recertification. Jardin has expanded its partnership throughout Las Cruces, Doña Ana County and New Mexico. These partnerships have developed additional resources and new programs. Jardin has built capacity within our organization to expand our services, which stabilize, empower, and elevate our families.

Please complete the table below for all key staff members involved in the project. Including executive director, fiscal officer, project manager and any employees to be funded by the project.

	Name	Title	Total Years' Experience	Years with Association
1	Michelle Adames	CEO	18	3
2	Joanne Loeit	Fiscal Manager/Accountant	26	1
3	Eryka Garcia	Licensed Clinical Social Worker	15	1
4	Cynthia Garcia	Licensed Mental Health Counselor	5	5
5	Diana O'Brien	Director of Development (Infant Mental Health Coordinator)	9	5
6	Marina Flores	Children's Services Coordinator	16	15
7	Alma Mendoza	Family Services Coordinator	9	8
8				
9				
10				

Application: Catholic Charities of Southern New Mexico; COVID-19 Recovery Fund

Kenneth Ferrone - kf@catholiccharitiesdlc.org
AMERICAN RESCUE PLAN ACT

RFP Application

Completed - Oct 14 2021

Proposal Information

1

ACKNOWLEDGEMENT OF REQUIRED ASSURANCES

This page must be signed and submitted with the application. Applications which do not contain a signed Acknowledgement of Required Assurances are ineligible for consideration.

By submitting the accompanying application and by my signature on this document, I understand and agree that any funding award resulting from this solicitation will require compliance with the signed agreement and with the regulations, requirements, and policies identified below, including but not limited to:

- **Compliance with 2 CFR Part 200 - Uniform Administrative Requirements**, Cost Principles, and Audit Requirements for Federal Awards (as appropriate);
    - Compliance with the requirements of the Americans with Disabilities Act Accessibility Guidelines;
        - Completion of an environmental regulations
        - Equal Employment Opportunity Act;
        - City of Las Cruces Nondiscrimination policy
        - Minority and Women's Business Enterprise (MBE/WBE);
        - Lead Based Paint;
        - Title VI of the Civil Rights Act of 1964, as amended;
        - The Fair Housing Act;
        - Equal Opportunity in Housing Act;
        - Age Discrimination Act;

- Americans with Disabilities Act;
- Section 504 of the Rehabilitation Act;
- Federal Funding Accountability and Transparency Act (FFATA);
- Hatch Act
- Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
- New Restrictions on Lobbying, 31 C.F.R. Part 21.
- Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C.§§ 4601-4655) and implementing regulations.
- Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Recipient should encourage its contractors to adopt and enforce on-thejob seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.
- Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Recipient should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and Recipient should establish workplace safety policies to decrease accidents caused by distracted drivers.
- Compliance with policies of the City of Las Cruces, NM
- Compliance with federal and state laws requiring the safeguarding and disclosure of confidential information.
- Evidence of comprehensive liability insurance and bonding, as required by the City;
- Completion of an annual financial audit, and/or as applicable, providing the City with a copy of the organization’s audited financial statement;
- Completion and subsequent renewal of background checks for all employees, volunteers, or interns who will or may have unsupervised contact with children or vulnerable adults;
- Maintaining program and financial records for audit review, and providing access to documentation upon request by the City;
- Submission of program and financial reports, as required by the City;
- Certification that the firm, association, corporation, or any person in a controlling capacity or any position involving the administration of federal, state, or local funds is not currently under suspension, debarment, voluntary exclusion, or a determination of ineligibility by any agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any agency within the past three (3) years; does not have a proposed debarment pending; has not been indicted, convicted, or has not had a civil judgment rendered against said person, firm,

association, or corporation by a court of competent jurisdiction in any matter involving fraud or misconduct with the past three (3) years.

- Certification that the firm is not bankrupt or under an administration appointed by the Court, or under proceedings leading to a declaration of bankruptcy; and provide any pending or known legal actions against the company.
- Certification that, in the past seven (7) years, the organization has not had any bankruptcy proceedings (closed or not) initiated against the Contractor and that there are no bankruptcy proceedings pending by or against the Contractor regardless of the date of filing;
- All pending or known litigation/court action(s) have been disclosed in the application.
- Certification that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Applicant further covenants that in the performance of this project/application, no person having any conflicting interest will be employed.

Application Approval and Signature: The signatory declares that he/she is an authorized official of the applicant organization, is authorized to make this application, is authorized to commit the organization in financial matters, and will assure that any funds received because of this application are used for the purposes set forth herein.

Please Sign

ARPA Categories:

Pick one (If project does not meet a category, it is ineligible for funding)

Public Health/Negative Economic Impacts: Household Assistance: Rent, Mortgage, and Utility Aid

Organization Information

Applicant Organization Information:

Name of Organization:	Catholic Charities of Southern New Mexico
Address:	125 West Mountain Avenue
City:	Las Cruces
State:	NM
Zip code:	88005
Organization DUNS Number:	830368226
Phone:	575-527-0500
Fax:	575-526-9626
Organization DUNS Number:	830368226

Primary Contact Information:

Project Manager:	Kenneth Ferrone
Title:	Executive Director
Phone:	575-527-0500
Email:	kf@catholiccharitiesdlc.org
Fax:	575-526-9626
Phone:	575-527-0500

Alternative Contact Information:

Alternative Contact:	Lorena Jimenez
Title:	Office Manager
Phone:	527-0500
Email:	lj@catholiccharitiesdlc.org
Fax:	575-526-9626
Phone:	575-527-0500

PROJECT INFORMATION

PROJECT NAME

COVID-19 Recovery Fund

PROJECT SUMMARY:

PROJECT SUMMARY: Describe the proposed Project. This summary will be used to describe your project in official City documents and media. (Note: The Project Summary is an abstract or summary of your proposal and should be written after completion of the application.)

Catholic Charities' COVID-19 Recovery Fund will provide direct financial assistance to the poor and less fortunate who have been negatively impacted by the coronavirus. Those Las Cruces individuals and families who meet program eligibility requirements will receive assistance for items such as rent, mortgage, utility, food, and medical care including mental health services and counseling. Using HUD income guide lines, the COVID-19 Recovery Fund will focus on assisting individuals and families who live at or below the federal poverty line.

Type of Client Populations & Number of Clients to be served (ESTIMATED)

Select Primary

500 individuals/families living @ 30% and above of home income limits

Program Type: * (check one only)

Direct Assistance to Households

Application Information

All questions must be answered, and all forms completed to be eligible for review by staff.

PROJECT JUSTIFICATION

1.Description and Justification of the Project; Provide a detailed description of the proposed project: Include project objectives, target population, major project characteristics, number and type of units, and how it responds to the public health emergency or its negative economic impacts.

According to the Journal Nature (2021, vol. 596, p. 495-504), there is a realistic expectation that the global effort in vaccination will bring the pandemic caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) under control. Nonetheless, uncertainties remain about the type of long-term association that the virus will establish with the human population and, in particular, whether coronavirus disease 2019 (COVID-19) will become an endemic disease. Although the trajectory is difficult to predict, the conditions, concepts and variables that influence this transition can be anticipated. Persistence of SARS-CoV-2 as an endemic virus, perhaps with seasonal epidemic peaks, may be fueled by pockets of susceptible individuals and waning immunity after infection or vaccination, changes in the virus that diminish protection, and new variants. In short, our agency is concerned about the lingering effects of COVID-19 in our community due to: 1.) resistance to vaccination especially among the young, 2.) a medical condition known as "long haulers" syndrome for those previously infected, 3.) mis-information about the virus and prevention treatments. For these reasons, we believe that our agency's COVID-19 Recovery Fund will provide vital assistance to the community as we seek to find a new "normal" regarding the virus. As such, our objectives are two-fold: 1.) provide financial assistance to those who continue to be impacted by coronavirus physically, financially, and emotionally, 2.) educate members of vulnerable communities, particularly the homeless, immigrants and migrant worker populations, about virus prevention and treatment. Our target populations will be the poor, immigrants, migrant workers, the homeless, and current and previous health care workers. Major program characteristics will include: 1.) direct assistance to those who need food, rent, utility, and medical assistance including mental health services and counseling, 2.) public, bi-lingual education initiatives in partnership with local health care providers including clinics and hospitals. Over a three year period, we propose to distribute $233,333 in direct assistance in order to assist 500 individuals/families who have been and will be negatively affected by COVID-19.

ALIGNMENT WITH CITY PLANS

2. What specific priorities in the City's Strategic Plan, Elevate Las Cruces and/or 2021-2025 Consolidated Plan? (Click on plan links below to view)

City Plans:

ELEVATE PLAN

COUNCIL STRATEGIC PLAN

2021-2025 CON PLAN

Our agency's COVID-19 Recovery Fund aligns well with objectives outlined in the city's strategic plan, Elevate Las Cruces plan, and the 2021-2025 consolidated plan. For example, our plan supports the city's Elevate Las Cruces and strategic goals ELC CP-1, CP-10, CP-11, as well as CL-18, CL-17. Goal CP-11 targets and supports traditionally underserved populations including the poor, the homeless, individuals suffering from mental illness, immigrants, and migrant workers. Goal CP-1 seeks develop a strong workforce that supports an expanding local and regional economy. Our plan will assist vulnerable communities by providing financial and social support to those affected by COVID-19 and, through a healthier workforce, will allow for more individuals to be healthy enough to be employed therefore improving our economy and individuals' standard of living. Also, our plan seeks to improve community health by providing access to health care for the poor (CP-10), mental health services (CL-18), and food for those experiencing food insecurity (CL-18). Specifically, our plan aligns with policy goal CL 18.1.2 regarding giving the poor access to health care and CL 18.1.5 regarding the treatment and utilization of local mental health facilities for those individuals including health care workers who are in need of counseling and treatment. Regarding the 2021-2025 consolidated plan, our initiative aligns with the city's goals of assisting the homeless, those individuals struggling with housing issues including the potential for homelessness, and special needs populations. Specifically, we have a strong reputation in the bi-lingual immigrant and migrant worker communities who look to us first when they are in need. Also, with the recent surge in housing demand and lack of affordable rentals, we have already been assisting families find temporary shelter particularly when landlords/owners sell homes and provide renters with little or no notice of an impending eviction.

COMMUNITY IMPACT

3. What is the anticipated impact of your program on the Las Cruces community? How will you measure the expected outcomes?

Through our past partnership with the city assisting those individuals and families affected by COVID-19, we saw significant results and impact. We provided over $400,000 in direct assistance to the disadvantaged which resulted in less food insecurity and homelessness, significantly less residential utility cut-offs, and greater access to health care services for those who contacted COVID-19 and could not afford medical treatments or to purchase private health care insurance. We anticipate a similar impact if our agency is awarded an APRA grant. Also, we anticipate a large portion of our population, particularly those who refuse to or cannot be vaccinated, to become ill sometime over the next three years. Unfortunately, the delta variant of COVID-19 is highly transmittable and brings with it more serious complications. This fact, along with the many community members who got infected with COVID and now suffer from "long-haulers" syndrome, means that there will be a great need for medical treatments and services going forward. The assistance we will provide to the community will have a significant impact because so many community members are currently unvaccinated (only 53.7% of adults are fully vaccinated in Dona Ana County as of October 1, 2021). We will measure outcomes quantitatively and qualitatively in particular: 1.) number of clients saved from eviction, 2.) number of individuals who received medical care, 3.) number of clients who did not have their utilities shut-off, 4.) number of immigrants and migrant workers served, 5.) number of COVID-19 bi-lingual public information sessions organized, 6.) number of bi-lingual media messages (electronic and traditional) targeted at vulnerable populations, 7.) increased community awareness of the benefits of vaccination, 8.) greater feelings of wellness and reduced stress among under-represented individuals and communities.

4. BUDGET INFORMATION

PART A

Instructions: Please complete the budget summary. Indicate the amount ARPA funds needed for each expenditure classification. Also include other funds for the project from federal, state and private sources. Columns A, B, C & D must add up to Column E (Total Budget) needed for the project.

Please Enter just numbers no symbols (i.e. $,)

	ARPA FUNDING	OTHER FEDERAL FUNDS	STATE FUNDS	PRIVATE FUNDS	TOTAL BUDGET

Permanent Position, Full Time	100000				100000
Permanent Position, Part Time					
Temporary Positions					
Employment Liability Insurance	3000				3000
Other Employee Benefits *	20650				20650
Office Supplies	1666				1666
Operating Supplies	1666				1666
Repair & Maintenance Supplies					
Small Tools					
Motor Oil and Fuel					
Library Books and Periodicals					
Magazines and Periodicals					
Audio Visual Aids					
Wearing Apparel					
Postage and Federal Express	333				333

City Service (water, waste, etc.)	333				333
Electricity	333				333
Telephone	333				333
Utility Services – Other					
Legal Services					
Auditing Services					
Engineering Services					
Architectural Services					
Maintenance Agreements					
Fees or Service Charges					
Advertising	6666				6666
Landscape Maintenance					
Required Building Repair & Maintenance					
Auto or Truck Repair					
Equipment Repair					
Building or Land Rental	1666				1666
Vehicle Rental					
Equipment Rental					

Liability Insurance					
Property Insurance					
Fidelity Insurance					
Transportation (in-state only)	1666				1666
Per Diem (in-state only)					
Registration Fees					
Miscellaneous Costs	16666				16666
Training and Education					
Land-Vacant					
Land-Buildings or Other					
Land-Right of Way					
Land Improvements					
Furniture and Fixtures					
Building Improvements					
Automobiles					
Trucks and Vans					
Heavy Equipment					
Furniture and					

Fixtures					
Office Equipment					
Data Processing					
Shop Equipment					
Client Housing (rent, mortgage, utilities, deposit)	233333				233333
Client Support (medical, classes)	161689				161689
Total	550000.0	0	0	0	550000.0

Part B – BUDGET JUSTIFICATION

Briefly and specifically describe each line item listed on Part A (ARPA FUNDS) in a separate paragraph below:

Position - full-time employee salary $100,000 over two years or $24.04 per hour

Liability - general and property $3,000 over two years

Employee benefits - 8.65% of salary (FICA, unemployment insurance, etc.) over two years

Supplies - office and professional $3,332 over two years

Postage - $333 over two years

Utilities - water, electricity, telephone $999 over two years

Advertisements - social media, website, print and radio $6,666 for two years

Rent - $1,666 for one office for two years

Miscellaneous - employee health care $16,666 over two years

Client Housing - $233,333 for rental assistance, housing deposits over two years

Client Support - access to health care and counseling for the poor $80,844 over two years

DUPLICATION

5. Is this a new or existing program in the Community? How do ARPA funds makes this project feasible? If existing, describe additional efforts to prevent duplication of services.

The COVID-19 Recovery Fund will be a continuation of our City of Las Cruces Telshor grant program that allowed our agency to provide direct assistance to the poor and vulnerable communities. ARPA funds make the COVID-19 Recovery Fund feasible because our agency relies primarily on private foundation and individual donor contributions and grants to provide direct assistance to the poor. Many private funders are no longer funding COVID-19 related projects so ARPA funding will allow us to continue to support those who have been affected by COVID-19. There are other agencies in Las Cruces that provide direct assistance to the poor. However, our clientele typically only speaks Spanish, are undocumented, and live at or beneath the federal poverty level. Many are immigrants and migrant workers who did not receive government stimulus checks, unemployment insurance, or other government benefits when they lost their jobs during the pandemic. Members of these underserved communities rely on Catholic Charities for support because they trust us and often turn to our agency first when they are in need of housing, food, utility assistance and medical care. Also, we see a need to better support Las Cruces health care professional who have suffered greatly care for patients or got infected with the virus. We plan to reach out to these individuals in a highly personal way utilizing our connections and partners in the medical sector.

FEASABILITY/TIMELINE

6. Please provide a detailed timeline or work schedule for implementing this project including anticipated milestone dates.

If our proposal is approved in December 2021, we will immediate begin a search for a full-time employee who will administer the COVID-19 Recovery Fund program. We anticipate hiring this person in January or February 2022. This individual will analyze our current direct assistance procedures and protocols on how we will handle assistance requests and process client in-takes. We anticipate improvements being made to processes and that the new employee will spend their first three months in training. They will be asked to strengthen current partnerships and build new ones with other Las Cruces nonprofit agencies and leaders to ensure collaboration and that we do not duplicate our services. Building partnerships will also ensure that our clients receive comprehensive services and direct assistance that is both dignified and efficient, and meets their needs. We anticipate beginning the direct assistance program by March 2022 and we will start our public education and awareness campaigns by April 2022. At the appropriate times, we will provide the City of Las Cruces with reimbursement requests and progress reports towards goals and objectives. Also, the agency's Board of Directors meets each February as part of a strategic planning process. The board will play an active role in helping us set goals and ensure that community needs are being met.

7. Is this project dependent on future funding to fully complete this project? Include specific timelines/dates and funding commitments needed to complete the project and have it fully operational for public benefit. Can this project be phased? Can this project be partially funded?

No. Over the past six years Catholic Charities typically provides over $91,000 annually in direct assistance to the poor and less fortunate. (Another $250,000 is given away annually in the form of free legal services to victims of crime and immigrants). These direct assistance funds represent approximately 56% of our annual operating budget which is finalized each July. Direct assistance funds are secured through private donations, foundation grants, and government funding. This fundraising initiative and our direct assistance efforts will continue to take place even if we unfortunately do not receive ARPA funding. Catholic Charities regularly receives support through its fundraising program which includes a personal solicitation component as well as grant writing, direct mail and electronic solicitations, and social media appeals. The agency fundraises throughout the year with a large number of donations being received during the year-end holidays. Finally, this program could be partially funded because providing assistance to the poor is a core part of our mission. With ARPA funding however, we could do greater good in the community and assist more individuals in need of assistance due to COVID-19.

8. If funded, it is expected that the project will begin within ninety (90) days of being issued a fully executed contract. What potential or known barriers exist to beginning the project within ninety (90) days and completing the project within twenty-four (24) months of being issued a Notice to Proceed from City Staff? Please describe in detail your plan for overcoming the barriers identified and achieving a timely and successful completion of the project.

Since we have partnered with the City of Las Cruces in the past to support individuals and families affected by COVID-19, we do not anticipate any barriers or challenges to implementing this program within 90 days of receiving a Notice to Proceed. Also, we are already are an approved vendor with the city and all our paperwork is up-to-date. Those in need of assistance will start contacting us immediately when the news is out about the grant since we already have a strong reputation in the community for helping the poor and we are trusted by vulnerable populations including the homeless and immigrants and migrant workers. The only challenge I believe we might encounter will be in hiring a program administrator because companies and nonprofits have experienced difficulty in hiring employees of late. We have overcome this challenge already by forging relationships with social workers in town who have expressed interest in working at Catholic Charities and share our passion for assisting the poor. Also, we have a good working relationship with NMSU's School of Social Work faculty and employees who will assist us in recruiting a new employee.

ORGANIZATION HISTORY AND CAPACITY

9. History of your organization’s TOTAL ANNUAL REVENUES for the past three (3) fiscal years:

	2020	2019	2018
Total Annual Revenues $	1,039,343	641,486	690,802

10. Applicant Qualifications

Summarize your organization's experience in areas relevant to the proposed project describe at least two most recent projects; if applicable. Describe Organizations capacity to implement proposed project.

Catholic Charities has been in existence since 2004 and we have provided over $457,181 in direct assistance to the poor and disadvantaged over the past five (5) years. Our agency has also provided over $750,000 in direct assistance to the immigrants and victims of crime in the form of free legal services over that same time period. Most importantly, we successfully partnered with the City of Las Cruces in 2020 and 2021 to provide Telshor Funds to those affected by COVID-19 within our community. Because we are a faith-based 501 (c) 3 nonprofit organization, we seek to help all and therefore we do not discriminate against any individuals or groups of individuals based on their race, gender, faith or beliefs, sexual identity or orientation, immigration status or cultural background. Our motto is to give assistance, provide hope, and serve all. Based on previous success with assisting the poor and disadvantage affected by COVID-19, I believe we have the experience and knowledge to meet our goals and objectives in administering ARPA funds to the community through 2024.

Please complete the table below for all key staff members involved in the project. Including executive director, fiscal officer, project manager and any employees to be funded by the project.

	Name	Title	Total Years' Experience	Years with Association
1	Kenneth Ferrone	Executive Director	35	8
2	TBA	Program Administrator	TBD	TBD
3				
4				
5				
6				
7				
8				
9				
10				

Application: NMHCDC;Peachtree

Steven Rice - nmhcdc.one@gmail.com
AMERICAN RESCUE PLAN ACT

RFP Application

Completed - Oct 14 2021

Proposal Information

1

ACKNOWLEDGEMENT OF REQUIRED ASSURANCES

This page must be signed and submitted with the application. Applications which do not contain a signed Acknowledgement of Required Assurances are ineligible for consideration.

By submitting the accompanying application and by my signature on this document, I understand and agree that any funding award resulting from this solicitation will require compliance with the signed agreement and with the regulations, requirements, and policies identified below, including but not limited to:

- **Compliance with 2 CFR Part 200 - Uniform Administrative Requirements**, Cost Principles, and Audit Requirements for Federal Awards (as appropriate);
    - Compliance with the requirements of the Americans with Disabilities Act Accessibility Guidelines;
        - Completion of an environmental regulations
        - Equal Employment Opportunity Act;
        - City of Las Cruces Nondiscrimination policy
        - Minority and Women’s Business Enterprise (MBE/WBE);
        - Lead Based Paint;
        - Title VI of the Civil Rights Act of 1964, as amended;
        - The Fair Housing Act;
        - Equal Opportunity in Housing Act;
        - Age Discrimination Act;
        - Americans with Disabilities Act;

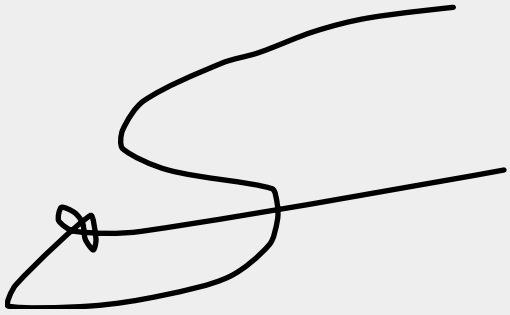
- Section 504 of the Rehabilitation Act;
- Federal Funding Accountability and Transparency Act (FFATA);
- Hatch Act
- Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
- New Restrictions on Lobbying, 31 C.F.R. Part 21.
- Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C.§§ 4601-4655) and implementing regulations.
- Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Recipient should encourage its contractors to adopt and enforce on-thejob seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.
- Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Recipient should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and Recipient should establish workplace safety policies to decrease accidents caused by distracted drivers.
- Compliance with policies of the City of Las Cruces, NM
- Compliance with federal and state laws requiring the safeguarding and disclosure of confidential information.
- Evidence of comprehensive liability insurance and bonding, as required by the City;
- Completion of an annual financial audit, and/or as applicable, providing the City with a copy of the organization’s audited financial statement;
- Completion and subsequent renewal of background checks for all employees, volunteers, or interns who will or may have unsupervised contact with children or vulnerable adults;
- Maintaining program and financial records for audit review, and providing access to documentation upon request by the City;
- Submission of program and financial reports, as required by the City;
- Certification that the firm, association, corporation, or any person in a controlling capacity or any position involving the administration of federal, state, or local funds is not currently under suspension, debarment, voluntary exclusion, or a determination of ineligibility by any agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any agency within the past three (3) years; does not have a proposed debarment pending; has not been indicted, convicted, or has not had a civil judgment rendered against said person, firm, association, or corporation by a court of competent jurisdiction in any matter

involving fraud or misconduct with the past three (3) years.

- Certification that the firm is not bankrupt or under an administration appointed by the Court, or under proceedings leading to a declaration of bankruptcy; and provide any pending or known legal actions against the company.
- Certification that, in the past seven (7) years, the organization has not had any bankruptcy proceedings (closed or not) initiated against the Contractor and that there are no bankruptcy proceedings pending by or against the Contractor regardless of the date of filing;
- All pending or known litigation/court action(s) have been disclosed in the application.
- Certification that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Applicant further covenants that in the performance of this project/application, no person having any conflicting interest will be employed.

Application Approval and Signature: The signatory declares that he/she is an authorized official of the applicant organization, is authorized to make this application, is authorized to commit the organization in financial matters, and will assure that any funds received because of this application are used for the purposes set forth herein.

Please Sign



ARPA Categories:

Pick one (If project does not meet a category, it is ineligible for funding)

Services to Disproportionately Impacted Communities: Housing Support: Affordable Housing

Organization Information

Applicant Organization Information:

Name of Organization:	New Mexico Housing & Community Development Corporation
Address:	108 S. Cedar St.
City:	Truth or Consequences
State:	New Mexico
Zip code:	87901
Organization DUNS Number:	006880523
Phone:	575-894-2244
Fax:	575-894-0756
Organization DUNS Number:	949809362

Primary Contact Information:

Project Manager:	Thomas Andrews
Title:	Development Consultant
Phone:	605-265-1700
Email:	thomasdevelopment@comcast.net
Fax:	575-894-0756
Phone:	605-265-1700

Alternative Contact Information:

Alternative Contact:	Steven Rice
Title:	Owner
Phone:	575-894-2244
Email:	nmhcdc.one@gmail.com
Fax:	575-894-0756
Phone:	575-894-2244

PROJECT INFORMATION

PROJECT NAME

Peachtree Flats

PROJECT SUMMARY:

PROJECT SUMMARY: Describe the proposed Project. This summary will be used to describe your project in official City documents and media. (Note: The Project Summary is an abstract or summary of your proposal and should be written after completion of the application.)

New Mexico Housing and Community Development Corporation proposes to build Peachtree Flats, a new construction of ninety-six unit affordable housing community located within the Metro Verde South Subdivision of Las Cruces, New Mexico. The size and scale of the development supports the project objective to increase the supply of affordable housing in Las Cruces to meet the critical low supply of affordable options within the community. Metro Verde South is a planned community incorporating mixed uses, mixed densities, and creation of a series of small-town centers amid residential development. The site is bounded by Peachtree Hills Road on the north. Two and Three bedroom units are sized to accommodate households with children, whose income is at or below 60%AMI. Buildings on the site are organized around the green open space of the interior “canyon”. This urban open space compliments the open unbounded space of the desert surrounding the site. This contrast between urban and natural allows for a rich set of experiences when moving through the site. The design of the project presages the oncoming urbanization of the surrounding area and attempts to fit within both the current natural setting and the forthcoming built environment of the city.
The commons/community building contains space for management and laundry facilities. This structure marks the entry to the site and establishes the character of the community. A large roof floats lightly on a band of glass above enclosing walls. Sustainable building will be incorporated into the overall design of Peachtree Flats

Type of Client Populations & Number of Clients to be served (ESTIMATED)

Select Primary

low income families

Program Type: * (check one only)

Affordable Housing Development

Application Information

All questions must be answered, and all forms completed to be eligible for review by staff.

PROJECT JUSTIFICATION

1.Description and Justification of the Project; Provide a detailed description of the proposed project: Include project objectives, target population, major project characteristics, number and type of units, and how it responds to the public health emergency or its negative economic impacts.

PEACHTREE FLATS-GENERAL NARRATIVE DESCRIPTION
Project Name: Peachtree Flats
Project Address:
The General Narrative is written to provide a description of Peachtree Flats project and to point out the many factors why the Peachtree proposal should be selected for an award. These include: an extreme need for the project in the community, the population being served, bedroom mix, site location, project amenities (in and off the project and property), and the positive health and economic impacts within the community of Las Cruces.

Why The Peachtree Apartments application should be selected for an award of ARPA Funds

Project Objective:

New Mexico Housing and Community Development Corporation and Thomas Development Group propose to build Peachtree Flats, new construction of a ninety-six unit affordable housing community located within the Metro Verde South Subdivision of Las Cruces, New Mexico. The size and scale of the development supports the project objective to increase the supply of affordable housing in Las Cruces to meet the critical low supply of affordable options within the community. Metro Verde South is a planned community incorporating mixed uses, mixed densities, and creation of a series of small-town centers amid residential development. The site is bounded by Peachtree Hills Road on the north. To the east is land slated for commercial development and to the west land is subdivided for future single-family residential development. To the south are six acres of land zoned for additional multi-family development. The location for Peachtree Flats is ideally suited for families with the construction of a new elementary and middle school directly north and within walking distance of the project site.

Target Population:

The proposed project anticipates primarily serving a demographic of working family households with children, whose incomes are at or below 60% Area Median Income (AMI). According to the 2021 LIHTC Income Limits for a household size of four (4) income is $32,760.
Number and Type of Units:
The unit and bedroom mix at Peachtree Flats is as follows:
40-two-bedroom, two-bath; 850 square feet
56-three-bedroom, two-bath; 1050 square feet

Project Characteristics:
The individual units have open floor plans designed around a core living area. Living rooms and kitchens are sized to accommodate families with multiple children. Kitchens have abundant cabinet and countertop space. Large windows admit natural light into all primary living spaces. Each unit has a private outdoor patio or balcony. All units have nine-foot-high ceilings to improve thermal comfort during hot summer months.

Building masses are arranged to form a tight, deep “canyon” that cuts and bends through the site. The arroyo at the floor of the canyon is slightly excavated and sculpted to both gather and channel sheet flow storm drainage and to detain developed flows. The water detained in this area supports the extensive planting and reduces the project’s need for irrigation. At the same time this organic, natural area is the heart of the community. Paths alongside the watercourse allow circulation throughout the site - connecting individual courtyard complexes to each other and to the community building. Site amenities including picnic tables, benches, a sandbox, and a playground for toddlers are arrayed along its length. The arroyo also serves as a large natural playground. A series of small bridges will cross the shallow watercourse.
Buildings on the site are organized around the green open space of the interior “canyon”. This urban open space compliments the open unbounded space of the desert surrounding the site. This contrast between urban and natural allows for a rich set of experiences when moving through the site. The design of the project presages the oncoming urbanization of the surrounding area and attempts to fit within both the current natural setting and the forthcoming built environment of the city.
The commons/community building contains space for management and laundry facilities. This structure marks the entry to the site and establishes the character of the community. A large roof floats lightly on a band of glass above enclosing walls. It both provides shelter from the sun and rain, protection from the busy street to the north. The frontage area of the site bordering Peachtree Hills Road area has been

designed for a future bus stop.

Response to public health emergency or its negative economic impact:

Peachtree Flats proposal addresses the significant gap between the supply of and demand for affordable rental housing units. The lack of stable housing is associated with a host of community problems, including crime, poor health, and poor educational outcomes. By increasing access to affordable housing, Peachtree Flats will be directly addressing priority needs in all three of these areas. Furthermore, decent, safe, affordable housing is important to families and fulfills a basic human need for shelter, but also contributes to the wellbeing of both parents and children. Studies show that children in stable housing do better in school and are less likely to experience disruption in their education due to unwanted moves. Quality, affordable housing reduces stress, toxins, and infectious disease, which leads to improvement in both physical and mental health. Affordable housing also frees up funds within families' tight budgets to spend on health care and food. If this project is approved, New Mexico Housing and Community Development Corporation seeks immediately to obtain funding sources necessary to complete various predevelopment, hard and soft costs activities that can generally increase the total development costs of projects, thus making them unaffordable. Additional HOME Funds and Telshor Funds will be needed as a source of leveraging for the development's financial feasibility. Good-quality affordable housing is an essential need for all citizens of Las Cruces, New Mexico. The support of the Las Cruces City Council for Peachtree Flats will have a direct positive impact on the overall well-being of the citizens and city of Las Cruces.

ALIGNMENT WITH CITY PLANS

2. What specific priorities in the City's Strategic Plan, Elevate Las Cruces and/or 2021-2025 Consolidated Plan? (Click on plan links below to view)

City Plans:

ELEVATE PLAN

COUNCIL STRATEGIC PLAN

2021-2025 CON PLAN

New Mexico Housing and Community Development Corporation was founded in 2004. The mission statement reads “For the purpose of providing decent, safe and sanitary housing for eligible families, seniors and disabled people in a manner that promotes serviceability, economy, efficiency and stability of the housing programs and social well-being of the tenants”. The Peachtree Flats project objective and goal is to increase the supply of affordable housing in Las Cruces to meet the critical low supply of affordable options within the community.

Peachtree Flats proposal meets the goals and objectives outlined in all three City Council adopted plans. Listed are the goals met in the proposal for Peachtree Flats:

City’s Strategic Plan-Strategic Theme #1 Community Prosperity

2. ELC Goal CP-7: Attainable Housing. Provide affordable, clean, and safe housing options for all residents regardless of income.

3. ELC Goal CP-11: Underserved Populations. Develop and support programs that provide assistance to traditionally underserved populations.

7. ELC Goal CP-9: Housing Diversity. Provide a diverse range of housing options to accommodate residents at all stages in life.

8. Council Goal: Prioritize development of attractive, energy-efficient, mixed income housing in infill areas and along the El Paseo Corridor

13. ELC Goal CE-4: Complete Neighborhoods. Develop mixed-use neighborhoods that incorporate a wide range of recreational, commercial, employment, and civic uses.

2021-2025 Consolidated Plan

The #1 goal starting in 2021 according to the plan states low-to-moderate income residents will have access to safe, decent, and affordable housing citywide. Housing needs is listed as the top priority of the 2021-2025 Consolidated Plan

Low Income - 50 to 80% AMI An estimated 55.9 percent of low-income households had at least one housing problem. Peachtree Flats target population households with children, whose income at or below 60% AMI provides more affordable housing directly supporting the citizens at the highest risk within the community.

Elevate Las Cruces

Ten Primary Smart Growth Principal-Create a range of housing opportunities and choices

Future Growth Scenario-Table 1.3 Multifamily Dwelling Units 5,310 additional units

Las Cruces as a Livable Community

Community Prosperity-Las Cruces values vibrant neighborhoods-residential infill development

Community Prosperity Policy Framework Summary Housing

Housing; Goal CP-7-Attainable Housing-ability of residents to afford rent with enough money left over for other living and discretionary expenses. Attaining affordable housing has increasingly become an issue in

Las Cruces neighborhoods.

COMMUNITY IMPACT

3. What is the anticipated impact of your program on the Las Cruces community? How will you measure the expected outcomes?

Peachtree Flats will increase the supply of affordable housing within the Las Cruces community. New Mexico Mortgage Finance Authority 2020 Housing Needs Assessment for Las Cruces needing more than 5,000 additional affordable housing units as demand far outpaces the supply of affordable units within the community. Peachtree Flats would be the largest new construction multifamily affordable housing project in Las Cruces. The project size and the current shortage of affordable units both key contributing factors in the development proposal. Upon completion, Peachtree Flats will provide ninety-six (96) affordable rental units with the goal of being an affordable housing model for future developments.

4. BUDGET INFORMATION

PART A

Instructions: Please complete the budget summary. Indicate the amount ARPA funds needed for each expenditure classification. Also include other funds for the project from federal, state and private sources. Columns A, B, C & D must add up to Column E (Total Budget) needed for the project.

Please Enter just numbers no symbols (i.e. $,)

	ARPA FUNDING	OTHER FEDERAL FUNDS	STATE FUNDS	PRIVATE FUNDS	TOTAL BUDGET
Permanent Position, Full Time					
Permanent Position, Part Time					

Temporary Positions					
Employment Liability Insurance					
Other Employee Benefits *					
Office Supplies					
Operating Supplies					
Repair & Maintenance Supplies					
Small Tools					
Motor Oil and Fuel					
Library Books and Periodicals					
Magazines and Periodicals					
Audio Visual Aids					
Wearing Apparel					
Postage and Federal Express					
City Service (water, waste, etc.)					
Electricity					
Telephone					

Utility Services – Other					
Legal Services					
Auditing Services					
Engineering Services					
Architectural Services		500000			500000
Maintenance Agreements					
Fees or Service Charges					2159402
Advertising					
Landscape Maintenance					
Required Building Repair & Maintenance					
Auto or Truck Repair					
Equipment Repair					
Building or Land Rental					
Vehicle Rental					
Equipment Rental					
Liability Insurance					
Property Insurance					
Fidelity					

Insurance					
Transportation (in-state only)					
Per Diem (in-state only)					
Registration Fees					
Miscellaneous Costs					
Training and Education					
Land-Vacant				640332	640332
Land-Buildings or Other	2000000			5120198	7120198
Land-Right of Way					
Land Improvements					
Furniture and Fixtures					
Building Improvements				8016459	8016459
Automobiles					
Trucks and Vans					
Heavy Equipment					
Furniture and Fixtures					
Office Equipment					
Data					

Processing					
Shop Equipment					
Client Housing (rent, mortgage, utilities, deposit)					
Client Support (medical, classes)					
Total	2000000.0	500000.0	0	13776989.0	18436391.0

Part B – BUDGET JUSTIFICATION

Briefly and specifically describe each line item listed on Part A (ARPA FUNDS) in a separate paragraph below:

Land Building and other-$2,000,000 ARPA FUNDS will be used for construction costs/land and the total application request of $2,000,000 is needed for financial feasibility. ARPA funds will be used for hard construction costs-lumber,windows,doors,drywall,HVAC equipment,appliances,flooring,metals,roofing, and specialties.

DUPLICATION

5. Is this a new or existing program in the Community? How do ARPA funds makes this project feasible? If existing, describe additional efforts to prevent duplication of services.

Peachtree Flats will be the new construction of affordable housing. ARPA funds are required to complete the financing structure of the total development cost of the project. Construction materials have been trending at all-time highs and are expected to remain at or near record levels due to labor shortages and slowing of the supply chain for materials and equipment. All sectors of the construction industry have been impacted by the COVID pandemic.

ARPA funds will also facilitate the award of federal housing tax credits from the NM Mortgage Finance Authority 4% Bond Program by providing financing leverage.

FEASABILITY/TIMELINE

6. Please provide a detailed timeline or work schedule for implementing this project including anticipated milestone dates.

2021 October 14-Submit ARPA application to City
2022 1st Quarter-Submit NM MFA 4% Bond Application
2022 2nd Quarter-Project architect begins construction plans
2022 End 2nd Quarter-Construction plans complete, apply for building permit
2022 4th Quarter- Commence closing process with tax credit partner, construction lender, purchase development site
2023 January-begin construction phase
2024 January-construction complete

7. Is this project dependent on future funding to fully complete this project? Include specific timelines/dates and funding commitments needed to complete the project and have it fully operational for public benefit. Can this project be phased? Can this project be partially funded?

The project will apply for the non-competitive 4% LIHTC Tax Credits from MFA and Bond Financing upon receiving the award of ARPA Funds. The bond application will be submitted upon approval of ARPA award in 1st quarter 2022 with anticipated construction would begin early first quarter 2023. The construction phase will take twelve months.

Peachtree Flats will have to be built in one phase and requires total funding commitments in order to start construction. The tax credit rent limits for Dona Ana County are some of the lowest in the entire state therefore for project feasibility the project needs to receive $2,000,000 ARPA Award.

8. If funded, it is expected that the project will begin within ninety (90) days of being issued a fully executed contract. What potential or known barriers exist to beginning the project within ninety (90) days and completing the project within twenty-four (24) months of being issued a Notice to Proceed from City Staff? Please describe in detail your plan for overcoming the barriers identified and achieving a timely and successful completion of the project.

The project anticipates a 24 month period timeline for completion. MFA has an open cycle to accept 4% Bond Applications during the year.

The award of ARPA funds will fast-track the development timeline.

ORGANIZATION HISTORY AND CAPACITY

9. History of your organization's TOTAL ANNUAL REVENUES for the past three (3) fiscal years:

	2020	2019	2018
Total Annual Revenues $	1316330	1327508	1519220

10. Applicant Qualifications

Summarize your organization's experience in areas relevant to the proposed project describe at least two most recent projects; if applicable. Describe Organizations capacity to implement proposed project.

The New Mexico Housing and Community Development Corporation (NMHCDC) places special emphasis and commitment to the development, sponsorship, management and/or ownership of low to moderate income housing. The corporation was created in 2003 for the purpose of developing and/or providing, on a non-profit basis, decent, safe and sanitary housing for low and moderate income families, and individuals - including the elderly, handicapped and disabled. Services are provided under applicable housing programs including, but not limited to the United States Department of Agriculture - Rural Development, Federal Housing Administration, and the Department of Housing and Urban Development. These programs provide multi-family rental housing through acquisition and rehabilitation, homeownership programs, self-help housing and home rehabilitation, to low and moderate income consumers.

The New Mexico Housing and Community Development Corporation has also embraced the mission of aiding local Housing Authorities to expand their services into housing markets otherwise dominated by private for-profit and not-for-profit organizations. NMHCDC firmly believes that local Housing Authorities are often in the best position to understand and provide for the housing and social service needs of their communities. NMHCDC is committed to providing the financial backing and the technical assistance local housing authorities need in the acquisition and rehabilitation process.

Casa del Rio I & II Apartments—84 units, Truth or Consequences, NM.

- Villa del Norte Apartments—50 units, Espanola, NM.
- Villa San Jose Apartments—60 units, Carlsbad, NM.
- Vista Montano Apartments—56 units, Socorro, NM.

Please complete the table below for all key staff members involved in the project. Including executive director, fiscal officer, project manager and any employees to be funded by the project.

	Name	Title	Total Years' Experience	Years with Association
1	Steven Rice	President/CEO	18 years	18 years
2	Thomas Andrews	Developer	21 years	11 years
3				
4				
5				
6				
7				
8				
9				
10				

Application: Boys & Girls Club of Las Cruces Capital Campaign

Ashley Echavarria - ashley@bgclascruces.org
AMERICAN RESCUE PLAN ACT

RFP Application

Completed - Oct 14 2021

Proposal Information

1

ACKNOWLEDGEMENT OF REQUIRED ASSURANCES

This page must be signed and submitted with the application. Applications which do not contain a signed Acknowledgement of Required Assurances are ineligible for consideration.

By submitting the accompanying application and by my signature on this document, I understand and agree that any funding award resulting from this solicitation will require compliance with the signed agreement and with the regulations, requirements, and policies identified below, including but not limited to:

- **Compliance with 2 CFR Part 200 - Uniform Administrative Requirements**, Cost Principles, and Audit Requirements for Federal Awards (as appropriate);
    - Compliance with the requirements of the Americans with Disabilities Act Accessibility Guidelines;
        - Completion of an environmental regulations
        - Equal Employment Opportunity Act;
        - City of Las Cruces Nondiscrimination policy
        - Minority and Women's Business Enterprise (MBE/WBE);
        - Lead Based Paint;
        - Title VI of the Civil Rights Act of 1964, as amended;
        - The Fair Housing Act;
        - Equal Opportunity in Housing Act;
        - Age Discrimination Act;

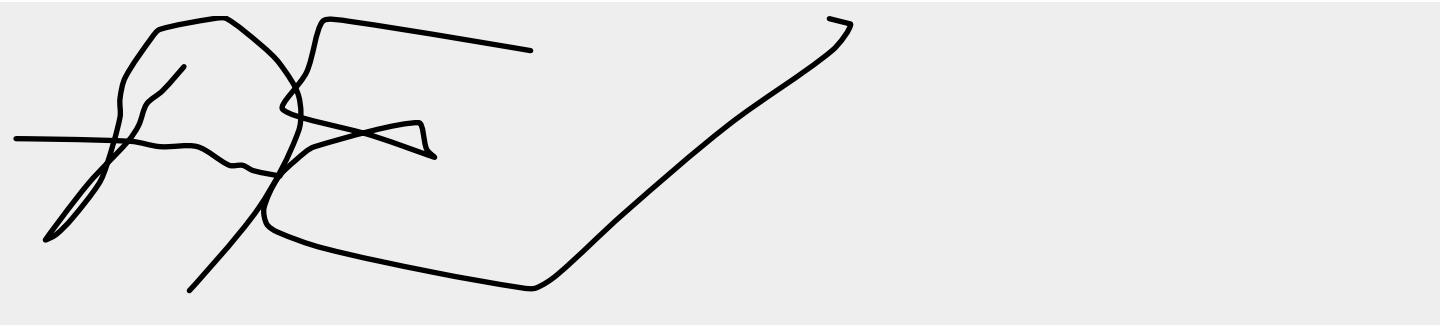
- Americans with Disabilities Act;
- Section 504 of the Rehabilitation Act;
- Federal Funding Accountability and Transparency Act (FFATA);
- Hatch Act
- Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
- New Restrictions on Lobbying, 31 C.F.R. Part 21.
- Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C.§§ 4601-4655) and implementing regulations.
- Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Recipient should encourage its contractors to adopt and enforce on-thejob seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.
- Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Recipient should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and Recipient should establish workplace safety policies to decrease accidents caused by distracted drivers.
- Compliance with policies of the City of Las Cruces, NM
- Compliance with federal and state laws requiring the safeguarding and disclosure of confidential information.
- Evidence of comprehensive liability insurance and bonding, as required by the City;
- Completion of an annual financial audit, and/or as applicable, providing the City with a copy of the organization’s audited financial statement;
- Completion and subsequent renewal of background checks for all employees, volunteers, or interns who will or may have unsupervised contact with children or vulnerable adults;
- Maintaining program and financial records for audit review, and providing access to documentation upon request by the City;
- Submission of program and financial reports, as required by the City;
- Certification that the firm, association, corporation, or any person in a controlling capacity or any position involving the administration of federal, state, or local funds is not currently under suspension, debarment, voluntary exclusion, or a determination of ineligibility by any agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any agency within the past three (3) years; does not have a proposed debarment pending; has not been indicted, convicted, or has not had a civil judgment rendered against said person, firm,

association, or corporation by a court of competent jurisdiction in any matter involving fraud or misconduct with the past three (3) years.

- Certification that the firm is not bankrupt or under an administration appointed by the Court, or under proceedings leading to a declaration of bankruptcy; and provide any pending or known legal actions against the company.
- Certification that, in the past seven (7) years, the organization has not had any bankruptcy proceedings (closed or not) initiated against the Contractor and that there are no bankruptcy proceedings pending by or against the Contractor regardless of the date of filing;
- All pending or known litigation/court action(s) have been disclosed in the application.
- Certification that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Applicant further covenants that in the performance of this project/application, no person having any conflicting interest will be employed.

Application Approval and Signature: The signatory declares that he/she is an authorized official of the applicant organization, is authorized to make this application, is authorized to commit the organization in financial matters, and will assure that any funds received because of this application are used for the purposes set forth herein.

Please Sign



ARPA Categories:

Pick one (If project does not meet a category, it is ineligible for funding)

Services to Disproportionately Impacted Communities: Healthy Childhood Environments: Child Care

Organization Information

Applicant Organization Information:

Name of Organization:	Boys & Girls Club of Las Cruces
Address:	330 W Las Cruces Ave
City:	Las Cruces
State:	NM
Zip code:	88005
Organization DUNS Number:	147262638
Phone:	5755261519
Fax:	5755279167
Organization DUNS Number:	147262638

Primary Contact Information:

Project Manager:	Ashley Echavarria
Title:	Chief Executive Officer
Phone:	5755261519
Email:	ashley@bgclascruces.org
Fax:	5755279167
Phone:	5755261519

Alternative Contact Information:

Alternative Contact:	Joel Montoya
Title:	Director of Operations & Programs
Phone:	5755261519
Email:	joel@bgclascruces.org
Fax:	5755279167
Phone:	5755261519

PROJECT INFORMATION

PROJECT NAME

Boys & Girls Club Capital Campaign

PROJECT SUMMARY:

PROJECT SUMMARY: Describe the proposed Project. This summary will be used to describe your project in official City documents and media. (Note: The Project Summary is an abstract or summary of your proposal and should be written after completion of the application.)

BGCLC is requesting ARPA funding from the City of Las Cruces to support the soft costs and preliminary expenses that we will incur as we undergo a capital campaign for a new building. For years, we have dreamt of the day that we can welcome Las Cruces kids and teens to a brand new, state-of-the art facility. This new facility will allow us to triple the amount of youth we are able to serve, fulfilling the same mission we have always worked for – building great futures for young people, but in bigger, more meaningful ways. A few high level facts about the new facility:

>>BGCLC is currently working with the City of Las Cruces to identify City owned land where the facility will be built.
>>The facility will be around 22,000 square feet, and include a full size gymnasium, a state of the art STEM Lab, a separate wing for teens, and much more.
>>The new building will give BGCLC the capacity to serve around 250 kids per day.
>>BGCLC will also work with the City of Las Cruces Parks and Recreation Department and other community entities to allow after-hours usage of the gymnasium and other Club amenities.

The commitment of ARPA funding toward this project, coupled with the city’s commitment to provide land for the facility will make a strong statement to our community of the need for this facility, thereby being the driving force to garner community support and the funding needed to complete the entire project.

Type of Client Populations & Number of Clients to be served (ESTIMATED)

Select Primary

Children & Youth: 600

Program Type: * (check one only)

Education and Youth Programs

Application Information

All questions must be answered, and all forms completed to be eligible for review by staff.

PROJECT JUSTIFICATION

1.Description and Justification of the Project; Provide a detailed description of the proposed project: Include project objectives, target population, major project characteristics, number and type of units, and how it responds to the public health emergency or its negative economic impacts.

Since 1963, Boys & Girls Club of Las Cruces (BGCLC) has provided kids and teens (ages 5 to 18) with a safe and fun place, positive adult mentors, educational enhancement, guidance on healthy living and life-changing programs during the out-of-school time. We actively seek to enrich the lives of kids and teens who are disconnected and need us most, with this mission: To enable all young people, especially those who need us most, to reach their full potential as productive, caring, responsible citizens.

BGCLC is requesting ARPA funding from the City of Las Cruces to support the soft costs and preliminary expenses that we will incur as we undergo a capital campaign for a new building. For years, we have dreamt of the day that we can welcome Las Cruces kids and teens to a brand new, state-of-the art facility. This new facility will allow us to triple the amount of youth we are able to serve, fulfilling the same mission we have always worked for – building great futures for young people, but in bigger, more meaningful ways. A few high level facts about the new facility include:

>>BGCLC is currently working with the City of Las Cruces City Manager's Office and several other departments to identify City owned land where the facility will be built.
>>The facility will be around 22,000 square feet, and include a full size gymnasium, a state of the art STEM Lab, a separate wing for teens, and much more.
>>The new building will give BGCLC the capacity to serve around 250 kids per day.
>>BGCLC will also work with the City of Las Cruces Parks and Recreation Department and other community entities to allow after-hours usage of the gymnasium and other Club amenities.

Our daily mission aligns with several of the treasury recommended priorities for this funding, and successfully completing this campaign will allow us to further that mission. Supporting this campaign through ARPA funding will help the City to address educational disparities, promote healthy childhood environments, and enhance equity for the citizens of Las Cruces.

In 1965, Boys & Girls Club of Las Cruces made the long-term move to our existing facility, which was previously an old Presbyterian Church. Since then, this facility has been a home away from home to tens of thousands of youth. Although the facility has never compromised our ability to deliver our mission, at just over 6,800 square feet, it continues to limit the amount of youth we can provide consistent daily services to. The increased need for our services becomes more apparent each year with waiting lists of youth we are unable to serve due to our building size.

While our services have always been deemed critical, the pandemic brought on another level of need for child care services and supports that we were unprepared to deal with. School closures and the transition to remote education raised particular challenges for lower-income students, potentially exacerbating educational disparities. The need for more space was heightened as capacity restrictions and social distancing requirements were mandated, and again our building size made it extremely difficult for us to help fill the severe need that was there.

Moreover, a building of this age undoubtedly brings on multiple challenges including frequent costly repairs and the lack of infrastructure needed to provide the technology and tools that are imperative for young people to achieve 21st Century success. A new facility will help us to enhance our programs and services to address the academic needs of students through afterschool and summer enrichment and extended learning opportunities, coupled with our numerous programs that address the social, emotional, and mental health needs of young people.

BGCLC is committed to advancing equity, as we work diligently to reach those families who need us most. Since 2014 the City has supported our More Members, More Often initiative, which was developed solely to increase access to our services and to help families overcome the economic barriers prohibiting them from utilizing our programs. We work diligently to reach those families who need us most, and now more than ever the need is evident, where currently 76% of Boys & Girls Club members live in households with low-to-moderate income levels, compared to 57% pre-pandemic.

The City’s support of this campaign will foster a strong, inclusive, and equitable recovery, which will provide long-term benefits for health and economic outcomes. Being able to triple the amount of youth we serve will provide significant benefits to the City of Las Cruces as a whole. In fact, a recent study by the University of Michigan found that for every $1 invested into a Club, the surrounding community gets almost $10 back in economic benefits to individuals and society.

This funding will support the soft costs and preliminary expenses of the project which include

professional fees such as consultant fees for conducting the fundraising campaign, architecture and engineering, geo-technical tests, topographical and boundary surveys, furniture and equipment, etc. The commitment of ARPA funding toward this project, coupled with the city's commitment to provide land for the facility will make a strong statement to our community of the need for this facility, thereby being the driving force to garner community support and the funding needed to complete the entire project.

ALIGNMENT WITH CITY PLANS

2. What specific priorities in the City's Strategic Plan, Elevate Las Cruces and/or 2021-2025 Consolidated Plan? (Click on plan links below to view)

City Plans:

ELEVATE PLAN

COUNCIL STRATEGIC PLAN

2021-2025 CON PLAN

The Elevate Las Cruces Plan establishes that Las Cruces will be a city of public and private partnerships where business investment will be leveraged with social initiatives. The comprehensive planning process brought consensus that the network of human service organizations should be funded and mobilized to provide for the daily well-being and long-term growth of Las Crucens. Supporting this project is a perfect example of putting that plan to action.

The following can be directly tied back to the proposed project:

Goal CP-10: Community Health - What happens at our Club – building relationships with staff, participating in fun and engaging programs, learning important skills, making new friends, developing talents – is referred to as the Club Experience. The Club Experience provides each member with support physically, mentally, developmentally, emotionally and socially.

Goal CP-11: Underserved Populations - BGCLC strives to achieve the goal of reaching those populations, evident by the current 76% of Boys & Girls Club members who live in households with low-to-moderate income.

Action CP-11.2.4: Increase access to childcare for single-parent households. Currently, 49% of our Club members come from single-parent homes.

Policy CP-11.3: Support Programs that encourage positive youth development. BGCLC is part of a nationwide Movement of more than 4,700 Club facilities, serving more than 4.6 million young people nationwide. For 160 years, BGCA has been a leader in youth development. Because of our nationwide reach and support from a national office our staff are offered extensive training in positive youth development practices.

Goal CL-4: Recreational Opportunity - Offer a diverse suite of recreational facilities and programs to cater to varying community interests, ages and abilities. A new BGCLC facility will address this goal including: Action CL-4 1.2, 1.3, 1.4, 1.5, 2.3, and 2.4. BGCLC has already invested in a feasibility study which is currently underway. BGCLC would willingly work with the park and recreation department to allow access to the gymnasium and other building amenities. We also partner with NMSU for staffing our program, and plan to continue to do so.

Other relevant goals within City plans that are addressed by BGCLC include Action CP-1.2.1: Support local programs that provide employment, volunteer opportunities, and/or training to citizens, as we currently provide employment and training to many citizens including NMSU students and we offer numerous volunteer opportunities. Additionally, GOAL CL-17: Food Security - BGCLC offers daily USDA approved meals to all program participants.

COMMUNITY IMPACT

3. What is the anticipated impact of your program on the Las Cruces community? How will you measure the expected outcomes?

For many kids and teens, the American Dream is no longer within reach. Studies show for the first time in history, the next generation of youth will be left with fewer opportunities than the one before. (equality-of-opportuniy.org) At BGCLC, we hope to change this trajectory by providing educational and career opportunities, building character and teaching invaluable life skills.

Research shows that the amount of time spent at Clubs is a determining factor in the depth of impact the

Club Experience has on young lives. Frequency of Club attendance is directly tied to these positive changes for Club members: increased academic confidence; higher levels of community service; decreased levels of aggression; increased school effort; and lower likelihood of starting to carry a weapon, smoke marijuana, and have sexual intercourse. Moreover, growing evidence links high-quality after-school programs to gains in standardized test scores and work habits, as well as to reductions in behavior problems among disadvantaged students.

With such strong validation of the positive effect of participation in the Club, we know serving more youth will provide significant benefits to the City of Las Cruces as a whole. As mentioned above, a study by the University of Michigan found that for every $1 invested into a Club, the surrounding community gets almost $10 back in economic benefits to individuals and society. That’s real, tangible impact that affects generations.

BGCLC has made a conscious effort to utilize a continuous improvement cycle to improve program quality and operations. We have some formal systems in place, and are fortunate to have various tools provided to us by Boys & Girls Clubs of America (BGCA) to make this process easier.

BGCLC utilizes the National Youth Outcomes Initiative Survey conducted by Boys & Girls Clubs of America. This survey measures indicators of youth achievement in Academic Success, Good Character and Citizenship, and Healthy Lifestyles. The survey also asks members about their perceptions of the Club, allowing us to assess how effective our Club environment and programs are.

A large facility should yield higher numbers of youth being served, thereby measuring increased number of members and average daily attendance levels will also be critical to measuring success. BGCLC uses a program called KidTrax to track membership attendance, demographics, and program participation. This program allows us to run monthly reports with demographic and attendance information in order to constantly evaluate our recruitment process and work to meet our goals.

4. BUDGET INFORMATION

PART A

Instructions: Please complete the budget summary. Indicate the amount ARPA funds needed for each expenditure classification. Also include other funds for the project from federal, state and private sources. Columns A, B, C & D must add up to Column E (Total Budget) needed for the project.

Please Enter just numbers no symbols (i.e. $,)

	ARPA FUNDING	OTHER FEDERAL FUNDS	STATE FUNDS	PRIVATE FUNDS	TOTAL BUDGET
Permanent Position, Full Time				26000.00	26000.00
Permanent Position, Part Time					
Temporary Positions					
Employment Liability Insurance					
Other Employee Benefits *					
Office Supplies					
Operating Supplies					
Repair & Maintenance Supplies					
Small Tools					
Motor Oil and Fuel					
Library Books and Periodicals					
Magazines and Periodicals					
Audio Visual Aids					

Wearing Apparel					
Postage and Federal Express				1000.00	1000.00
City Service (water, waste, etc.)					
Electricity					
Telephone					
Utility Services – Other					
Legal Services					
Auditing Services					
Engineering Services	209000.00				209000.00
Architectural Services	209000.00			5000.00	214000.00
Maintenance Agreements					
Fees or Service Charges					
Advertising	5000.00			5000.00	10000.00
Landscape Maintenance					
Required Building Repair & Maintenance					
Auto or Truck Repair					
Equipment					

Repair					
Building or Land Rental					
Vehicle Rental					
Equipment Rental					
Liability Insurance					
Property Insurance					
Fidelity Insurance					
Transportation (in-state only)					
Per Diem (in-state only)					
Registration Fees					
Miscellaneous Costs	127000.00			30000.00	157000.00
Training and Education					
Land-Vacant					
Land-Buildings or Other	500000.00				500000.00
Land-Right of Way					
Land Improvements					
Furniture and Fixtures	338000.00				338000.00
Building					

Improvements					
Automobiles					
Trucks and Vans					
Heavy Equipment					
Furniture and Fixtures					
Office Equipment					
Data Processing					
Shop Equipment					
Client Housing (rent, mortgage, utilities, deposit)					
Client Support (medical, classes)					
Total	1388000.0	0	0	67000.0	1455000.0

Part B – BUDGET JUSTIFICATION

Briefly and specifically describe each line item listed on Part A (ARPA FUNDS) in a separate paragraph below:

Engineering Services & Architectural Services - This is projected to be around 6.5% of construction costs. This will include all of the design and engineering required to complete the project including preliminary design, revisions, and final construction documents. Initial renderings, schematics, and building programs are being done probono.

Advertising - This will be used for the cost of printing brochures and marketing materials to present to potential donors, foundations, and other community members to garner support for the campaign.

Miscellaneous Costs - This includes cost for the fundraising consultant who will work to raise the funds necessary to complete the campaign. Given that BGCLC CEO is the only person on staff who raises money for the organization, a fundraising consultant will be critical to complete this project, as the CEO will need to be raising operation funding while the capital campaign is underway. This also includes the cost of topographical and boundary surveys, geo-technical tests, and any other required testing.

Land - Buildings or Other - This is to cover any initial construction expenses associated with the project, such as permitting, electrical, plumbing, ground breaking, etc.

Furniture and Fixtures - This would be used to cover the building furnishings and required equipment, such as desks, computers, televisions, pool tables, technology, etc. to ensure the building is adequate for operations.

DUPLICATION

5. Is this a new or existing program in the Community? How do ARPA funds makes this project feasible? If existing, describe additional efforts to prevent duplication of services.

Boys & Girls Clubs of Las Cruces is an existing program, however ARPA funding will be a critical component to launching this campaign for a new building. The new building will allow us to offer not only expanded programming to more youth, but also will allow us to be a resource for the community and a partner to other entities who may be in need of such a facility. By covering initial soft costs associated with this project, the City will be making a statement of support, which will be a strong foundation for us to garner the additional support needed from our donorbase and the community to finish this project. As we go out into the community to ask for support, we will have a strong ground to stand on in being able to say that the city is not only allowing us to utilize city own land for the project, but also taking advantage of these one-time funds to make a significant financial investment so that this long-term dream for Las Cruces youth can become a reality.

FEASABILITY/TIMELINE

6. Please provide a detailed timeline or work schedule for implementing this project including anticipated milestone dates.

September 2021—February 2022: Feasibility study conducted – Campaign feasibility study is currently underway with Hueston Consulting Group.

June 2021—December 2021: Site acquisition – BGCLC is currently working with the City of Las Cruces to determine the best site location. Several sites are being explored, and we hope to have this solidified with a resolution adopted by City Council by December 2021 at the latest.

September 2021 – November 2021 – BGCLC is working with Desert Peak Architects for initial renderings and schematics as well as the building program.

January 2022 – February 2022 – More detailed preliminary design will be conducted.

February to March 2022 – Silent Campaign Launch – BGCLC with Hueston Consulting Group will begin the silent fundraising phase for the project. Fundraising will continue through the launch of the public phase with the goal of having 60 to 75% of the funds raised by the launch of the public phase.

April 2023 – Public Campaign Launch – BGCLC with Hueston Consulting Group will launch the public phase of the campaign, announcing the amount that has been raised and soliciting for the balance. The announcement will occur at the 15th Annual Lou & Mary Henson Community Breakfast.

April 2023 - September 2023 – BGCLC with Hueston Consulting Group will continue the fundraising process, with the goal of meeting the campaign goal by September 30, 2023.

April 2023 – October 2023 – Final Construction Documents will be created by the architect.

November to December 2023 – Groundbreaking, followed by 9- to 12-month construction period.

December 2024 – Grand Opening

7. Is this project dependent on future funding to fully complete this project? Include specific timelines/dates and funding commitments needed to complete the project and have it fully operational for public benefit. Can this project be phased? Can this project be partially funded?

This project will be dependent on future funding in order to complete the entire project. Because we know that this will require between $6 to $8 million dollars in total, BGCLC has invested in a feasibility study. This study will serve as the foundation for fundraising support and provide insight on how we will identify these funds.

We anticipate the entire fundraising process to take 18 months, with the first 12 months of the campaign being “silent.” During those months, we will strive to raise 60% to 75% of the funds, with the goal of launching the public phase in April of 2023 at the annual Lou & Mary Community Breakfast, and wrapping up the fundraising by September of 2023.

BGCLC has the current asset of our existing building, which will be sold to apply toward the new building. We anticipate the building will sell at $300 to $350 thousand. We also hope to work with the City to gain support to be added to the CIP, so that we can pursue and qualify for capital outlay funding from the state.

The opportunity to garner support through ARPA funding for the initial expenses allows BGCLC to have leverage when seeking larger donations from individuals and foundations to support the building. The success of this project will be more attainable by showing that we have strong support from local government.

8. If funded, it is expected that the project will begin within ninety (90) days of being issued a fully executed contract. What potential or known barriers exist to beginning the project within ninety (90) days and completing the project within twenty-four (24) months of being issued a Notice to Proceed from City Staff? Please describe in detail your plan for overcoming the barriers identified and achieving a timely and successful completion of the project.

The largest barrier to incurring costs within that timeframe will be dependent identifying land and gaining a commitment from the City on the land, so that we can move forward with the project design and initial steps. Spending within the first 90 days will be mostly related to consultant and advertisement fees, as we will rely heavily on a consultant to conduct the overall fundraising campaign. Spending the other soft costs related to architecture, engineering, and design will be dependent on where we are with the overall campaign and how much money has been committed.

While there will undoubtedly be hurdles throughout the process, as we have already ran into a few with land identification, we feel that feasibility study that is currently underway coupled with the public knowledge of the support from the City will truly help guide us through the fundraising process and ensure that we are successful in raising the funds needed to complete the project.

ORGANIZATION HISTORY AND CAPACITY

9. History of your organization's TOTAL ANNUAL REVENUES for the past three (3) fiscal years:

	2020	2019	2018
Total Annual Revenues $	553762.00	504243.00	477671.00

10. Applicant Qualifications

Summarize your organization's experience in areas relevant to the proposed project describe at least two most recent projects; if applicable. Describe Organizations capacity to implement proposed project.

This project is a first for BGCLC, however, serving the youth of Las Cruces has been our sole mission since our inception in 1963. We believe that our tremendous growth in membership and revenue over the last 8 years provides evidence that our programs are working. More and more families want to utilize our services and our community support has grown consistently each year. In our small community we rely heavily on word of mouth and we believe our consistent growth says a lot about the success of our program. Moreover, this year with expansions into school sites, the need for our services continues to be proven, and we feel that these types of partnerships would not occur if our services were not working.

Some of our most recent projects include successfully securing ESSER funding from the New Mexico Public Education Department. This funding will allow us to expand programs to operate out of 4 elementary schools. Another one of our newer and existing projects is our teen initiative, which is funded by the Paso del Norte Health Foundation.

We also currently have a state contract for the Child and Adult Food Care (CACFP) program, another through CYFD, and a federal award from the OJJDP. These funds are reimbursement based funding, so we are familiar with the process and the need to have a healthy cash flow. All of the contracts mentioned in addition to the existing City support through the Health Related Public Services fund, demonstrate our ability to manage projects and contracts.

Moreover, utilizing an expert fundraising consultant (Hueston Consulting Firm) coupled with support services from Boys & Girls Clubs of America, we are well positioned to raise the funds needed to complete this project which will make a lasting impact in young lives for years to come.

Please complete the table below for all key staff members involved in the project. Including executive director, fiscal officer, project manager and any employees to be funded by the project.

	Name	Title	Total Years' Experience	Years with Association
1	Ashley Echavarria	Chief Executive Officer	16	8
2				
3				
4				
5				
6				
7				
8				
9				
10				

Application: Oak Street Apartments Rehabilitation

Mesilla Valley Public Housing Authority
AMERICAN RESCUE PLAN ACT

RFP Application

Completed - Oct 13 2021

Proposal Information

1

ACKNOWLEDGEMENT OF REQUIRED ASSURANCES

This page must be signed and submitted with the application. Applications which do not contain a signed Acknowledgement of Required Assurances are ineligible for consideration.

By submitting the accompanying application and by my signature on this document, I understand and agree that any funding award resulting from this solicitation will require compliance with the signed agreement and with the regulations, requirements, and policies identified below, including but not limited to:

- **Compliance with 2 CFR Part 200 - Uniform Administrative Requirements**, Cost Principles, and Audit Requirements for Federal Awards (as appropriate);
    - Compliance with the requirements of the Americans with Disabilities Act Accessibility Guidelines;
        - Completion of an environmental regulations
        - Equal Employment Opportunity Act;
        - City of Las Cruces Nondiscrimination policy
        - Minority and Women's Business Enterprise (MBE/WBE);
        - Lead Based Paint;
        - Title VI of the Civil Rights Act of 1964, as amended;
        - The Fair Housing Act;
        - Equal Opportunity in Housing Act;
        - Age Discrimination Act;

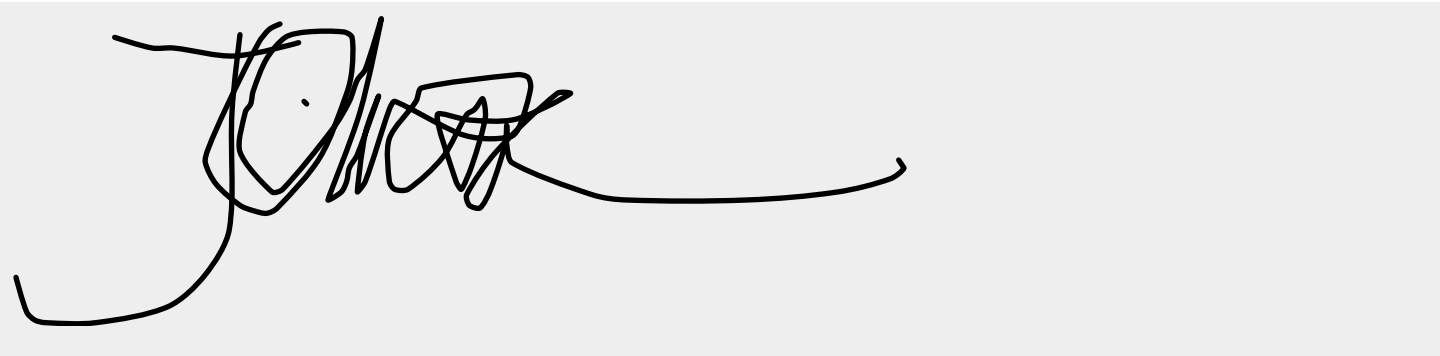
- Americans with Disabilities Act;
- Section 504 of the Rehabilitation Act;
- Federal Funding Accountability and Transparency Act (FFATA);
- Hatch Act
- Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
- New Restrictions on Lobbying, 31 C.F.R. Part 21.
- Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C.§§ 4601-4655) and implementing regulations.
- Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Recipient should encourage its contractors to adopt and enforce on-thejob seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.
- Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Recipient should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and Recipient should establish workplace safety policies to decrease accidents caused by distracted drivers.
- Compliance with policies of the City of Las Cruces, NM
- Compliance with federal and state laws requiring the safeguarding and disclosure of confidential information.
- Evidence of comprehensive liability insurance and bonding, as required by the City;
- Completion of an annual financial audit, and/or as applicable, providing the City with a copy of the organization’s audited financial statement;
- Completion and subsequent renewal of background checks for all employees, volunteers, or interns who will or may have unsupervised contact with children or vulnerable adults;
- Maintaining program and financial records for audit review, and providing access to documentation upon request by the City;
- Submission of program and financial reports, as required by the City;
- Certification that the firm, association, corporation, or any person in a controlling capacity or any position involving the administration of federal, state, or local funds is not currently under suspension, debarment, voluntary exclusion, or a determination of ineligibility by any agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any agency within the past three (3) years; does not have a proposed debarment pending; has not been indicted, convicted, or has not had a civil judgment rendered against said person, firm,

association, or corporation by a court of competent jurisdiction in any matter involving fraud or misconduct with the past three (3) years.

- Certification that the firm is not bankrupt or under an administration appointed by the Court, or under proceedings leading to a declaration of bankruptcy; and provide any pending or known legal actions against the company.
- Certification that, in the past seven (7) years, the organization has not had any bankruptcy proceedings (closed or not) initiated against the Contractor and that there are no bankruptcy proceedings pending by or against the Contractor regardless of the date of filing;
- All pending or known litigation/court action(s) have been disclosed in the application.
- Certification that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Applicant further covenants that in the performance of this project/application, no person having any conflicting interest will be employed.

Application Approval and Signature: The signatory declares that he/she is an authorized official of the applicant organization, is authorized to make this application, is authorized to commit the organization in financial matters, and will assure that any funds received because of this application are used for the purposes set forth herein.

Please Sign



ARPA Categories:

Pick one (If project does not meet a category, it is ineligible for funding)

Services to Disproportionately Impacted Communities: Housing Support: Affordable Housing

Organization Information

Applicant Organization Information:

Name of Organization:	Mesilla Valley Public Housing Authority
Address:	926 S San Pedro St
City:	Las Cruces
State:	New Mexico
Zip code:	88001
Organization DUNS Number:	042444484
Phone:	5755282000
Fax:	5755268452
Organization DUNS Number:	042444484

Primary Contact Information:

Project Manager:	Juan Olvera
Title:	Executive Director
Phone:	5755282007
Email:	jolvera@mvpha.org
Fax:	5755268452
Phone:	5755282007

Alternative Contact Information:

Alternative Contact:	Lorena Rivera
Title:	Deputy Director
Phone:	5755282018
Email:	lrivera@mvpha.org
Fax:	5755268452
Phone:	5755282018

PROJECT INFORMATION

PROJECT NAME

Oak Street Apartments Rehabilitation

PROJECT SUMMARY:

PROJECT SUMMARY: Describe the proposed Project. This summary will be used to describe your project in official City documents and media. (Note: The Project Summary is an abstract or summary of your proposal and should be written after completion of the application.)

Oak Street Apartments is currently occupied, and the majority of tenenats are Veterans Assistance Supportive Housing (VASH) recipients. The original property has not been renovated and is in need of site repairs and unit updates. The goal of the project is to complete a moderate rehabilitation of the property, including but not limited to: Improving site accessibility; building with new paint; adding exterior lighting to improve site security; and, remodel kitchens and bathrooms.

Type of Client Populations & Number of Clients to be served (ESTIMATED)

Select Primary

Other: 20

Program Type: * (check one only)

Affordable Housing Development

Application Information

All questions must be answered, and all forms completed to be eligible for review by staff.

PROJECT JUSTIFICATION

1.Description and Justification of the Project; Provide a detailed description of the proposed project: Include project objectives, target population, major project characteristics, number and type of units, and how it responds to the public health emergency or its negative economic impacts.

Oak Street Apartments entails the moderate rehabilitation of a 22-unit affordable housing development owned by the Mesilla Valley Public Housing Authority (MVPHA) at 3350 Oak St. in Las Cruces, NM. The original building was built in 1976 and contains 20 one-bedroom units (650 SF). The property was

expanded in 2012. The expansion added two (2) efficiency units, a laundry room, and service space. The MVPHA currently partners with Mesilla Valley Community of Hopes, a local non-profit social services agency, for the provision of on-site case management, free transportation, and nutrition support services. Oak Street is currently occupied, and the majority of tenants are Veterans Assistance Supportive Housing (VASH) recipients. Given this, the resident selection criterial will include a preference for active duty or retired US military Veterans.

The original property has not been renovated and is in need of site repairs and unit updates. The goal of the project is to complete a moderate rehabilitation that will enable MVPHA to continue to provide safe, decent, affordable housing to lower income veterans and households in the community. MVPHA plans to leverage the City's CDBG funds to complete the following improvements:

• Improving site accessibility by repairing and/or replacing concrete walkways and stairs and resurfacing the parking lot;
• Upgrading the building with new paint;
• Adding exterior lighting to improve site security, and;
• Updating unit interiors with new kitchen flooring and cabinets and remodeled bathrooms.

Upon completion, Oak Street will continue to serve extremely and very-low income households with incomes at or below 50% of area median income.

Oak Street Apartments is located in the southern portion of Las Cruces in Dona Ana County. The development fully occupied and well-located. The surrounding neighborhood is comprised primarily of commercial retail and single-family homes.

Directly to the east of the property is Pan Am Plaza (1.7 miles). Retail, restaurants, and services in the shopping center include a Dollar Tree, Joann Fabrics and Crafts, Super Cuts, Milagro Coffee y Espresso, McDonald's, Domino's Pizza and Lorenzo's Italian. The site is located 0.4 miles east of the New Mexico State University, which is an extensively developed area in the Las Cruces community. Within this approximate area, residents at Oak Street Apartments have access to many amenities such as NMSU Center for the Arts, University Museum, Aggie Health and Wellness Center, Quintana Learning Center and numerous restaurants like Aggie Grill, Subway, Santorini, Metropolitan Deli & Grill, and Pho Zero Degree. The United States Postal Service is located 0.1 miles east of the site. A Walmart Super Center is located 1.8 miles north of the site.

Additionally, there are several recreational areas nearby, including Mesilla Park (0.4 miles), Fabian Garcia Botanical Gardens (0.8 miles), Preciado Park (1.0 miles) and Frank O'Brien Papen Community Center (0.4

miles). The Frank O'Brien Papen Community Center contains a playground area and an arts and crafts room. The Community Center also offers many extracurricular activities to the community.

The residents at Oak Street Apartments have access to a bus stop directly adjacent to the property.

ALIGNMENT WITH CITY PLANS

2. What specific priorities in the City's Strategic Plan, Elevate Las Cruces and/or 2021-2025 Consolidated Plan? (Click on plan links below to view)

City Plans:

ELEVATE PLAN

COUNCIL STRATEGIC PLAN

2021-2025 CON PLAN

Goal 1: Reduce Homelessness – Oak Street Apartments will provide 22-rehabilitated affordable units for extremely and very-low income households with a preference for United States veterans, a targeted group by the City of Las Cruces for eliminating homelessness.

Goal 2: More affordable, accessible rental housing – Oak Street Apartments will provide housing for individuals/households at or below 50% AMI or below.

Goal 3: Preserve Existing Affordable Housing –The MVPHA will complete a moderate rehabilitation of the existing 22-unit Oak Street Apartments, improving site accessibility and security by repairing and/or replacing concrete walkways and stairs, resurfacing the parking lot, and updating unit interiors.

COMMUNITY IMPACT

3. What is the anticipated impact of your program on the Las Cruces community? How will you measure the expected outcomes?

Reduce Homelessness in particular for the Veterans population. We will track the number of new homeless veterans are housed at the Oak Street Apartments.

4. BUDGET INFORMATION

PART A

Instructions: Please complete the budget summary. Indicate the amount ARPA funds needed for each expenditure classification. Also include other funds for the project from federal, state and private sources. Columns A, B, C & D must add up to Column E (Total Budget) needed for the project.

Please Enter just numbers no symbols (i.e. $,)

	ARPA FUNDING	OTHER FEDERAL FUNDS	STATE FUNDS	PRIVATE FUNDS	TOTAL BUDGET
Permanent Position, Full Time					
Permanent Position, Part Time					
Temporary Positions					
Employment Liability Insurance					
Other Employee Benefits *					
Office Supplies					
Operating					

Supplies					
Repair & Maintenance Supplies					
Small Tools					
Motor Oil and Fuel					
Library Books and Periodicals					
Magazines and Periodicals					
Audio Visual Aids					
Wearing Apparel					
Postage and Federal Express					
City Service (water, waste, etc.)					
Electricity					
Telephone					
Utility Services – Other					
Legal Services	15000				15000
Auditing Services					
Engineering Services					
Architectural Services	7500				7500
Maintenance					

Agreements					
Fees or Service Charges	81353				81353
Advertising					
Landscape Maintenance					
Required Building Repair & Maintenance					
Auto or Truck Repair					
Equipment Repair					
Building or Land Rental					
Vehicle Rental					
Equipment Rental					
Liability Insurance					
Property Insurance	2000				2000
Fidelity Insurance					
Transportation (in-state only)					
Per Diem (in-state only)					
Registration Fees					
Miscellaneous Costs					
Training and					

Education					
Land-Vacant					
Land-Buildings or Other					
Land-Right of Way					
Land Improvements		100000			100000
Furniture and Fixtures					
Building Improvements	200000	200000			400000
Automobiles					
Trucks and Vans					
Heavy Equipment					
Furniture and Fixtures					
Office Equipment					
Data Processing					
Shop Equipment					
Client Housing (rent, mortgage, utilities, deposit)					
Client Support (medical, classes)					

Total	305853.0	300000.0	0	0	605853.0

Part B – BUDGET JUSTIFICATION

Briefly and specifically describe each line item listed on Part A (ARPA FUNDS) in a separate paragraph below:

Architectural Services - Drawings, specifications, materials and equipment for the site improvements and the kitchen and batroom remodel.
Fees or Service Charges - Financial development consultants, appraissals, survey, market studies, permit fees, developer fees.
Property Insurance - liability and hazardous insurance during rehabilitation.
Building Improvements - Kitchen and bathroom remodel of 20 units ($10,000 per unit).

DUPLICATION

5. Is this a new or existing program in the Community? How do ARPA funds makes this project feasible? If existing, describe additional efforts to prevent duplication of services.

The Oak Street Apartments have been providing afordable housing for Veterans for several years now. The property was constructed in 1976 with 20 one-bedroom units. MVPHA constructed two efficiency units and a community center on an adjacent parcel in 2013. The property is in need of site and accessibility improvements and unit upgrades. Kitchens and batrooms are more than 40years old. The ARPA funds will fill the financing gap which will make the rehabilitation of the property feasible.

FEASABILITY/TIMELINE

6. Please provide a detailed timeline or work schedule for implementing this project including anticipated milestone dates.

Contractor RFP: January 2022

Permits Received: February 2022

Construction Start: February 2022

Construction Completion: November 2022

7. Is this project dependent on future funding to fully complete this project? Include specific timelines/dates and funding commitments needed to complete the project and have it fully operational for public benefit. Can this project be phased? Can this project be partially funded?

The project already has been awarded $300,000.00 in CBDG funds. The ARPA funds will cover the rest of the financing needs.

8. If funded, it is expected that the project will begin within ninety (90) days of being issued a fully executed contract. What potential or known barriers exist to beginning the project within ninety (90) days and completing the project within twenty-four (24) months of being issued a Notice to Proceed from City Staff? Please describe in detail your plan for overcoming the barriers identified and achieving a timely and successful completion of the project.

If the ARPA funds are awarded, MVPHA will issue an RFP to procure a general contractor to start the construction work within the required ninety (90) days. There are no anticipated or known barriers to begin the project within ninety (90) days and complete the project within twenty-four (24) months of being issued a Notice to Proceed from City Staff.

ORGANIZATION HISTORY AND CAPACITY

9. History of your organization’s TOTAL ANNUAL REVENUES for the past three (3) fiscal years:

	2020	2019	2018
Total Annual Revenues $	9,643,772	10,272,560	9,576,489

10. Applicant Qualifications

Summarize your organization's experience in areas relevant to the proposed project describe at least two most recent projects; if applicable. Describe Organizations capacity to implement proposed project.

MVPHA completed the Desert Hope Apartments project in July of 2021. The project is located at 1310 Pecos Street, Las Cruces, NM 88001. The project type is a Multi-Family Rental Housing with 40 efficiency units of which 36 are PBV units 4 units restricted @ 30% AMI.
MVPHA completed the Robledo Ridge Apartments project in 2011. The project is located at 1519 Medina Street, Las Cruces, NM 88007. The project type is a Multi-Family Rental Housing with 71 units of which 60 are PBRA units and 11 market rate units.

Please complete the table below for all key staff members involved in the project. Including executive director, fiscal officer, project manager and any employees to be funded by the project.

	Name	Title	Total Years' Experience	Years with Association
1	Juan Olvera	Executive Director	Over 30 years	6.5 years
2	Lorena Rivera	Deputy Director/COO	Over 20 years	4.5 years
3	Elizabeth Garcia	Director of Finance	Over 20 years	4 years
4	Gilbert Cruz	Modernization Manager	Over 30 years	1 year
5				
6				
7				
8				
9				
10				

Application: LiftFund; Revitalize Las Cruces Small Businesses

Mindy Jimenez - grants@liftfund.com
AMERICAN RESCUE PLAN ACT

RFP Application

Completed - Oct 14 2021

Proposal Information

1

ACKNOWLEDGEMENT OF REQUIRED ASSURANCES

This page must be signed and submitted with the application. Applications which do not contain a signed Acknowledgement of Required Assurances are ineligible for consideration.

By submitting the accompanying application and by my signature on this document, I understand and agree that any funding award resulting from this solicitation will require compliance with the signed agreement and with the regulations, requirements, and policies identified below, including but not limited to:

- **Compliance with 2 CFR Part 200 - Uniform Administrative Requirements**, Cost Principles, and Audit Requirements for Federal Awards (as appropriate);
    - Compliance with the requirements of the Americans with Disabilities Act Accessibility Guidelines;
        - Completion of an environmental regulations
        - Equal Employment Opportunity Act;
        - City of Las Cruces Nondiscrimination policy
        - Minority and Women's Business Enterprise (MBE/WBE);
        - Lead Based Paint;
        - Title VI of the Civil Rights Act of 1964, as amended;
        - The Fair Housing Act;
        - Equal Opportunity in Housing Act;
        - Age Discrimination Act;

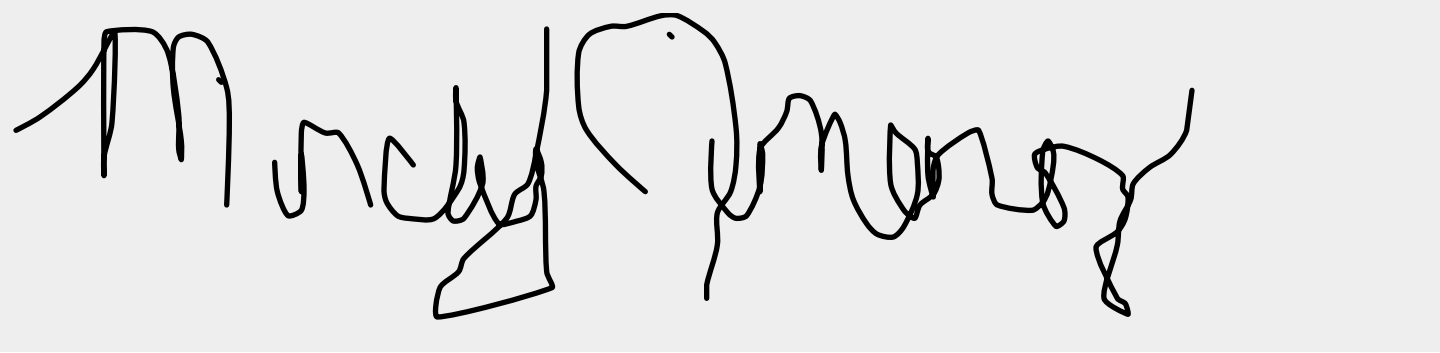
- Americans with Disabilities Act;
- Section 504 of the Rehabilitation Act;
- Federal Funding Accountability and Transparency Act (FFATA);
- Hatch Act
- Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
- New Restrictions on Lobbying, 31 C.F.R. Part 21.
- Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C.§§ 4601-4655) and implementing regulations.
- Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Recipient should encourage its contractors to adopt and enforce on-thejob seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.
- Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Recipient should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and Recipient should establish workplace safety policies to decrease accidents caused by distracted drivers.
- Compliance with policies of the City of Las Cruces, NM
- Compliance with federal and state laws requiring the safeguarding and disclosure of confidential information.
- Evidence of comprehensive liability insurance and bonding, as required by the City;
- Completion of an annual financial audit, and/or as applicable, providing the City with a copy of the organization’s audited financial statement;
- Completion and subsequent renewal of background checks for all employees, volunteers, or interns who will or may have unsupervised contact with children or vulnerable adults;
- Maintaining program and financial records for audit review, and providing access to documentation upon request by the City;
- Submission of program and financial reports, as required by the City;
- Certification that the firm, association, corporation, or any person in a controlling capacity or any position involving the administration of federal, state, or local funds is not currently under suspension, debarment, voluntary exclusion, or a determination of ineligibility by any agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any agency within the past three (3) years; does not have a proposed debarment pending; has not been indicted, convicted, or has not had a civil judgment rendered against said person, firm,

association, or corporation by a court of competent jurisdiction in any matter involving fraud or misconduct with the past three (3) years.

- Certification that the firm is not bankrupt or under an administration appointed by the Court, or under proceedings leading to a declaration of bankruptcy; and provide any pending or known legal actions against the company.
- Certification that, in the past seven (7) years, the organization has not had any bankruptcy proceedings (closed or not) initiated against the Contractor and that there are no bankruptcy proceedings pending by or against the Contractor regardless of the date of filing;
- All pending or known litigation/court action(s) have been disclosed in the application.
- Certification that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Applicant further covenants that in the performance of this project/application, no person having any conflicting interest will be employed.

Application Approval and Signature: The signatory declares that he/she is an authorized official of the applicant organization, is authorized to make this application, is authorized to commit the organization in financial matters, and will assure that any funds received because of this application are used for the purposes set forth herein.

Please Sign



ARPA Categories:

Pick one (If project does not meet a category, it is ineligible for funding)

Public Health/Negative Economic Impacts: Small Business Economic Assistance (General)

Organization Information

Applicant Organization Information:

Name of Organization:	LiftFund Inc.
Address:	2007 W. Martin Street
City:	San Antonio
State:	Texas
Zip code:	78207
Organization DUNS Number:	957166796
Phone:	(210) 226-3664
Fax:	(210) 533-2940
Organization DUNS Number:	957166796

Primary Contact Information:

Project Manager:	Lupe Mares
Title:	Regional Vice President
Phone:	(915) 248-1996
Email:	mlmares@liftfund.com
Fax:	(210) 533-2940
Phone:	(915) 231-8626

Alternative Contact Information:

Alternative Contact:	Mindy Jimenez
Title:	Vice President of Advancement
Phone:	(210) 531-1227
Email:	mjimenez@liftfund.com
Fax:	(210) 533-2940
Phone:	(210) 707-0846

PROJECT INFORMATION

PROJECT NAME

Revitalize Las Cruces Small Businesses

PROJECT SUMMARY:

PROJECT SUMMARY: Describe the proposed Project. This summary will be used to describe your project in official City documents and media. (Note: The Project Summary is an abstract or summary of your proposal and should be written after completion of the application.)

LiftFund is providing 2 options for programs that have proved to be very successful in its deployment and to the small businesses who participated in them. Working together with the City of Las Cruces, LiftFund's intention is to provide a program that best suits the needs of the city and small businesses who are still fighting to overcome the challenges of the pandemic. Both options include opportunities for small business owners to access the capital they need as well as receive the technical assistance/business education they require to ensure the health and safety of their staff and their customers.

Type of Client Populations & Number of Clients to be served (ESTIMATED)

Select Primary

Small Business: 70-96

Program Type: * (check one only)

Small Business/Nonprofit Assistance

Application Information

All questions must be answered, and all forms completed to be eligible for review by staff.

PROJECT JUSTIFICATION

1.Description and Justification of the Project; Provide a detailed description of the proposed project: Include project objectives, target population, major project characteristics, number and type of units, and how it responds to the public health emergency or its negative economic impacts.

The Las Cruces Small Business Recovery Program can include a variety of beneficial and educational

programming for small businesses in Las Cruces who continue to struggle with the challenges brought about by the COVID-19 pandemic. LiftFund has two program types to offer, either of which would be a way for small businesses to access much needed capital as well as learn ways to remain sustainable during the recovery period that small businesses continue to face as a result of the pandemic.

The first program option is a blended approach of both a technical assistance accelerator as well as a grant relief program. The accelerator would provide technical assistance over a 5-week course with specific topics such as “Building your Business”, “Funding Your Business”, “Connecting with Customers”, “Managing your Money”, and Telling your story”. Each course runs approximately 2 hours and is held once a week virtually. This program would be conducted in 2 cohorts that run parallel to each other, one in English and the other in Spanish. Upon the successful completion of the accelerator, each participant will receive a grant ranging from $5,000 to $20,000 based on eligibility criteria and need. The funds can be used as needed to support the small business owner in providing their services, products, keeping up with payroll and other business-related expenses. Grant funding will also be available for small business applicants who are not able to participate in the accelerator; however, availability will be limited as opposed to guaranteed when they chose to complete the accelerator course. LiftFund provides a number of innovative accelerators for small business owners such as our HELM, Break Fast and Launch and our most recent award of the only Shell LiveWIRE program in the country. Each of these accelerators targets a specific industry as well as region of our footprint which allows our small business owners to dive deep into the questions and answers they need while they continue to navigate the complexities of the pandemic and its impact on their small business.

The amount of grant funding awarded to each small business for this program would be based on the number of employees per business as follows:

Number of Employees Amount of Grant Funding
Self-Employed $5,000
2-10 Employees $10,000
11+ Employees $20,000

The second program option we could offer is an opportunity for a forgivable loan. Loans would be up to $25,000 at 0% interest with a 6-month deferment. If within 6 months, the small business owner completes 2-3 criteria that will be determined in collaboration with the City, the loan is forgiven and the funding becomes a grant. Loans would range in value up to $25,000 at 0% interest and approval can be based on factors such as need, budget, credit review, eligibility and availability of funds. These eligibility factors are merely an example of what LiftFund has utilized in other similar programs, however, these can be adjusted to fit the priorities of the City. Loans may be used for working capital, covering expenses of debt, and workforce needs. There is a 3% loan forgiveness administration cost that serves to assist

LiftFund in the administration of this type of loan program. Technical assistance is also offered through this program in the form of one-on-one consultations and mentorship which can help small business owners with their specific challenges and answer questions directly related to their issues. In addition, technical assistance can help small business owners with creating or improving healthy spaces.
Either program would be beneficial to small businesses in Las Cruces and provide them with the resources they need to continue to recover from the impact of COVID-19 as well as prepare them with the knowledge they need to plan for the financial stability, health and safety of their business, staff and customers now and in the future.

ALIGNMENT WITH CITY PLANS

2. What specific priorities in the City's Strategic Plan, Elevate Las Cruces and/or 2021-2025 Consolidated Plan? (Click on plan links below to view)

City Plans:

ELEVATE PLAN

COUNCIL STRATEGIC PLAN

2021-2025 CON PLAN

The priorities in the City's Strategic Plan and Elevate Las Cruces this program addresses is Community Prosperity covering several goals in this Strategic Theme. Some of the goals our program assists the City in meeting are ELC Goal CP-2: Economic Equity, ELC Goal CP-11: Underserved Populations, ELC Goal CP-4 Diversification, and ELC Goal CP-3: Entrepreneurship.

Each goal is achieved because of the target population our programs assist everyday: Entrepreneurs who are underserved and come from diverse populations such as LMI individuals, minorities, women and veterans. Our program would focus on prioritizing entrepreneurs who have not had access to the capital and support they have needed and assist them with our services throughout the program.

COMMUNITY IMPACT

3. What is the anticipated impact of your program on the Las Cruces community? How will you measure the expected outcomes?

Depending on the program selected, the anticipated impact will be measured through:

- Number of businesses receiving capital
- Number of businesses receiving technical assistance/business support
- Number of participants successfully completing the accelerator
- Number of participants successfully completing the loan forgiveness criteria
- Number of jobs created
- Number of jobs retained

With a $2 million for the first option grant and accelerator program, LiftFund expects to assist a minimum of 66 small businesses through the grant program and an additional 30 small business through the accelerator program.
Through the second option, the loan forgiveness program, LiftFund expects to assist a minimum of 70 small businesses with a 0% interest loan with a 6-month deferment that may qualify to be forgiven and evolve into a grant to the small business owner. Each of these small business owners will also have access to our technical assistance services and can be matched with a coach if needed for additional support.

4. BUDGET INFORMATION

PART A

Instructions: Please complete the budget summary. Indicate the amount ARPA funds needed for each expenditure classification. Also include other funds for the project from federal, state and private sources. Columns A, B, C & D must add up to Column E (Total Budget) needed for the project.

Please Enter just numbers no symbols (i.e. $,)

	ARPA FUNDING	OTHER	STATE FUNDS	PRIVATE FUNDS	TOTAL BUDGET

		FEDERAL FUNDS			
Permanent Position, Full Time	110000				
Permanent Position, Part Time					
Temporary Positions	50000				
Employment Liability Insurance					
Other Employee Benefits *	26000				
Office Supplies					
Operating Supplies	150000				
Repair & Maintenance Supplies					
Small Tools					
Motor Oil and Fuel					
Library Books and Periodicals					
Magazines and Periodicals					
Audio Visual Aids					
Wearing Apparel					
Postage and					

Federal Express					
City Service (water, waste, etc.)					
Electricity					
Telephone					
Utility Services – Other					
Legal Services					
Auditing Services					
Engineering Services					
Architectural Services					
Maintenance Agreements					
Fees or Service Charges					
Advertising	30000				
Landscape Maintenance					
Required Building Repair & Maintenance					
Auto or Truck Repair					
Equipment Repair					
Building or Land Rental					
Vehicle Rental					

Equipment Rental					
Liability Insurance					
Property Insurance					
Fidelity Insurance					
Transportation (in-state only)					
Per Diem (in-state only)					
Registration Fees					
Miscellaneous Costs					
Training and Education					
Land-Vacant					
Land-Buildings or Other					
Land-Right of Way					
Land Improvements					
Furniture and Fixtures					
Building Improvements					
Automobiles					
Trucks and Vans					

Heavy Equipment					
Furniture and Fixtures					
Office Equipment					
Data Processing					
Shop Equipment					
Client Housing (rent, mortgage, utilities, deposit)					
Client Support (medical, classes)	1634000				
Total	2000000.0	0	0	0	0

Part B – BUDGET JUSTIFICATION

Briefly and specifically describe each line item listed on Part A (ARPA FUNDS) in a separate paragraph below:

The budget in the chart above details the allocations associated with Option 1.
A percentage of key staff's salary based on the amount of time spent working on this program is included in the $110,000 allocated to this line item. Key staff include the Regional Vice President, two Business Development Officers and a Community Manager. In addition, a percentage for costs for accounting and IT staff are included as they relate to this program.

Benefits for full-time staff include FICA, medical, dental, vision and life insurance as well as retirement and total approximately 25% of salary expense.

Operating Supplies include the supplies needed to conduct two cohorts of the accelerator described.

Advertising will be utilized to ensure potential applicants are aware of the Revive Las Cruces Small Businesses program availability and how to access the services being provided.

Client Support is the grant funding that will be available for small businesses to apply for either through the application process or after completion of the accelerator program.

Option 1 - The $2 million award for the grant and accelerator combination program would be allocated as follows:
Small Business Grants - $1,334,000
Accelerator Program Grants - $300,000 (30 participants @ $10,000 each)
Program expenses - $150,000 ($75,000 per cohort)
Outreach partners - $50,000
Marketing - $30,000
Administration Cost - $136,000

The second option is similar in categories of allocation such as salary, benefits, program expenses, and grants.
Option 2 - The Loan Forgiveness Program would be allocated as follows:
Small Business Grants - $1,748,000
Technical Assistance - $150,000
Administration Cost - $102,000

DUPLICATION

5. Is this a new or existing program in the Community? How do ARPA funds makes this project feasible? If existing, describe additional efforts to prevent duplication of services.

Either program would be new to the Las Cruces community, but it is not new to LiftFund. Versions of these programs have been implemented and successfully delivered in other parts of our footprint, such as El Paso and Dallas, Texas. ARPA funds make this project feasible because the focus is targeted to support small businesses impacted by the pandemic who are still fighting to remain open and not have to close their doors permanently. Our programs, supported with ARPA funding, provide the two measures that small businesses need right now to survive: capital and business support services.

FEASABILITY/TIMELINE

6. Please provide a detailed timeline or work schedule for implementing this project including anticipated milestone dates.

Once the contract is fully executed, LiftFund will work with the City of Las Cruces to determine the eligibility criteria and requirements of the program selected for this project and will allow 30 days to complete this process. Once LiftFund and the City of Las Cruces have agreed on the terms of the program, LiftFund will need another 30 days to fully launch the program. This will include a web page that provides information about the program and the application needed to apply for funding and/or the accelerator or other business support services. Marketing materials will be created and distributed to outreach partners, as well as press releases and social media announcements to ensure we are making all potential program participants aware of the program's availability. The application period will be open for 2 weeks and the review and approval process will begin as we start to receive complete applications.

Task Date
Fully executed contract received February 1, 2022
Discussion with the City regarding terms
of the Program February 2 - March 2, 2022
Program Launch March 7, 2022
Application Acceptance Portal Closes March 18, 2022
Funding of Awards to Small Businesses March 21 – April 29, 2022
Technical Assistance Ongoing beginning March 7, 2022

7. Is this project dependent on future funding to fully complete this project? Include specific timelines/dates and funding commitments needed to complete the project and have it fully operational for public benefit. Can this project be phased? Can this project be partially funded?

This project is not dependent on future funding to fully complete the project. However, LiftFund will continue to offer technical assistance and affordable loans through our regular programming services in New Mexico which continues to grow through the efforts of our development team and Business Development Officers who are actively addressing the needs of the small business community.

8. If funded, it is expected that the project will begin within ninety (90) days of being issued a fully executed contract. What potential or known barriers exist to beginning the project within ninety (90) days and completing the project within twenty-four (24) months of being issued a Notice to Proceed from City Staff? Please describe in detail your plan for overcoming the barriers identified and achieving a timely and successful completion of the project.

Based on timelines from similar past programs, we are confident we can begin the project well-within 90 days of the fully executed contract and complete the project within 24 months of receiving the Notice to Proceed from City Staff. As explained in the program description, LiftFund would be flexible in working with the City to ensure the program consists of the proper criteria, tasks and business support focus. The only barrier that might take some time would be calibrating the program to fit the needs the City would like to have included in the program. Since March 2020, when the economic and health and safety issues caused by the pandemic had its impact on small businesses, LiftFund has worked with many municipalities across our footprint, discussing, adjusting, and implementing relief programs to fit the specific communities and their diversity. This is a process LiftFund is comfortable and proficient at engaging in while offering our expertise based on our experience and feedback from our clients.

ORGANIZATION HISTORY AND CAPACITY

9. History of your organization’s TOTAL ANNUAL REVENUES for the past three (3) fiscal years:

	2020	2019	2018
Total Annual Revenues $	103246914	18175930	18709550

10. Applicant Qualifications

Summarize your organization's experience in areas relevant to the proposed project describe at least two most recent projects; if applicable. Describe Organizations capacity to implement proposed project.

Two projects similar to the ones proposed in this application are EPC FASTER and the El Paso City and County Small Business Relief Programs administered by LiftFund.
The EPC FASTER program was a loan forgiveness program that was successfully administered in El Paso providing 64 small businesses with $1.75 million in loans that were subsequently turned into grants. All of the small businesses who received a loan through this fund were able to successfully complete the required criteria within the 6-month deferment timeframe resulting in the loan being forgiven.
The Small Business Relief Programs were administered by LiftFund for both the El Paso City and El Paso County. Through the City program, LiftFund provided 236 small businesses with $10,340,000 in grant funding. Through the County program, LiftFund provided 33 small businesses with $552,000 in grant funding. In addition, our Regional Vice President, Business Development Officers and Lending Assistants provided technical assistance to these entrepreneurs to assist them with their applications as well as helped them pivot their business plans to help them keep their operations safely running during the pandemic.

Please complete the table below for all key staff members involved in the project. Including executive director, fiscal officer, project manager and any employees to be funded by the project.

	Name	Title	Total Years' Experience	Years with Association
1	Maria Lupe Mares	Regional Vice President	36+	3 years
2	Victor Zamora	Business Development Officer	21 years	1 year
3	Enrique Aragon	Business Development Officer	13 years	12 years
4	Marisol Diaz	Doña Ana Community Manager	8 years	3 months
5				
6				
7				
8				
9				
10				

Application: Economic and Educational Recovery and Renewal via a Community Makerspace

Cruces Creatives
AMERICAN RESCUE PLAN ACT

Summary

ID: 0000000040
Last submitted: Oct 13 2021 11:21 PM (MDT)

RFP Application

Completed - Oct 13 2021

Proposal Information

1

ACKNOWLEDGEMENT OF REQUIRED ASSURANCES

This page must be signed and submitted with the application. Applications which do not contain a signed Acknowledgement of Required Assurances are ineligible for consideration.

By submitting the accompanying application and by my signature on this document, I understand and agree that any funding award resulting from this solicitation will require compliance with the signed agreement and with the regulations, requirements, and policies identified below, including but not limited to:

- **Compliance with 2 CFR Part 200 - Uniform Administrative Requirements**, Cost Principles, and Audit Requirements for Federal Awards (as appropriate);
    - Compliance with the requirements of the Americans with Disabilities Act Accessibility Guidelines;
        - Completion of an environmental regulations
        - Equal Employment Opportunity Act;
        - City of Las Cruces Nondiscrimination policy
        - Minority and Women’s Business Enterprise (MBE/WBE);

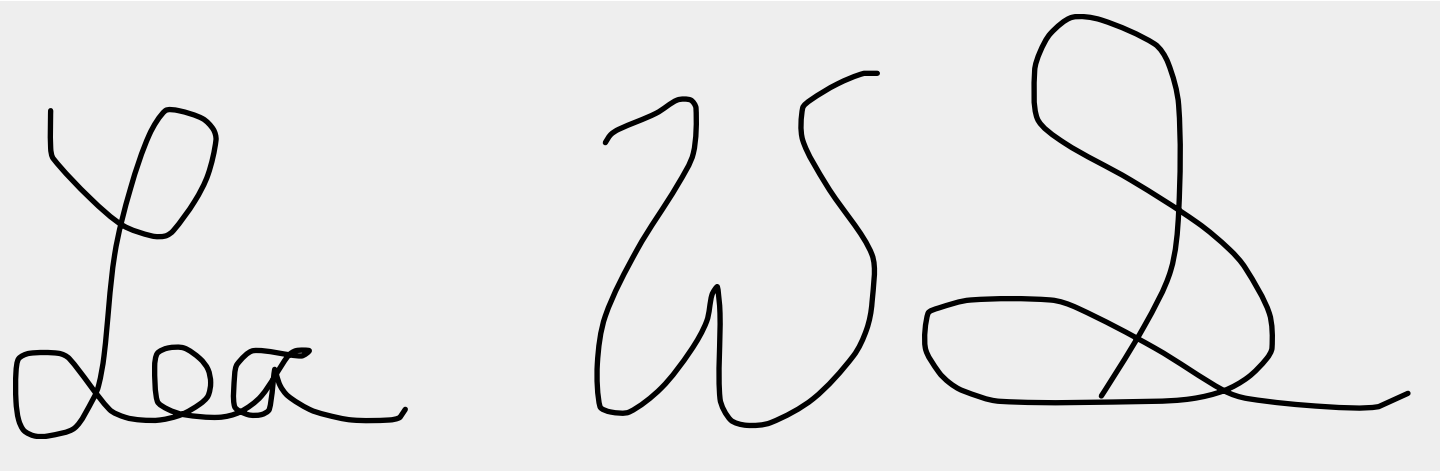
- Lead Based Paint;
- Title VI of the Civil Rights Act of 1964, as amended;
- The Fair Housing Act;
- Equal Opportunity in Housing Act;
- Age Discrimination Act;
- Americans with Disabilities Act;
- Section 504 of the Rehabilitation Act;
- Federal Funding Accountability and Transparency Act (FFATA);
- Hatch Act
- Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
- New Restrictions on Lobbying, 31 C.F.R. Part 21.
- Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C.§§ 4601-4655) and implementing regulations.
- Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Recipient should encourage its contractors to adopt and enforce on-thejob seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.
- Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Recipient should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and Recipient should establish workplace safety policies to decrease accidents caused by distracted drivers.
- Compliance with policies of the City of Las Cruces, NM
- Compliance with federal and state laws requiring the safeguarding and disclosure of confidential information.
- Evidence of comprehensive liability insurance and bonding, as required by the City;
- Completion of an annual financial audit, and/or as applicable, providing the City with a copy of the organization’s audited financial statement;
- Completion and subsequent renewal of background checks for all employees, volunteers, or interns who will or may have unsupervised contact with children or vulnerable adults;
- Maintaining program and financial records for audit review, and providing access to documentation upon request by the City;
- Submission of program and financial reports, as required by the City;
- Certification that the firm, association, corporation, or any person in a controlling capacity or any position involving the administration of federal, state, or local funds

is not currently under suspension, debarment, voluntary exclusion, or a determination of ineligibility by any agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any agency within the past three (3) years; does not have a proposed debarment pending; has not been indicted, convicted, or has not had a civil judgment rendered against said person, firm, association, or corporation by a court of competent jurisdiction in any matter involving fraud or misconduct with the past three (3) years.

- Certification that the firm is not bankrupt or under an administration appointed by the Court, or under proceedings leading to a declaration of bankruptcy; and provide any pending or known legal actions against the company.
- Certification that, in the past seven (7) years, the organization has not had any bankruptcy proceedings (closed or not) initiated against the Contractor and that there are no bankruptcy proceedings pending by or against the Contractor regardless of the date of filing;
- All pending or known litigation/court action(s) have been disclosed in the application.
- Certification that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Applicant further covenants that in the performance of this project/application, no person having any conflicting interest will be employed.

Application Approval and Signature: The signatory declares that he/she is an authorized official of the applicant organization, is authorized to make this application, is authorized to commit the organization in financial matters, and will assure that any funds received because of this application are used for the purposes set forth herein.

Please Sign



ARPA Categories:

Pick one (If project does not meet a category, it is ineligible for funding)

Services to Disproportionately Impacted Communities: Education Assistance: Other

Organization Information

Applicant Organization Information:

Name of Organization:	Cruces Creatives
Address:	205 E Lohman Ave.
City:	Las Cruces
State:	New Mexico
Zip code:	88005
Organization DUNS Number:	116754343
Phone:	575-448-1072
Fax:	575-448-1072
Organization DUNS Number:	116754343

Primary Contact Information:

Project Manager:	Lea Wise-Surguy
Title:	Executive Director
Phone:	575-448-1072
Email:	l.wisesurguy@crucescreatives.org
Fax:	575-448-1072
Phone:	575-520-2030

Alternative Contact Information:

Alternative Contact:	Patrick DeSimio
Title:	Grant Writer
Phone:	575-448-1072
Email:	p.desimio@crucescreatives.org
Fax:	575-448-1072
Phone:	937-830-3649

PROJECT INFORMATION

PROJECT NAME

Economic and Educational Recovery and Renewal via a Community Makerspace

PROJECT SUMMARY:

PROJECT SUMMARY: Describe the proposed Project. This summary will be used to describe your project in official City documents and media. (Note: The Project Summary is an abstract or summary of your proposal and should be written after completion of the application.)

By building on the tools, space, and personnel available to the people of Las Cruces through Cruces Creatives, we propose to launch and expand a spectrum of programs that empower Las Cruces residents to address the economic and educational harms of Covid-19, while creating long-term opportunities for our community.

To address the adverse educational impacts of Covid-19, we propose to bring the highly effective, engaging practice of project-based learning to students throughout the district, supported by tools, space, and technicians available through Cruces Creatives as well as the involvement of community members. Several programs in support of this goal are already led by Cruces Creatives, reaching 6,000 students annually; with additional tools, space, and technicians to support more projects and more types of projects, we plan to bring the benefits of community-engaged, project-based learning to every student in the district.

To address the economic harms of Covid-19, we propose to use the same tools, space, and technicians that support K-12 educational programs to support economic interventions including 21st Century Skills Training and certifications, prototyping and business development, and non-certification skills training that responds to the needs of existing local businesses--all in the context of a multi-use makerspace that brings diverse groups of people together to share ideas and support each other. By providing access to empowering tools, training in how to use them, and a diverse and supportive community, we can help the people of Las Cruces build their own businesses and secure stable employment for themselves and others.

Type of Client Populations & Number of Clients to be served (ESTIMATED)

Select Primary

Children & Youth: 24,000

Program Type: * (check one only)

Education and Youth Programs

Application Information

All questions must be answered, and all forms completed to be eligible for review by staff.

PROJECT JUSTIFICATION

1.Description and Justification of the Project; Provide a detailed description of the proposed project: Include project objectives, target population, major project characteristics, number and type of units, and how it responds to the public health emergency or its negative economic impacts.

We propose to build on the existing resources available through Cruces Creatives, Las Cruces's community makerspace, to launch multiple programs that empower the people of Las Cruces to address the adverse economic and educational impacts of Covid-19, while creating long-term opportunities for our community.

Community makerspaces like Cruces Creatives offer unique combinations of multidisciplinary tools, training, community connections, skilled personnel, and accessibility. In no other contemporary space can community members readily access such a wide range of tools, such a breadth of learning opportunities, or such a large and diverse network of creative people--all brought together and made into a community through the shared human capacity to create. These component conditions act as parts that can be configured and reconfigured to simultaneously enact a spectrum of programs and interventions, each designed to empower the people of Las Cruces not only to address the adverse impacts of Covid-19 on education, economic conditions, and mental health, but also to create enduring improvements in each of these areas.

In K-12 education, we face the challenges of reengaging students after the extreme disruptions caused by Covid-19, helping students regain ground they lost during the pandemic, and reducing the burdens on teachers to prevent further attrition in our educational system. Though these are formidable challenges, we can significantly address them through makerspace resources--while enduringly changing our educational system for the better.

In education, we propose to coordinate district-wide project-based learning, often paired with the

involvement and support of the Las Cruces community. Project-based learning engages students through meaningful work, cultivates deep and transferable content mastery, and gives students practice working with each other, with teachers, and with members of the community (https://www.pblworks.org/why-project-based-learning)--in brief, project-based learning is a highly effective approach for helping students develop academic skills, life skills, and well-being (Ames, 1992; Krajcik & Blumenfeld, 2006; Rajaratnam & Campbell, 2013). In a further benefit, project-based learning offers a compelling pathway for involving volunteers from the community in the educational system--project-based learning is exciting for adults too, and the community partners who come to the classroom for project-based learning not only support projects, but also offer specialized knowledge and perspectives, make academic learning relevant and engaging by showing its real-world connections, and bring more diversity and role models into the classroom. By pairing project-based learning with community partners in the classroom, we have a research-backed pathway for improving the educational experiences and outcomes of students in Las Cruces.

Thanks to its strengths in multidisciplinary projects and community engagement, as well as existing resources and programs, Cruces Creatives is well positioned to advance education through project-based learning with community support. The makerspace currently offers a 12,400 ft^2, downtown facility with a wide range of tools, many of which can be controlled remotely through computer files; existing activities, kits, and curricula for project-based learning developed through Cruces Creatives extracurricular classes; an active makerspace network of over 3,400 creators from which we can draw community partners; and--critically--an online platform, CommunityShare Las Cruces, specifically designed to connect teachers with community partners.

Existing funding for this educational work, including budgets for program coordinators, educational assistants/consultants, and classroom projects, has been secured from the W. K. Kellogg Foundation, the New Mexico State University STEM Outreach Center, the Stocker Foundation, the Las Cruces Partnership for Community Schools, and the El Paso Community Foundation.

With ARPA funding for additional tools, additional space, and additional technicians to teach the safe use of tools, we will have the capacity to support both significantly more projects and a significantly broader range of projects, allowing us to expand our interventions in project-based learning from 6,000 students to 24,000 students annually. Over the project period, we intend to engage every K-12 student in Las Cruces (our target population for education) in at least one meaningful project with the support of a community partner.

In the city economy, we face the Covid-exacerbated challenges of unemployment and worker

displacement; skills gaps, where employers in the City of Las Cruces are not finding local employees with the skills they need; a brain drain, where recent graduates from area colleges and universities are not finding the employment opportunities they need; and foregone opportunities in value-added production (which also impacts food security).

To address these challenges, we first propose using makerspace tools and personnel to launch skills training programs for the 21st century workforce. These training programs would include formal courses and certifications offered in partnership with the FabLab network (accessible to displaced workers through funding from the NM Department of Workforce Solutions), as well as regular non-certification skills classes to teach the use and maintenance of the many employment-related tools available through Cruces Creatives.

Additionally, we propose new business development through a business incubator (including a hub-and-spoke kitchen incubator for value-added products), integrated with long-term peer-to-peer support cohorts and coordinated access to tool training at the makerspace and existing business trainings in the community; long-term job creation and on-the-job training at Cruces Creatives through the commercialization of technologies already developed through Cruces Creatives; and low-interest Co-op Capital loans for startup businesses, arranged in partnership with Nusenda Credit Union.

In our economic development programs, the same tools, spaces, and technicians provided by ARPA funds for educational programs will also support business development, skills training, and job creation, increasing the value that these investments produce. We also propose job positions for business cohort coordination, kitchen incubator coordination, marketing support, technical writing and grantwriting, and commercialization and sales, all of which will support both participants in the business development cohort and businesses launched directly through Cruces Creatives.

Our target populations for the economic initiatives are displaced workers and new/prospective entrepreneurs, but programs will also be open to city residents in general, whose skills and entrepreneurship can lead to job opportunities and economic growth for the city.

Individually, each of the programs we propose follows standard, research-backed best practices; the innovation in the project comes from breaking down silos and efficiently using the same set of resources to achieve multiple goals.

In a further benefit, each of the programs proposed through Cruces Creatives leverages substantial resources already available through the makerspace. A makerspace is like a community toolkit, and the

toolkit at Cruces Creatives already contains much of what our city needs to launch the proposed programs and address the adverse educational and economic impacts of Covid-19 on our city. By filling in some missing pieces in the toolkit--each of which can be used to support multiple projects--instead of trying to assemble a new toolkit from scratch, ARPA funding directed through Cruces Creatives acts as a targeted investment in our community's toolkit, allowing large projects and large benefits for Las Cruces at relatively low cost.

Works Cited

Ames, C. (1992). Classrooms: Goals, Structures, and Student Motivation. Journal of Educational Psychology, 84(3), 261-271.

Krajcik, J. S., and Blumenfeld, P. C. (2006) Project-Based Learning. The Cambridge Handbook of the Learning Sciences. R. Keith Sawyer, ed. Cambridge UP.

Rajaratnam, K., and Campbell, A. (2013). Enhancing students' learning through practical knowledge taught by professionals. International Business & Economics Research Journal 12(6), 717-724.

ALIGNMENT WITH CITY PLANS

2. What specific priorities in the City's Strategic Plan, Elevate Las Cruces and/or 2021-2025 Consolidated Plan? (Click on plan links below to view)

City Plans:

ELEVATE PLAN

COUNCIL STRATEGIC PLAN

2021-2025 CON PLAN

The projects we propose align with multiple priorities in Elevate Las Cruces, the Council Strategic Plan, and the 2021-2025 Consolidated Plan.

Alignments with Elevate Las Cruces include

>CP-1, READY WORKFORCE: DEVELOP A STRONG AND EDUCATED WORKFORCE THAT SUPPORTS AN EXPANDING LOCAL AND REGIONAL ECONOMY.

>CP-1.2.1 SUPPORT LOCAL PROGRAMS THAT PROVIDE EMPLOYMENT, VOLUNTEER OPPORTUNITIES, AND/OR TRAINING TO CITIZENS.

>CP-4.2, SUPPORT EFFORTS TO BE REGIONALLY AND NATIONALLY COMPETITIVE IN REGARDS TO RETAINING AND GROWING BUSINESSES, JOBS, AND STUDENTS.

>CP-4.2.7 EXPLORE THE POSSIBILITY OF DEVELOPING A PROGRAM TO INCREASE SMALL BUSINESSES ACCESS TO CAPITAL.

>CP-4.2.8 ESTABLISH PROGRAMS TO ENCOURAGE GROWTH AND RETENTION OF LOCAL BUSINESSES.

>CP-4.4.6 CREATE ADDITIONAL PROGRAMS TO SUPPORT CREATION, ATTRACTION, RETENTION, AND EXPANSION OF BUSINESS.

>CP-5.1, PURSUE PARTNERSHIPS WITH EDUCATION PROVIDERS TO ENRICH LEARNING OPPORTUNITIES FOR ALL RESIDENTS.

>CP-5.1.2 CONTINUE COLLABORATION WITH LAS CRUCES PUBLIC SCHOOLS TO IDENTIFY NEW OPPORTUNITIES FOR DEVELOPING AND SUPPORTING COMMUNITY SCHOOLS.

>CP-5.1.5 WORK WITH LCPS TO IMPROVE ACCESS TO TECHNOLOGY IN SCHOOLS.

POLICY CP-11.3, SUPPORT PROGRAMS THAT ENCOURAGE POSITIVE YOUTH DEVELOPMENT.

>CL-13.1.3 COLLABORATE WITH LAS CRUCES PUBLIC SCHOOLS, NMSU, AND OTHER ORGANIZATIONS TO EXPAND ART EDUCATION.

>CL-17.1.4 ESTABLISH A KITCHEN INCUBATOR PROGRAM WITH COMPREHENSIVE SUPPORT FOR LOCAL FOOD BUSINESSES.

Cruces Creatives is mentioned by name 13 times in Elevate Las Cruces and is explicitly listed as a potential partner for many of the programs we propose, including a business incubator program (p. 154); workforce training (p. 266); employment and volunteering opportunities, especially for vulnerable populations (p. 268); a kitchen incubator program (p. 331); and arts education (p. 322).

Alignments with the Council Strategic Plan include

>ELC Goal CP-2: Economic Equity. Generate employment opportunities that create economic security for all residents

>ELC Goal CP-4: Diversification. Seek a balance of business recruitment, retention, and expansion to diversify economic opportunities.

>ELC Goal CP-1: Ready Workforce. Develop a strong and educated workforce that supports an expanding local and regional economy.

In alignment with the Consolidated Plan, which reports that Las Cruces residents “ranked top needs as Economic development, Mental Health Services, Domestic Violence Shelters, and Education and Job Training as their top needs” (p. 20), the project we propose would address economic development, education, and job training.

COMMUNITY IMPACT

3. What is the anticipated impact of your program on the Las Cruces community? How will you measure the expected outcomes?

Over the project period, we intend to engage every K-12 student in Las Cruces (roughly 24,000 students total) in at least one meaningful project with the support of a community partner, producing measurable outcomes including
>Increases in student engagement and learning outcomes, as reported by teachers in project evaluations
>Real-world projects and real-world benefits achieved by students, documented in cooperation with the students and their teachers
>Increased educator job satisfaction and increased perceptions of community support among educators, as reported by teachers in project evaluations

In economic development, we plan to support and expand the local economy by providing displaced workers with digital design and manufacturing training and certifications, drawing on community instructors to offer a range of non-certification training programs that teach employable skills to students and the community as a whole, offering on-the-job training, launching kitchen incubator programs through a central site and partner locations, coordinating business development/kitchen incubator cohorts, offering low-interest loans to business cohort participants, and commercializing products developed through Cruces Creatives. Through the project, we will also directly create 17 full-time jobs, each paying at least $15/hr and on average paying $21/hr.

Economic program metrics, which we will monitor through the administration of the programs, surveys of participants, and regular communication with participants, include
>The number of businesses launched
>The number of products launched
>The revenue generated from new businesses/products

>The number of new jobs created

>The number of new sites providing access to a commercial kitchen, the number of hours used at those sites, and the number of culinary/value-added businesses that move into their own commercial kitchen

>The purposes to which participants in non-certification skills training courses put the information and skills they gain

>The number of displaced workers trained in new skills, the job placement rates for the retrained workers, and the salary ranges for the displaced workers

We will also track the overall numbers of participants in makerspace programs.

4. BUDGET INFORMATION

PART A

Instructions: Please complete the budget summary. Indicate the amount ARPA funds needed for each expenditure classification. Also include other funds for the project from federal, state and private sources. Columns A, B, C & D must add up to Column E (Total Budget) needed for the project.

Please Enter just numbers no symbols (i.e. $,)

	ARPA FUNDING	OTHER FEDERAL FUNDS	STATE FUNDS	PRIVATE FUNDS	TOTAL BUDGET
Permanent Position, Full Time	1268105.74	101544.00	55419.52	131616.78	1556686.04
Permanent Position, Part Time	42753.57	50400.00		474828.96	567982.53
Temporary Positions	32000.00			42480.00	74480.00
Employment Liability Insurance	10678.87	1215.55	318.18	2589.38	14801.98
Other					

Employee Benefits *					
Office Supplies	1000	2000.00	1000.00	1000.00	5000.00
Operating Supplies	11424.00	60000.00		60000.00	131424.00
Repair & Maintenance Supplies				5000.00	5000.00
Small Tools	13683.36				13683.36
Motor Oil and Fuel					
Library Books and Periodicals					
Magazines and Periodicals					
Audio Visual Aids					
Wearing Apparel				2500.00	2500.00
Postage and Federal Express				200.00	200.00
City Service (water, waste, etc.)	7000.00			3000.00	10000.00
Electricity	28000.00			22000.00	50000.00
Telephone					
Utility Services – Other				2500.00	2500.00
Legal Services					
Auditing Services	24000.00				24000.00
Engineering					

Services					
Architectural Services					
Maintenance Agreements	6000.00			2000.00	8000.00
Fees or Service Charges	38625.88	500.00	100.00	10000.00	49225.88
Advertising	10000.00			10000.00	20000.00
Landscape Maintenance	6000.00			2000.00	8000.00
Required Building Repair & Maintenance				5000.00	5000.00
Auto or Truck Repair					
Equipment Repair		4000.00			
Building or Land Rental				144000.00	144000.00
Vehicle Rental					
Equipment Rental				1000.00	5000.00
Liability Insurance	5000.00			3000.00	8000.00
Property Insurance					
Fidelity Insurance					
Transportation (in-state only)					
Per Diem (in-state only)					
Registration					

Fees					
Miscellaneous Costs	4841.82			5158.18	10000.00
Training and Education					
Land-Vacant					
Land-Buildings or Other	200000.00			300000.00	500000.00
Land-Right of Way					
Land Improvements					
Furniture and Fixtures					
Building Improvements	55000.00			5000.00	60000.00
Automobiles					
Trucks and Vans					
Heavy Equipment	68386.94				68386.94
Furniture and Fixtures	19061.95				19061.95
Office Equipment	19500.00				19500.00
Data Processing					
Shop Equipment	118937.87				118937.87
Client Housing (rent, mortgage, utilities, deposit)					

Client Support (medical, classes)	10000.00			90000.00	100000.00
Total	1999999.99	219659.54	56837.7	1324873.3	3601370.53

Part B – BUDGET JUSTIFICATION

Briefly and specifically describe each line item listed on Part A (ARPA FUNDS) in a separate paragraph below:

Permanent Position, Full Time: Program Director, Volunteer Coordinator, Member & Entrepreneur Coordinator, Shop Manager (x2), Shop Assistant, Executive Director, Senior Writer, Accountant, Developer, Commercial Sales Lead, Senior Technician, Tech Assistant, Instructor & Tool Manager (x2), Marketing & Media Associate, Kitchen Incubator Coordinator

Permanent Position, Part Time: Office Assistant

Temporary Positions: Flexible Instructor Budget, Flexible Tech Development Specialist Budget

Employment Liability Insurance: Employment Insurance

Office Supplies: Paper, ink, staples, etc.

Operating Supplies: Materials and consumables for classes (e.g., 3D printing spools, welding gas, steel panels, vinyl, wood, raw plastics, resins, etc.)

Small Tools: Small tools including auto-darkening helmets, welding gloves, welding jackets, c-clamps and vice grips, aluminum Cleco fasteners, riveter, bolt cutter, thread cutting taps, bench grinder, angle grinders, Z87+ safety glasses, ear protection, metal drill bits, wire cutters, die grinder, metal nibbler, angle grinder, throat-less shear, center punch, etc.

City Service (water, waste, etc.): City water and waste

Electricity: El Paso Electric electricity

Auditing Services: Auditing services

Maintenance Agreements: Janitorial services

Fees or Service Charges: Payroll software; RFID access software; Autodesk Architecture, Engineering & Construction Collection software; Autodesk Product Design & Manufacturing Collection software; Autodesk Media & Entertainment Collection; Mya 3D design software; Adobe Creative Suite (Photoshop, Premiere, Illustrator, etc) software; Z Brush software; Unity 3D gaming engine software

Advertising: Budget for advertising with social media boosts, in local ads, radio, and more

Landscape Maintenance: Landscape maintenance

Liability Insurance: Liability insurance

Miscellaneous Costs: Miscellaneous budget for expenses

Land-Buildings or Other: Purchase or rent for a new Hot Works+ site in an industrial area to allow for the expansion of tool types available, including metal, plastics, mold-making, resins, foams, and more.

Building Improvements: Renovations including ventilation, welding curtains, updates to adhere to codes, installation of RFID system, etc.

Heavy Equipment: Press brake, tabletop CNC water jet, CNC milling machine, bandsaw, MIG welder (x2), TIG welder (x2), plasma cutter, metal drill press, belt and wheel sander, metal working lathe, sheet metal roller

Furniture and Fixtures: Metal shelves, metal tables, computer chairs, shop stools, work tables, lockers, locking tool cage, gas cage, divider sheets

Office Equipment: Laptops for team

Shop Equipment: VR Oculus Quest 2, AR Microsoft Hololens 2, high quality projector, metal carts, drones with cameras, 3D printer for resin, 3D printer for nylon, 3D printer for SLS, vacuum chamber for molds, pressure chamber for molds, plastic injection machine, VR camera, 4k professional camcorder, LED light panels, chop saw, desktops and monitors for members (with software mentioned under Service charges)

Client Support: $10,000 down for a $90,000 matching contribution from Nusenda Credit Union to start a small business community capital loan program

DUPLICATION

5. Is this a new or existing program in the Community? How do ARPA funds makes this project feasible? If existing, describe additional efforts to prevent duplication of services.

We propose to use resources provided by ARPA funds to launch several new programs and significantly expand several others.

In education, with additional tools, space, and technicians provided by ARPA funds, we will be able to expand our community-engaged, project-based learning initiatives from reaching 6,000 students annually to reaching 24,000 students annually, a 300% service increase. We will reach students through the CommunityShare Las Cruces, STEAMM Team, and Hazlo programs, all of which are currently in operation.

In economic development, we will add several new programs, including Fab Lab skills training and certifications, the Co-op Capital Loan program, and business development cohorts. We will also significantly expand several existing programs, including non-certification skills training, commercial kitchen access, and technology commercialization and job creation through the Seeding Regenerative Agriculture project. In each of these projects, we plan to increase service by at least 100%, as measured by the number of participants, the number of technologies commercialized, the revenue generated, and the jobs created.

The largest risk of duplication is in the business development/incubation work area, where Las Cruces already has multiple funded programs that provide excellent business training and sometimes startup space--for instance, WESST, SCORE, and the Arrowhead Center all provide business training, and the Arrowhead Center provides office space. El Calvario United Methodist Church also currently provides commercial kitchen space. To avoid duplication, we propose to connect participants in the business incubator cohorts with existing resources wherever applicable, focusing our work on providing easy access to the tools that support product development, long-term peer support, additional funding opportunities, and the diverse social capital needed to test ideas and build a team.

FEASABILITY/TIMELINE

6. Please provide a detailed timeline or work schedule for implementing this project including anticipated milestone dates.

The project timeline and milestone dates, organized by quarter, are below:

Q1:
Make purchase or sign lease agreement for industrial makerspace satellite site
Order first priority tools
Order RFID systems for expanded access at makerspace and kitchen sites and begin installation
Hire new personnel
Finalize curricula for new programs
Continue and expand educational programs
Launch commercialization of technologies developed through Cruces Creatives
Launch internship/on-the-job training (OJT) program in conjunction with technology commercialization through Cruces Creatives
Monitor and evaluate project

END OF Q1 MILESTONES: Industrial makerspace site and commercial kitchen site(s) secured. New personnel hired. Curricula for new programs completed.

Q2:
Renovate industrial makerspace satellite site, original makerspace facility, and commercial kitchen(s) to meet all regulatory requirements and accommodate new tools
Install first priority tools and order second-priority tools
Install RFID systems
Launch business development and kitchen incubator cohorts
Develop policies and procedures for Co-op Capital low-interest loan program
Launch Fab Lab training and certification classes, as well as non-certification skills classes
Continue and expand educational programs
Continue and expand technology commercialization and internship/OJT program
Further develop partnerships with commercial businesses and other nonprofits
Continue monitoring and evaluation

END OF Q2 MILESTONES: All programs launched. Highest priority new tools installed. RFID systems installed.

Q3:
Complete renovations
Launch industrial makerspace satellite site and add additional commercial kitchen site(s) to the expanded kitchen incubator network
Install second priority tools
Launch non-certification skills classes
Launch Co-op Capital Loan program
Test and improve RFID access system
Continue and expand all programs
Continue monitoring and evaluation

END OF Q3 MILESTONES: All facilities operational. All new tools installed. All project programs launched.

Q4-Q8:
Continue and expand all programs
Continue building cross-sector partnerships
Continue monitoring and evaluation

END OF Q8 MILESTONES: Proposed scope of work accomplished. Project programs are sustainable through market participation, fee-for-service models, and additional funding sources.

7. Is this project dependent on future funding to fully complete this project? Include specific timelines/dates and funding commitments needed to complete the project and have it fully operational for public benefit. Can this project be phased? Can this project be partially funded?

The full scope of work for the project assumes the renewal of existing grant-funded programs at Cruces Creatives, including STEAMM Team educational programming, CommunityShare Las Cruces, and the Seeding Regenerative Agriculture project. STEAMM Team funding is renewed annually, and it will be up for renewal during the project period in late spring 2022 and late spring 2023. CommunityShare Las Cruces is funded through a two-year grant that will be up for renewal during the project period in summer 2023. The Seeding Regenerative Agriculture project is on a three-year funding cycle and will be up for renewal during the project period in November 2022. Each of these programs has been renewed at least once, and we anticipate that each will be renewed at the same or higher funding levels during the project.

To cover the larger capital purchases that we propose on a reimbursement basis, we would need to arrange short-term loans from an organization such as Families and Youth, Inc., or Nusenda Credit Union--we are in discussions with both organizations about this possibility, and we anticipate a smooth and prompt agreement on precise terms if the project is funded.

The spectrum of approaches offered through the project allows the project to be phased if necessary, and the project could be partially funded on a programmatic or line-item basis.

8. If funded, it is expected that the project will begin within ninety (90) days of being issued a fully executed contract. What potential or known barriers exist to beginning the project within ninety (90) days and completing the project within twenty-four (24) months of being issued a Notice to Proceed from City Staff? Please describe in detail your plan for overcoming the barriers identified and achieving a timely and successful completion of the project.

Although the project as a whole involves multiple programs that can run in parallel rather than in sequence (preventing barriers to one program delaying others and making it overwhelmingly likely that the project can launch within 90 days of being issued a Notice to Proceed), we have identified and are working to address several barriers that could delay the start of individual projects.

Potential barriers in the first quarter of the project include difficulty filling new positions, which we are already addressing by identifying and communicating with promising candidates in advance; supply chain difficulties that may delay the sourcing of tools and supplies, which we are addressing by identifying tools and suppliers in advance, so that orders can be placed immediately; the time needed to purchase or lease the satellite building for industrial tools, which we are abbreviating by identifying promising sites in advance; and the time needed for the new facility to pass all City inspections, which we can minimize through diligent work to fulfill all requirements and meet timelines; and potential difficulty securing short-term loans to cover 2-3 months of reimbursable expenses, which we are addressing by communicating with potential lenders in advance.

The identified quarter-one barriers, because of the measures we have taken and will take, are extremely unlikely to delay the project by 90 days or prevent us from completing the project within 24 months. However, we recognize that we are proposing work in complicated systems, and we can expect unexpected barriers. We will identify and address these barriers through regular communication, ongoing monitoring and evaluation, and adaptation within the bounds of the award contract, allowing us to begin the project within 90 days and complete the project within 24 months of the award notice.

ORGANIZATION HISTORY AND CAPACITY

9. History of your organization’s TOTAL ANNUAL REVENUES for the past three (3) fiscal years:

	2020	2019	2018
Total Annual Revenues $	288,746	203,601	74,720

10. Applicant Qualifications

Summarize your organization's experience in areas relevant to the proposed project describe at least two most recent projects; if applicable. Describe Organizations capacity to implement proposed project.

Cruces Creatives has built and managed a community-accessible space that provides many of the tools, much of the network, and pilot versions for many of the programs that the proposed project requires. We also have the capacity to manage grant awards, including $240,000 in Federal funding through the 21st Century School Fund, $210,000 in private funding from the Santa Fe Community Foundation, and $150,000 in private funding from the W. K. Kellogg Foundation.

Through its programs, Cruces Creatives has experience and connections in both education and economic development. In education, Cruces Creatives leads CommunityShare Las Cruces, which connects teachers and students with community partners for project-based learning; the STEAMM (Science, Technology, Engineering, Arts, Mathematics, and Making) Team program, which provides direct instruction and remote kits for project-based learning; and Hazlo, which connects students with mentors, tools, and funding to complete projects that students propose. By the end of 2021, we are on track to engage over 6,000 students through these initiatives, making our goal of reaching the 24,000 K-12 students in Las Cruces ambitious but realistic.

In economic development, Cruces Creatives specializes in agriculture and value-added production. Cruces Creatives currently coordinates long-term, cooperative peer networks for farmers and ranchers, along with a range of support services. Even during Covid, 10 different producers have been able to cooperate on three different business ventures launched through the network. Also, in response to requests from network members, Cruces Creatives has developed a suite of commercializable agricultural technologies that could increase local food production and serve as export goods for Las Cruces.

Building on these foundations and the partnerships that Cruces Creatives is currently finalizing--including training and certifications with Fab Lab Network and Co-op Capital loans with Nusenda Credit Union--Cruces Creatives is well positioned to achieve the project goals.

Please complete the table below for all key staff members involved in the project. Including executive director, fiscal officer, project manager and any employees to be funded by the project.

	Name	Title	Total Years' Experience	Years with Association
1	Lea Wise-Surguy	Executive Director	14	4
2	Patrick DeSimio	Senior Writer	12	4
3	Jeffrey Moore	Chief IT Officer	32	4
4	Jon Simmons	Senior Technician	20	4
5	Brittany Ontiveros	Accountant	6	2
6	Sandy Smith	Volunteer Coordinator	9	2
7	Lindsey McDonald	Shop Manager	6	2
8	Abby Nayra	CommunityShare Coordinator	6	1
9	Cheryl Carreon	CommunityShare Coordinator	31	0
10				

Required Attachments

Completed - Oct 13 2021

Required Attachments

Mandatory Attachments

Proof of 501c Status – IRS Tax Exemption Determination Letter

Cruces Creatives IRS Determination Letter.pdf

Filename: Cruces Creatives IRS Determination Letter.pdf **Size:** 270.1 kB

Most Recent Independent Audit or Financial Statements

CrucesCreatives_FinancialStatement_201231.pdf

Filename: CrucesCreatives_FinancialStatement_201231.pdf **Size:** 149.6 kB

List of Current Board Members' names, physical addresses, mailing addresses, phone numbers, and email addresses

CrucesCreatives_Board_211013.pdf

Filename: CrucesCreatives_Board_211013.pdf **Size:** 122.6 kB

Articles of Incorporation and By-Laws

CrucesCreatives_ArticlesofIncorporation_ByLaws.pdf

Filename: CrucesCreatives_ArticlesofIncorporation_ByLaws.pdf **Size:** 1.9 MB

Statement of Insurance

Cruces Creatives_Certificate of Insurance_2021.pdf

Filename: Cruces Creatives_Certificate of Insurance_2021.pdf **Size:** 102.2 kB

Signed letter from the Board of Directors or designated authorized official authorizing submission of the application

LasCrucesARPA_BoardLetter_CrucesCreatives.pdf

Filename: LasCrucesARPA_BoardLetter_CrucesCreatives.pdf **Size:** 109.8 kB

One (1) page (maximum) Resume(s) of executive director, fiscal officer, project manager and any employees to be funded by the project.

CrucesCreatives_Team_All_211013.pdf

Filename: CrucesCreatives_Team_All_211013.pdf **Size:** 1.2 MB

Cruces Creatives
205 East Lohman Avenue
Las Cruces, NM 88001

October 13, 2021

Dear Las Cruces City Council and Grant Evaluation Committee:
On behalf of the Board of Cruces Creatives, we enthusiastically approve of and commit to the proposal “Economic and Educational Recovery and Renewal via a Community Makerspace,” in response to the American Rescue Plan Act.

Since the makerspace’s establishment in 2017, we have been anticipating and planning for the scope of work detailed in the proposal, and we are grateful for the potential opportunity to put our preparation into action in service of the community.

Sincerely,

Lea Wise-Surguy — October 13, 2021
Lea Wise-Surguy, Board President — Date

October 13, 2021
Jon Simmons, Board Vice-President — Date

Patrick DeSimio — October 13, 2021
Patrick DeSimio, Board Secretary — Date

CRUCES CREATIVES

205 E Lohman Avenue

Las Cruces, NM 88001

CrucesCreatives.org

Team Resumes and Hires Cover

Position (Current or New with Proposal)	Team Member	Page	Year Joined Team
Executive Director	Lea Wise-Surguy	1	2017
Senior Writer	Patrick DeSimio	2	2017
Chief IT Officer (In-Kind)	Jeffrey Moore	3	2017
Senior Technician	Jon Simmons	4	2017
Accountant	Brittany Ontiveros	5	2019
Volunteer Coordinator	Sandy Smith	6	2019
Shop Manager	Lindsey McDonald	7	2019
CommunityShare Coordinator	Abby Nayra	8	2020
CommunityShare Coordinator	Cheryl Carreon	9	2021
To Hire List		10	

Lea Wise-Surguy

528 N Melendres St., Las Cruces, NM 88005 — (575) 520-2030 — leawisesurguy@yahoo.com

SELECTED PROFESSIONAL EXPERIENCE

Executive Director *Cruces Creatives* - Las Cruces, NM — 2017- Present

- Established the vision and model of operations for the makerspace
- Built the team and provided the vision to grow Cruces Creatives from an idea into a 12,400 ft^2 facility and an active network of over 3,400 people
- Served as chief executive officer and ultimate responsible party for all makerspace operations
- Led a team of employees and volunteers to successfully launch all current programs (contracted for over $645,000), to manage those programs, and to develop and launch new programs
- Regularly communicate with other organizations to identify and act on partnership opportunities
- Represent Cruces Creatives in interactions with the media, government, and other organizations
- Successfully guided Cruces Creatives through an average annual growth rate, in revenue, of 700% since its founding in 2017.

Community Organizer and Event Coordinator *MESA Project* - Las Cruces, NM — 2016 - 2019

- Collaborated to develop the $250,000 proposal that funded the MESA Project, which will use the arts, agricultural science and economics to protect the environment by improving agricultural practices
- Reach out to community
- Coordinate the five meals that are the center of the MESA Project
- Handle videography, video editing, and website design

Technician & Instructor *New Mexico State University, Art Department, Sculpture* - Las Cruces, NM — 2012 – 2015

- Trained students in multiple materials, tools, techniques and concepts, and led intro and advanced courses
- Managed inventory and material ordering
- Responsible for the safety of students
- Responsible for the tools and space of the Sculpture Area
- Performed various administrative duties

Development and Office Associate *Culture Works* - Dayton, OH — 2010 – 2012

- Tracked over $1 million in annual donations from over 70 companies and thousands of individual donors
- Managed donor records and donor relations with Raiser's Edge, a smart cloud fundraising and relationship management software program
- Performed office management and secretarial duties
- Performed specialized searches in Raiser's Edge to generate customized donor appeals
- Wrote company training manual on Raiser's Edge

EDUCATION

Master of Fine Arts, Studio Art in Sculpture — 2015
New Mexico State University - Las Cruces, NM

Bachelor of Fine Arts, Studio Art in Ceramics, Minor in Photography — 2010
University of Dayton - Dayton, OH

Patrick David DeSimio

528 N Melendres Street, Las Cruces, NM 88005 • p.desimio@crucescreatives.org

Skills

- Business administration
- Technical editing and grant writing
- Marketing
- Project management

Professional Experience

Grant Writer & Project Manager, Cruces Creatives (February 2017-Present)

- Manage CommunityShare Las Cruces, which connects students and teachers with community partners and makerspace resources for project-based learning, and Hazlo, which offers project-based learning and mentorship to K-12 students in Doña Ana County
- Lead the Seeding Regenerative Agriculture Project, which coordinates the efforts of over a dozen partner organizations to advance regenerative agriculture by developing supporting technologies and by connecting farmers and ranchers for peer-to-peer knowledge sharing and business partnerships
- Write grant proposals and contracts, with $761,134 from 21 proposals funded so far
- Developed the Cruces Creatives business plan, demonstrating the viability of the makerspace and attracting essential partner organizations

Graduate Teaching Assistant and Writing Program Coordinator, Department of English, New Mexico State University (August 2016-May 2018)

- Planned and organized professional development workshops for instructors in the Department of English
- Served as instructor of record for courses in the Department of English (ENGL 111 and ENGL 203)
- Mentored and supervised four first-year graduate assistants
- Coauthored *Paideia 17*, a textbook for students in first-year composition courses

Assistant Writer, Institute for Energy & the Environment, New Mexico State University (August 2013-August 2016)

- Comprehensively edited research articles for publication in academic journals
- Drafted and comprehensively edited reports, feasibility studies, financial analyses, marketing materials, best management practices, and other texts as needed
- Collaborated with colleagues to develop five successful grant proposals totaling $335,000

Education

M.A. in Rhetoric and Professional Communication — May 2018
New Mexico State University — 4.0 G.P.A.

B.B.A. in General Business — May 2015
New Mexico State University — 4.0 G.P.A.

B.A. in English — May 2008
University of Dayton — 3.46 G.P.A.

Awards

Verna Newman Rule Award (outstanding scholarship within the Department of English) — 2018
Department of English, New Mexico State University

Outstanding Graduate, General Business Program — 2015
College of Business, New Mexico State University

Jeffrey Moore

Email: j.moore@crucescreatives.org

Objective

Utilize scientific knowledge, technical ability, and leadership skills to increase the value of informatics in business, especially scientific and medical research.

Relevant Experience

Cruces Creatives (Las Cruces, NM)
Chief Technical Officer (11/17 – Present)
Member, Board of Directors (12/17 – Present)

- Responsible for information systems for **Cruces Creatives**, a non-profit organization that has established a major makerspace in Las Cruces.
- Designed, implemented, and deployed a multi-vendor and custom solution for supplying the information infrastructure of the company.
- As member of the Board of Directors, provide oversight and strategic direction for the organization.

CeuticalSoft, Inc. (Hudson, NY)
Chief Technical Officer (02/10 – 06/17)

- Designed and implemented chemical registration system using MS Excel and ChemAxon software.
- Created Excel-based system for controlling and managing a robotic, plate-based inventory system for the Lankenau Institute for Medical Research.

Desert Informatics, Inc. (Las Cruces, NM)
Founder and President (11/06 – Present)

- Participated in requirements analysis and implementation of a system for a biotechnology company performing basic immunology research.
- Completed multiple consulting engagements with pharmaceutical and biotechnology partners.

Roche Palo Alto LLC (Palo Alto, CA)
Global Head, Scientific Information Integration (01/05 – 10/06)

- Global responsibility for architecture and application development for Global Research Informatics (GRI).
- Led global team of 27 developers at three sites (Palo Alto, Nutley, Basel) across functional areas of chemistry, inventory, lead identification, lead optimization, and pre-clinical drug safety.

Oxford Molecular Group, Inc. (Baltimore, MD)
Vice President, Cheminformatics (3/96 – 7/00)

- Responsible for worldwide cheminformatics business based on *RS^3 Discovery* and related products, including engineering, quality assurance, support, and professional services functions. During this period, the customer base grew to include 70 pharmaceutical, chemical and biotechnology companies in the U.S., Europe and Asia. Revenues grew during this period to $10 million for the product line.

Education

University of Wisconsin-Madison
Research Assistant, Physical-Organic Chemistry

University of Idaho
B.S. Professional Chemistry

Patents

Jeffrey Moore, Joanne Brazil, Jeffrey Hoover, "*Chemical Structure Storage, Searching, and Retrieval System*" **U.S. Patent 5,577,239** (Nov 1996).

Jeffrey Moore, Joanne Brazil, Jeffrey Hoover, "*Relational Database Management System for Chemical Structure Storage, Searching, and Retrieval*" **U.S. Patent 5,950,192** (Sep 1999).

Jon Simmons

Cruces Creatives - Shop Manager

575-640-4288

jonsimmons@hotmail.com

Profile

I am an experienced maker and serial entrepreneur. I get excited about helping other business owners and showing young people the opportunities that exist in "new collar" technology careers. I especially like to build equipment that does something useful.

Experience

President / Master technician, Copier Guy Inc.; Las Cruces, NM 2001-present

Maintenance and sales of copiers, printers, wide format, and document imaging systems. Field service troubleshooting electrical and mechanical systems. Training new technicians.

Google's Makercamp, Cruces Creatives, and other STEM programs 2005-present

Organize, manage, and teach maker skills, physics, electronics, robotics, design, and fabrication. Hosted a Summer robotics project and developed a complex multiplayer game that required frequent redesign of robots and teamwork to meet new challenges.

Co-founder, Seedshare; Las Cruces, NM 2009-present

Created a volunteer driven organization to collect, grow, and save seeds. Teach workshops on seed saving techniques. Organize annual seed saving events. Collaborate with other seed organizations to share best practices. Developed a bioponic growing system utilizing local agricultural byproducts. Experimenting with a hybrid economic model to make local seed production viable. Developing a web based system for alerting users to optimum seed planting dates based on real time satellite sensing of soil temperature.

Senior Technician, Cruces Creatives; Las Cruces, NM 2017-present

Install and maintain tools and infrastructure at Cruces Creatives makerspace. Develop and teach classes on the safe and effective use of shop tools. Respond to requests from farmers, ranchers, agricultural scientists, and value-added producers to develop, prototype, and refine custom technologies including a seed cleaner, a root harvester, a contour-line plow equipped with an injection system for beneficial microbes, a small-scale thresher, an erosion-monitoring system, a barbwire-stringing backpack for rugged terrain, a bagging system for freeze-dried goods, a jujube pitter, and more. Supervise apprentices and participants in on-the-job training.

Education

Virginia Commonwealth University, Richmond, VA - BS Management 1994

Skills and Interests

Traditional hand and power wood shop tools - Moldmaking and Casting - Troubleshooting and repairing electrical and mechanical devices - Digital and analog electronics - Raspberry Pi - Building culturing systems for plants, animals, insects, and microbiology - Linux, Mac OS, and Windows systems and networking - Business development - Process improvement - Small scale production system design and optimization - Creating gaming systems that transform people

Brittany Ontiveros

205 Dona Ana School Rd ♦ Las Cruces, NM 88007 ♦ 575-520-4050 ♦ B.ontiveros@crucescreatives.org

Cruces Creatives

STEAM Program

Co-Director of Youth Programming and Accountant July 2019 - Present

- Develop Science, technology, engineering, art, and mathematics based youth programming with an emphasis on project based learning and making. Students gained exposure to tools such as 3D printers, laser cutters, Cricut machines, soldering irons, drills and other various tools.
- Instruct classes for 3rd - 6th grades in the Las Cruces Public Schools afterschool program.
- Develop STEAM Sewing program that incorporates sewing and STEAM principals. Students worked to develop their own patterns and gained confidence with various textile tools such as sewing machines, Cricut machines to cut fabric, pattern design software, irons, and other various tools.
- Develop and manage a budget for STEAM class programming. Ordered and documented all materials needed for various STEAM classes.
- Developed a line of STEAM maker kits and, during school closures, delivered over 4,000 kits, with instructions in English and Spanish, to students throughout Las Cruces.
- Developed virtual STEAM maker class with maker kits that were delivered to students before the beginning of project sessions. Developing virtual classes allowed us to continue our afterschool program during the virtual school year 2020-2021.

Community Share (CS) Las Cruces

Project Supply Coordinator and Accountant September 2021- Present

- Manage program budget for Community Share program. Creates documentation and reports for program funders.
- Order all program materials for the classroom mini grant program and ensure teachers and community partners have all materials needed to complete successful projects.

Consumer Direct Personal Care

Administrative Coordinator March 2017 - July 2019

- Helped integrate the Authenticare system per New Mexico State requirements for all clients and caregivers.
- Provided support to clients and ensured payroll was run accurately and timely to ensure all caregivers would be paid on time during system change over.
- Trained new employees on how to use the Authenticare system.
- Helped integrate a new tablet system so all employees would have access to the new clocking in and clocking out systems, especially members living on the Navajo nations, ensuring a vulnerable population would have continued care.
- Managed payroll data and created reports for state auditing and MCO auditing.

Sandy Smith
s.smith@crucescreatives.org

CRUCES CREATIVES Las Cruces, New Mexico

Youth Program Co-Director/STEAMM Instructor
Youth Program Co-Director

- Develop a novel curriculum which crosses disciplinary domains, provides rich hands-on experiences, deeply integrates use of real tools, and draws out real creativity in students.
- Prepare curriculum for publication and coordinate with Spanish speaking translator to build bi-lingual kit instructions and inserts.
- Develop materials orders, identify suppliers, prepare NTTC forms for purchases.
- Recruit, instruct, and oversee volunteers and new staff.
- Develop and distribute advertising materials.

STEAMM Instructor July 2019 – Present

- Instruct classes for 3rd-6th graders focused on STEAMM (Science, Technology, Engineering, Art, Mathematics, Making) projects.
- Transport all materials, tools, clean-up supplies to and from classes held at local elementary schools. During virtual instruction: prepare all materials for distribution as kits. Deliver kits to families as needed.
- Assist with ordering, maintaining, and preparing supplies for all STEAMM programs.
- Present opportunity to use real tools in ways that foster safety and proper Maker Etiquette.

CommunityShare (CS) Las Cruces
Community Engagement Coordinator September 2021 – Present

- Recruit local individuals and companies to participate in the CommunityShare Program
- Provide support to individuals in their curriculum building as they prepare opportunities for Las Cruces Public School classrooms

HABITAT FOR HUMANITY EAST BAY SILICON VALLEY Oakland, California
Playhouse Event Specialist October 2018 – May 2019

- Organize and instructor Recruit local individuals and companies to participate in the CommunityShare Program
- Provide support to individuals in their curriculum building as they prepare opportunities for Las Cruces Public School classrooms

LIBER COMMUNITY SCHOOL / LIBER CO-OP Hayward, California
Teacher/Administrator and Board Member January 2009 – June 2012

- Taught various language arts and literature-based classes using unconventional techniques like creating dolls to represent the Shakespearean characters we were studying.
- Led the annual theater production, which included teaching kids to sew costumes and create props, scouting performance locations, managing rehearsal schedules, selecting the play, and teaching stage skills.
- Led Exploration Days, including an event that allowed 20+ students to design and create their own bookbag out of jeans.
- Participated in setting the school's yearly goals, identifying the needs of the students, and mentoring new students.
- Provided teacher support, assisted in identifying and organizing school service projects, and sat on the board during the restructuring and relocation of the school.

Lindsey McDonald

4110 County Road B-10
La Mesa, New Mexico 88044
(915) 248-6480
l.mcdonald@crucescreatives.org

Education: *New Mexico State University, B.F.A. - Sculpture (2015)*

Work Experience:

Cruces Creatives (2019-Present)

Shop Manager:

- Supervise the 12,400 ft^2 facility to ensure its safe and efficient operation
- Identify and implement facility improvements
- Supervise staff
- Lead general organization of tools, equipment, and other materials
- Coordinate events and operations of other programs within the building.
- Handle public communications, including emails, voicemails, and other messages
- Cooperate with other makerspace personal to write and carry out Job Shop contracts for custom design and fabrication services

Volunteer Coordinator:

- Manage the volunteer schedule.
- Implement proper volunteer training.
- Assist volunteers with day to day operations as needed.

OSHA Compliant Forklift Operator (2019)

- Certified as Class 1, 2, & 4 forklift operator.
- Worked with mass inventory at a warehouse.
- Offloaded and organized truck lots from bays.
- Added large lots to inventory using a digital system.

MESA Project Event Coordinator (2017-2019)

- Assisted in food preparation and serving at large catered events of 100+ people.
- Coordinated staff with operations before, during and after events, with set up, break down and serving.
- Assisted caterers with their needs during events.
- Recorded and analyzed 200+ community improvement surveys, and presented resulting data.

Hotel/Restaurant Management (2015-2017)

- Managed multiple levels of staff, including bar, hotel, front of house waitstaff, and some back of house management.
- Managed inventory for the bar and hotel.
- Balanced multiple registers and deposits from each area of the facility.
- Coordinated large catering events for weddings and parties.
- Coordinated booked entertainment for staged venues.

Abby Nayra
1183 W. Hadley Ave. Las Cruces, New Mexico 88005 575 640 9130 a.nayra@crucescreatives.org

Education

New Mexico State University, College of Arts & Sciences Las Cruces, New Mexico
Bachelor of Arts in History (May 2014)
New Mexico State University, College of Education
Master of Arts in Education (December 2016)

Work

New Mexico State University, College of Education Las Cruces, New Mexico
Graduate/Teaching/Research Assistant January 2015—December 2016
· Assisted supervising professor in teaching both undergraduate and graduate level Multicultural Education and Curriculum + Pedagogy courses
Curriculum and Instruction, Practicum/Student Teaching September—December 2016
Las Montañas Charter High School & Mayfield High School
· Assisted teaching 12th and 10th grade Government courses to fulfill teaching certification

NMSU Honors College Las Cruces, New Mexico
New Mexico Leadership Institute: Program Coordinator February 2017—May 2018
· Facilitated professional and interpersonal development trainings, scholarship cycles, budget allocations, and community engagement events in support of student cohorts
Student Programs Coordinator February 2017—February 2019
· Facilitated all student programs in Honors College by state-wide recruitment, distributing scholarships, conducting professional/academic workshops, and coordinating community events: Undergraduate Research & Creative Arts Symposium or Keynote Speaker Series

NMSU Aggies Go Global Las Cruces, New Mexico
Senior Program Specialist February 2019 – Present
· Facilitate international travel, logistics, and funding for individual and group research, conference, and internships across the globe

CRUCES CREATIVES Las Cruces, New Mexico
CommunityShare (CS) Las Cruces
Education and Community Engagement Coordinator June 2020 – Present
· Community school teacher and community partner outreach to populate CS platform and launch student-driven, collaborative project-based learning experiences
· Collaborate with regional CS staff to facilitate outreach events, deliver materials, and secure expansive support for local teachers and community partners

The HAZLO Foundation
Secretary April 2021 – Present
· Scheduling board meetings and recording/distributing meeting minutes
· Assistance with tax filings, purchases, and other financial record maintenance
Program Coordinator
· Outreach to current and potential mentors to assess and adapt viability of proposed K-12 student-initiated, hand-on projects

Cheryl Carreon

558 Corona del Campo * Las Cruces, NM * 88011 *
* (505) 644-8567

EDUCATION:

Master of Arts C & I *New Mexico State University, Las Cruces, NM* 2005
GPA: 4.0 Focus: Multicultural, Reading, and Early Childhood

Bachelor of Science New *Mexico State University, Las Cruces, NM* 1990
Crimson Scholar, GPA: 3.7 Majors- Elementary Education/Special Education
Concentration- Language Arts Endorsement- Early Childhood

LICENSURE:

NM Teacher License – Elementary (1-6) 1990
NM Teacher License – Special Education (K-12) 1990
NM Teacher License - Early Childhood 1996

WORK EXPERINCE:

Education Coordinator, Community Share Las Cruces August 2021-present

- Present program educational and social emotional benefits to district leaders
- Connect educators and community partners to the platform
- Engage educators in professional development surrounding community-based learning
- Support teachers in the process of developing and carrying out project

TEACHING EXPERIENCE:

Special Education Preschool Teacher 2010- 2021, *East Picacho Elementary School, Las Cruces, NM*
1st/2nd Looping and Multi-Age Teacher 2010-1997, **Second Grade** 1992-1994, **C-Level Sped Teacher** 1990-1992 *East Picacho Elementary and Conlee Elementary School, Las Cruces, NM*

Supervising Teacher

LCPS Beginning Teacher Induction Program 2003-2021

- Presented at the Beginning Teacher Orientation as Teacher of the Year (2016) and as an NEA Representative/ Membership Drive (2017)
- Provided a professional model to incoming teachers, utilizing reflective techniques.

NMSU Student Teaching Program 1993-2007

- Mentored Student Teachers
- Oversaw numerous practicum students from education, psychology, and math programs.

Las Cruces Public Schools Youth Tutoring Youth 2004-2007

- Supervised High-School Students as they tutored children, guided lesson implementation.

Professional Association:

National Association for the Education of Young Children	2017-present
National Education Association- NM Communications	2015-present
National Education Association: Association Building Representative	2010-2021
National Education Association: Member	2000-Present

PROFESSIONAL DEVELOPMENT/ SCHOOL LEADERSHIP

EPSS Leadership Committee	2003-2021
Literacy Committee Member/Chair/Co-Chair	1996 -2010
Child Study Team Member	1997-2010
LCPS Extended School Year Summer School Teacher	1993-2018

AWARDS AND TEACHING RECOGNITION:

- ❖ Delta Kappa Gamma Omega Educator Achievement Award 2020
- ❖ Labor Honoree Award Dona Ana County Democratic Party
- ❖ NEA-New Mexico Award for Teaching Excellence 2018
- ❖ Teacher of the Year 2017-Las Cruces Public Schools

CRUCES CREATIVES

205 E Lohman Avenue

Las Cruces, NM 88001

CrucesCreatives.org

To Hire -

Program Director

- Duties: Manage current programs and bring in and start new programs. Work closely with other Coordinators and Instructors to meet all program goals and organization goals.
- Needed Skills: Management skills, teamwork skills, communication skills, ability to manage complex information and projects, inventiveness.

Member & Entrepreneur Coordinator:

- Duties: Work with members, especially entrepreneur members, to make sure all members have access to the tools and training they need to succeed. Work with members to connect to other members, create teams, access business classes and other opportunities in the community, and give support as needed.
- Needed Skills: Great people skills, ability to understand the vast number of programs and opportunities at Cruces Creatives and in the community. Prompt, clear, and positive communication skills.

Developer:

- Duties: Communicate with local businesses and the public about Cruces Creatives and our programs, creating campaigns and special events to support the work of the makerspace.
- Needed Skills: Creativity, experience leading and organizing events. Public speech skills. Data-entry.

Commercialization Sales Lead:

- Duties: Take finished technology created at Cruces Creatives and launch these products into the consumer market. Create specific business plans for each product, identify best areas of marketing and launch, handle sales, and communicate all operational and sales needs to the tech development team.
- Needed Skills: Business plan development, sales, financial projections, operations.

Second Senior Technician:

- Duties: Work with fellow Senior Technician to solve technological challenges faced by program participants and members. Work with current set of R&D products, and develop more prototypes and finished products to solve current list of requests. Work with sales team to identify costs, production operations, and more.
- Needed Skills: Background in engineering, software, electronics. Ability to work in teams. Good communication. Ability to work iteratively and prototype. Careful production and documentation of processes.

Second Shop Manager:

- Duties: Work with Senior Shop Manager to manage both makerspace sites and all tools and activities within. Keep the makerspace sites safe, clean, organized, and ready for membership and class use. Manage needed inspections, safety checks, and maintenance. Take on additional responsibilities as needed.
- Needed Skills: People skills. Experience in a shop environment and with tools.

Instructor & Tool Manager (x2):

- Duties: Develop and teach a diverse set of basic, advanced, and specialty classes based on the tools available at Cruces Creatives, the skills needed by members and the skills requested from business partners. Maintain tools, keeping them safe and ready for use.
- Needed Skills: People skills. Curriculum building experience. Instructor experience with a variety of ages and abilities. Positive attitude. Self-management.

Kitchen Incubator Coordinator:

- Duties: Run the current pilot Kitchen Incubator program, working with our partner to develop schedules and program parameters. Work with participants to access the kitchen, learn new skills, access additional business education, and run the kitchenprenuer cohort, leading to long-term success of participants. Bring new kitchens into the expanded kitchen incubator network.
- Needed Skills: Organization. Kitchen manager certification. Group facilitation. Experience in kitchens. Communication skills.

Marketing & Media Associate:

- Duties: Create all media and marketing materials for all Cruces Creatives programs and the organization. Respond promptly to needed materials and requests and be able to swiftly create needed materials.
- Needed Skills: Independence, creativity. Good communication skills with team and with the public. Excellent spelling and grammar skills.

Co-op Capital Coordinator:

- Duties: Work with partner Nusenda to create a co-op capital loan program for program participants. Launch program, run financial classes, connect participants to additional business education classes, and manage the co-op capital cohort, giving support as necessary to lead participants to success.
- Needed Skills: Creative thinking. Familiarity with financial and managerial accounting and with business strategies. Group facilitation. Organization and ability to follow timelines.

OFFICE OF THE SECRETARY OF STATE

NEW MEXICO

Certificate of Incorporation

OF

Cruces Creatives

5380995

New Mexico

The Office of the Secretary of State certifies that the Articles of Incorporation, duly signed and verified pursuant to the provisions of the

Nonprofit Corporation Act **53-8-1 to 53-8-99 NMSA 1978**

have been received and are found to conform to law. Accordingly, by virtue of the authority vested in it by law, the Office of the Secretary of State issues this Certificate of Incorporation and attaches hereto a duplicate of the Articles of Incorporation.

Dated: **February 10, 2017**

In testimony whereof, the Office of the Secretary of State has caused this certificate to be signed on this day in the City of Santa Fe, and the seal of said office to be affixed hereto.

Maggie Toulouse Oliver

Maggie Toulouse Oliver
Secretary of State

Office of the New Mexico Secretary of State
Filing Number: 0001742980
Filed On: 2/10/2017
Total Number of Pages: 1 of 3

325 Don Gaspar, Suite 300 · Santa Fe, NM 87501
(800) 477-3632 · www.sos.state.nm.us

SUBMIT ORIGINAL AND A COPY
TYPE OR PRINT LEGIBLY

Nonprofit Corporation
ARTICLES OF INCORPORATION

The undersigned, acting as incorporator(s) to form a corporation under the New Mexico Nonprofit Corporation Act, adopt the following Articles of Incorporation:

ARTICLE ONE: The name of the Corporation is: Cruces Creatives

ARTICLE TWO:
The period of duration is: perpetual

ARTICLE THREE:
The purpose for which the corporation is organized is for education, science, charity, and the arts, which will be achieved through a makerspace and related activities.

ARTICLE FOUR:
(1) The New Mexico street address of the corporation's initial registered office is:
625 Loomis Rd, Las Cruces NM 88007
(P.O. Box is not acceptable. Provide a description of the geographical location if a street address does not exist)
(2) The name of the initial registered agent at the address of the initial registered office is:
Lea Wise-Surguy

ARTICLE FIVE: The names and addresses of the initial board of directors are: (***minimum number of directors required is three***) *(attach schedule if needed)*

NAME	ADDRESS
Lea Wise-Surguy	625 Loomis Rd., Las Cruces, NM 88007
Patrick DeSimio	625 Loomis Rd., Las Cruces, NM 88007
Carlos Estrada-Vega	1129 N. Campo St., Las Cruces, NM 88001

RECEIVED
SOS
Corporation Bureau
FEB 10 2017

Office of the New Mexico Secretary of State
Filing Number: 0001742980
Filed On: 2/10/2017
Total Number of Pages: 2 of 3

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ARTICLE SIX: The name and address of each incorporator is: *(attach schedule if needed)*

NAME	ADDRESS
Lea Wise-Surguy	625 Loomis Rd, Las Cruces, NM 88007

Dated: 2/7/17

Lea Wise-Surguy

Signature of Incorporator(s)
(each person named in Article Six must sign)

Form DNP
(revised 06/13)

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Corporation Bureau
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Office of the New Mexico Secretary of State
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Filed On: 2/10/2017
Total Number of Pages: 3 of 3

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STATEMENT OF ACCEPTANCE OF APPOINTMENT BY DESIGNATED INITIAL REGISTERED AGENT

I, Lea Wise-Surguy,
hereby acknowledge that the undersigned individual or corporation accepts appointment

as Initial Registered Agent of Cruces Creatives,

the corporation which is named in the annexed Articles of Incorporation.

Lea Wise-Surguy

(Sign on this line if the registered agent named in the Articles of Incorporation is an individual. If this line is signed, the two lines below do not apply and must be left blank.)

CORPORATION ACTING AS A REGISTERED AGENT ONLY

(If the following lines are used, the signature line above does not apply and must be left blank)

_____

(If the registered agent named in the Articles of Incorporation is a corporation, type or print the name of that corporation here.)

By_____

(An authorized officer of the corporation being appointed as registered agent must sign here)

Form D-STMNT
(revised 06/13)

RECEIVED
SOS
Corporation Bureau
FEB 10 2017

Bylaws of Cruces Creatives

ARTICLE I – NAME AND ORGANIZATION

a. This organization shall be known as Cruces Creatives.
b. Cruces Creatives shall be incorporated, organized, and operated as a 501(c)(3) non-profit charity under the Internal Revenue Code of the United States.

ARTICLE II – OBJECTIVES

a. Cruces Creatives is organized exclusively for educational, scientific, charitable, and literary purposes under section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code.
b. No part of the net earnings of Cruces Creatives shall inure to the benefit of, or be distributable to its members, trustees, officers, or other private persons, except that Cruces Creatives shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes described in section 501(c)(3). Cruces Creatives shall not intervene in any political campaign on behalf of or in opposition to any candidate for public office, and Cruces Creatives shall not exceed the expenditure limits established by the IRS expenditure test for attempting to influence legislation. Notwithstanding any other provision of these articles, Cruces Creatives shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or (b) by a corporation, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

ARTICLE III – FISCAL YEAR AND FINANCES

a. The fiscal year of Cruces Creatives shall commence on the first day of January and end on the following 31st day of December.
b. All checks, drafts, or other orders for the payment of money, obligations, notes, or other evidence of indebtedness, and all other instruments signed or issued on behalf of Cruces Creatives shall be signed or endorsed by the Treasurer, Executive Director or such officers or agents of the organization as the Board of Directors shall by resolution specify.
c. All funds of Cruces Creatives not otherwise committed shall be deposited from time to time to the organization's credit in such banks or other insured depositories as shall be determined by the Board of Directors or its designee.

ARTICLE IV – NON-DISCRIMINATION

a. Cruces Creatives shall not discriminate on the basis of race, sex, color, religion, national origin, gender orientation, sexual orientation, or any other category protected by local, state, or federal law.

ARTICLE V – BOARD OF DIRECTORS

a. The Board of Directors shall be vested with the full powers and responsibility for the management and policies of Cruces Creatives subject to these Bylaws.
b. The Board of Directors shall be composed of at least three members including the Chair, the Vice-Chair, and Secretary/Treasurer. The roles and responsibilities of these members shall be as described below:

Chair – The Chair:

- Shall foster the formulation of policy;
- Shall serve as a full voting member of the Board of Directors;
- Shall develop financial support;
- Shall execute the decisions and directives of the Board of Directors;
- Shall conduct official correspondence;
- Shall choose the time, date, and location of the Annual Meeting of the Board of Directors, and shall provide all members of the Board of Directors with written notice at least one month before said Annual Meeting;
- May appoint persons to the Executive Committee, which shall assist the Chair in executing the decisions and directives of the Board of Directors.
- Shall chair meetings of the Executive Committee and Board of Directors;
- May assign members of the Executive Committee to chair or be a member of a committee created by the Board of Directors;
- Shall have such authorities, powers, and duties as are assigned to the office of Chair by these Bylaws;
- In extraordinary or emergency situations, may act subject to review by the Board of Directors.

Vice-Chair – The Vice-Chair:

- Shall, in the absence or incapacity of the Chair, perform the duties of the Chair and any other duties assigned by the Chair;
- Shall serve as a full voting member of the Board of Directors.

Secretary – The Secretary:

- Shall keep a record of the meetings of the Board of Directors, issue notices to the Board Members of all meetings, and perform such duties as may be assigned by the Chair;
- Shall serve as a full voting member of the Board of Directors;
- Shall be official custodian of the records of Cruces Creatives.
- Shall prepare and publish minutes of all meetings of the Board of Directors, and shall bring a copy of the previous meeting's minutes to each meeting.

Treasurer – The Treasurer:

- Shall, with the assistance of the Board of Directors, present a budget for the following fiscal year (January 1 – December 31) at the Annual Meeting of the Board of Directors.
- Shall account for all moneys and other assets of Cruces Creatives with the assistance of members of the Board of Directors and shall, at each meeting of the Board of Directors, submit a report of the financial transactions of the organization from the time of the preceding report.
- Shall serve as a full voting member of the Board of Directors.

c. The offices of Secretary and Treasurer may be combined for any year upon majority vote of the Board of Director members voting in person. The combined officer will cast only one (1) vote in the Board of Directors.
d. Members of the Board of Directors shall be elected by a simple majority vote of the Board of Directors at the Annual Meeting.
e. The Annual Meeting of the Board of Directors shall be held at least once per fiscal year at a date, time, and place to be designated by the Chair.
f. Special meetings may be called at any time and place by the Chair or upon written request of not less than two Board Members of Cruces Creatives. Special meetings may be conducted through telecommunications, including but not limited to teleconferences and video conferences.
g. Board Members must be given two weeks' advance notice of such special meeting.
h. For the Annual Meeting, a quorum shall consist of the Board Members of Cruces Creatives present in person. A quorum must represent a simple majority of the Board of Directors.
i. For special meetings, a quorum shall consist of the Board Members of Cruces Creatives present in person or electronically. A quorum must represent a simple majority of the Board of Directors.
j. Simple majority vote shall control, except as herein otherwise provided. Officers and members may not vote on issues in which they may have a potential conflict of interest.
k. The Board of Directors may create any number of various committees to aid the Board in performing a task or providing information to the Board of Directors.

Terms of Office

a. Terms of office shall commence on the first day of January of the election year and shall last for two years (until December 31st of the second subsequent year) or until successors are elected, unless an emergency appointment becomes necessary due to an unforeseen vacancy.
b. Elections for Chair and Secretary shall be held in even years, Treasurer and Vice-Chair in odd years.

Compensation of Board Members

a. Board members shall receive no compensation for their service as board members.
b. In the event that a board member might be compensated for other services to Cruces Creatives, the transaction must be conducted "at arm's length," with terms indistinguishable from those on

the open market. To demonstrate that the transaction has been conducted "at arm's length," compensation must be proven reasonable by at least one of the following methods:

1. Comparison to payments by at least three similarly situated organizations for similar services,
2. Through appraisal by a third-party expert, or
3. Through other demonstrations recognized by law.

c. For any vote regarding the compensation of a board member for services to Cruces Creatives, the names of those voting for and against compensation must be recorded in the meeting minutes. The board member under consideration for compensation shall abstain from voting about said compensation.

Removal of Board Members

a. Any Board Member may be removed from office by the Board of Directors.
b. Written notification of the causes for removal must be provided to the individual to be removed.
c. At any meeting in which the removal of any individual is considered, a simple majority of the Board must be present.
d. The individual who is contemplated for removal has no vote on this issue.
e. A simple majority of the Board Members present at the hearing, less the Board Member contemplated for removal, must vote for the removal before the individual is removed.
f. Any individual removed in this manner is automatically removed from any other offices or committees on which that individual serves.

Replacement of Board Members

a. The Board of Directors may replace an individual who has resigned or who has been removed by the Board.
b. At any meeting where a replacement is to be voted upon, a simple majority of the Board Members must be present.
c. A simple majority of the Board Members present at the meeting must cast votes of approval before the replacement is so approved.

ARTICLE VI – ELECTIONS

a. Candidates for the Board of Directors shall be nominated by the Board of Directors.
b. Nominees must agree to their nomination.
c. Elections will be held at the Annual Meeting.
d. Officers shall be elected by a majority of the votes cast.
e. If replacement during the term of a Board Member is required due to resignation or dismissal, the Chair shall call a special board meeting to attend to replacing the Board Member.
f. If a member of the Board is unable to attend elections in person, that member may vote before the meeting via an email sent to both the Secretary and the Chair.

ARTICLE VII – AMENDMENTS

a. These Cruces Creatives Bylaws may be amended at any Annual Meeting of the Board of Directors.

b. Bylaws may be amended by special meeting if no less than two weeks' notice of the special meeting is delivered by the Chair and/or Secretary to all Board Members, stating when and where the meeting shall be held and the general nature of the proposed Bylaw amendments.
c. A simple majority of Board Members must be present in person at the meeting.
d. An amendment receiving a simple majority of all votes cast by voting members and approved by the Chair shall be deemed as adopted.

ARTICLE VIII – DISSOLUTION

a. In the event that Cruces Creatives is dissolved or otherwise ceases to exist as an organization, its assets will be permanently dedicated to tax-exempt purposes in a manner designated by the Officers of Cruces Creatives.
b. If the Officers of Cruces Creatives are unable to designate the disbursement of Cruces Creatives resources to a tax-exempt organization, all assets of Cruces Creatives shall go to the State of New Mexico.

These bylaws have been approved by the following officers:

Printed Name: Lea Wise-Surguy

Position: Board Chair

Signature: Lea Wise-Surguy Date: 3/31/17

Printed Name: Patrick DeSimio

Position: Treasurer

Signature: P DeSimio Date: 3/31/17

OFFICE OF THE SECRETARY OF STATE

NEW MEXICO

Certificate of Good Standing and Compliance

IT IS HEREBY CERTIFIED THAT:

Cruces Creatives

5380995

the above named entity, a Corporation incorporated under the laws of New Mexico, is duly authorized to transact business in New Mexico as a Domestic Nonprofit Corporation, under the

Nonprofit Corporation Act **53-8-1 to 53-8-99 NMSA 1978**

having filed its Articles of Incorporation on February 10, 2017, and Certificate of Incorporation issued as of said date.

It is further certified that the fees due to the Office of the Secretary of State which have been assessed against the above named entity have been paid to date and the entity is in good standing and duly authorized to transact business as its existence has not been revoked in New Mexico. This certificate is not to be construed as an endorsement, recommendation, or notice of approval of the entity's financial condition or business activities and practices.

Certificate Issued: **August 8, 2019**

In testimony whereof, the Office of the Secretary of State has caused this certificate to be signed on this day in the City of Santa Fe, and the seal of said office to be affixed hereto.

Maggie Toulouse Oliver
Secretary of State

Certificate Validation #: 0030935

A certificate issued electronically from the New Mexico Secretary of State's office is immediately valid and effective. The validity of a certificate may be established by viewing the **Certificate Validation** option on the Business Filing System at https://portal.sos.state.nm.us/bfs/online and following the instructions displayed under **Certificate Validation.**

INTERNAL REVENUE SERVICE
P. O. BOX 2508
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date: FEB 21 2017

CRUCES CREATIVES
625 LOOMIS RD
LAS CRUCES, NM 88007-0000

Employer Identification Number:
81-5340614
DLN:
26053446003267
Contact Person:
CUSTOMER SERVICE ID# 31954
Contact Telephone Number:
(877) 829-5500
Accounting Period Ending:
December 31
Public Charity Status:
509(a)(2)
Form 990/990-EZ/990-N Required:
Yes
Effective Date of Exemption:
February 10, 2017
Contribution Deductibility:
Yes
Addendum Applies:
No

Dear Applicant:

We're pleased to tell you we determined you're exempt from federal income tax under Internal Revenue Code (IRC) Section 501(c)(3). Donors can deduct contributions they make to you under IRC Section 170. You're also qualified to receive tax deductible bequests, devises, transfers or gifts under Section 2055, 2106, or 2522. This letter could help resolve questions on your exempt status. Please keep it for your records.

Organizations exempt under IRC Section 501(c)(3) are further classified as either public charities or private foundations. We determined you're a public charity under the IRC Section listed at the top of this letter.

If we indicated at the top of this letter that you're required to file Form 990/990-EZ/990-N, our records show you're required to file an annual information return (Form 990 or Form 990-EZ) or electronic notice (Form 990-N, the e-Postcard). If you don't file a required return or notice for three consecutive years, your exempt status will be automatically revoked.

If we indicated at the top of this letter that an addendum applies, the enclosed addendum is an integral part of this letter.

For important information about your responsibilities as a tax-exempt organization, go to www.irs.gov/charities. Enter "4221-PC" in the search bar to view Publication 4221-PC, Compliance Guide for 501(c)(3) Public Charities, which describes your recordkeeping, reporting, and disclosure requirements.

Letter 947

CRUCES CREATIVES

Sincerely,

Jeffrey I. Cooper
Director, Exempt Organizations
Rulings and Agreements

Letter 947

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 10/7/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Mesilla Valley Insurance 545 S. Melendres, Suite C Las Cruces NM 88005	**CONTACT NAME:** Tessa Cathey **PHONE (A/C, No, Ext):** 575-527-8800 **FAX (A/C, No):** 575-527-8778 **E-MAIL ADDRESS:** tessa.mvig@yahoo.com
INSURED Cruces Creatives 205 E. Lohman Ave Las Cruces NM 88001	**INSURER(S) AFFORDING COVERAGE** / **NAIC #** **INSURER A :** SCOTTSDALE INSURANCE **INSURER B :** NEW MEXICO MUTUAL INS CO **INSURER C :** **INSURER D :** **INSURER E :** **INSURER F :**

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC ☐ OTHER:			CPS7078924	02/21/2021	02/21/2022	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 100,000 $ 5,000 $ 1,000,000 $ 2,000.000 $ 2,000,000
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ $ $ $
	☐ **UMBRELLA LIAB** ☐ OCCUR ☐ **EXCESS LIAB** ☐ CLAIMS-MADE ☐ DED ☐ RETENTION $						EACH OCCURRENCE AGGREGATE	$ $
B	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N: Y **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		0100603.102	11/14/2020	11/14/2021	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 1,000,000 $ 1,000,000 $ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

To Whom It May Concern

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Tessa Cathey

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CRUCES CREATIVES

205 E Lohman Avenue

Las Cruces, NM 88001

CrucesCreatives.org

2021 Board Members:

Chair:

Lea Wise-Surguy

528 N Melendres Ave

Las Cruces, NM 88005

575-520-2030

l.wisesurguy@crucescreatives.org

Vice-chair:

Jon Simmons

450 Linda Vista Rd

Las Cruces, NM 88005

575-640-4288

j.simmons@crucescreatives.org

Secretary:

Patrick DeSimio

528 N Melendres Ave

Las Cruces, NM 88005

937-830-3649

p.desimio@crucescreatives.org

Treasurer:

Margaret Neill

217 N Reymond St.

Las Cruces, NM 88005

915-491-9021

m.neill@crucescreatives.org

Additional Board Members:

Jeff Moore

5136 Lost Padre Mine Rd

Las Cruces, NM 8011

650-218-1605

j.moore@crucescreatives.org

Michael Harris

743 Hellenic Dr.

Las Cruces, NM 88011

575-496-4392

m.harris@crucescreatives.org

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01/20/21
Accrual Basis

Cruces Creatives
Balance Sheet
As of December 31, 2020

	Dec 31, 20	
ASSETS		
Current Assets		
Checking/Savings		
10000 · Cash		
10005 · First Light Operating	32,061.36	
10010 · First Light Proj #1 Earmarks	918.60	
10020 · First Light Proj #2 Restricted	5.45	
10030 · First Light Proj #3 Surguy Mem	512.28	
10040 · Petty Cash	110.00	
Total 10000 · Cash		33,607.69
Total Checking/Savings		33,607.69
Accounts Receivable		
11100 · Accounts Receivable		
11120 · A/R Other	1,200.00	
Total 11100 · Accounts Receivable		1,200.00
Total Accounts Receivable		1,200.00
Total Current Assets		34,807.69
Fixed Assets		
15000 · Furniture, Equip & Tools		19,619.00
17000 · Accum Depr - Furn, Equip & Tool		-19,619.00
Total Fixed Assets		0.00
Other Assets		
19000 · Security Deposits Asset		6,000.00
Total Other Assets		6,000.00
TOTAL ASSETS		**40,807.69**
LIABILITIES & EQUITY		
Liabilities		
Current Liabilities		
Other Current Liabilities		
24000 · Payroll Liabilities		
24100 · 941 Payroll Tax Total	-36.30	
Total 24000 · Payroll Liabilities		-36.30
25000 · Loans from Officers, Directors		9,200.00
Total Other Current Liabilities		9,163.70
Total Current Liabilities		9,163.70
Long Term Liabilities		
28000 · Refundable Deposits Payable		1,000.00
Total Long Term Liabilities		1,000.00
Total Liabilities		10,163.70
Equity		
30000 · Net Assets		
30100 · Net Assets Unrestrict	3,599.70	
30200 · Net Assets Restricted		
30201 · Restricted Grants & Other	25,950.28	
Total 30200 · Net Assets Restricted		25,950.28
Total 30000 · Net Assets		29,549.98

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01/20/21
Accrual Basis

Cruces Creatives
Balance Sheet
As of December 31, 2020

	Dec 31, 20
Net Income	1,094.01
Total Equity	30,643.99
TOTAL LIABILITIES & EQUITY	**40,807.69**

4:06 PM
01/20/21
Accrual Basis

Cruces Creatives
Profit & Loss
January through December 2020

	Jan - Dec 20	
Ordinary Income/Expense		
Income		
40000 · Uncategorized Income		0.00
41000 · Direct Public Support		
41100 · Contributions - Unrestricted	13,607.64	
41200 · Contributions Restricted	5,765.00	
Total 41000 · Direct Public Support		19,372.64
42000 · Program Income		
42100 · Classes & Workshops	1,383.00	
42101 · Member Dues	21,775.00	
42106 · LCPS Mayfield Young Learners	795.69	
42108 · STEM Program	50,523.52	
42113 · PPE	18,138.53	
42300 · Workforce Development OJT Reimb	25,670.99	
42999 · Other Program Income	28,104.89	
Total 42000 · Program Income		146,391.62
43000 · Grant Income		
43002 · Zone Grant	90,000.00	
43007 · Stocker Grant	14,293.72	
43999 · Grants Various	17,250.00	
Total 43000 · Grant Income		121,543.72
44000 · Job Shop Contracts		
44010 · Quilt Repair #1095	150.00	
44999 · Small Job Shops	1,280.00	
Total 44000 · Job Shop Contracts		1,430.00
46000 · Workforce Reimbursed Salaries		0.00
48000 · Dividends & Interest		8.12
Total Income		288,746.10
Gross Profit		288,746.10
Expense		
61000 · Administration		
61100 · Contract Labor - Admin Support	770.12	
Total 61000 · Administration		770.12
62000 · Program Expenses		
62100 · Class Instruction & Events	279.50	
62106 · Mayfield Program	322.50	
62108 · STEM		
62108-2 · Labor	17,264.35	
62108-3 · Materials	18,609.91	
62108-4 · Other	1,364.25	
Total 62108 · STEM	37,238.51	
62112 · Community Schools/Community Sha		
62112-2 · Labor	2,767.50	
62112-3 · Materials	683.06	
62112-4 · Other	19,300.00	
Total 62112 · Community Schools/Community Sha	22,750.56	
62113 · PPE Program - City LC		
62113-2 · Labor	7,178.50	
62113-3 · Materials	1,233.55	
62113-4 · Other	435.00	
Total 62113 · PPE Program - City LC	8,847.05	

Cruces Creatives
Profit & Loss
January through December 2020

	Jan - Dec 20	
62998 · Other Program		
62998-2 · Labor	219.38	
62998-3 · Materials	26.98	
62998 · Other Program - Other	563.75	
Total 62998 · Other Program		810.11
Total 62000 · Program Expenses		70,248.23
63000 · Awards and Grants		
63001 · Zone Grant Exps		
63001-2 · Labor	10,717.28	
63001-3 · Materials	282.18	
63001-4 · Other	13,055.10	
Total 63001 · Zone Grant Exps		24,054.56
63003 · Rumphius Mural Grant		
63003-4 · Other	796.10	
Total 63003 · Rumphius Mural Grant		796.10
63007 · Stocker Grant		
63007-2 · Labor	8,262.47	
63007-4 · Other	2,500.00	
Total 63007 · Stocker Grant		10,762.47
63999 · Grants Various Small		
63999-2 · Labor	1,122.36	
63999-3 · Materials	850.23	
Total 63999 · Grants Various Small		1,972.59
Total 63000 · Awards and Grants		37,585.72
64000 · Job Shop Expenses		
64008 · Library Bench Build Out #1213		
64008-2 · Labor	400.42	
64008-3 · Materials	90.89	
Total 64008 · Library Bench Build Out #1213		491.31
64010 · Quilty Repair #1095		
64010-2 · Labor	150.00	
Total 64010 · Quilty Repair #1095		150.00
64011 · Precious Plastics #1272		
64011-2 · Labor	1,400.00	
64011-3 · Materials	762.42	
Total 64011 · Precious Plastics #1272		2,162.42
64012 · Thresher #1271		
64012-2 · Labor	1,500.00	
64012-3 · Materials	701.02	
Total 64012 · Thresher #1271		2,201.02
64013 · Covid PPE#2199 LCPS Faceshields		
64013-2 · Labor	11,996.62	
64013-3 · Materials	14,481.49	
Total 64013 · Covid PPE#2199 LCPS Faceshields		26,478.11

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01/20/21
Accrual Basis

Cruces Creatives
Profit & Loss
January through December 2020

	Jan - Dec 20	
64999 · Small Job Shops Exp		
64999-1 · Labor	990.00	
64999-3 · Materials	293.52	
64999 · Small Job Shops Exp - Other	293.86	
Total 64999 · Small Job Shops Exp	1,577.38	
Total 64000 · Job Shop Expenses		33,060.24
66000 · Facilities and Equipment		
66001 · Rent	56,750.00	
66010 · Utilities	9,164.23	
66020 · Repairs & Maintenance	737.80	
66022 · Cleaning Supplies	174.46	
66025 · Other Facilities Exp	241.18	
66050 · Property & Liability Insurance	1,217.49	
Total 66000 · Facilities and Equipment		68,285.16
67000 · Business Expenses		
67001 · Software & Computer Costs	4,330.70	
67010 · Fees	1,170.21	
67020 · Office Supplies	671.57	
67025 · Other Supplies	58.04	
67040 · Marketing	33.63	
67960 · Other Business Exp	552.40	
Total 67000 · Business Expenses		6,816.55
69999 · Unclassified		0.00
70000 · Payroll Expenses		
71000 · Shop Wages		
71100 · Gross Wages	63,235.25	
71200 · Payroll Taxes	5,942.27	
71300 · Worker's Compensation	1,537.00	
71400 · Payroll Other Costs	87.78	
71999 · Penalties & Interest	83.77	
Total 71000 · Shop Wages	70,886.07	
70000 · Payroll Expenses - Other	0.00	
Total 70000 · Payroll Expenses		70,886.07
Total Expense		287,652.09
Net Ordinary Income		1,094.01
Net Income		**1,094.01**

Budget Justification

Cruces Creatives
Las Cruces ARPA

Permanent Positions, Full-Time:
One 0.80 FTE Accountant (partially paid with ARPA, partially paid from other sources) to handle project accounting and finance reports; one 0.80 FTE Program Director to lead educational efforts and coordinate the work of the team in achieving program objectives; one 0.80 FTE Volunteer Education Coordinator to coordinate the efforts of community partners and volunteers across all educational programs; four 0.80 FTE CommunityShare Las Cruces Coordinators to engage teachers in Las Cruces Public Schools and community partners and to support educational projects; one 0.80 FTE Hazlo Coordinator to arrange and manage long-term, project-based student mentorships through Hazlo; two 0.80 FTE STEAMM Team Instructors to teach additional STEAMM Team *(Science, Technology, Engineering, Arts, Mathematics, and Making)* educational classes at Cruces Creatives and at school sites; one 0.80 FTE STEAMM Instructor Assistant to provide teaching support across STEAMM Team educational classes; one 0.80 FTE Outreach Coordinator (partially paid with ARPA, partially paid from other sources) to raise awareness about educational programming and increase involvement from Las Cruces Public Schools and the community as a whole.

Permanent Positions, Part-Time:
One 0.50 FTE Senior Technician to provide tool and project support, plus specialized guidance on tool use for educational programming; one 0.50 FTE Tech Assistant to provide tool and project support, plus specialized guidance on tool use for educational programming; two 0.50 FTE STEAMM Team Instructors to teach additional STEAMM Team educational classes at Cruces Creatives and at school sites.

Temporary Positions:
Contractor Instructor budget to temporarily hire subject matter experts from the community for summer, spring break, and after school STEAMM classes at Cruces Creatives.

Employment Liability Insurance: Expenses for employment liability insurance for project employees

Office Supplies: Expenses for general office supplies (paper, ink, staples, etc.) to support the project

Operating Supplies: Operating supplies, all of which are direct program support, will be materials and consumables for educational programming (e.g., 3D printing spools, vinyl, wood, wires, motors, felt, etc.)

Small Tools: Various small tools (heat guns, soldering irons, hammers, wrenches, screwdrivers, etc.) for direct program support for educational projects across all ARPA-funded programs. Except as required for compliance with Federal regulations including 2 CFR 200.313(c)(2), the small tools shall be used exclusively in support of educational activities to address learning loss.

City Service (water, waste, etc.): Facility expenses for water and waste as part of IDC, based on 50% utilization of the Cruces Creatives facility for educational activities to address learning loss, with ARPA covering 25% of the total expenses.

Electricity: Facility expenses for electricity as part of IDC, based on a projected 50% utilization of the Cruces Creatives facility for educational activities to address learning loss. This expense will be paid partially through ARPA and partially through other sources, with ARPA covering 25% of total expenses.

Auditing Services: Expenses for project audit in each year of operation, paid partially through ARPA and partially through other sources

Fees or Service Charges:
For direct support of educational programming, the budget includes the following software licenses: Five licenses to AutoDesk Architecture, Engineering, and Construction Collection to support educational projects in these fields; five licenses to AutoDesk Product Design and Manufacturing Collection to support educational projects in engineering, project design, and similar fields; five licenses to AutoDesk Media and Entertainment Collection to support educational projects in graphic design, photography, videography, film, and game design; five two-year subscriptions to Mya 3D Software for projects in computer-aided design and digital manufacturing to support educational projects in engineering, product design, and similar fields; 11 licenses to Adobe Photoshop for projects in graphic design, photography, and film; 11 licenses to ZBrush for educational projects in computer-aided design, videography, graphic design, and game design; and one license to Unity for educational projects in computer-aided design, animation, game design, videography and film, and digital manufacturing. Except as required for compliance with Federal regulations including 2 CFR 200.313(c)(2), the licensed software shall be used exclusively in support of educational activities to address learning loss. The project will also have IDC expenses related to service charges for financial and accountant support for payroll and tax filings related to the project.

Advertising: Expenses for advertising and outreach in support of educational programming to address learning loss

Building or Land Rental: Facility expenses for rent as part of IDC, based on a projected 50% utilization of the Cruces Creatives facility for educational activities to address learning loss. This expense will be paid partially through ARPA and partially through other sources, with ARPA paying 25% of total costs.

Liability Insurance: Expenses for liability insurance as part of IDC, based on a projected 50% utilization of the Cruces Creatives facility for educational activities to address learning loss. This expense will be paid partially through ARPA and partially through other sources, with ARPA paying 25% of total costs.

Miscellaneous Costs: Miscellaneous budget for expenses related to educational programming

Furniture and Fixtures:
20 computer chairs for student projects at computer workstations; 20 shop stools for students to engage in multiple educational projects; 24 folding chairs for students for multiple educational projects; one chair dolly to store folding chairs; six folding tables for portable workstations; six sewing tables for textile projects; five clear-view lockers for student project storage, two charging cabinets (one for media cameras, drone, etc., one for woodshop tools) to securely store and charge educational tools; a rolling charging cabinet to securely store and charge laptops for STEAMM Team educational programming; two mobile workstations to support a range of educational projects; a metal rolling cart to transport larger projects and to move project supplies; and a mobile computer cabinet to securely store VR equipment. Except as required for compliance with Federal regulations including 2 CFR 200.313(c)(2), the furniture and fixtures purchased with ARPA funding shall be used exclusively in support of educational activities to address learning loss.

Office Equipment: Work laptops for new permanent employees to be hired in support of educational activities to address learning loss. Except as required for compliance with Federal regulations including 2 CFR 200.313(c)(2), these laptops shall be used exclusively in support of educational activities to address learning loss.

Shop Equipment:
The budget includes the following shop equipment for direct support of educational programs: a drone with camera to support educational projects in videography and film; a VR Oculus Quest 2 to support educational projects in videography, film, virtual reality, game design, programming, and robotics/haptics; a Microsoft Hololens 2 to support educational projects in videography and film; a high-quality projector to support educational projects in videography, film, and game design; a 3D nylon printer, 3D resin printer, and 3D SLS printer to support educational projects in digital manufacturing and computer-aided design; a vacuum chamber and pressure chamber for educational projects in moldmaking, computer-aided design, engineering, product design and similar fields; a CNC mill for educational projects in digital manufacturing, computer aided design, product design, engineering, and similar fields; a plastic injection machine for educational projects in moldmaking, computer-aided design, product design, engineering, and similar fields; a VR camera for educational projects in videography, film, virtual reality, game design, and programming; seven 4K camcorders for educational projects in videography and film; LED light panels for educational projects in videography and film; 11 Alienware Aurora Gaming Desktops for educational projects in game design, computer-aided design, graphic design, film, videography, audio

engineering, engineering, product design, and similar fields; 12 high-quality monitors for educational products in game design, computer-aided design, graphic design, film, videography, engineering, product design, and similar fields; and a laser cutter with air filter for educational projects in engineering, technology, digital manufacturing, computer-aided design, and similar fields. Except as required for compliance with Federal regulations including 2 CFR 200.313(c)(2), the shop equipment shall be used exclusively in support of educational activities to address learning loss.

Project:						
Line Item	EXPENDITURE CLASSIFICATION	ARPA FUNDING	OTHER FEDERAL FUNDS	STATE FUNDS	PRIVATE FUNDS	TOTAL BUDGET**
501-001	Permanent Position, Full Time	$869,606.40	$117,898.56		$178,102.08	**$1,165,607.04**
501-101	Permanent Position, Part Time	$181,864.80	$74,078.55		$85,531.20	**$341,474.55**
501-003	Temporary Positions	$33,326.00	$25,326.00		$9,600.00	**$68,252.00**
502-006	Employment Liability Insurance	$8,614.38			$3,631.49	**$12,245.87**
502-007	Other Employee Benefits *					**$0.00**
602-001	Office Supplies	$500.00	$5,280.00		$2,400.00	**$8,180.00**
602-002	Operating Supplies	$191,000.00	$36,000.00		$50,000.00	**$277,000.00**
602-003	Repair & Maintenance Supplies				$1,000.00	**$1,000.00**
602-004	Small Tools	$10,000.00	$10,000.00		$5,000.00	**$25,000.00**
602-005	Motor Oil and Fuel					**$0.00**
602-006	Library Books and Periodicals					**$0.00**
602-007	Magazines and Periodicals					**$0.00**
602-008	Audio Visual Aids					**$0.00**
602-009	Wearing Apparel				$1,000.00	**$1,000.00**
603-001	Postage and Federal Express				$200.00	**$200.00**
604-001	City Service (water, waste, etc.)	$1,500.00			$1,500.00	**$3,000.00**
604-002	Electricity	$7,500.00			$7,500.00	**$15,000.00**
604-003	Telephone					**$0.00**
604-004	Utility Services – Other				$3,580.00	**$3,580.00**
605-001	Legal Services					**$0.00**
605-002	Auditing Services	$12,000.00			$12,000.00	**$24,000.00**
605-003	Engineering Services					**$0.00**
605-004	Architectural Services					**$0.00**
605-005	Maintenance Agreements					**$0.00**
605-006	Fees or Service Charges	$58,057.89	$2,000.00			**$60,057.89**
605-007	Advertising	$10,000.00			$10,000.00	**$20,000.00**
701-001	Landscape Maintenance					**$0.00**
701-002	Required Building Repair & Maintenance					**$0.00**
701-003	Auto or Truck Repair					**$0.00**
701-004	Equipment Repair					**$0.00**

702-001	Building or Land Rental	$40,500.00			$40,500.00	**$81,000.00**
702-003	Vehicle Rental					**$0.00**
702-004	Equipment Rental					**$0.00**
704-001	Liability Insurance	$4,000.00			$4,000.00	**$8,000.00**
704-002	Property Insurance					**$0.00**
704-003	Fidelity Insurance					**$0.00**
708-001	Transportation (in-state only)					**$0.00**
708-002	Per Diem (in-state only)					**$0.00**
708-003	Registration Fees					**$0.00**
708-004	Miscellaneous Costs	$10,000.00			$10,000.00	**$20,000.00**
708-005	Training and Education					**$0.00**
801-001	Land-Vacant					**$0.00**
801-002	Land-Buildings or Other					**$0.00**
801-003	Land-Right of Way					**$0.00**
802-001	Land Improvements					**$0.00**
803-001	Building Improvements					**$0.00**
804-001	Automobiles					**$0.00**
804-002	Trucks and Vans					**$0.00**
804-003	Heavy Equipment					**$0.00**
804-004	Furniture and Fixtures	$20,220.00				**$20,220.00**
804-005	Office Equipment	$10,500.00				**$10,500.00**
804-006	Data Processing					**$0.00**
804-007	Shop Equipment	$132,599.88	$10,000.00		$40,000.00	**$182,599.88**
900-001	Client Housing (rent, mortgage, utilities, deposit)					**$0.00**
900-002	Client Support (medical, classes)					**$0.00**
	TOTAL	**$1,601,789.35**	**$280,583.11**	**$0.00**	**$465,544.77**	**$2,347,917.23**
						$2,347,917.23
			Cost Share %	46.58%		
			Non-Federal Cost Share	29.06%		
			Total ARPA Admin / IDC Total	$151,868.78		
			Total ARPA Admin / IDC Percentage:	9.48%		

Application: Crosstown Flats

Tierra Del Sol Housing Corporation, Inc.
AMERICAN RESCUE PLAN ACT

RFP Application

Completed - Oct 14 2021

Proposal Information

1

ACKNOWLEDGEMENT OF REQUIRED ASSURANCES

This page must be signed and submitted with the application. Applications which do not contain a signed Acknowledgement of Required Assurances are ineligible for consideration.

By submitting the accompanying application and by my signature on this document, I understand and agree that any funding award resulting from this solicitation will require compliance with the signed agreement and with the regulations, requirements, and policies identified below, including but not limited to:

- **Compliance with 2 CFR Part 200 - Uniform Administrative Requirements**, Cost Principles, and Audit Requirements for Federal Awards (as appropriate);
    - Compliance with the requirements of the Americans with Disabilities Act Accessibility Guidelines;
        - Completion of an environmental regulations
        - Equal Employment Opportunity Act;
        - City of Las Cruces Nondiscrimination policy
        - Minority and Women’s Business Enterprise (MBE/WBE);
        - Lead Based Paint;
        - Title VI of the Civil Rights Act of 1964, as amended;
        - The Fair Housing Act;
        - Equal Opportunity in Housing Act;
        - Age Discrimination Act;
        - Americans with Disabilities Act;

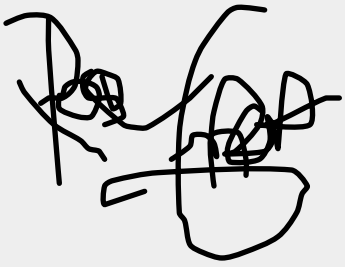
- Section 504 of the Rehabilitation Act;
- Federal Funding Accountability and Transparency Act (FFATA);
- Hatch Act
- Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
- New Restrictions on Lobbying, 31 C.F.R. Part 21.
- Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C.§§ 4601-4655) and implementing regulations.
- Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Recipient should encourage its contractors to adopt and enforce on-thejob seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.
- Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Recipient should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and Recipient should establish workplace safety policies to decrease accidents caused by distracted drivers.
- Compliance with policies of the City of Las Cruces, NM
- Compliance with federal and state laws requiring the safeguarding and disclosure of confidential information.
- Evidence of comprehensive liability insurance and bonding, as required by the City;
- Completion of an annual financial audit, and/or as applicable, providing the City with a copy of the organization’s audited financial statement;
- Completion and subsequent renewal of background checks for all employees, volunteers, or interns who will or may have unsupervised contact with children or vulnerable adults;
- Maintaining program and financial records for audit review, and providing access to documentation upon request by the City;
- Submission of program and financial reports, as required by the City;
- Certification that the firm, association, corporation, or any person in a controlling capacity or any position involving the administration of federal, state, or local funds is not currently under suspension, debarment, voluntary exclusion, or a determination of ineligibility by any agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any agency within the past three (3) years; does not have a proposed debarment pending; has not been indicted, convicted, or has not had a civil judgment rendered against said person, firm, association, or corporation by a court of competent jurisdiction in any matter

involving fraud or misconduct with the past three (3) years.

- Certification that the firm is not bankrupt or under an administration appointed by the Court, or under proceedings leading to a declaration of bankruptcy; and provide any pending or known legal actions against the company.
- Certification that, in the past seven (7) years, the organization has not had any bankruptcy proceedings (closed or not) initiated against the Contractor and that there are no bankruptcy proceedings pending by or against the Contractor regardless of the date of filing;
- All pending or known litigation/court action(s) have been disclosed in the application.
- Certification that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Applicant further covenants that in the performance of this project/application, no person having any conflicting interest will be employed.

Application Approval and Signature: The signatory declares that he/she is an authorized official of the applicant organization, is authorized to make this application, is authorized to commit the organization in financial matters, and will assure that any funds received because of this application are used for the purposes set forth herein.

Please Sign



ARPA Categories:

Pick one (If project does not meet a category, it is ineligible for funding)

Services to Disproportionately Impacted Communities: Housing Support: Affordable Housing

Organization Information

Applicant Organization Information:

Name of Organization:	Tierra Del Sol Housing Corp.
Address:	210 E Idaho Ave
City:	Las Cruces
State:	NM
Zip code:	88005
Organization DUNS Number:	097966923
Phone:	575-541-0477
Fax:	575-541-0476
Organization DUNS Number:	097966923

Primary Contact Information:

Project Manager:	Thomas Andrews
Title:	Developer
Phone:	605-265-1700
Email:	thomasdevelopment@comcast.net
Fax:	575-541-0476
Phone:	605-265-1700

Alternative Contact Information:

Alternative Contact:	Rose Garcia
Title:	Executive Director
Phone:	575-541-0477
Email:	roseg@tdshc.org
Fax:	575-541-0476
Phone:	575-649-2395

PROJECT INFORMATION

PROJECT NAME

Crosstown Flats

PROJECT SUMMARY:

PROJECT SUMMARY: Describe the proposed Project. This summary will be used to describe your project in official City documents and media. (Note: The Project Summary is an abstract or summary of your proposal and should be written after completion of the application.)

The Tierra Del Sol Housing Corporation proposes the construction of Crosstown Flats, a new seventy-two unit affordable apartment community to be located in the Royal Crossing PUD. Royal Crossing will be a master planned community incorporating mixed uses, incomes, and densities along with open green space.

The individual units will have open floor plans around a central living area. Two and three bedroom apartment homes have living rooms and kitchens are sized to accommodate families with children. One bedroom units will be available for smaller households including seniors. Kitchens will have abundant cabinet and countertop space . Large windows are designed to admit natural light into all primary living spaces. Each unit will have a private patio or balcony. Nine foot high ceilings will provide thermal comfort for are circulation. Sustainable building will be incorporated into the overall design Crosstown Flats.

Type of Client Populations & Number of Clients to be served (ESTIMATED)

Select Primary

low-income seniors and families

Program Type: * (check one only)

Affordable Housing Development

Application Information

All questions must be answered, and all forms completed to be eligible for review by staff.

PROJECT JUSTIFICATION

1.Description and Justification of the Project; Provide a detailed description of the proposed project: Include project objectives, target population, major project characteristics, number and type of units, and how it responds to the public health emergency or its negative economic impacts.

The Tierra Del Sol Housing Corporation proposes Crosstown Flats to provide affordable workforce housing serving a diverse demographic of single individuals, seniors and households with children. The unit mix proposes a blend of sixteen one, thirty-two two and twenty-four three bedroom apartments. Crosstown Flats will offer affordable rents at fifty-percent of area median income. A commons/community building will contain the management office, computer center and room for resident activities.

The NM Mortgage Finance Authority completed a Housing Needs Assessment in 2020 which stated the Las Cruces MSA has an estimated shortage of 12,292 affordable rental units. This is the second largest affordable rental unit shortage for MSAs in the State of New Mexico (Albuquerque is #1).

Crosstown Flats will be designed towards promoting sustainability thorough incorporating green building practices and materials. This will facilitate energy efficiency and reduce utility costs to the residents. Solar energy generation will be utilized throughout the development.

Crosstown Flats is conveniently located close to employment, public transportation, retail, health care facilities, and a variety of services for the residents. As an in-fill development, placing people close to jobs, Crosstown Flats will reduce commuting costs for its residents and lessen traffic counts throughout the City.

The impact of the economic dynamics of the Covid pandemic are a shortage of workers for all labor sectors. Crosstown Flats will place a labor pool close to a variety of employment opportunities.

ALIGNMENT WITH CITY PLANS

2. What specific priorities in the City's Strategic Plan, Elevate Las Cruces and/or 2021-2025 Consolidated Plan? (Click on plan links below to view)

City Plans:

ELEVATE PLAN

COUNCIL STRATEGIC PLAN

2021-2025 CON PLAN

Elevate Las Cruces presents a Smart Growth Principal of creating a range of housing opportunities and choices. The Future Growth Scenario for Las Cruces states an additional need of 5,310 multifamily units will be needed by 2045. Crosstown Flat is a good initial step to move towards that goal.

The location of Crosstown Flats within the Royal Crossing PUD is in line with the Elevate Las Cruces concept of Community Prosperity which promotes vibrant neighborhoods through infill development and balanced development providing a combination of housing types.

The Elevate Las Cruces Community Prosperity Policy Framework Summary states Housing Goal CP-7, Attainable Housing. Crosstown Flats will provide residents with the ability to afford rent with enough income left over for other living and discretionary expenses. Housing Policy Goal CP-7.2 calls for dispersing affordable housing units to promote the development of mixed income neighborhoods. This is completely in line with the master planning of the Royal Crossing PUD. Crosstown Flats is also directly adjacent to public transit- Goal CP 7.2.1. Royal Crossing will offer a diversity of housing- Goal CP 9.

COMMUNITY IMPACT

3. What is the anticipated impact of your program on the Las Cruces community? How will you measure the expected outcomes?

Crosstown Flats will be placed in service in 2024 and provide quality affordable housing to seventy-two families. Rents will be set at an amount that residents will pay no more than 30% of their household income for rent and utilities. The impact on household budgets will be immediate.

City statistics for Las Cruces indicate a current shortage of 5,000 affordable rental units with 4,000 households paying more than 50 percent of their income for rent.

The construction of Crosstown Flats will create over 100 jobs during the construction period and up to four long-term jobs for the operation and management of the property.

It is estimated that the development will lease-up within 90 days of completion.

4. BUDGET INFORMATION

PART A

Instructions: Please complete the budget summary. Indicate the amount ARPA funds needed for each expenditure classification. Also include other funds for the project from federal, state and private sources. Columns A, B, C & D must add up to Column E (Total Budget) needed for the project.

Please Enter just numbers no symbols (i.e. $,)

	ARPA FUNDING	OTHER FEDERAL FUNDS	STATE FUNDS	PRIVATE FUNDS	TOTAL BUDGET
Permanent Position, Full Time					
Permanent Position, Part Time					
Temporary					

Positions					
Employment Liability Insurance					
Other Employee Benefits *					
Office Supplies					
Operating Supplies					
Repair & Maintenance Supplies					
Small Tools					
Motor Oil and Fuel					
Library Books and Periodicals					
Magazines and Periodicals					
Audio Visual Aids					
Wearing Apparel					
Postage and Federal Express					
City Service (water, waste, etc.)					
Electricity					
Telephone					
Utility Services					

– Other					
Legal Services			45000		45000
Auditing Services			12500		12500
Engineering Services			55000		55000
Architectural Services			425975		424975
Maintenance Agreements					
Fees or Service Charges		500000	1813899		2313899
Advertising					
Landscape Maintenance					
Required Building Repair & Maintenance					
Auto or Truck Repair					
Equipment Repair					
Building or Land Rental					
Vehicle Rental					
Equipment Rental					
Liability Insurance			5000		5000
Property Insurance					
Fidelity					

Insurance					
Transportation (in-state only)					
Per Diem (in-state only)					
Registration Fees					
Miscellaneous Costs					
Training and Education					
Land-Vacant			1089000		1089000
Land-Buildings or Other					
Land-Right of Way					
Land Improvements					
Furniture and Fixtures					
Building Improvements	2000000			9080614	11080614
Automobiles					
Trucks and Vans					
Heavy Equipment					
Furniture and Fixtures			40000		40000
Office Equipment			25000		25000
Data Processing					

Shop Equipment					
Client Housing (rent, mortgage, utilities, deposit)					
Client Support (medical, classes)					
Total	2000000.0	500000.0	3511374.0	9080614.0	15090988.0

Part B – BUDGET JUSTIFICATION

Briefly and specifically describe each line item listed on Part A (ARPA FUNDS) in a separate paragraph below:

ARPA funds will be used for hard construction costs- lumber, windows, doors, drywall, HVAC equipment, appliances, flooring, metals, roofing and specialties.

DUPLICATION

5. Is this a new or existing program in the Community? How do ARPA funds makes this project feasible? If existing, describe additional efforts to prevent duplication of services.

Crosstown Flats will be the new construction of affordable housing. ARPA funds are required to complete the financing structure of the total development cost of the project. Construction materials have been trending at all-time highs and are expected to remain at or near record levels due to labor shortages and slowing of the supply chain for materials and equipment. All sectors of the construction industry have been impacted by the Covid pandemic.

ARPA funds will also facilitate the award of federal housing tax credits from the NM Mortgage Finance Authority by providing financing leverage.

FEASABILITY/TIMELINE

6. Please provide a detailed timeline or work schedule for implementing this project including anticipated milestone dates.

2021 October 14- submit ARPA application to City

2022 January 28- submit tax credit application to MFA

May 19- MFA awards tax credits

June- project architect begins construction plans

September- constructions plans complete, apply for building permit

October-December- commence closing process with tax credit partner, construction lender, purchase development site

2023 January- begin construction phase

2024 January- construction completion

7. Is this project dependent on future funding to fully complete this project? Include specific timelines/dates and funding commitments needed to complete the project and have it fully operational for public benefit. Can this project be phased? Can this project be partially funded?

The project is dependent upon the award of federal housing tax credits. The award of ARPA funds will assist in providing a competitive advantage. The tax credit application will be submitted in January 2022 and credits will be awarded in May 2022. Construction would begin fourth quarter 2022 or early first quarter 2023. The construction phase will take twelve months.

Crosstown Flats will have to built in one phase and requires total funding commitments in order to start construction.

8. If funded, it is expected that the project will begin within ninety (90) days of being issued a fully executed contract. What potential or known barriers exist to beginning the project within ninety (90) days and completing the project within twenty-four (24) months of being issued a Notice to Proceed from City Staff? Please describe in detail your plan for overcoming the barriers identified and achieving a timely and successful completion of the project.

The project development timeline is dependent upon the tax credit application cycle of MFA. Upon the successful award of federal housing tax credits, the project will be able to be completed within 24 months.

The award of ARPA funds place Crosstown Flats in a competitive advantage to receive an allocation of federal housing tax credits and will fast-track the development timeline.

ORGANIZATION HISTORY AND CAPACITY

9. History of your organization's TOTAL ANNUAL REVENUES for the past three (3) fiscal years:

	2020	2019	2018
Total Annual Revenues $	2020 Audit in review	4,385,128	2,017,849

10. Applicant Qualifications

Summarize your organization's experience in areas relevant to the proposed project describe at least two most recent projects; if applicable. Describe Organizations capacity to implement proposed project.

The Tierra Del Sol Housing Corporation (TDS) was incorporated in 1973 and is recognized regionally and nationally as a leading provider of affordable housing. TDS has constructed over 5,000 affordable housing units and has also developed multiple single family subdivisions for the construction of homes for first time homebuyers. TDS has completed over thirty multifamily apartment communities of over 1,000 units.

TDS has a proven track record of financing multifamily properties utilizing local, state, federal and private funds. Several national investment firms have purchased federal housing tax credits from TDS. It is typical to receive several offers from potential equity investment partners for a TDS sponsored development.

TDS has recently co-developed multifamily properties in Las Cruces- Paseo Del Oro and El Camino apartments in Hatch, NM.

TDS continues to operate single family home ownership, home ownership counseling and home rehabilitation programs.

Please complete the table below for all key staff members involved in the project. Including executive director, fiscal officer, project manager and any employees to be funded by the project.

	Name	Title	Total Years' Experience	Years with Association
1	Rose Garcia	Executive Director	38 years	18 years
2	Thomas Andrews	Developer	31 years	11 years
3				
4				
5				
6				
7				
8				
9				
10				

Compliance and Reporting Guidance

State and Local Fiscal Recovery Funds

February 28, 2022

Version: 3.0

Coronavirus State and Local Fiscal Recovery Funds Guidance on Recipient Compliance and Reporting Responsibilities

On March 11, 2021, the American Rescue Plan Act was signed into law, and established the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Fund, which together make up the Coronavirus State and Local Fiscal Recovery Funds ("SLFRF") program. This program is intended to provide support to State, territorial, local, and Tribal governments in responding to the economic and public health impacts of COVID-19 and in their efforts to contain impacts on their communities, residents, and businesses.

In May 2021, Treasury published the interim final rule ("IFR") describing eligible and ineligible uses of SLFRF, as well as other program requirements. The initial versions of this Compliance and Reporting guidance reflected the IFR and its eligible use categories. On January 6, 2022, the U.S. Department of the Treasury ("Treasury") adopted the final rule implementing the SLFRF program. The final rule will be effective on April 1, 2022. Until that time, the IFR remains in effect; funds used consistently with the IFR while it is in effect are in compliance with the SLFRF program. However, recipients can choose to take advantage of the final rule's flexibilities and simplifications now, even ahead of the effective date. Recipients may consult the *Statement Regarding Compliance with the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule and Final Rule* for more information on compliance with the IFR and the final rule.

To support recipients in complying with the final rule, this reporting guidance reflects the final rule and provides additional detail and clarification for each recipient's compliance and reporting responsibilities under the SLFRF program, and should be read in concert with the Award Terms and Conditions, the authorizing statute, the final rule, and other regulatory and statutory requirements, including regulatory requirements under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards ("Uniform Guidance" or 2 CRF Part 200), and the Compliance Supplement. Please see the Assistance Listing in SAM.gov under assistance listing number (formerly known as CFDA number), 21.027 for more information.

Please Note: This guidance document applies to the SLFRF program only and does not change nor impact reporting and compliance requirements for the Coronavirus Relief Fund ("CRF") established by the CARES Act.

This guidance includes two parts:

Part 1: General Guidance

This section provides an orientation to recipients' compliance responsibilities and Treasury's expectations and recommends best practices where appropriate under the SLFRF program.

A. Key Principles……. P. 4
B. Statutory Eligible Uses……. P. 4
C. Treasury's Final Rule……. P. 5
D. Uniform Guidance (2 CFR Part 200)……. P. 7
E. Award Terms and Conditions……... P. 12

Part 2: Reporting Requirements

This section provides information on the reporting requirements for the SLFRF program.

A. Interim Report..... P. 16
B. Project and Expenditure Report..... P. 17
C. Recovery Plan Performance Report..... P. 28

Appendix 1: Expenditure Categories..... P. 35
Appendix 2: Evidenced-Based Intervention Additional Information..... P. 40
Appendix 3: Expenditure Categories under the Interim Final Rule..... P. 41

OMB Control Number: 1505-0271

OMB Expiration Date: 02/28/2022[1]

PAPERWORK REDUCTION ACT NOTICE

The information collected will be used for the U.S. Government to process requests for support. The estimated burden for the collections of information included in this guidance is as follows: 30 minutes for Title VI Assurances, 2 hours per response for the Interim Report, 6 hours per response for the Project and Expenditure Report and 100 hours per response for the Recovery Plan Performance Report (if applicable). Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Privacy, Transparency and Records, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220. DO NOT send the form to this address. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

[1] Under OMB review to extend the expiration date

Part 1: General Guidance

This section provides an orientation on recipients' compliance responsibilities and Treasury's expectations and recommended best practices where appropriate under the SLFRF program.

Recipients under the SLFRF program are the eligible entities identified in sections 602 and 603 of the Social Security Act as added by section 9901 of the American Rescue Plan Act of 2021 (the "SLFRF statute") that receive a SLFRF award. Subrecipients under the SLFRF program are entities that receive a subaward from a recipient to carry out the purposes (program or project) of the SLFRF award on behalf of the recipient.

Recipients are accountable to Treasury for oversight of their subrecipients in accordance with 2 CFR 200.332, including ensuring their subrecipients comply with the SLFRF statute, SLFRF Award Terms and Conditions, Treasury's interim final rule and final rule, applicable federal statutes, regulations, and reporting requirements.

A. Key Principles

There are several guiding principles for developing your own effective compliance regimes:

- Recipients and subrecipients are the first line of defense and responsible for ensuring the SLFRF award funds are not used for ineligible purposes, and there is no fraud, waste, or abuse associated with their SLFRF award;
- Many SLFRF-funded projects respond to the COVID-19 public health emergency and meet urgent community needs. Swift and effective implementation is vital, and recipients must balance facilitating simple and rapid program access widely across the community and maintaining a robust documentation and compliance regime;
- Treasury encourages recipients to use SLFRF-funded projects to advance shared interests and promote equitable delivery of government benefits and opportunities to underserved communities, as outlined in Executive Order 13985, On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government; and
- Transparency and public accountability for SLFRF award funds and use of such funds are critical to upholding program integrity and trust in all levels of government, and SLFRF award funds should be managed consistent with Administration guidance per Memorandum M-21-20 and Memorandum M-20-21.

B. Statutory Eligible Uses

As a recipient of an SLFRF award, your organization has substantial discretion to use the award funds in the ways that best suit the needs of your constituents – as long as such use fits into one of the following four statutory categories:

1. To respond to the COVID-19 public health emergency or its negative economic impacts;
2. To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers of the recipient that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work;
3. For the provision of government services, to the extent of the reduction in revenue of such recipient due to the COVID–19 public health emergency, relative to revenues collected in the most recent full fiscal year of the recipient prior to the emergency; or
4. To make necessary investments in water, sewer, or broadband infrastructure.

Treasury adopted an interim final rule in May 2021 and the final rule on January 6, 2022 to implement these eligible use categories and other restrictions on the use of funds under the SLFRF

program. The final rule takes effect on April 1, 2022, and the interim final rule remains in effect until that time, although recipients can choose to take advantage of the final rule's flexibilities and simplifications prior to April 1, 2022. Recipients may consult the Statement Regarding Compliance with the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule and Final Rule for more information on compliance with the interim final rule and the final rule.

It is the recipient's responsibility to ensure all SLFRF award funds are used in compliance with these requirements. In addition, recipients should be mindful of any additional compliance obligations that may apply – for example, additional restrictions imposed upon other sources of funds used in conjunction with SLFRF award funds, or statutes and regulations that may independently apply to water, broadband, and sewer infrastructure projects. Recipients should ensure they maintain proper documentation supporting determinations of costs and applicable compliance requirements, and how they have been satisfied as part of their award management, internal controls, and subrecipient oversight and management.

C. Treasury's Final Rule

Treasury's final rule details recipients' compliance responsibilities and provides additional information on eligible and restricted uses of SLFRF award funds and reporting requirements. Your organization should review and comply with the information contained in Treasury's final rule when building appropriate controls for SLFRF award funds.

1. **Eligible and Restricted Uses of SLFRF Funds.** As described in the SLFRF statute and summarized above, there are four enumerated eligible uses of SLFRF award funds. As a recipient of an award under the SLFRF program, your organization is responsible for complying with requirements for the use of funds. In addition to determining a given project's eligibility, recipients are also responsible for determining subrecipient's or beneficiaries' eligibility, and must monitor subrecipients' use of SLFRF award funds.

   To help recipients build a greater understanding of eligible uses, Treasury's final rule establishes a framework for determining whether a specific project would be eligible under the SLFRF program, including some helpful definitions. For example, Treasury's final rule establishes:

   - A framework for determining whether a project responds to the COVID-19 public health emergency or its negative economic impacts;
   - Definitions of "eligible employers," "essential work," "eligible workers," and "premium pay" for cases where premium pay is an eligible use;
   - The option to select between a standard amount of revenue loss or complete a full revenue loss calculation of revenue lost due to the COVID-19 public health emergency;
   - A framework for necessary water and sewer infrastructure projects that aligns eligible uses with projects that are eligible under the Environmental Protection Agency's Drinking Water and Clean Water State Revolving Funds along with certain additional projects, including a wider set of lead remediation and stormwater infrastructure projects and aid for residential wells; and
   - A framework for necessary broadband projects that allows for projects that are designed to provide service of sufficient speeds to eligible areas, as well as an affordability requirement for providers that provide service to households.

   Treasury's final rule also provides more information on important restrictions on use of SLFRF award funds, including that recipients other than Tribal governments may not deposit SLFRF funds into a pension fund; and recipients that are States or territories may not use SLFRF funds to offset a reduction in net tax revenue resulting from the recipient's change in law, regulation, or administrative interpretation. In addition, recipients may not use SLFRF funds directly to service debt, satisfy a judgment or settlement, or contribute to a "rainy day" fund. Recipients should refer to Treasury's final rule for more information on these restrictions.

Treasury's final rule outlines that funds available under the "revenue loss" eligible use category (sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act) generally may be used to meet the non-federal cost-share or matching requirements of other federal programs. However, the final rule notes that SLFRF funds may not be used as the non-federal share for purposes of a state's Medicaid and CHIP programs because the Office of Management and Budget ("OMB") has approved a waiver as requested by the Centers for Medicare & Medicaid Services pursuant to 2 CFR 200.102 of the Uniform Guidance and related regulations. If a recipient seeks to use SLFRF funds to satisfy match or cost-share requirements for a federal grant program, it should first confirm with the relevant awarding agency that no waiver has been granted for that program, that no other circumstances enumerated under 2 CFR 200.306(b) would limit the use of SLFRF funds to meet the match or cost-share requirement, and that there is no other statutory or regulatory impediment to using the SLFRF funds for the match or cost-share requirement. SLFRF funds beyond those that are available under the revenue loss eligible use category may not be used to meet the non-federal match or cost-share requirements of other federal programs, other than as specifically provided for by statute. For example, the Infrastructure Investment and Jobs Act provides that SLFRF funds may be used to meet the non-federal match requirements of authorized Bureau of Reclamation projects and certain broadband deployment projects.

2. **Eligible Costs Timeframe.** Your organization, as a recipient of an SLFRF award, may use SLFRF funds to cover eligible costs that your organization incurred during the period that begins on March 3, 2021 and ends on December 31, 2024, as long as the award funds for the obligations incurred by December 31, 2024 are expended by December 31, 2026. Costs for projects incurred by the recipient State, territorial, local, or Tribal government prior to March 3, 2021 are not eligible, as provided for in Treasury's final rule.

   Recipients may, in certain circumstances, use SLFRF award funds for the eligible use categories described in Treasury's final rule for costs incurred prior to March 3, 2021. Specifically,

   a. Public Health/Negative Economic Impacts: Recipients may use SLFRF award funds to provide assistance to households, small businesses, and nonprofits to respond to the public health emergency or negative economic impacts of the pandemic – such as rent, mortgage, or utility assistance – for costs incurred by the beneficiary (e.g., a household) prior to March 3, 2021, provided that the recipient State, territorial, local or Tribal government did not incur the cost of providing such assistance prior to March 3, 2021.

   b. Premium Pay: Recipients may provide premium pay retrospectively for work performed at any time since the start of the COVID-19 public health emergency. Such premium pay must be "in addition to" wages and remuneration already received and the obligation to provide such premium pay must not have been incurred by the recipient prior to March 3, 2021.

   c. Revenue Loss: Recipients have broad discretion to use funds for the provision of government services to the extent of reduction in revenue. While calculation of lost revenue is based on the recipient's revenue in the last full fiscal year prior to the COVID-19 public health emergency, use of funds for government services must be forward looking for costs incurred by the recipient after March 3, 2021.

   d. Investments in Water, Sewer, and Broadband: Recipients may use SLFRF award funds to make necessary investments in water, sewer, and broadband infrastructure. Recipients may use SLFRF award funds to cover costs incurred for eligible projects planned or started prior to March 3, 2021, provided that the project costs covered by the SLFRF award funds were incurred by the recipient after March 3, 2021.

   Any funds not obligated or expended for eligible uses by the timelines above must be returned to Treasury, including any unobligated or unexpended funds that have been provided to subrecipients and contractors as part of the award closeout process pursuant to 2 C.F.R. 200.344(d). For the purposes of determining expenditure eligibility, Treasury's final rule provides

that "incurred" means the recipient has incurred an obligation, which has the same meaning given to "financial obligation" in 2 CFR 200.1.

3. **Reporting.** Generally, recipients must submit one initial Interim Report, quarterly or annual Project and Expenditure reports which include subaward reporting, and in some cases annual Recovery Plan reports. Treasury's final rule and Part 2 of this guidance provide more detail around SLFRF reporting requirements.

4. **Expenditure Categories**. Treasury's final rule provides greater flexibility and simplicity for recipients to fight the pandemic and support families and businesses struggling with its impacts, maintain vital services amid revenue shortfalls, and build a strong, resilient, and equitable recovery. As such, recipients will report on a broader set of eligible uses and associated Expenditure Categories ("EC"), starting with the April 2022 Project and Expenditure Report. Appendix 1 includes the new ECs, as well as a reference to previous ECs used for reporting under the interim final rule.

Assistance Listing

The Assistance Listing for the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) was published May 28, 2021 on SAM.gov under Assistance Listing Number ("ALN"), formerly known as CFDA Number, **21.027**.

The assistance listing includes helpful information including program purpose, statutory authority, eligibility requirements, and compliance requirements for recipients. The ALN is the unique 5-digit number assigned to identify a federal assistance listing, and can be used to search for federal assistance program information, including funding opportunities, spending on USASpending.gov, or audit results through the Federal Audit Clearinghouse.

To expedite payments and meet statutory timelines Treasury issued initial payments under an existing ALN, 21.019, assigned to the CRF. If you have already received funds or captured the initial number in your records, please update your systems and reporting to reflect the new ALN 21.027 for the SLFRF program. **Recipients must use ALN 21.027 for all financial accounting, subawards, and associated program reporting requirements for the SLFRF awards.**

D. Uniform Administrative Requirements

The SLFRF awards are generally subject to the requirements set forth in the Uniform Guidance. In all instances, your organization should review the Uniform Guidance requirements applicable to your organization's use of SLFRF funds, and SLFRF-funded projects. Recipients should consider how and whether certain aspects of the Uniform Guidance apply.

The following sections provide a general summary of your organization's compliance responsibilities under applicable statutes and regulations, including the Uniform Guidance, as described in the most recent compliance supplement issued by OMB. Note that the descriptions below are only general summaries and all recipients and subrecipients are advised to carefully review the Uniform Guidance requirements and any additional regulatory and statutory requirements applicable to the program.

1. **Allowable Activities.** Each recipient should review program requirements, including Treasury's final rule and the recipient's Award Terms and Conditions, to determine and record eligible uses of SLFRF funds. Per 2 CFR Part 200.303, your organization must develop and implement effective internal controls to ensure that funding decisions under the SLFRF award constitute eligible uses of funds, and document determinations.

2. **Allowable Costs/Cost Principles.** As outlined in the Uniform Guidance at 2 CFR Part 200, Subpart E regarding Cost Principles, allowable costs are based on the premise that a recipient is responsible for the effective administration of Federal awards, application of sound management practices, and administration of Federal funds in a manner consistent with the program objectives and terms and conditions of the award. Recipients must implement robust internal controls and effective monitoring to ensure compliance with the Cost Principles, which are important for building trust and accountability.

   SLFRF funds may be, but are not required to be, used along with other funding sources for a given project. Recipients should note that SLFRF funds available under the "revenue loss" eligible use category generally may be used to meet the non-federal cost-share or matching requirements of other federal programs. If a recipient seeks to use SLFRF funds to satisfy match or cost-share requirements for a federal grant program, the recipient should first confirm with the relevant awarding agency that no waiver has been granted for that program, that no other circumstances enumerated under 2 CFR 200.306(b) would limit the use of SLFRF funds to meet the match or cost-share requirement, and that there is no other statutory or regulatory impediment to using the SLFRF funds for the match or cost-share requirement. For instance, recipients should note that SLFRF funds may not be used as the non-federal share for purposes of a state's Medicaid and CHIP programs because the OMB has approved a waiver from this provision as requested by the Centers for Medicare & Medicaid Services pursuant to 2 CFR 200.102 of the Uniform Guidance and related regulations.

   SLFRF funds beyond those that are available under the revenue loss eligible use category may not be used to meet the non-federal match or cost-share requirements of other federal programs, other than as specifically provided for by statute. As an example, the Infrastructure Investment and Jobs Act provides that SLFRF funds may be used to meet the non-federal match requirements of authorized Bureau of Reclamation projects and certain broadband deployment projects. Recipients should consult the final rule for further details if they seek to utilize SLFRF funds as a match for these projects.

   Treasury's final rule, program guidance, and the Uniform Guidance outline the types of costs that are allowable, including certain audit costs. For example, per 2 CFR 200.425, a reasonably proportionate share of the costs of audits required by the Single Audit Act Amendments of 1996 are allowable; however, costs for audits that were not performed in accordance with 2 CFR Part 200, Subpart F and the Compliance Supplement are not allowable. Please see 2 CFR Part 200, Subpart E regarding the Cost Principles for more information.

   a. Administrative costs*:* Recipients may use funds for administering the SLFRF program, including costs of consultants to support effective management and oversight, including consultation for ensuring compliance with legal, regulatory, and other requirements.[2] Further, costs must be reasonable and allocable as outlined in 2 CFR 200.404 and 2 CFR 200.405. Pursuant to the SLFRF Award Terms and Conditions, recipients are permitted to charge both direct and indirect costs to their SLFRF award as administrative costs as long as they are accorded consistent treatment per 2 CFR 200.403. Direct costs are those that are identified specifically as costs of implementing the SLFRF program objectives, such as contract support, materials, and supplies for a project. Indirect costs are general overhead costs of an organization where a portion of such costs are allocable to the SLFRF award such as the cost of facilities or administrative functions like a director's office.[3][4] Each category of cost should be treated consistently in like circumstances as direct or indirect, and

[2] Recipients also may use SLFRF funds directly for administrative costs to improve the design and execution of programs responding to the COVID-19 pandemic and to administer or improve the efficacy of programs addressing the public health emergency or its negative economic impacts. 31 CFR 35.6(b)(3)(ii)(E)(3).
[3] 2 CFR 200.413 Direct Costs.
[4] 2 CFR 200.414 Indirect Costs.

recipients may not charge the same administrative costs to both direct and indirect cost categories, or to other programs. If a recipient has a current Negotiated Indirect Costs Rate Agreement ("NICRA") established with a Federal cognizant agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals, then the recipient may use its current NICRA. Alternatively, if the recipient does not have a NICRA, the recipient may elect to use the de minimis rate of 10 percent of the modified total direct costs pursuant to 2 CFR 200.414(f).

b. Salaries and Expenses*:* In general, certain employees' wages, salaries, and covered benefits are an eligible use of SLFRF award funds. Please see Treasury's final rule for details.

3. **Cash Management.** SLFRF payments made to recipients are not subject to the requirements of the Cash Management Improvement Act and Treasury's implementing regulations at 31 CFR Part 205 or 2 CFR 200.305(b)(8)-(9).

   As such, recipients can place funds in interest-bearing accounts, do not need to remit interest to Treasury, and are not limited to using that interest for eligible uses under the SLFRF award.

4. **Eligibility.** Under this program, recipients are responsible for ensuring funds are used for eligible purposes. Generally, recipients must develop and implement policies and procedures, and retain records, to determine and monitor implementation of criteria for determining the eligibility of beneficiaries and/or subrecipients. Your organization, and if applicable, the subrecipient(s) administering a program on behalf of your organization, will need to maintain procedures for obtaining information evidencing a given beneficiary, subrecipient, or contractor's eligibility, including a valid SAM.gov registration (except with respect to individuals or households for which a SAM.gov registration is not required). Implementing risk-based due diligence for eligibility determinations is a best practice to augment your organization's existing controls.

5. **Equipment and Real Property Management.** Any purchase of equipment or real property with SLFRF funds must be consistent with the Uniform Guidance at 2 CFR Part 200, Subpart D. Equipment and real property acquired under this program must be used for the originally authorized purpose, unless stated otherwise by Treasury. Consistent with 2 CFR 200.311 and 2 CFR 200.313, any equipment or real property acquired using SLFRF funds shall vest in the non-Federal entity, consistent with any guidance that Treasury may issue. Any acquisition and maintenance of equipment or real property must also be in compliance with relevant laws and regulations.

6. **Matching, Level of Effort, Earmarking.** There are no matching, level of effort, or earmarking compliance responsibilities associated with the SLFRF award. See Section C.1 (Eligible and Restricted Uses of SLFRF Funds) for a discussion of restrictions on use of SLFRF funds. Please see 2. Allowable Costs/Cost Principles above for information on the use of SLFRF funds for non-Federal match or cost-sharing requirements in other Federal programs.

7. **Period of Performance.** Your organization should also develop and implement internal controls related to activities occurring outside the period of performance. For example, each recipient should articulate each project's policy on allowability of costs incurred prior to award or start of the period of performance. All funds remain subject to statutory requirements that they must be used for costs incurred by the recipient during the period that begins on March 3, 2021, and ends on December 31, 2024, and that award funds for the financial obligations incurred by December 31, 2024 must be expended by December 31, 2026. Any funds not used must be returned to Treasury as part of the award closeout process pursuant to 2 C.F.R. 200.344(d).

8. **Procurement, Suspension & Debarment.** Recipients are responsible for ensuring that any procurement using SLFRF funds, or payments under procurement contracts using such funds,

are consistent with the procurement standards set forth in the Uniform Guidance at 2 CFR 200.317 through 2 CFR 200.327, as applicable. The Uniform Guidance establishes in 2 CFR 200.319 that all procurement transactions for property or services must be conducted in a manner providing full and open competition, consistent with standards outlined in 2 CFR 200.320, which allows for non-competitive procurements only in circumstances where at least one of the conditions below is true: the item is below the micro-purchase threshold; the item is only available from a single source; the public exigency or emergency will not permit a delay from publicizing a competitive solicitation; or after solicitation of a number of sources, competition is determined inadequate.[5] Recipients must have and use documented procurement procedures that are consistent with the standards outlined in 2 CFR 200.317 through 2 CFR 200.320. The Uniform Guidance requires an infrastructure for competitive bidding and contractor oversight, including maintaining written standards of conduct and prohibitions on dealing with suspended or debarred parties. Your organization must ensure adherence to all applicable local, State, and federal procurement laws and regulations.

9. **Program Income.** Generally, program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under Federal awards, and principal and interest on loans made with Federal award funds. Program income does not include interest earned on advances of Federal funds, rebates, credits, discounts, or interest on rebates, credits, or discounts. Recipients of SLFRF funds should calculate, document, and record the organization's program income. Additional controls that your organization should implement include written policies that explicitly identify appropriate allocation methods, accounting standards and principles, compliance monitoring checks for program income calculations, and records.

   The Uniform Guidance outlines the requirements that pertain to program income at 2 CFR 200.307. Treasury intends to provide additional guidance regarding program income and the application of 2 CFR 200.307(e)(1).

10. **Reporting.** All recipients of federal funds must complete financial, performance, and compliance reporting as required and outlined in Part 2 of this guidance. Expenditures may be reported on a cash or accrual basis, as long as the methodology is disclosed and consistently applied. Reporting must be consistent with the definition of expenditures pursuant to 2 CFR 200.1. Your organization should appropriately maintain accounting records for compiling and reporting accurate, compliant financial data, in accordance with appropriate accounting standards and principles.

    In addition, where appropriate, your organization needs to establish controls to ensure completion and timely submission of all mandatory performance and/or compliance reporting. See Part 2 of this guidance for a full overview of recipient reporting responsibilities.

    Consolidated jurisdictions or other types of jurisdictions that received multiple SLFRF allocations (e.g., a county and city with a consolidated government), are only required to file once per reporting period, and such reports will cover the total SLFRF allocations received by the jurisdiction. This includes Non-entitlement units of local government ("NEUs") and/or Units of general local government within counties that are not units of general local government ("Non-UGLGs"). In addition, the total SLFRF allocations across all sources for a given jurisdiction will be used to identify that jurisdiction's Reporting Tier.

11. **Subrecipient Monitoring.** SLFRF recipients that are pass-through entities as described under 2 CFR 200.1 are required to manage and monitor their subrecipients to ensure compliance with requirements of the SLFRF award pursuant to 2 CFR 200.332 regarding requirements for pass-through entities.

[5] 2 CFR 200.320(c)(1)-(3) and (5). 2 CFR 200.320(c)(4) is excluded from application to the SLFRF program as outlined in the ALN.

First, your organization must clearly identify to the subrecipient: (1) that the award is a subaward of SLFRF funds; (2) any and all compliance requirements for use of SLFRF funds; and (3) any and all reporting requirements for expenditures of SLFRF funds.

Next, your organization will need to evaluate each subrecipient's risk of noncompliance based on a set of common factors. These risk assessments may include factors such as prior experience in managing Federal funds, previous audits, personnel, and policies or procedures for award execution and oversight. Ongoing monitoring of any given subrecipient should reflect its assessed risk and include monitoring, identification of deficiencies, and follow-up to ensure appropriate remediation.

Accordingly, your organization should develop written policies and procedures for subrecipient monitoring and risk assessment and maintain records of all award agreements identifying or otherwise documenting subrecipients' compliance obligations.

Recipients should note that NEUs and Non-UGLGs are not subrecipients under the SLFRF program. They are SLFRF recipients that will report directly to Treasury.

Recipients should also note that subrecipients do not include individuals and organizations that received SLFRF funds as end users. Such individuals and organizations are beneficiaries and not subject to audit pursuant to the Single Audit Act and 2 C.F.R. Part 200, Subpart F.

Many recipients may choose to provide a subaward or contract to other entities to provide services to other end users. For example, a recipient may provide a subaward to a nonprofit to provide homeless services to individuals experiencing homelessness. In this case, the subaward to a nonprofit is based on the services that the recipient intends to provide (assistance to households experiencing homelessness), and the nonprofit is serving as the subrecipient, providing services on behalf of the recipient. Subrecipients are subject to an audit pursuant to the Single Audit Act and 2 CFR part 200, subpart F regarding audit requirements, whereas contractors are not subject to an audit pursuant to the Single Audit Act and 2 CFR part 200, subpart F regarding audit requirements.

12. **Special Tests and Provisions.** Treasury may issue subregulatory guidance as well as frequently asked questions.

Across each of the compliance requirements above, Treasury has described some best practices for development of internal controls in **Table 1** below, with an example of each best practice.

Table 1: Internal controls best practices

Best Practice	Description	Example
Written policies and procedures	Formal documentation of recipient policies and procedures	Documented procedure for determining worker eligibility for premium pay
Written standards of conduct	Formal statement of mission, values, principles, and professional standards	Documented code of conduct / ethics for subcontractors
Risk-based due diligence	Pre-payment validations conducted according to an assessed level of risk	Enhanced eligibility review of subrecipient with imperfect performance history
Risk-based compliance monitoring	Ongoing validations conducted according to an assessed level of risk	Higher degree of monitoring for projects that have a higher risk of fraud, given program characteristics

Best Practice	Description	Example
Record maintenance and retention	Creation and storage of financial and non-financial records.	Storage of all subrecipient payment information.

E. Award Terms and Conditions

The Award Terms and Conditions of the SLFRF financial assistance agreement sets forth the compliance obligations for recipients pursuant to the SLFRF statute, the Uniform Guidance, Treasury's final rule, and applicable federal laws and regulations. Recipients should ensure they remain in compliance with all Award Terms and Conditions. These obligations include the following items in addition to those described above:

1. **SAM.gov Requirements.** All eligible recipients are also required to have an active registration with the System for Award Management ("SAM") (https://www.sam.gov) pursuant to 2 CFR Part 25. To ensure timely receipt of funding, Treasury has stated that NEUs who have not previously registered with SAM.gov may do so after receipt of the award, but before the submission of mandatory reporting.[6]

2. **Recordkeeping Requirements.** Generally, your organization must maintain records and financial documents for five years after all funds have been expended or returned to Treasury, as outlined in paragraph 4.c. of the Award Terms and Conditions. Treasury may request transfer of records of long-term value at the end of such period. Wherever practicable, such records should be collected, transmitted, and stored in open and machine-readable formats.

   Your organization must agree to provide or make available such records to Treasury upon request, and to the Government Accountability Office ("GAO"), Treasury's Office of Inspector General ("OIG"), and their authorized representative in order to conduct audits or other investigations.

3. **Single Audit Requirements.** Recipients and subrecipients that expend more than $750,000 in Federal awards during their fiscal year will be subject to an audit under the Single Audit Act and its implementing regulation at 2 CFR Part 200, Subpart F regarding audit requirements.[7] Note that the Compliance Supplement provides information on the existing, important compliance requirements that the federal government expects to be considered as a part of such audit. The Compliance Supplement is routinely updated, and is made available in the Federal Register and on OMB's website: https://www.whitehouse.gov/omb/office-federal-financial-management/ Recipients and subrecipients should consult the Federal Audit Clearinghouse to see examples of Single Audit submissions.

4. **Civil Rights Compliance**. Recipients of Federal financial assistance from the Treasury are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of Federal funds. Those requirements include ensuring that entities receiving Federal financial assistance from the Treasury do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 CFR part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 CFR part 28; Age Discrimination Act of 1975, Public

[6] See flexibility provided in https://www.whitehouse.gov/wp-content/uploads/2021/03/M_21_20.pdf.
[7] For-profit entities that receive SLFRF subawards are not subject to Single Audit requirements. However, they are subject to other audits as deemed necessary by authorized governmental entities, including Treasury and Treasury's OIG.

Law 94-135, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 CFR part 23.

In order to carry out its enforcement responsibilities under Title VI of the Civil Rights Act, Treasury will collect and review information from non-Tribal recipients to ascertain their compliance with the applicable requirements before and after providing financial assistance. Treasury's implementing regulations, 31 CFR part 22, and the Department of Justice (DOJ) regulations, Coordination of Non-discrimination in Federally Assisted Programs, 28 CFR part 42, provide for the collection of data and information from recipients (see 28 CFR 42.406). Treasury may request that recipients submit data for post-award compliance reviews, including information such as a narrative describing their Title VI compliance status. This collection does not apply to Tribal governments[8].

[8] Please note, as explained in Treasury FAQ 12.1, that the award terms and conditions for Treasury's pandemic recovery programs, including the SLFRF, do not impose antidiscrimination requirements on Tribal governments beyond what would otherwise apply under federal law.

Part 2: Reporting Guidance

There are three types of reporting requirements for the SLFRF program. The report requirements are approved and documented under OMB PRA number - OMB # 1505-0271.

- **Interim Report:** Provide initial overview of status and uses of funding. This is a one-time report. **See Section A, page 16.**

- **Project and Expenditure Report:** Report on projects funded, expenditures, and contracts and subawards over $50,000, and other information. **See Section B, page 17.**

- **Recovery Plan Performance Report:** The Recovery Plan Performance Report (the "Recovery Plan") will provide information on the projects that large recipients are undertaking with program funding and how they plan to ensure program outcomes are achieved in an effective, efficient, and equitable manner. It will include key performance indicators identified by the recipient and some mandatory indicators identified by Treasury. The Recovery Plan will be posted on the website of the recipient as well as provided to Treasury. **See Section C, page 28.**

The reporting threshold is based on the total award amount allocated by Treasury under the SLFRF program, not the funds received by the recipient as of the time of reporting.

States and territories are also required to submit information on their distributions to NEUs. Please refer to Section D for additional details.

Table 2: Reporting requirements by recipient type

Tier	Recipient	Interim Report	Project and Expenditure Report	Recovery Plan Performance Report
1	States, U.S. territories, metropolitan cities and counties with a population that exceeds 250,000 residents	By August 31, 2021 or 60 days after receiving funding if funding was received by October 15, with expenditures by category. *Note: NEUs were not required to submit an Interim Report*	By January 31, 2022, and then 30 days after the end of each quarter thereafter *Note: NEUs were not required to submit a Project and Expenditure Report on January 31, 2022. The first reporting date for NEUs will be April 30, 2022.*	By August 31, 2021 or 60 days after receiving funding, and annually thereafter by July 31
2	Metropolitan cities and counties with a population below 250,000 residents that are allocated more than $10 million in SLFRF funding, and NEUs that are allocated more than $10 million in SLFRF funding.			
3	Tribal Governments that are allocated more than $30 million in SLFRF funding			
4	Tribal Governments that are allocated less than $30 million in SLFRF funding		By April 30, 2022, and then annually thereafter	
5	Metropolitan cities and counties with a population below 250,000 residents that are allocated less than $10 million in SLFRF funding, and NEUs that are allocated less than $10 million in SLFRF funding.			

Note: Based on the period of performance, reports will be collected through April 30, 2027. See the specific due dates listed in Sections B and C.

As mentioned above, the total SLFRF allocations across all sources for a given jurisdiction will be used to identify that jurisdiction's Reporting Tier, beginning in April of 2022. Treasury may reach out to jurisdictions to update Reporting Tiers.

The remainder of this document describes these reporting requirements. User guides describing how and where to submit required reports are posted at www.treasury.gov/SLFRPReporting and updated on a regular basis.

Comparison to reporting for the CRF

This guidance does not change the reporting or compliance requirements pertaining to the CRF. Reporting and compliance requirements for the SLFRF are separate from CRF reporting requirements. Differences between CRF and SLFRF include:

- **Project, Expenditure, and Subaward Reporting**: The SLFRF reporting requirements leverage the existing reporting regime used for CRF to foster continuity and provide many recipients with a familiar reporting mechanism. The data elements for the Project and Expenditure Report will largely mirror those used for CRF, with some minor exceptions noted in this guidance. The users' guide will describe how reporting for CRF funds will relate to reporting for the SLFRF.
- **Timing of Reports**: CRF reports were due within 10 days of each calendar quarter end. For quarterly reporters, SLFRF reporting will be due the last day of the month following the end of the period covered. For annual reporters, SLFRF reporting will be due on an annual schedule (see table in Section B below).
- **Program and Performance Reporting**: The CRF reporting did not include any program or performance reporting. To build public awareness and accountability and allow Treasury to monitor compliance with eligible uses, some program and performance reporting is required for SLFRF.

A. Interim Report

Note: The Interim Reports were submitted under the interim final rule.

States, U.S. territories, metropolitan cities, counties, and Tribal governments were required to submit a one-time interim report with expenditures[9] by Expenditure Category covering the period from March 3rd to July 31, 2021, by August 31, 2021 or sixty (60) days after first receiving funding if the recipient's date of award was between July 15, 2021 and October 15, 2021. The recipient was required to enter obligations[10] and expenditures and, for each, select the specific expenditure category from the available options. See Appendix 3 for Expenditure Categories applicable for the Interim Report.

1. Required Programmatic Data

Recipients were also required to provide the following information if they had or planned to have expenditures in the following Expenditure Categories.

a. Revenue replacement (EC 6.1[11]): Key inputs into the revenue replacement formula in the Interim Final Rule and estimated revenue loss due to the Covid-19 public health emergency calculated using the formula in the Interim Final Rule as of December 31, 2020.
- Base year general revenue (e.g., revenue in the last full fiscal year prior to the public health emergency)
- Fiscal year end date
- Growth adjustment used (either 4.1 percent or average annual general revenue growth over 3 years prior to pandemic)
- Actual general revenue as of the twelve months ended December 31, 2020

[9] For purposes of reporting in the SLFRF portal, an expenditure is the amount that has been incurred as a liability of the entity (the service has been rendered or the good has been delivered to the entity).
[10] For purposes of reporting in the SLFRF portal, an obligation is an order placed for property and services, contracts and subawards made, and similar transactions that require payment.
[11] See Appendix 3 for the full Expenditure Category (EC) list. Please note that Appendix 3 includes the expenditure categories under the interim final rule, applicable to the Interim Report.

- Estimated revenue loss due to the Covid-19 public health emergency as of December 31, 2020
- An explanation of how revenue replacement funds were allocated to government services (Note: additional instructions was provided in the user guide)

In calculating general revenue and the other items discussed above, recipients should have used audited data if it was available. When audited data was not available, recipients were not required to obtain audited data if substantially accurate figures could be produced on an unaudited basis. Recipients should have used their own data sources to calculate general revenue and did not need to rely on revenue data published by the Census Bureau. Treasury acknowledges that due to differences in timing, data sources, and definitions, recipients' self-reported general revenue figures may differ from those published by the Census Bureau. Recipients were permitted to provide data on a cash, accrual, or modified accrual basis, provided that recipients are consistent in their choice of methodology throughout the covered period and until reporting is no longer required. Recipients' reporting should align with their own financial reporting.

In calculating general revenue, recipients should have excluded all intergovernmental transfers from the federal government. This includes, but is not limited to, federal transfers made via a State to a locality pursuant to the CRF or SLFRF. To the extent federal funds are passed through States or other entities or intermingled with other funds, recipients should have attempted to identify and exclude the federal portion of those funds from the calculation of general revenue on a best-efforts basis.

Consistent with the broad latitude provided to recipients to use funds for government services to the extent of reduction in revenue, recipients were required to submit a description of services provided. This description may be in narrative or in another form, and recipients were encouraged to report based on their existing budget processes and to minimize administrative burden. For example, a recipient with $100 in revenue replacement funds available could indicate that $50 were used for law enforcement operating expenses and $50 were used for pay-go building of sidewalk infrastructure. As discussed in the interim final rule, these services can include a broad range of services but may not be used directly for pension deposits or debt service.

Reporting requirements did not require tracking the indirect effects of Fiscal Recovery Funds, apart from the restrictions on use of Fiscal Recovery Funds to offset a reduction in net tax revenue. In addition, recipients were required to indicate that Fiscal Recovery Funds were not used to make a deposit in a pension fund.

B. Project and Expenditure Report

All recipients are required to submit Project and Expenditure Reports.

Note on NEUs: To facilitate reporting, each NEU will need a NEU Recipient Number. This is a unique identification code for each NEU assigned by the State or territory to the NEU as part of its request for funding.

1. Quarterly Reporting

The following recipients are required to submit quarterly Project and Expenditure Reports:

- States and U.S. territories
- Tribal governments that are allocated more than $30 million in SLFRF funding
- Metropolitan cities and counties with a population that exceeds 250,000 residents

- Metropolitan cities and counties with a population below 250,000 residents that are allocated more than $10 million in SLFRF funding and NEUs that are allocated more than $10 million in SLFRF funding.

For these recipients, the initial quarterly Project and Expenditure Report covers three calendar quarters from March 3, 2021 to December 31, 2021 and was required to be submitted to Treasury by January 31, 2022. The subsequent quarterly reports will cover one calendar quarter and must be submitted to Treasury by the last day of the month following the end of the period covered. Quarterly reports are not due concurrently with applicable annual reports. **Table 3** summarizes the quarterly report timelines:

Table 3: Quarterly Project and Expenditure Report Timeline

Report	Year	Quarter	Period Covered	Due Date
1	2021	2 – 4	March 3 – December 31	January 31, 2022
2	2022	1	January 1 – March 31	April 30, 2022
3	2022	2	April 1 – June 30	July 31, 2022
4	2022	3	July 1 – September 30	October 31, 2022
5	2022	4	October 1 – December 31	January 31, 2023
6	2023	1	January 1 – March 31	April 30, 2023
7	2023	2	April 1 – June 30	July 31, 2023
8	2023	3	July 1 – September 30	October 31, 2023
9	2023	4	October 1 – December 31	January 31, 2024
10	2024	1	January 1 – March 31	April 30, 2024
11	2024	2	April 1 – June 30	July 31, 2024
12	2024	3	July 1 – September 30	October 31, 2024
13	2024	4	October 1 – December 31	January 31, 2025
14	2025	1	January 1 – March 31	April 30, 2025
15	2025	2	April 1 – June 30	July 31, 2025
16	2025	3	July 1 – September 30	October 31, 2025
17	2025	4	October 1 – December 31	January 31, 2026
18	2026	1	January 1 – March 31	April 30, 2026
19	2026	2	April 1 – June 30	July 31, 2026
20	2026	3	July 1 – September 30	October 31, 2026
21	2026	4	October 1 – December 31	March 31, 2027

2. Annual Reporting

The following recipients are required to submit annual Project and Expenditure Reports:

- Tribal governments that are allocated less than $30 million in SLFRF funding
- Metropolitan cities and counties with a population below 250,000 residents that are allocated less than $10 million in SLFRF funding and NEUs that are allocated less than $10 million in SLFRF funding.

For these recipients, the initial Project and Expenditure Report will cover from March 3, 2021 to March 31, 2022 and must be submitted to Treasury by April 30, 2022. The subsequent annual reports will cover one calendar year and must be submitted to Treasury by April 30. **Table 4** summarizes the annual report timelines:

Table 4: Annual Project and Expenditure Report timeline

Report	Period Covered	Due Date
1	March 3, 2021 – March 31, 2022	April 30, 2022
2	April 1, 2022 – March 31, 2023	April 30, 2023
3	April 1, 2023 – March 31, 2024	April 30, 2024
4	April 1, 2024 – March 31, 2025	April 30, 2025
5	April 1, 2025 – March 31, 2026	April 30, 2026
6	April 1, 2026 – December 31, 2026	April 30, 2027

3. Required Information

The following information will be required in Project and Expenditure Reports for both quarterly and annual reporting:

a. Projects: Provide information on all SLFRF funded projects. Projects are new or existing eligible government services or investments funded in whole or in part by SLFRF funding. For each project, the recipient will be required to enter the project name, identification number (created by the recipient), project expenditure category (see Appendix 1), description, and status of completion. Project descriptions must describe the project in sufficient detail to provide understanding of the major activities that will occur, and will be required to be between 50 and 250 words. Projects should be defined to include only closely related activities directed toward a common purpose. Recipients should review the Required Programmatic Data described in 3.g. below and define their projects at a sufficient level of granularity.

Note: For each project, the recipient will be asked to select the appropriate Expenditure Category based on the scope of the project (see Appendix 1). Projects should be scoped to align to a single Expenditure Category. For select Expenditure Categories, the recipient will also be asked to provide additional programmatic data (described further below).

b. Obligations and Expenditures: Once a project is entered the recipient will be able to report on the project's obligations and expenditures. Recipients will be asked to report:
- Current period obligation
- Cumulative obligation
- Current period expenditure
- Cumulative expenditure

c. Project Status: Once a project is entered the recipient will be asked to report on project status each reporting period, in four categories:
- Not Started
- Completed less than 50 percent
- Completed 50 percent or more
- Completed

d. Program Income: Recipients should report the program income earned and expended to cover eligible project costs, if applicable.

e. Adopted Budget *(States, U.S. territories, metropolitan cities and counties with a population that exceeds 250,000 residents only)*: Each state, territory and metropolitan city and county with a population that exceeds 250,000 residents will provide the budget adopted for each project by its jurisdiction associated with SLFRF funds. Treasury will use this information to better understand the intended impact, identify opportunities for outreach, and understand the recipient's progress in program implementation. Treasury is not approving or pre-approving projects or budgets.
- Recipients will enter the Adopted Budget based on information that exists currently in the recipient's financial systems and the recipient's established budget process. Treasury

understands that recipients may use different budget processes. For example, a recipient may consider a project budgeted once a legislature has appropriated funds; whereas another recipient may consider a project budgeted at the moment when the funds have been obligated.

- Additional information is provided on the differences between Adopted Budget, Obligations, and Expenditures as part of the user guide posted at www.treasury.gov/SLFRPReporting.

f. Project Demographic Distribution (applicable to Public Health and Negative Economic Impact ECs: EC 1.1-2.37)– *Collection to begin April 2022*

Recognizing the disproportionate public health and negative economic impacts of the pandemic on many households, communities, and other entities, recipients must report whether certain types of projects are targeted to impacted and disproportionately impacted communities. Recipients will be asked to respond to the following:

a. What Impacted and/or Disproportionally Impacted population does this project primarily serve? Please select the population primarily served.
b. If this project primarily serves more than one Impacted and/or Disproportionately Impacted population, please select up to two additional populations served.

Recipients will select from the following options:

	Impacted	Disproportionately Impacted
Public Health	• General Public	
Assistance to Households	• Low- or-moderate income households or populations[12] • Households that experienced unemployment • Households that experienced increased food or housing insecurity • Households that qualify for certain federal programs[13] • For services to address lost instructional time in K-12 schools: any students that lost access to in-person instruction for a significant period of time • Other households or populations that experienced a negative	• Low-income households and populations[14] • Households and populations residing in Qualified Census Tracts • Households that qualify for certain federal programs[15] • Households receiving services provided by Tribal governments • Households residing in the U.S. territories or receiving services from these governments

[12] Low or moderate-income households and communities are those with (i) income at or below 300 percent of the Federal Poverty Guidelines for the size of the household based on the most recently published poverty guidelines by the Department of Health and Human Services (HHS) or (ii) income at or below 65 percent of the Area Median Iarea median income for the county and size of household based on the most recently published data by the Department of Housing and Urban Development (HUD).

[13] For Impacted households, these programs are Children's Health Insurance Program ("CHIP"); Childcare Subsidies through the Child Care and Development Fund ("CCDF") Program; Medicaid; National Housing Trust Fund ("HTF"), for affordable housing programs only; Home Investment Partnerships Program ("HOME"), for affordable housing programs only.

[14] Low-income households and communities are those with (i) income at or below 185 percent of the Federal Poverty Guidelines for the size of the household based on the most recently published poverty guidelines by HHS or (ii) income at or below 40 percent of Area Median Income for its county and size of household based on the most recently published data by HUD.

[15] For Disproportionately Impacted households, these programs are Temporary Assistance for Needy Families ("TANF"), Supplemental Nutrition Assistance Program ("SNAP"), Free- and Reduced-Price Lunch ("NSLP") and/or School Breakfast ("SBP") programs, Medicare Part D Low-Income Subsidies, Supplemental Security Income ("SSI"), Head Start, Special Supplemental Nutrition Program for Women, Infants, and Children ("WIC"), Section 8 Vouchers, Low-Income Home Energy Assistance Program ("LIHEAP"), and Pell Grants.

	Impacted	Disproportionately Impacted
	economic impact of the pandemic other than those listed above (please specify)	• For services to address educational disparities, Title I eligible schools[16] • Other households or populations that experienced a disproportionate negative economic impact of the pandemic other than those listed above (please specify)
Assistance to Small Businesses	• Small businesses that experienced a negative economic impact of the pandemic • Classes of small businesses designated as negatively economically impacted by the pandemic (please specify)	• Small businesses operating in Qualified Census Tracts • Small businesses operated by Tribal governments or on Tribal lands • Small businesses operating in the U.S. territories • Other small businesses disproportionately impacted by the pandemic (please specify)
Assistance to Non-Profits	• Non-Profits that experienced a negative economic impact of the pandemic (please specify) • Classes of non-profits designated as negatively economically impacted by the pandemic (please specify)	• Non-profits operating in Qualified Census Tracts • Non-profits operated by Tribal governments or on Tribal lands • Non-profits operating in the U.S. territories • Other non-profits disproportionately impacted by the pandemic (please specify)
Aid to Impacted Industries	• Travel, tourism, or hospitality sectors (including Tribal development districts) • Industry outside the travel, tourism, or hospitality sectors that experienced a negative economic impact of the pandemic (please specify)	N/A

g. Subawards, Contracts, Grants, Loans, Transfers, and Direct Payments: Each recipient shall also provide detailed obligation and expenditure information for any contracts and grants awarded, loans issued, transfers made to other government entities, and direct payments made by the recipient that are greater than $50,000.

Recipients do not need to submit separate monthly subaward reports to FSRS.gov as required pursuant to the 2 CFR Part 170, Appendix A award term regarding reporting subaward and executive compensation, which is included in the SLFRF Award Terms and Conditions. Treasury will submit this reporting on behalf of recipients using the $50,000 reporting threshold, timing, and data elements discussed in this guidance. If recipients choose to continue reporting to FSRS.gov in addition to reporting directly to Treasury on these funds, they may do so and will be asked to notify Treasury as part of their quarterly submission.

[16] For educational services and other efforts to address educational disparities, Treasury will recognize Title I eligible schools as disproportionately impacted and responsive services that support the school generally or support the whole school service as eligible. "Title I eligible schools" means schools eligible to receive services under section 1113 of Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6313), including schools served under section 1113(b)(1)(C) of that Act.

In general, recipients will be asked to provide the following information for each Contract, Grant, Loan, Transfer, or Direct Payment greater than $50,000:

- Subrecipient identifying and demographic information (e.g., DUNS/UEI/TIN number and location)
- Award number (e.g., Award number, Contract number, Loan number)
- Award date, type, amount, and description
- Award payment method (reimbursable or lump sum payment(s))
- For loans, expiration date (date when loan expected to be paid in full)
- Primary place of performance
- Related project name(s)
- Related project identification number(s) (created by the recipient)
- Period of performance start date
- Period of performance end date
- Quarterly obligation amount
- Quarterly expenditure amount
- Project(s)
- Additional programmatic performance indicators for select Expenditure Categories (see below)

Aggregate reporting is required for contracts, grants, transfers made to other government entities, loans, direct payments that are below $50,000. This information will be accounted for by Expenditure Category at the project level. Note that all obligations and expenditures made directly to individuals, regardless of dollar amount, should be included in aggregate reporting.

As required by the 2 CFR Part 170, Appendix A award term regarding reporting subaward and executive compensation, recipients must also report the names and total compensation of their five most highly compensated executives and their subrecipients' executives for the preceding completed fiscal year if (1) the recipient received 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as provided by 2 CFR 170.320 (and subawards), and received $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act (and subawards), and (2) if the information is not otherwise public. In general, most SLFRF recipients are governmental entities with executive salaries that are already disclosed, so no additional information would be required to be reported. The recipient is responsible for the subrecipients' compliance with registering and maintaining an updated profile on SAM.gov.

h. Civil Rights Compliance: Treasury will request information on recipients' compliance with Title VI of the Civil Rights Act of 1964, as applicable, on an annual basis. This information may include a narrative describing the recipient's compliance with Title VI, along with other questions and assurances. This collection does not apply to Tribal governments[17]

i. Ineligible Activities: Tax Offset Provision (States and territories only): Treasury may collect additional information related to the Tax Offset Provision as described in section 602(c)(2) of the Social Security Act and implemented under 31 CFR 35.8 as part of the Project and Expenditure Report, such as but not limited to revenue reducing covered changes. Please see Section C.11 (Recovery Plan, Ineligible Activities: Tax Offset Provision) for more information.

[17] Please note, as explained in Treasury FAQ 12.1, that the award terms and conditions for Treasury's pandemic recovery programs, including the SLFRF, do not impose antidiscrimination requirements on Tribal governments beyond what would otherwise apply under federal law.

j. Required Programmatic Data (other than infrastructure projects): For all projects listed under the following Expenditure Categories (see Appendix 1), the information listed must be provided in each report.

1. Public Health and Negative Economic Impact (EC 1.1-3.5) - *Collection to begin in April 2022*
   - Brief description of structure and objectives of assistance program(s), including public health or negative economic impact experienced
   - Brief description of how a recipient's response is related and reasonably and proportional to a public health or negative economic impact of COVID-19.[18]

     Note: The final rule presumes that all enumerated eligible uses for programs and services, including COVID-19 mitigation and prevention programs and services, are reasonably proportional responses to the harm identified unless a response is grossly disproportionate to the type or extent of harm experienced. Many of the Eligibility Categories encompass multiple specific enumerated eligible uses and may be provided to a variety of populations. For example, EC 2.13 *Healthy Childhood Environments: Services to Foster Youth or Families Involved in Child Welfare System* includes a wide array of financial, educational, child development, or health supports, or other supports necessary, including supports for kinship care and may be provided to foster youth and/or families involved in the child welfare system. Between these two fields above, recipients should provide enough information to identify the type of enumerated eligible use being provided within the EC (e.g., kinship care support services), the public health or economic impact experienced, who the program and/or service is being provided to, and what services are being provided (e.g., respite resources). For enumerated eligible uses, recipients are not required to provide substantive documentation that the response is related and reasonably proportional in the Project and Expenditure Report.

2. Capital Expenditures (EC 1.1-3.5) - *Collection began in January 2022, with additional optional fields to begin in April 2022; optional fields will become required in July 2022*
   - Does this project include a capital expenditure? *(Collection began in January 2022)*
   - Total expected capital expenditure, including pre-development costs, if applicable *(Collection began in January 2022)*
   - Type of capital expenditure, based on the following enumerated uses (This field is *optional in April 2022; required in July 2022*):
     - COVID-19 testing sites and laboratories, and acquisition of related equipment
     - COVID-19 vaccination sites
     - Medical facilities generally dedicated to COVID-19 treatment and mitigation (e.g., emergency rooms, intensive care units, telemedicine capabilities for COVID-19 related treatment)
     - Temporary medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs
     - Acquisition of equipment for COVID-19 prevention and treatment, including ventilators, ambulances, and other medical or emergency services equipment
     - Emergency operations centers and acquisition of emergency response equipment (e.g., emergency response radio systems)
     - Installation and improvement of ventilation systems in congregate settings, health facilities, or other public facilities
     - Public health data systems, including technology infrastructure
     - Adaptations to congregate living facilities, including skilled nursing facilities, other long-term care facilities, incarceration settings, homeless shelters, residential foster

[18] Please note that capital expenditures are not considered "programs and services" and are not presumed to be reasonably proportional responses to an identified harm except as provided in the final rule.

care facilities, residential behavioral health treatment, and other group living facilities, as well as public facilities and schools (excluding construction of new facilities for the purpose of mitigating spread of COVID-19 in the facility)
    - Mitigation measures in small businesses, nonprofits, and impacted industries (e.g., developing outdoor spaces)
    - Behavioral health facilities and equipment (e.g., inpatient or outpatient mental health or substance use treatment facilities, crisis centers, diversion centers)
    - Technology and equipment to allow law enforcement to efficiently and effectively respond to the rise in gun violence resulting from the pandemic
    - Affordable housing, supportive housing, or recovery housing development
    - Food banks and other facilities primarily dedicated to addressing food insecurity
    - Transitional shelters (e.g., temporary residences for people experiencing homelessness)
    - Devices and equipment that assist households in accessing the internet (e.g., tablets, computers, or routers)
    - Childcare, daycare, and early learning facilities
    - Job and workforce training centers
    - Improvements to existing facilities to remediate lead contaminants (e.g., removal of lead paint)
    - Medical equipment and facilities designed to address disparities in public health outcomes (includes primary care clinics, hospitals, or integrations of health services into other settings)
    - Parks, green spaces, recreational facilities, sidewalks, pedestrian safety features like crosswalks, streetlights, neighborhood cleanup, and other projects to revitalize public spaces
    - Rehabilitations, renovation, remediation, cleanup, or conversions of vacant or abandoned properties
    - Schools and other educational facilities or equipment to address educational disparities
    - Technology and tools to effectively develop, execute, and evaluate government programs
    - Technology infrastructure to adapt government operations to the pandemic (e.g., video-conferencing software, improvements to case management systems or data sharing resources), reduce government backlogs, or meet increased maintenance needs
    - Other (please specify)
- For recipients (other than Tribal governments) investing in projects with total expected capital expenditures for an enumerated eligible use of $10 million or more, as well as projects with total expected capital expenditures for an "other" use of $1 million or more, please provide a written justification (This field is *optional in April 2022; required in July 2022)*
- For projects with total expected capital expenditures of over $10 million, provide labor reporting as outlined for infrastructure projects on pages 26 and 27 (This field is *optional in April 2022; required in July 2022*)

3. Use of Evidence (for relevant ECs noted in Appendix 1)—*Collection to begin April 2022*
    - The dollar amount of the total project spending that is allocated towards evidence-based interventions
    - Indicate if a program evaluation of the project is being conducted

4. Household Assistance (EC 2.1-2.8) – *Collection began January 2022*:
   - Number of households served (by program if recipient establishes multiple separate household assistance programs)

5. Small Business Economic Assistance (EC 1.8, 2.29-2.33) – *Collection to begin April 2022*
   - Number of small businesses served (by program if recipient establishes multiple separate small businesses assistance programs)

6. Assistance to Non-Profits (EC 1.9, 2.34)- *Collection to begin April 2022*
   - Number of Non-Profits served (by program if recipient establishes multiple separate non-profit assistance programs)

7. Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (EC 1.10, 2.35-2.36) – *Collection to begin April 2022*:
   - If aid is provided to industries other than travel, tourism, and hospitality (EC 2.36), describe if the industry experienced at least 8 percent employment loss from pre-pandemic levels, or the industry is experiencing comparable or worse economic impacts as the national tourism, travel, and hospitality industries as of the date of the final rule, and rationale for providing aide to the industry
   - For each subaward:
     - Sector of employer (Note: additional detail, including list of sectors, to be provided in the user guide posted to www.treasury.gov/SLFRP)
     - Purpose of funds (e.g., payroll support, safety measure implementation)

8. Education Assistance (EC 2.14, 2.24-.2.27) – *Collection began in January 2022*:
   - The National Center for Education Statistics ("NCES") School ID or NCES District ID. List the School District if all schools within the school district received some funds. If not all schools within the school district received funds, list the School ID of the schools that received funds. These can allow evaluators to link data from the NCES to look at school-level demographics and, eventually, student performance.[19]

9. Payroll for Public Health and Safety Employees (EC 3.1) – *Collection began in January 2022*:
   - Number of government FTEs responding to COVID-19 supported under this authority

10. Rehiring Public Sector Staff (EC 3.2) – *Collection began in January 2022*:
    - Number of FTEs rehired by governments under this authority

11. Premium Pay (both Public Sector EC 4.1 and Private Sector EC 4.2) – *Collection began in January 2022*; *with additional optional field to begin April 2022*
    - List of sectors designated as critical to protecting the health and well-being of residents by the chief executive of the jurisdiction, if beyond those included in the final rule *(Collection began January 2022)*
    - Number of workers to be served (*Collection began January 2022)*
    - Employer sector for all subawards to third-party employers (i.e., employers other than the State, local, or Tribal government) (*Collection began January 2022)*
    - For groups of workers (e.g., an operating unit, a classification of worker, etc.) or, to the extent applicable, individual workers, other than those where the eligible worker receiving premium pay is earning (with the premium pay included) below 150 percent of their residing state or county's average annual wage for all occupations, as defined by the Bureau of Labor Statistics Occupational Employment and Wage Statistics, whichever is

[19] For more information on NCES identification numbers see https://nces.ed.gov/ccd/districtsearch/ (districts) and https://nces.ed.gov/ccd/schoolsearch/ (schools).

higher, on an annual basis; OR the eligible worker receiving premium pay is not exempt from the Fair Labor Standards Act overtime provisions:
    - A brief written narrative justification of how the premium pay or grant is responsive to workers performing essential work during the public health emergency. This could include a description of the essential workers' duties, health or financial risks faced due to COVID-19, and why the recipient government determined that the premium pay was responsive to workers performing essential work during the pandemic. This description should not include personally identifiable information; when addressing individual workers, recipients should be careful not to include this information. Recipients may consider describing the workers' occupations and duties in a general manner as necessary to protect privacy (*Collection began January 2022)*
- Number of workers to be served with premium pay in K-12 schools (*Collection will begin April 2022)*

12. Revenue replacement (EC 6.1) – *Collection began in August 2021*:
As outlined in the final rule, recipients have the option to make a one-time decision to calculate revenue loss according to the formula outlined in the final rule or elect a "Standard Allowance" of up to $10 million, not to exceed the award allocation, to spend on government services throughout the period of performance. The option to make this one-time decision will be provided during the April 30, 2022 reporting deadline.

    For recipients electing the "Standard Allowance," Treasury will presume that up to $10 million, not to exceed the award allocation, in revenue has been lost due to the public health emergency and recipients are permitted to use that amount to fund "government services." Please note that electing the standard allowance does not change a recipient's total allocation. Recipients must elect to use this standard allowance instead of calculating lost revenue using the formula.

    For recipients calculating revenue loss according to the formula, the final rule permits recipients to choose whether to use calendar or fiscal year calculation dates. Recipients must use the same calculation time frame (calendar or fiscal year) throughout the award period.

    Recipients calculating lost revenue using the formula should report the following:

    - Choice of fiscal or calendar year revenue loss (choice must remain consistent throughout award period)
    - General revenue collected over the past 12 months as of the most recent calculation date, as outlined in the final rule.
    - Calculated revenue loss due to the Covid-19 public health emergency; and
    - An explanation of how the revenue replacement funds were allocated to government services (note: additional instructions and/or template to be provided in user guide).

    For information on treatment of future tax changes, please see the *Statement Regarding Compliance with the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule and Final Rule*.

k. Required Programmatic Data for Infrastructure Projects (EC 5): For all projects listed under the Water, Sewer, and Broadband Expenditure Categories (see Appendix 1), more detailed project-level information is required. Each project will be required to report expenditure data as described above, but will also report the following information:

    1. All infrastructure projects (EC 5) – *Collection began in January 2022:*
        - Projected/actual construction start date (month/year)

- Projected/actual initiation of operations date (month/year)
- Location (for broadband, geospatial data of locations to be served)
- For projects over $10 million (based on expected total cost):
  a. A recipient may provide a certification that, for the relevant project, all laborers and mechanics employed by contractors and subcontractors in the performance of such project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the "Davis-Bacon Act"), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as "baby Davis-Bacon Acts"). If such certification is not provided, a recipient must provide a project employment and local impact report detailing:
     - The number of employees of contractors and sub-contractors working on the project;
     - The number of employees on the project hired directly and hired through a third party;
     - The wages and benefits of workers on the project by classification; and
     - Whether those wages are at rates less than those prevailing.[20]
       Recipients must maintain sufficient records to substantiate this information upon request.
  b. A recipient may provide a certification that a project includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)). If the recipient does not provide such certification, the recipient must provide a project workforce continuity plan, detailing:
     - How the recipient will ensure the project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure high-quality construction throughout the life of the project, including a description of any required professional certifications and/or in-house training;
     - How the recipient will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project;
     - How the recipient will provide a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities, including descriptions of safety training, certification, and/or licensure requirements for all relevant workers (e.g., OSHA 10, OSHA 30);
     - Whether workers on the project will receive wages and benefits that will secure an appropriately skilled workforce in the context of the local or regional labor market; and
     - Whether the project has completed a project labor agreement.
  c. Whether the project prioritizes local hires.
  d. Whether the project has a Community Benefit Agreement, with a description of any such agreement.

2. Water and sewer projects (EC 5.1-5.18) *Required once the project starts:*
   - National Pollutant Discharge Elimination System (NPDES) Permit Number (if applicable; for projects aligned with the Clean Water State Revolving Fund) (*Collection began in January 2022)*
   - Public Water System (PWS) ID number (if applicable; for projects aligned with the Drinking Water State Revolving Fund) (*Collection began January 2022)*

[20] As determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the "Davis-Bacon Act"), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed.

- Median Household Income of service area *(Collection to begin in April 2022)*
- Lowest Quintile Income of the service area *(Collection to begin in April 2022)*

3. Broadband projects (EC 5.19-5.21) *Collection began in January 2022:*
   - Confirm that the project is designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds.
     - If the project is not designed to reliably meet or exceed symmetrical 100 Mbps download and upload speeds, explain why not, and
     - Confirm that the project is designed to, upon completion, meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed, and be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed.
   - Please note: additional programmatic data will be required for broadband projects beginning in July 2022 and will be defined in a subsequent version of the Reporting Guidance.

l. NEU Documentation (NEUs only): Each NEU will also be asked to provide the following information once their accounts are established in Treasury's Reporting Portal and prior to the due date for their first Project and Expenditure Report (due April 30, 2022):
   - Copy of the signed award terms and conditions agreement (which was signed and submitted to the State as part of the request for funding)
   - Copy of the signed assurances of compliance with Title VI of the Civil Rights Act of 1964 (which was signed and submitted to the State as part of the request for funding)
   - Copy of actual budget documents validating the top-line budget total provided to the State as part of the request for funding

   NEU accounts will be established in Treasury's Portal based on information provided by the States or territories, as further described in Section Part 2 D below.

C. Recovery Plan Performance Report

Note: The guidance included in this section will be updated prior to July 31, 2022 to align with the final rule. The guidance below, including the Expenditure Categories, reflects the interim final rule.

States, territories, metropolitan cities, and counties with a population that exceeds 250,000 residents will also be required to publish and submit to Treasury a Recovery Plan performance report ("Recovery Plan"). Each Recovery Plan must be posted on the public-facing website of the recipient by the same date the recipient submits the report to Treasury. This reporting requirement includes uploading a link to the publicly available document report along with providing data in the Treasury reporting portal.

The Recovery Plan will provide the public and Treasury information on the projects recipients are undertaking with program funding and how they are planning to ensure program outcomes are achieved in an effective, efficient, and equitable manner. While this guidance outlines some minimum requirements for the Recovery Plan, each recipient is encouraged to add information to the plan they feel is appropriate to provide information to their constituents on efforts they are taking to respond to the pandemic and promote economic recovery. Each jurisdiction may determine the general form and content of the Recovery Plan, as long as it includes the minimum information determined by Treasury. Treasury provided a template (located at www.treasury.gov/SLFRP) but recipients may modify this template as appropriate for their jurisdiction. The Recovery Plan will include key performance indicators identified by the recipient and some mandatory indicators identified by Treasury.

The initial Recovery Plan will cover the period from the date of award to July 31, 2021 and must be submitted to Treasury by August 31, 2021, or 60 days after receiving funding. Thereafter, the

Recovery Plan will cover a 12-month period and recipients will be required to submit the report to Treasury within 30 days after the end of the 12-month period (by July 31**). Table 5** summarizes the report timelines:

Table 5 Recovery Plan Timeline

Annual Report	Period Covered	Due Date
1	Award Date – July 31, 2021	August 31, 2021
2	July 1, 2021 – June 30, 2022	July 31, 2022
3	July 1, 2022 – June 30, 2023	July 31, 2023
4	July 1, 2023 – June 30, 2024	July 31, 2024
5	July 1, 2024 – June 30, 2025	July 31, 2025
6	July 1, 2025 – June 30, 2026	July 31, 2026
7	July 1, 2026 – December 31, 2026	March 31, 2027

The Recovery Plan will include, at a minimum, the following information:

1. Executive Summary

Provide a high-level overview of the jurisdiction's intended and actual uses of funding including, but not limited to: the jurisdiction's plan for use of funds to promote a response to the pandemic and economic recovery, key outcome goals, progress to date on those outcomes, and any noteworthy challenges or opportunities identified during the reporting period.

2. Uses of Funds

Describe in further detail your jurisdiction's intended and actual uses of the funds, such as how your jurisdiction's approach would help support a strong and equitable recovery from the COVID-19 pandemic and economic downturn. Describe any strategies employed to maximize programmatic impact and effective, efficient, and equitable outcomes. Given the broad eligible uses of funds and the specific needs of the jurisdiction, please also explain how the funds would support the communities, populations, or individuals in your jurisdiction. Your description should address how you are promoting each of the following, to the extent they apply. Note that these expenditure categories reflect the interim final rule and will be updated prior to July 31, 2022 to align with the final rule.

a. Public Health (EC 1): As relevant, describe how funds are being used to respond to COVID-19 and the broader health impacts of COVID-19 and the COVID-19 public health emergency.
b. Negative Economic Impacts (EC 2): As relevant, describe how funds are being used to respond to negative economic impacts of the COVID-19 public health emergency, including to households and small businesses.
c. Services to Disproportionately Impacted Communities (EC 3): As relevant, describe how funds are being used to provide services to communities disproportionately impacted by the COVID-19 public health emergency.
d. Premium Pay (EC 4): As relevant, describe the approach, goals, and sectors or occupations served in any premium pay program. Describe how your approach prioritizes low-income workers.
e. Water, sewer, and broadband infrastructure (EC 5): Describe the approach, goals, and types of projects being pursued, if pursuing.
f. Revenue Replacement (EC 6): Describe the loss in revenue due to the COVID-19 public health emergency and how funds have been used to provide government services.

Where appropriate, recipients should also include information on your jurisdiction's use (or planned use) of other federal recovery funds including other programs under the American Rescue Plan such as Emergency Rental Assistance, Housing Assistance, and so forth, to provide broader context on the overall approach for pandemic recovery.

3. Promoting equitable outcomes

Describe efforts to promote equitable outcomes, including how programs were designed with equity in mind. Please include in your description how your jurisdiction will consider and measure equity at the various stages of the program, including:

a. Goals: Are there particular historically underserved, marginalized, or adversely affected groups that you intend to serve within your jurisdiction?
b. Awareness: How equal and practical is the ability for residents or businesses to become aware of the services funded by the SLFRF?
c. Access and Distribution: Are there differences in levels of access to benefits and services across groups? Are there administrative requirements that result in disparities in ability to complete applications or meet eligibility criteria?
d. Outcomes: Are intended outcomes focused on closing gaps, reaching universal levels of service, or disaggregating progress by race, ethnicity, and other equity dimensions where relevant for the policy objective?

Treasury encourages uses of funds that promote strong, equitable growth, including racial equity. Please describe how your jurisdiction's planned or current use of funds prioritizes economic and racial equity as a goal, names specific targets intended to produce meaningful equity results at scale, and articulates the strategies to achieve those targets. In addition, please explain how your jurisdiction's overall equity strategy translates into the specific services or programs offered by your jurisdiction in the following Expenditure Categories, as indicated in the interim final rule. Note these expenditure categories will be updated prior to July 31, 2022 to align with the final rule:

a. Negative Economic Impacts (EC 2): assistance to households, small businesses, and non-profits to address impacts of the pandemic, which have been most severe among low-income populations. This includes assistance with food, housing, and other needs; employment programs for people with barriers to employment who faced negative economic impacts from the pandemic (such as residents of low-income neighborhoods, minorities, disconnected youth, the unemployed, formerly incarcerated people, veterans, and people with disabilities); and other strategies that provide disadvantaged groups with access to education, jobs, and opportunity.

b. Services to Disproportionately Impacted Communities (EC 3): services to address health disparities and the social determinants of health, build stronger neighborhoods and communities (e.g., affordable housing), address educational disparities (e.g., evidence-based tutoring, community schools, and academic, social-emotional, and mental health supports for high poverty schools), and promote healthy childhood environments (e.g., home visiting, child care).

The initial report must describe efforts to date and intended outcomes to promote equity. Each annual report thereafter must provide an update, using qualitative and quantitative data, on how the recipients' approach achieved or promoted equitable outcomes or progressed against equity goals during the performance period. Please also describe any constraints or challenges that impacted project success in terms of increasing equity. In particular, this section must describe the geographic and demographic distribution of funding, including whether it is targeted toward traditionally marginalized communities.

For the purposes of the SLFRF, equity is described in the Executive Order 13985 On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, as issued on January 20, 2021.

4. Community Engagement

Please describe how your jurisdiction's planned or current use of funds incorporates written, oral, and other forms of input that capture diverse feedback from constituents, community-based organizations, and the communities themselves. Where relevant, this description must include how funds will build the capacity of community organizations to serve people with significant barriers to services, including

people of color, people with low incomes, limited English proficient populations, and other traditionally underserved groups.

5. Labor Practices

Describe workforce practices on any infrastructure projects being pursued (EC 5). How are projects using strong labor standards to promote effective and efficient delivery of high-quality infrastructure projects while also supporting the economic recovery through strong employment opportunities for workers? For example, report whether any of the following practices are being utilized: project labor agreements, community benefits agreements, prevailing wage requirements, and local hiring.

6. Use of Evidence

The Recovery Plan should identify whether SLFRF funds are being used for evidence-based interventions[21] and/or if projects are being evaluated through rigorous program evaluations that are designed to build evidence. Recipients must briefly describe the goals of the project, and the evidence base for the interventions funded by the project. Recipients must specifically identify the dollar amount of the total project spending that is allocated towards evidence-based interventions for each project in the Public Health (EC 1), Negative Economic Impacts (EC 2), and Services to Disproportionately Impacted Communities (EC 3) Expenditure Categories, as identified in the interim final rule and noted in Appendix 3.[22] Please note that these expenditure categories reflect the interim final rule and will be updated prior to July 31, 2022 to align with the final rule.

Recipients are exempt from reporting on evidence-based interventions in cases where a program evaluation is being conducted. Recipients are encouraged to use relevant evidence Clearinghouses, among other sources, to assess the level of evidence for their interventions and identify evidence-based models that could be applied in their jurisdiction; such evidence clearinghouses include the U.S. Department of Education's What Works Clearinghouse, the U.S. Department of Labor's CLEAR, and the Childcare & Early Education Research Connections and the Home Visiting Evidence of Effectiveness clearinghouses from Administration for Children and Families, as well as other clearinghouses relevant to particular projects conducted by the recipient. In such cases where a recipient is conducting a program evaluation in lieu of reporting the amount of spending on evidence-based interventions, they must describe the evaluation design including whether it is a randomized or quasi-experimental design; the key research questions being evaluated; whether the study has sufficient statistical power to disaggregate outcomes by demographics; and the timeframe for the completion of the evaluation (including a link to completed evaluation if relevant).[23] Once the evaluation has been completed, recipients must post the evaluation publicly and link to the completed evaluation in the Recovery Plan. Once an evaluation has been completed (or has sufficient interim findings to determine the efficacy of the intervention), recipients should determine whether the spending for the evaluated interventions should be counted towards the dollar amount categorized as evidence-based for the relevant project.

For all projects, recipients may be selected to participate in a national evaluation, which would study their project along with similar projects in other jurisdictions that are focused on the same set of outcomes. In such cases, recipients may be asked to share information and data that is needed for the national evaluation.

[21] As noted in Appendix 2, evidence-based refers to interventions with strong or moderate levels of evidence.
[22] Of note, recipients are only required to report the amount of the total funds that are allocated to evidence-based interventions in the areas of Public Health, Negative Economic Impacts, and Services to Disproportionately Impacted Communities that are marked by an asterisk in Appendix 3: Expenditure Categories. Please note the expenditure categories in Appendix 3 reflect the interim final rule. This Recovery Plan guidance references the expenditure categories aligned with the interim final rule. This guidance will be updated prior to the July 2022 reporting period to reflect the final rule.
[23] For more information on the required standards for program evaluation, see OMB M-20-12.

Recipients are encouraged to consider how a Learning Agenda, either narrowly focused on SLFRF or broadly focused on the recipient's broader policy agenda, could support their overarching evaluation efforts in order to create an evidence-building strategy for their jurisdiction.[24]

Appendix 2 contains additional information on evidence-based interventions for the purposes of the Recovery Plan.

7. Table of Expenses by Expenditure Category

Please include a table listing the amount of funds used in each Expenditure Category (See Appendix 3). The table should include cumulative expenses to date within each category, and the additional amount spent within each category since the last annual Recovery Plan.

8. Project Inventory

List the name and provide a brief description of all SLFRF funded projects. Projects are new or existing eligible government services or investments funded in whole or in part by SLFRF funding. For each project, include the project name, funding amount, identification number (created by the recipient and used thereafter in the quarterly Program and Expenditure Report), project Expenditure Category (see Appendix 3), and a description of the project which includes an overview of the main activities of the project, the approximate timeline, primary delivery mechanisms and partners, if applicable, and intended outcomes. Include a link to the website of the project if available. This information will provide context and additional detail for the information reported quarterly in the Project and Expenditure Report.

For infrastructure investment projects (EC 5), project-level reporting will be more detailed, as described for the Project and Expenditure Report above. Projects in this area may be grouped by Expenditure Category if needed, with further detail (such as the specific project name and identification number) provided in the Project and Expenditure Report. For infrastructure projects, descriptions should note how the project contributes to addressing climate change.

9. Performance Report

The Recovery Plan must include key performance indicators for the major SLFRF funded projects undertaken by the recipient. The recipient has flexibility in terms of how this information is presented in the Recovery Plan, and may report key performance indicators for each project, or may group projects with substantially similar goals and the same outcome measures. In some cases, the recipient may choose to include some indicators for each individual project as well as crosscutting indicators.

Performance indicators should include both output and outcome measures. Output measures, such as number of students enrolled in an early learning program, provide valuable information about the early implementation stages of a project. Outcome measures, such as the percent of students reading on grade level, provide information about whether a project is achieving its overall goals. Recipients are encouraged to use logic models[25] to identify their output and outcome measures. While the initial report will focus heavily on early output goals, recipients must include the related outcome goal for each project and provide updated information on achieving these outcome goals in annual reports. In cases where recipients are conducting a program evaluation for a project (as described above), the outcome measures in the performance report should be aligned with those being evaluated in the program. To support their performance measurement and program improvement efforts, recipients are permitted to use funds to make improvements to data or technology infrastructure and data analytics, as well as program evaluations.

[24] For more information on learning agendas, please see OMB M-19-23
[25] A logic model is a tool that depicts the intended links between program investments and outcomes, specifically the relationships among the resources, activities, outputs, outcomes, and impact of a program.

10. Required Performance Indicators and Programmatic Data
While recipients have discretion on the full suite of performance indicators to include, a number of mandatory performance indicators and programmatic data must be included. These are necessary to allow Treasury to conduct oversight as well as understand and aggregate program outcomes across recipients. This section provides an overview of the mandatory performance indicators and programmatic data. This information may be included in each recipient's Recovery Plan as they determine most appropriate, including combining with the section above, but this data will also need to be entered directly into the Treasury reporting portal. Below is a list of required data for each Expenditure Category. Note these expenditure categories reflect the interim final rule and will be updated prior to July 31, 2022 to align with the final rule.

a. Household Assistance (EC 2.2 & 2.5) and Housing Support (EC 3.10-3.12):
   - Number of people or households receiving eviction prevention services (including legal representation)
   - Number of affordable housing units preserved or developed

b. Negative Economic Impacts (EC 2):
   - Number of workers enrolled in sectoral job training programs
   - Number of workers completing sectoral job training programs
   - Number of people participating in summer youth employment programs

c. Education Assistance (EC 3.1-3.5):
   - Number of students participating in evidence-based tutoring programs[26]

d. Healthy Childhood Environments (EC 3.6-3.9):
   - Number of children served by childcare and early learning (pre-school/pre-K/ages 3-5)
   - Number of families served by home visiting

The initial report should include the key indicators above. Each annual report thereafter should include updated data for the performance period as well as prior period data, and a brief narrative adding any additional context to help the reader interpret the results and understand the any changes in performance indicators over time. To the extent possible, Treasury also encourages recipients to provide data disaggregated by race, ethnicity, gender, income, and other relevant factors.

11. Ineligible Activities: Tax Offset Provision (States and territories only)
The following information is required for Treasury to ensure SLFRF funding is not used for ineligible activities.

In each reporting year, States and territories will report certain items related to the Tax Offset Provision as described in section 602(c)(2) of the Social Security Act and implemented by 31 CFR 35.8. Additional guidance will be forthcoming for reporting requirements regarding the tax offset provision and additional information that Recipients will report once the final rule goes into effect.

a. Revenue-reducing Covered Changes: *Collection began August 2021:*
   For each reporting year, a recipient must report the value of covered changes that the recipient predicts will have the effect of reducing tax revenue in a given reporting year (revenue-reducing covered changes), similar to the way it would in the ordinary course of its budgeting process. The value of these covered changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, that aligns with the recipient government's

[26] For more information on evidence-based tutoring programs, refer to the U.S. Department of Education's 2021 ED COVID-19 Handbook (Volume 2), which summarizes research on evidence-based tutoring programs (see the bottom of page 20.

existing approach for measuring the effects of fiscal policies, and that measures relative to a current law baseline. 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). Estimation approaches should not use dynamic methodologies that incorporate the projected effects of the policies on macroeconomic growth. In general, and where possible, reported values should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. Recipients must maintain records regarding the identification and predicted effects of revenue-reducing covered changes. The term "covered change," and "tax revenue" are described in the interim final rule, 31 CFR 35.3. For additional information, see 602(c)(2) of the Social Security Act, the interim final rule, and 31 CFR 35.8.

D. Distributions to NEUs

Each state and territory is asked to provide regular updates on their NEU distribution as well as their distributions to units of general local government within counties that are not units of general local government (Non-UGLG). The distribution template generally requests information on whether the local government has (1) received funding; (2) declined funding and requested a transfer to the state under Section 603(c)(4) of the Act; or (3) not taken action on its funding or declined funding.

For NEUs, states and territories should be prepared to report on their information, including the following:

- NEU name
- NEU DUNS or UEI number
- NEU Taxpayer Identification Number (TIN)
- NEU Recipient Number (a unique identification code for each NEU assigned by the State or territory to the NEU as part of the request for funding)
- NEU contact information (e.g., address, point of contact name, point of contact email address, and point of contact phone number)
- NEU authorized representative name and email address
- Initial allocation and, if applicable, subsequent allocation to the NEU (before application of the 75 percent cap)
- Total NEU reference budget (as submitted by the NEU to the State or territory as part of the request for funding)
- Amount of the initial and, if applicable, subsequent allocation above 75 percent of the NEU's reference budget which will be returned to Treasury
- Payment amount(s)
- Payment date(s)

States with "weak" minor civil divisions (i.e., Illinois, Indiana, Kansas, Missouri, Nebraska, North Dakota, Ohio, and South Dakota) should also list any minor civil divisions that the state deemed ineligible.

For each eligible NEU that declined funding and requested a transfer to the state under Section 603(c)(4), the state or territory must also attach a form signed by the NEU, as detailed in the Guidance on Distributions of Funds to Non-Entitlement Units of Local Government.

Appendix 1: Expenditure Categories

Treasury's final rule provides greater flexibility and simplicity for recipients to fight the pandemic and support families and businesses struggling with its impacts, maintain vital services amid revenue shortfalls, and build a strong, resilient, and equitable recovery. As such, recipients will report on a broader set of eligible uses and associated Expenditure Categories ("EC"), starting with the April 2022 Project and Expenditure Report. The table below includes the new Expenditure Categories, as well as a reference to previous Expenditure Categories used for reporting under the interim final rule.

The Expenditure Categories (EC) listed below must be used to categorize each project as noted in Part 2 above. The term "Expenditure Category" refers to the detailed level (e.g., 1.1 COVID-19 Vaccination). When referred to as a category (e.g., EC 1) it includes all Expenditure Categories within that level.

*Denotes areas where recipients must identify the amount of the total funds that are allocated to evidence-based interventions (see Use of Evidence section above for details)

^Denotes areas where recipients must report on whether projects are primarily serving disproportionately impacted communities (see Project Demographic Distribution section above for details)

Expenditure Category	EC[27]	Previous EC[28]
1: Public Health		
COVID-19 Mitigation & Prevention		
COVID-19 Vaccination^	1.1	1.1
COVID-19 Testing^	1.2	1.2
COVID-19 Contact Tracing^	1.3	1.3
Prevention in Congregate Settings (Nursing Homes, Prisons/Jails, Dense Work Sites, Schools, Child care facilities, etc.)*^	1.4	1.4
Personal Protective Equipment^	1.5	1.5
Medical Expenses (including Alternative Care Facilities)^	1.6	1.6
Other COVID-19 Public Health Expenses (including Communications, Enforcement, Isolation/Quarantine)^	1.7	1.8
COVID-19 Assistance to Small Businesses^	1.8	-
COVID 19 Assistance to Non-Profits^	1.9	-
COVID-19 Aid to Impacted Industries^	1.10	-
Community Violence Interventions		
Community Violence Interventions*^	1.11	3.16
Behavioral Health		
Mental Health Services*^	1.12	1.10
Substance Use Services*^	1.13	1.11
Other		
Other Public Health Services^	1.14	1.12
Capital Investments or Physical Plant Changes to Public Facilities that respond to the COVID-19 public health emergency	-	1.7
2: Negative Economic Impacts		
Assistance to Households		
Household Assistance: Food Programs*^	2.1	2.1
Household Assistance: Rent, Mortgage, and Utility Aid*^	2.2	2.2
Household Assistance: Cash Transfers*^	2.3	2.3

[27] Under the final rule to be used starting with April 2022 reports
[28] Under the interim final rule to be used in Interim Report and January 2022 Project and Expenditure Report

Expenditure Category	EC[27]	Previous EC[28]
Household Assistance: Internet Access Programs*^	2.4	2.4
Household Assistance: Paid Sick and Medical Leave^	2.5	-
Household Assistance: Health Insurance*^	2.6	-
Household Assistance: Services for Un/Unbanked*^	2.7	-
Household Assistance: Survivor's Benefits^	2.8	-
Unemployment Benefits or Cash Assistance to Unemployed Workers*^	2.9	2.6
Assistance to Unemployed or Underemployed Workers (e.g. job training, subsidized employment, employment supports or incentives)*^	2.10	2.7
Healthy Childhood Environments: Child Care*^	2.11	3.6
Healthy Childhood Environments: Home Visiting*^	2.12	3.7
Healthy Childhood Environments: Services to Foster Youth or Families Involved in Child Welfare System*^	2.13	3.8
Healthy Childhood Environments: Early Learning*^	2.14	3.1
Long-term Housing Security: Affordable Housing*^	2.15	3.10
Long-term Housing Security: Services for Unhoused Persons*^	2.16	3.11
Housing Support: Housing Vouchers and Relocation Assistance for Disproportionately Impacted Communities*^	2.17	-
Housing Support: Other Housing Assistance*^	2.18	3.12
Social Determinants of Health: Community Health Workers or Benefits Navigators*^	2.19	3.14
Social Determinants of Health: Lead Remediation*^	2.20	3.15
Medical Facilities for Disproportionately Impacted Communities^	2.21	-
Strong Healthy Communities: Neighborhood Features that Promote Health and Safety^	2.22	-
Strong Healthy Communities: Demolition and Rehabilitation of Properties^	2.23	-
Addressing Educational Disparities: Aid to High-Poverty Districts^	2.24	3.2
Addressing Educational Disparities: Academic, Social, and Emotional Services*^	2.25	3.3
Addressing Educational Disparities: Mental Health Services*^	2.26	3.4
Addressing Impacts of Lost Instructional Time^	2.27	-
Contributions to UI Trust Funds^	2.28	2.8
Assistance to Small Businesses		
Loans or Grants to Mitigate Financial Hardship^	2.29	2.9
Technical Assistance, Counseling, or Business Planning*^	2.30	
Rehabilitation of Commercial Properties or Other Improvements^	2.31	-
Business Incubators and Start-Up or Expansion Assistance*^	2.32	
Enhanced Support to Microbusinesses*^	2.33	
Assistance to Non-Profits		
Assistance to Impacted Nonprofit Organizations (Impacted or Disproportionately Impacted)^	2.34	2.10
Aid to Impacted Industries		
Aid to Tourism, Travel, or Hospitality^	2.35	2.11
Aid to Other Impacted Industries^	2.36	2.12
Other		
Economic Impact Assistance: Other*^	2.37	2.13
Household Assistance: Eviction Prevention*^	-	2.5
Education Assistance: Other*^	-	3.5
Healthy Childhood Environments: Other*^	-	3.9
Social Determinants of Health: Other*^	-	3.13

Expenditure Category	EC[27]	Previous EC[28]
3: Public Health-Negative Economic Impact: Public Sector Capacity		
General Provisions		
Public Sector Workforce: Payroll and Benefits for Public Health, Public Safety, or Human Services Workers	3.1	1.9
Public Sector Workforce: Rehiring Public Sector Staff	3.2	2.14
Public Sector Workforce: Other	3.3	-
Public Sector Capacity: Effective Service Delivery	3.4	7.2
Public Sector Capacity: Administrative Needs	3.5	-
4: Premium Pay		
Public Sector Employees	4.1	4.1
Private Sector: Grants to Other Employers	4.2	4.2
5: Infrastructure		
Water and Sewer		
Clean Water: Centralized Wastewater Treatment	5.1	5.1
Clean Water: Centralized Wastewater Collection and Conveyance	5.2	5.2
Clean Water: Decentralized Wastewater	5.3	5.3
Clean Water: Combined Sewer Overflows	5.4	5.4
Clean Water: Other Sewer Infrastructure	5.5	5.5
Clean Water: Stormwater	5.6	5.6
Clean Water: Energy Conservation	5.7	5.7
Clean Water: Water Conservation	5.8	5.8
Clean Water: Nonpoint Source	5.9	5.9
Drinking water: Treatment	5.10	5.10
Drinking water: Transmission & Distribution	5.11	5.11
Drinking water: Lead Remediation, including in Schools and Daycares	5.12	5.12
Drinking water: Source	5.13	5.13
Drinking water: Storage	5.14	5.14
Drinking water: Other water infrastructure	5.15	5.15
Water and Sewer: Private Wells	5.16	-
Water and Sewer: IIJA Bureau of Reclamation Match	5.17	-
Water and Sewer: Other	5.18	-
Broadband		
Broadband: “Last Mile” projects	5.19	5.16
Broadband: IIJA Match	5.20	-
Broadband: Other projects	5.21	5.17
6: Revenue Replacement		
Provision of Government Services	6.1	6.1
Non-federal Match for Other Federal Programs	6.2	-
7: Administrative		
Administrative Expenses	7.1	7.1
Transfers to Other Units of Government	7.2	7.3
Transfers to Non-entitlement Units (States and territories only)	-	7.4

Treasury has prepared the additional guidance below to support recipients in implementing the new expenditure categories. This table includes only those previous expenditure categories that are changing under the new structure, aligned with the final rule.

January 2022 Expenditure Categories		April 2022 Guidance
1: Public Health		
1.7	Capital Investments or Physical Plant Changes to Public Facilities that respond to the COVID-19 public health emergency	EC removed, capital expenditures can be designated in any relevant PH-NEI EC (e.g., new hospital wing would be tracked under EC 1.4)
1.8	Other COVID-19 Public Health Expenses (including Communications, Enforcement, Isolation/Quarantine)	EC is 1.7
1.9	Payroll Costs for Public Health, Safety, and Other Public Sector Staff Responding to COVID-19	EC is 3.1
1.10	Mental Health Services*	EC is 1.12
1.11	Substance Use Services*	EC is 1.13
1.12	Other Public Health Services	EC is 1.14
2: Negative Economic Impacts		
2.5	Household Assistance: Eviction Prevention	EC is now included as part of 2.2
2.6	Unemployment Benefits or Cash Assistance to Unemployed Workers*	EC is 2.9
2.7	Job Training Assistance (e.g., Sectoral job-training, Subsidized Employment, Employment Supports or Incentives)*^	EC is 2.10
2.8	Contributions to UI Trust Funds	EC is 2.28
2.9	Small Business Economic Assistance (General)*^	If public-health related (e.g., providing rapid tests for small businesses), EC is 1.8; if related to negative economic impact eligible use (e.g., grants, technical assistance, rehabilitation, incubators, or microbusinesses), EC is 2.29-2.33
2.10	Aid to Nonprofit Organizations*	If public-health related (e.g., providing rapid tests for non-profits), EC is 1.9; if related to negative economic impact (e.g., grants to stabilize non-profit budget), EC is 2.34
2.11	Aid to Tourism, Travel, or Hospitality	EC is 2.35
2.12	Aid to Other Impacted Industries	EC is 2.36
2.13	Other Economic Support*^	EC is 2.37, re-named Other Economic Impact
2.14	Rehiring Public Sector Staff	EC is 3.2
3: Services to Disproportionately Impacted Communities		
3.1	Education Assistance: Early Learning*^	EC is 2.14
3.2	Education Assistance: Aid to High-Poverty Districts ^	EC is 2.24
3.3	Education Assistance: Academic Services*^	EC is 2.25, social and emotional services will now be tracked under this EC
3.4	Education Assistance: Social, Emotional, and Mental Health Services*^	EC is 2.26, if social and emotional services, EC is 2.25;
3.5	Education Assistance: Other*^	EC is 2.37, collected under Other Economic Impact

January 2022 Expenditure Categories		April 2022 Guidance
3.6	Healthy Childhood Environments: Child Care*^	EC is 2.11
3.7	Healthy Childhood Environments: Home Visiting*^	EC is 2.12
3.8	Healthy Childhood Environments: Services to Foster Youth or Families Involved in Child Welfare System*^	EC is 2.13
3.9	Healthy Childhood Environments: Other*^	EC is 2.37, collected under Other Economic Impact
3.10	Housing Support: Affordable Housing*^	EC is 2.15
3.11	Housing Support: Services for Unhoused Persons*^	EC is 2.16
3.12	Housing Support: Other Housing Assistance*^	EC is 2.18
3.13	Social Determinants of Health: Other*^	EC is 2.37, collected under Other Economic Impact
3.14	Social Determinants of Health: Community Health Workers or Benefits Navigators*^	EC is 2.19
3.15	Social Determinants of Health: Lead Remediation^	EC is 2.20
3.16	Social Determinants of Health: Community Violence Interventions*^	EC is 1.11
5: Infrastructure		
5.16	Broadband: “Last Mile” projects	EC is 5.19
5.17	Broadband: Other projects	EC is 5.20
7: Administrative		
7.2	Evaluation and Data Analysis	EC is 3.4 and has been renamed Effective Service Delivery
7.3	Transfers to Other Units of Government	EC is 7.2
7.4	Transfers to Non-entitlement Units (States and territories only)	To be separately reported as part of NEU/Non-UGLG module. Refer to Part 2 Section D.

Appendix 2: Evidenced-Based Intervention Additional Information

What is evidence-based?
For the purposes of the SLFRF, with the exception of investments in educational services (see additional information below), evidence-based refers to interventions with strong or moderate evidence as defined below:

Strong evidence means that the evidence base can support causal conclusions for the specific program proposed by the applicant with the highest level of confidence. This consists of one or more well-designed and well-implemented experimental studies conducted on the proposed program with positive findings on one or more intended outcomes.

Moderate evidence means that there is a reasonably developed evidence base that can support causal conclusions. The evidence base consists of one or more quasi-experimental studies with positive findings on one or more intended outcomes OR two or more non-experimental studies with positive findings on one or more intended outcomes. Examples of research that meet the standards include: well-designed and well-implemented quasi-experimental studies that compare outcomes between the group receiving the intervention and a matched comparison group (i.e., a similar population that does not receive the intervention).

Preliminary evidence means that the evidence base can support conclusions about the program's contribution to observed outcomes. The evidence base consists of at least one non-experimental study. A study that demonstrates improvement in program beneficiaries over time on one or more intended outcomes OR an implementation (process evaluation) study used to learn and improve program operations would constitute preliminary evidence. Examples of research that meet the standards include: (1) outcome studies that track program beneficiaries through a service pipeline and measure beneficiaries' responses at the end of the program; and (2) pre- and post-test research that determines whether beneficiaries have improved on an intended outcome.

For investments in educational services, "evidence-based", consistent with the American Rescue Plan Act, has the meaning in section 8101(21) of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6301 *et seq*.). Please see page 16 of this Frequently Asked Questions resource on the Department of Education's Elementary and Secondary School Emergency Relief Programs and Governor's Emergency Education Relief Programs for more information.

Appendix 3: Expenditure Categories under the Interim Final Rule

1: Public Health	
1.1	COVID-19 Vaccination ^
1.2	COVID-19 Testing ^
1.3	COVID-19 Contact Tracing
1.4	Prevention in Congregate Settings (Nursing Homes, Prisons/Jails, Dense Work Sites, Schools, etc.)*
1.5	Personal Protective Equipment
1.6	Medical Expenses (including Alternative Care Facilities)
1.7	Capital Investments or Physical Plant Changes to Public Facilities that respond to the COVID-19 public health emergency
1.8	Other COVID-19 Public Health Expenses (including Communications, Enforcement, Isolation/Quarantine)
1.9	Payroll Costs for Public Health, Safety, and Other Public Sector Staff Responding to COVID-19
1.10	Mental Health Services*
1.11	Substance Use Services*
1.12	Other Public Health Services
2: Negative Economic Impacts	
2.1	Household Assistance: Food Programs* ^
2.2	Household Assistance: Rent, Mortgage, and Utility Aid* ^
2.3	Household Assistance: Cash Transfers* ^
2.4	Household Assistance: Internet Access Programs* ^
2.5	Household Assistance: Eviction Prevention* ^
2.6	Unemployment Benefits or Cash Assistance to Unemployed Workers*
2.7	Job Training Assistance (e.g., Sectoral job-training, Subsidized Employment, Employment Supports or Incentives)* ^
2.8	Contributions to UI Trust Funds
2.9	Small Business Economic Assistance (General)* ^
2.10	Aid to Nonprofit Organizations*
2.11	Aid to Tourism, Travel, or Hospitality
2.12	Aid to Other Impacted Industries
2.13	Other Economic Support* ^
2.14	Rehiring Public Sector Staff
3: Services to Disproportionately Impacted Communities	
3.1	Education Assistance: Early Learning* ^
3.2	Education Assistance: Aid to High-Poverty Districts ^
3.3	Education Assistance: Academic Services* ^
3.4	Education Assistance: Social, Emotional, and Mental Health Services* ^
3.5	Education Assistance: Other* ^
3.6	Healthy Childhood Environments: Child Care* ^
3.7	Healthy Childhood Environments: Home Visiting* ^
3.8	Healthy Childhood Environments: Services to Foster Youth or Families Involved in Child Welfare System* ^
3.9	Healthy Childhood Environments: Other* ^
3.10	Housing Support: Affordable Housing* ^
3.11	Housing Support: Services for Unhoused Persons* ^

3.12	Housing Support: Other Housing Assistance* ^
3.13	Social Determinants of Health: Other* ^
3.14	Social Determinants of Health: Community Health Workers or Benefits Navigators* ^
3.15	Social Determinants of Health: Lead Remediation ^
3.16	Social Determinants of Health: Community Violence Interventions* ^
4: Premium Pay	
4.1	Public Sector Employees
4.2	Private Sector: Grants to Other Employers
5: Infrastructure	
5.1	Clean Water: Centralized Wastewater Treatment
5.2	Clean Water: Centralized Wastewater Collection and Conveyance
5.3	Clean Water: Decentralized Wastewater
5.4	Clean Water: Combined Sewer Overflows
5.5	Clean Water: Other Sewer Infrastructure
5.6	Clean Water: Stormwater
5.7	Clean Water: Energy Conservation
5.8	Clean Water: Water Conservation
5.9	Clean Water: Nonpoint Source
5.10	Drinking water: Treatment
5.11	Drinking water: Transmission & Distribution
5.12	Drinking water: Transmission & Distribution: Lead Remediation
5.13	Drinking water: Source
5.14	Drinking water: Storage
5.15	Drinking water: Other water infrastructure
5.16	Broadband: “Last Mile” projects
5.17	Broadband: Other projects
6: Revenue Replacement	
6.1	Provision of Government Services
7: Administrative	
7.1	Administrative Expenses
7.2	Evaluation and Data Analysis
7.3	Transfers to Other Units of Government
7.4	Transfers to Non-entitlement Units (States and territories only)

Revision Log

Version	Date Published	Summary of changes
1.0	June 17, 2021	Initial publication
1.1	June 24, 2021	• Pg. 12, removed references to “summary” level with respect to reporting by Expenditure Categories in the Interim Report to avoid confusion. • Pg. 13, revised the coverage period end date for the Interim Report from June 30, 2021 to July 31, 2021 to align with the IFR. • Pg. 13, removed references to “summary” level with respect to reporting by Expenditure Categories in the Interim Report to avoid confusion. • Pg. 31, removed references to “summary level” with respect to Expenditure Categories in Appendix 1 to avoid confusion.
1.1	September 30, 2021	• Announced the extension in the Project and Expenditure Report submission date, originally due on October 31, 2021.
2.0	November 5, 2021	• Updated Subrecipient Monitoring section to clarify beneficiaries and recipients. • Updated references to Interim Final Rule comment period as comment period is closed. • Updated reporting tiers, thresholds and timelines in Part 2 Table 2, Reporting Requirements by recipient type, as well as Part 2 A and Part 2 B. • Updated reporting periods for Interim Report and Project and Expenditure reports. • Added concept of Adopted Budget to Project and Expenditure Report data fields. • Noted phase in of Required Programmatic Data in the Project and Expenditure Report. • Removed certain data fields from the Ineligible Activities: Tax Offset Provision under the Recovery Plan. • Separated reporting of NEU Distributions (for States and territories) from the Interim Report and Project and Expenditure Reports as information will be provided on an ongoing basis.
2.1	November 15, 2021	• Updated pages 9 and 11 to note that civil rights certification is not applicable to Tribal Governments.
3.0	February 28, 2022	• Updated to incorporate reporting updates under the final rule

This document has been submitted to the Office of the Federal Register (OFR) for publication and is currently pending placement on public display at the OFR and publication in the Federal Register. The document may vary slightly from the published document if minor editorial changes have been made during the OFR review process. Upon publication in the Federal Register, the regulation can be found at www.federalregister.gov, www.regulations.gov, and at www.treasury.gov. The document published in the Federal Register is the official document.

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: *Effective date:* The provisions in this final rule are effective April 1, 2022.

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SUPPLEMENTARY INFORMATION:

I. INTRODUCTION

Overview

Since the first case of coronavirus disease 2019 (COVID-19) was discovered in the United States in January 2020, the pandemic has caused severe, intertwined public health and economic crises. In March 2021, as these crises continued, the American Rescue Plan Act of 2021 (ARPA)[1] established the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) to provide state, local, and Tribal governments[2] 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[3] 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

[1] Pub. L. 117–2. https://www.congress.gov/117/plaws/publ2/PLAW-117publ2.pdf.
[2] Throughout this Supplementary Information, Treasury uses "state, local, and Tribal governments" or "recipients" to refer generally to governments receiving SLFRF funds; this includes states, territories, Tribal governments, counties, metropolitan cities, and nonentitlement units of local government.
[3] 86 Fed. Reg. 26786 (May 17, 2021).

reaching millions of children as well.[4] However, the disease continues to present an imminent threat to public health, especially among unvaccinated individuals. As the Delta variant spread across the country this summer and fall, the United States faced another severe wave of cases, deaths, and strain on the healthcare system, with the risk of hospitalization and mortality exponentially greater to unvaccinated Americans. COVID-19 has now infected over 50 million and killed over 800,000 Americans since January 2020; tens of thousands of Americans continue to be infected each day.[5] Even as the nation recovers, new and emerging COVID-19 variants may continue to pose threats to both public health and the economy. Moving forward, state, local, and Tribal governments will continue to play a major role in responding through vaccination campaigns, testing, and other services.

The economic recovery similarly has made tremendous progress but faces continued risks from the disease and the disruptions it has caused. In the early months of the pandemic, the United States experienced the sharpest economic downturn on record, with unemployment spiking to 14.8 percent in April 2020.[6] The economy has gradually added back jobs, with growth accelerating in the first half of 2021.[7] However, as the Delta variant spread, the intensified health risks and renewed disruptions slowed growth, demonstrating the continued risks from the virus. By fall 2021, the economy had exceeded its pre-pandemic size[8] and unemployment had fallen below 5 percent,[9] but despite this progress, too many Americans remain unemployed, out of the

[4] Centers for Disease Control and Prevention, COVID Data Tracker: COVID-19 Vaccinations in the United States, https://covid.cdc.gov/covid-data-tracker/#vaccinations (last visited December 31, 2021).
[5] Centers for Disease Control and Prevention, COVID Data Tracker, http://www.covid.cdc.gov/covid-data-tracker/#datatracker-home (last visited December 7, 2021).
[6] U.S. Bureau of Labor Statistics, Unemployment Rate [UNRATE], retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/UNRATE (last visited December 7, 2021).
[7] *Id.*
[8] 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).
[9] U.S. Bureau of Labor Statistics, *supra* note 5.

labor force, or unable to pay their bills, with this pain particularly acute among lower-income Americans and communities of color. Again, moving forward, state, local, and Tribal governments will remain on the frontlines of the economic response and rebuilding a stronger economy in the aftermath of the pandemic.

However, as state, local, and Tribal governments continue to face substantial needs to respond to public health and economic conditions, they have also experienced severe impacts from the pandemic and resulting recession. State, local, and Tribal governments cut over 1.5 million jobs in the early months of the pandemic amid sharp declines in revenue and remain over 950,000 jobs below their pre-pandemic levels.[10] As the Great Recession demonstrated, austerity among state, local, and Tribal governments can hamper overall economic growth and severely curtail the ability of governments to serve their constituents.

Recognizing these imperatives, the SLFRF program provides vital resources for state, local, and Tribal governments to respond to the pandemic and its economic effects and to replace revenue lost due to the public health emergency, preventing cuts to government services. Specifically, the ARPA provides that SLFRF funds[11] 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;

[10] U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, https://fred.stlouisfed.org/series/CES9092000001 and https://fred.stlouisfed.org/series/CES9093000001 (last visited December 7, 2021).

[11] The ARPA adds section 602 of the Social Security Act, which creates the State Fiscal Recovery Fund, and section 603 of the Social Security Act, which creates the Local Fiscal Recovery Fund (together, SLFRF). Sections 602 and 603 contain substantially similar eligible uses; the primary difference between the two sections is that section 602 establishes a fund for states, territories, and Tribal governments and section 603 establishes a fund for metropolitan cities, nonentitlement units of local government, and counties.

b) To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers;

c) For the provision of government services to the extent of the reduction in revenue due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency; and

d) To make necessary investments in water, sewer, or broadband infrastructure.

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 $10 million, allowing recipients to select between a standard amount of revenue loss or complete a full revenue loss calculation. Recipients that select the standard allowance may use that amount for government services.
- Water, Sewer, and Broadband Infrastructure: The final rule significantly broadens eligible broadband infrastructure investments to address challenges with broadband access, affordability, and reliability, and adds additional eligible water and sewer infrastructure investments, including a broad range of lead remediation and stormwater management projects.

Structure of the Supplementary Information

In addition to this Introduction, this Supplementary Information is organized into four sections: 1) Eligible Uses, 2) Restrictions on Use, 3) Program Administration Provisions, and 4) Regulatory Analyses.

The Eligible Uses section describes the standards to determine eligible uses of funds in each of the four eligible use categories:

1) Responding to the public health and negative economic impacts of the pandemic (which includes several sub-categories)
2) Providing premium pay to essential workers
3) Providing government services to the extent of revenue loss due to the pandemic, and
4) Making necessary investments in water, sewer, and broadband infrastructure.

Each eligible use category has separate and distinct standards for assessing whether a use of funds is eligible. Standards, restrictions, or other provisions in one eligible use category do not apply to the others. Therefore, recipients should first determine which eligible use category a potential use of funds fits within, then assess whether the potential use of funds meets the eligibility standard or criteria for that category. In the case of uses to respond to the public health and negative economic impacts of the pandemic, recipients should also determine which sub-category the eligible use fits within (i.e., public health, assistance to households, assistance to small businesses, assistance to nonprofits, aid to impacted industries, or public sector capacity and workforce), then assess whether the potential use of funds meets the eligibility standard for that sub-category. Treasury does not pre-approve uses of funds; recipients are advised to review the final rule and may pursue eligible projects under it.

In some sections of the rule, Treasury identifies specific uses of funds that are eligible, called "enumerated eligible uses"; for example, Treasury provides many enumerated eligible uses of funds to respond to the public health and negative economic impacts of the pandemic. Uses of funds that are not specifically named as eligible in this final rule may still be eligible in two ways. First, under the revenue loss eligible use category, recipients have broad latitude to use funds for government services up to their amount of revenue loss due to the pandemic. A potential use of funds that does not fit within the other three eligible use categories may be permissible as a government service, which recipients can fund up to their amount of revenue loss. For example, transportation infrastructure projects are generally ineligible as a response to the public health and negative economic impacts of the pandemic; however, a recipient could fund these projects as a government service up to its amount of revenue loss, provided that other restrictions on use do not apply. See sections Revenue Loss and Restrictions on Use for further information. Second, the eligible use category for responding to the public health and negative economic impacts of the pandemic provides a non-exhaustive list of enumerated eligible uses, which means that the listed eligible uses include some, but not all, of the uses of funds that could be eligible. The Eligible Uses section provides a standard for determining if other uses of funds, beyond those specifically enumerated, are eligible. If a recipient would like to pursue a use of funds that is not specifically enumerated, the recipient should use the standard and other guidance provided in the section Public Health and Negative Economic Impacts to assess whether the use of funds is eligible.

Next, the Restrictions on Use section describes limitations on how funds may be used. Treasury has divided the Restriction on Use section into (A) statutory restrictions under the ARPA, which include 1) offsetting a reduction in net tax revenue, and 2) deposits into pension

funds, and (B) other restrictions on use, which include 1) debt service and replenishing reserves, 2) settlements and judgments, and 3) general restrictions. These restrictions apply to all eligible use categories; however, some restrictions apply only to certain types of recipient governments, and recipients are advised to review the final rule to determine which restrictions apply to their type of government (e.g., state, territory, Tribal government, county, metropolitan city, or nonentitlement unit of government). To reiterate, for recipient governments covered by a specific restriction, that restriction applies to all eligible use categories and any use of funds under the SLFRF program. Specifically:

- For states and territories only, funds may not be used to offset directly or indirectly a reduction in net tax revenue resulting from a change in state or territory law.
- For all recipients except Tribal governments, funds may not be used for deposits into a pension fund.
- For all recipients, funds may not be used for debt service or replenishing financial reserves.
- All recipients must also comply with three general restrictions. First, a recipient may not use SLFRF funds for a program, service, or capital expenditure that conflicts with or contravenes the statutory purpose of ARPA, including a program, service, or capital expenditure that includes a term or condition that undermines efforts to stop the spread of COVID-19. Second, recipients may not use SLFRF funds in violation of the conflict-of-interest requirements contained in the Award Terms and Conditions, including any self-dealing or violation of ethics rules. Lastly, recipients should be aware that federal, state, and local laws and regulations, outside of SLFRF program requirements, also apply, including for example, environmental laws and federal civil rights and nondiscrimination

requirements, which include prohibitions on discrimination on the basis of race, color, national origin, sex (including sexual orientation and gender identity), religion, disability, age, or familial status (having children under the age of 18).

The Program Administration Provisions section describes the processes and requirements for administering the program on an ongoing basis, specifically as relates to the following: distribution of funds, timeline for using funds, transfer of funds from a recipient to different organizations, use of funds for program administration, reporting on use of funds, and remediation and recoupment of funds used for ineligible purposes. Of note, SLFRF funds may only be used for costs incurred within a specific time period, beginning March 3, 2021, with all funds obligated by December 31, 2024 and all funds spent by December 31, 2026. Recipients are advised to also consult Treasury's Reporting and Compliance Guidance for additional information on program administration processes and requirements, including applicability of the Uniform Guidance.

Finally, the section Regulatory Analyses provides Treasury's analysis of the impacts of this rulemaking, as required by several laws, regulations, and Executive Orders.

Throughout this Supplementary Information, statements using the terms "should" or "must" refer to requirements, except when used in summarizing opinions expressed in public comments. Statements using the term "encourage" refer to recommendations, not requirements.

II. ELIGIBLE USES

A. PUBLIC HEALTH AND NEGATIVE ECONOMIC IMPACTS

Background

Since the first case of COVID-19 was discovered in the United States in January 2020, the disease has infected over 50 million and killed over 800,000 Americans.[12] The disease – and necessary measures to respond – have had an immense public health and economic impact on millions of Americans across many areas of life, as detailed below in the respective sections on Public Health and Negative Economic Impacts. Since the release of the interim final rule in May 2021, the country has made major progress in fighting the disease and rebuilding the economy but faces continued risks, as illustrated by the spread of the Delta variant and the resulting slowdown in the economic recovery. The SLFRF program, and Treasury's interim final rule, provide substantial flexibility to recipients to respond to pandemic impacts in their local community; this flexibility is designed to help state, local, and Tribal governments adapt to the evolving public health emergency and tailor their response as needs evolve and to the particular local needs of their communities.

Indeed, state, local, and Tribal governments face continued needs to respond at scale to the public health emergency. This includes continued public health efforts to slow the spread of the disease, to increase vaccination rates and provide vaccinations to new populations as they become eligible, to protect individuals living in congregate facilities, and to address the broader impacts of the pandemic on public health. Similarly, while a strong economic recovery is underway, the economy remains 3.9 million jobs below its pre-pandemic level, pointing to the

[12] Centers for Disease Control and Prevention, COVID Data Tracker, http://www.covid.cdc.gov/covid-data-tracker/#datatracker-home (last visited December 31, 2021).

continued need for response efforts, with low-income workers and communities of color facing elevated rates of unemployment and economic hardship.[13] Long-standing disparities in health and economic outcomes in underserved[14] communities, that amplified and exacerbated the impacts of the pandemic, also present continued barriers to full and equitable recovery.

As state, local, and Tribal governments work to meet the public health and economic needs of their communities, these governments are also confronting the need to rebuild their own capacity. Facing severe budget challenges during the pandemic, many state, local, and Tribal governments have been forced to make cuts to services or their workforces, including cutting over 1.5 million jobs from February to May 2020, or delay critical investments. As of fall 2021, state, local, and Tribal government employment remained over 950,000 jobs below pre-pandemic levels.[15] In the recovery from the Great Recession, cuts to state, local, and Tribal governments became a meaningful drag on economic growth for several years, and the SLFRF program provides the resources needed to re-invest in vital public services and workers to avoid this outcome.[16]

[13] U.S. Bureau of Labor Statistics, All Employees, Total Nonfarm [PAYEMS] https://fred.stlouisfed.org/series/PAYEMS (last visited December 7, 2021).
[14] Treasury uses "underserved" to refer to populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life. In the interim final rule, Treasury generally used the term "disadvantaged" to refer to these same populations and communities.
[15] U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, https://fred.stlouisfed.org/series/CES9092000001 and https://fred.stlouisfed.org/series/CES9093000001 (last visited December 7, 2021).
[16] Tracy Gordon, State and Local Budgets and the Great Recession, Brookings Institution (Dec. 31, 2012), http://www.brookings.edu/articles/state-and-local-budgets-and-the-great-recession.

1. GENERAL PROVISIONS: STRUCTURE AND STANDARDS

Background: Sections 602(c)(1)(A) and 603(c)(1)(A) of the Social Security Act establish that recipients may use funds "to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality." The interim final rule established three categories within this eligible use: 1) public health responses for those impacted by the pandemic, including the general public; 2) responses to the negative economic impacts that were experienced by those impacted as a result of the pandemic; and 3) additional services, either as a public health response or a response to the negative economic impacts of the pandemic, for disproportionately impacted communities.

The interim final rule established the method to determine which specific programs or services may be eligible to respond to the public health emergency or to respond to the negative economic impacts of the public health emergency within this framework. The interim final rule included multiple enumerated uses that are eligible within each of these categories when provided to eligible populations, including populations that the interim final rule presumed to have been *impacted* (in the case of public health responses and responses to negative economic impacts) or *disproportionately impacted* (in the case of disproportionately impacted communities). Finally, the interim final rule also allowed recipients to designate additional individuals or classes as impacted or disproportionately impacted. The standards for each of these criteria under the interim final rule are discussed below.

To assess whether a program or service would be eligible to respond to the public health emergency or its negative economic impacts, the interim final rule stated that, "the recipient [is required] to, first, identify a need or negative impact of the COVID–19 public health emergency

and, second, identify how the program, service, or other intervention addresses the identified need or impact [….] [E]ligible uses under this category must be in response to the disease itself or the harmful consequences of the economic disruptions resulting from or exacerbated by the COVID–19 public health emergency." The enumerated eligible uses were presumed to meet this criterion.

With respect to uses not specifically enumerated in the interim final rule as eligible public health responses, the interim final rule stated that, "[t]o assess whether additional uses would be eligible under this category, recipients should identify an effect of COVID–19 on public health, including either or both of immediate effects or effects that may manifest over months or years, and assess how the use would respond to or address the identified need."

With respect to uses not specifically enumerated in the interim final rule as eligible responses to a negative economic impact of the public health emergency, the interim final rule stated that "[e]ligible uses that respond to the negative economic impacts of the public health emergency must be designed to address an economic harm resulting from or exacerbated by the public health emergency. In considering whether a program or service would be eligible under this category, the recipient should assess whether, and the extent to which, there has been an economic harm, such as loss of earnings or revenue, that resulted from the COVID–19 public health emergency and whether, and the extent to which, the use would respond to or address this harm.[17] A recipient should first consider whether an economic harm exists and whether this harm was caused or made worse by the COVID–19 public health emergency." The interim final rule went on to say that: "In addition, the eligible use must 'respond to' the identified negative economic impact. Responses must be related and reasonably proportional to the extent and type

[17] In some cases, a use may be permissible under another eligible use category even if it falls outside the scope of section (c)(1)(A) of section 602 and 603 of the Social Security Act.

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 presumed to be disproportionately impacted, it also empowered recipients to identify other disproportionately impacted households, populations, communities, or small businesses. The interim final rule provided that, in identifying these disproportionately impacted communities, recipients should be able to support

their determination that the pandemic resulted in disproportionate public health or economic outcomes to the specific populations, households, or geographic areas to be served.

Throughout this final rule, Treasury refers to those households, communities, small businesses, and nonprofits that experienced disproportionate public health or negative economic impacts of the pandemic as "disproportionately impacted." The third category in the interim final rule under this eligible use included public health responses and responses to the negative economic impacts for these disproportionately impacted classes.

The interim final rule provided significant flexibility for recipients to determine which households, populations, communities, or small businesses have been impacted and/or disproportionately impacted by the pandemic and to identify appropriate responses. The interim final rule included several provisions to provide simple methods for recipients to identify impacts and design programs to address those impacts. First, the interim final rule allowed recipients to demonstrate a negative economic impact on a population or class and provide assistance to households or small businesses that fall within that population or class. In such cases, the recipient need only demonstrate that an individual household or business is within the class that experienced a negative economic impact, rather than requiring a recipient to demonstrate that each individual household or small business experienced a negative economic impact, because the impact was already identified for the class.

Second, in the interim final rule, Treasury presumed that certain populations have been impacted or disproportionately impacted and are thus eligible for services that respond to these impacts or disproportionate impacts. Specifically, the interim final rule permitted recipients to presume that households that experienced unemployment, increased food or housing insecurity, or are low- or moderate-income experienced a negative economic impact from the pandemic.

The interim final rule also permitted recipients to presume that certain services provided in Qualified Census Tracts (QCTs), to individuals living in QCTs, or by Tribal governments are responsive to disproportionate impacts of the pandemic. In addition to the populations presumed to be impacted or disproportionately impacted, under the interim final rule, recipients could identify other impacted households or classes, as described above, as well as other populations, households, or geographic areas that are disproportionately impacted by the pandemic.

Third, as mentioned previously, the interim final rule included a non-exhaustive list of uses of funds that Treasury identified as responsive to the impacts or disproportionate impacts of the pandemic. Treasury refers to these as "enumerated eligible uses."

To summarize, the interim final rule identified certain populations that are presumed to be *impacted* by the pandemic (and specific enumerated uses of funds that are responsive to that impact) and populations that are presumed to be *disproportionately impacted* by the pandemic (and specific enumerated uses of funds that are responsive to those disproportionate impacts). In addition, the interim final rule provided standards for recipients to assess whether additional uses of funds, beyond the enumerated eligible uses, are eligible for impacted and disproportionately impacted populations and permitted recipients to identify other households or classes that experienced impacts of the pandemic or disproportionate impacts of the pandemic.

Rule Structure

Public Comment: Many commenters expressed concern regarding the structure of the eligible uses, indicating they found the structure of the public health and negative economic impacts section of the interim final rule to be confusing or difficult to navigate. Other commenters indicated that they understood the enumerated uses to be the only eligible uses

and/or the presumed eligible populations to be the only eligible populations. Several commenters expressed frustration about the number of eligible uses specifically enumerated in the interim final rule, which they considered too few, and commenters proposed a wide range of additional enumerated eligible uses (for further discussion, see the section Public Health and section Negative Economic Impacts). Commenters expressed concern with pursuing uses of funds not explicitly enumerated in the eligible use section or uncertainty regarding the broad flexibility provided under the interim final rule to pursue additional programs that respond to the public health or negative economic impacts of the pandemic or the process for doing so.

Treasury Response: Treasury recognizes that many commenters felt the structure of the interim final rule could be clarified. These comments are consistent with many of the questions that Treasury has received from recipients, which requested clarification regarding the category their desired response fits into. Treasury observes that these comments and questions generally fall into four categories: 1) how to identify the correct public health or negative economic impact category for a particular response, 2) how to identify whether a particular use is eligible, 3) how to identify an impacted or disproportionately impacted class, and 4) whether an enumerated use can be provided to a class other than those presumed impacted or disproportionately impacted. In response to comments, Treasury is adjusting the structure of the public health and negative economic impacts eligible use section of the final rule to improve clarity and make it easier for recipients to interpret and apply the final rule.

Specifically, Treasury is restructuring the rule to aid recipients in determining whether a particular response is eligible and how the particular response might be eligible under a particular category. This restructuring reinforces the fundamental criteria that a use of funds is eligible based on its responsiveness to a public health or negative economic impact experienced

by individuals, households, small businesses, nonprofits, or impacted industries (together "beneficiaries").[18] This restructuring is intended to make the rule easier to navigate and to implement, including any criteria or conditions on particular uses of funds.

The reorganization of the public health and negative economic impacts section of the final rule is also intended to clarify the enumerated eligible uses described in the interim final rule. The reorganization itself is not intended to change the scope of the enumerated uses that were included in the interim final rule or that were allowable under the interim final rule. In some cases, specific enumerated uses are being altered, and those changes are discussed 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.

[18] Note that small businesses, nonprofits, and industries may also function as subrecipients. For additional information on these distinctions see section Distinguishing Subrecipients versus Beneficiaries.

a. STANDARDS FOR IDENTIFYING A PUBLIC HEALTH OR NEGATIVE ECONOMIC IMPACT

Standards: Designating a Public Health Impact

Public Comment: Many commenters expressed uncertainty about how to determine whether a use of funds, beyond those specifically enumerated as eligible, might be an eligible public health response. For example, many commenters submitted questions asking whether specific uses of funds would be eligible. Others described what they considered to be impacts of the pandemic and argued that uses of funds to respond to these issues should be eligible. Some commenters requested that Treasury provide additional detail to guide their assessments of eligible uses of funds. For example, a commenter requested more clarification around exactly what and whose medical expenses can be covered. These comments ranged in their specificity and covered the full range of the enumerated eligible uses.

Treasury Response: Treasury is clarifying that when assessing whether a program or service is an eligible use to respond to the public health impacts of the COVID–19 public health emergency, the Department will consider the two eligibility requirements discussed below. These standards apply to all proposed public health uses.

First, there must be a negative public health impact or harm experienced by an individual or a class. For ease of administration, the interim final rule allowed, and the final rule maintains the ability for, recipients to identify a public health impact on a population or group of individuals, referred to as a "class," and to provide assistance to that class. In determining whether an individual is eligible for a program designed to address a harm experienced by a class, the recipient need only document that the individual is within the class that experienced a public health impact, see section Standards: Designating Other Impacted Classes. In the case of

some impacts, for example impacts of COVID-19 itself that are addressed by providing prevention and mitigation services, such a class could reasonably include the general public.

Second, the program, service, or other intervention must address or respond to the identified impact or harm. The final rule maintains the interim final rule requirement that eligible uses under this category must be in response to the disease itself or other public health harms that it caused.[19]

Responses must be reasonably designed to benefit the individual or class that experienced the public health impact or harm. Uses of funds should be assessed based on their responsiveness to their intended beneficiaries and the ability of the response to address the impact or harm experienced by those beneficiaries.

Responses must also be related and reasonably proportional to the extent and type of public health impact or harm experienced. Uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses. Reasonably proportional refers to the scale of the response compared to the scale of the harm. It also refers to the targeting of the response to beneficiaries compared to the amount of harm they experienced. In evaluating whether a use is reasonably proportional, recipients should consider relevant factors about the harm identified and the response. For example, recipients may consider the size of the population impacted and the severity, type, and duration of the impact. Recipients may also consider the efficacy, cost, cost-effectiveness, and time to delivery of the response.

[19] In designing an intervention to mitigate COVID-19, the recipient should consider guidance from public health authorities, particularly the Centers for Disease Control and Prevention (CDC), in assessing appropriate COVID-19 mitigation and prevention strategies (*see* Centers for Disease Control and Prevention, COVID-19, https://www.cdc.gov/coronavirus/2019-ncov/index.html). A program or service that imposes conditions on participation in or acceptance of the service that would undermine efforts to stop the spread of COVID-19 or discourage compliance with practices in line with CDC guidance for stopping the spread of COVID-19 is not a permissible use of funds.

If a recipient intends to fund capital expenditures in response to the public health impacts of the pandemic, recipients should refer to the section Capital Expenditures for details about the eligibility of capital expenditures.

Standards: Designating a Negative Economic Impact

Public Comment: Many commenters expressed uncertainty about how to determine whether uses of funds, beyond those specifically enumerated as eligible, might be eligible responses to negative economic impacts. For example, many commenters submitted questions asking whether specific uses of funds would be eligible. Others described what they considered to be impacts of the pandemic and argued that uses of funds to respond to these issues should be eligible. Some commenters requested that Treasury provide additional detail to guide their assessments of eligible uses of funds. These comments ranged in their specificity and covered the full range of eligible uses to respond to negative economic impacts. Several commenters asked for clarification about what types of food assistance would be considered eligible. Another commenter requested that the establishment of outdoor dining be eligible. Many commenters inquired about homeless shelters as an eligible use of SLFRF funds.

Commenters also expressed uncertainty about the ability to establish classes, including geographic areas, that experienced a negative economic impact or disagreed with the requirement that an individual entity be impacted by the pandemic in order to receive assistance. For example, a commenter argued that interventions should not be limited to individuals or businesses that experienced an economic impact and should instead be used broadly to support economic growth. These commenters argued that an expenditure that supports a more robust economy may help combat the pandemic's negative economic impacts, and it can do so even if

funding is provided to individuals or entities that did not themselves experience a negative economic impact during the pandemic.

Treasury Response: The final rule maintains the standard articulated in the interim final rule. For clarity, the final rule re-articulates that when assessing whether a program or service is an eligible use to respond to the negative economic impacts of the COVID–19 public health emergency, Treasury will consider the two eligibility requirements discussed below.

First, there must be a negative economic impact, or an economic harm, experienced by an individual or a class. The recipient should assess whether, and the extent to which, there has been an economic harm, such as loss of earnings or revenue, that resulted from the COVID–19 public health emergency. A recipient should first consider whether an economic harm exists and then whether this harm was caused or made worse by the COVID–19 public health emergency. This approach is consistent with the text of the statute, which provides that funds in this category must be used to "respond to the public health emergency with respect to… its negative economic impacts."

While economic impacts may either be immediate or delayed, individuals or classes that did not experience a negative economic impact from the public health emergency would not be eligible beneficiaries under this category. As noted above, the interim final rule permitted recipients to presume that households that experienced unemployment, increased food or housing insecurity, or are low- or moderate-income experienced a negative economic impact from the pandemic. For discussion of the final rule's approach to this presumption, see section Populations Presumed Eligible.

The final rule also maintains several provisions included in the interim final rule and subsequent guidance that are intended to ease administration of identifying that the beneficiary

experienced a negative economic impact or harm. For example, the interim final rule allowed, and the final rule maintains the ability for, recipients to demonstrate a negative economic impact on a population or group, referred to as a "class," and to provide assistance to households, small businesses, or nonprofits that fall within that class. In such cases, the recipient need only demonstrate that the household, small business, or nonprofit is within the class that experienced a negative economic impact, see section Standards: Designating Other Impacted Classes. This would allow, for example, an internet access assistance program for all households with children to support those households' ability to participate in healthcare, work, and educational activities like extending learning opportunities, among other critical activities. In that case, the recipient would only need to identify a negative economic impact to the class of "households with children" and would not need to document or otherwise demonstrate that each individual household served experienced a negative economic impact.

Second, the response must be designed to address the identified economic harm or impact resulting from or exacerbated by the public health emergency. In selecting responses, the recipient must assess whether, and the extent to which, the use would respond to or address this harm or impact. This approach is consistent with the text of the statute, which provides that funds may be used to "respond to" the "negative economic impacts" of the public health emergency "including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality." The list of potential responses ("assistance" or "aid") suggests that responses should address the "negative economic impacts" of particular types of beneficiaries (e.g., households or small businesses).

Responses must be reasonably designed to benefit the individual or class that experienced the negative economic impact or harm. Uses of funds should be assessed based on their

responsiveness to their intended beneficiary and the ability of the response to address the impact or harm experienced by that beneficiary.[20]

Responses must also be related and reasonably proportional to the extent and type of harm experienced; uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses.[21] Reasonably proportional refers to the scale of the response compared to the scale of the harm. It also refers to the targeting of the response to beneficiaries compared to the amount of harm they experienced; for example, it may not be reasonably proportional for a cash assistance program to provide assistance in a very small amount to a group that experienced severe harm and in a much larger amount to a group that experienced relatively little harm. In evaluating whether a use is reasonably proportional, recipients should consider relevant factors about the harm identified and the response. For example, recipients may consider the size of the population impacted and the severity, type, and duration of the impact. Recipients may also consider the efficacy, cost, cost-effectiveness, and time to delivery of the response.

Finally, recipients should be aware of the distinction between beneficiaries of funds and subrecipients; a recipient may provide services to beneficiaries through subrecipients that did not experience a negative economic impact, see section Distinguishing Subrecipients versus Beneficiaries. That is, a recipient may award SLFRF funds to an entity that did not experience a negative economic impact in order to implement a program or provide a service to beneficiaries on its behalf. Such transfers, when implementing a public health or negative economic impact

[20] For example, expenses such as excessive compensation to employees or expenses which have already been reimbursed through another federal program, are not reasonably designed to address a negative economic impact to a beneficiary.

[21] For example, a program or service that imposes conditions on participation in or acceptance of the service that would undermine efforts to stop the spread of COVID-19 or discourage compliance with practices in line with CDC guidance for stopping the spread of COVID-19 is not a permissible use of funds.

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).[22]

The final rule defines a household as *moderate income* if it has (i) income at or below 300 percent of the FPG for the size of its household based on the most recently published

[22] AMI is also often referred to as median family income for the area. Since AMI is synonymous with this term and used more generally, the final rule refers to AMI.

poverty guidelines by HHS or (ii) income at or below 65 percent of the AMI for its county and size of household based on the most recently published data by HUD.[23]

Recipients may determine whether to measure income levels for specific households or for a geographic area based on the type of service to be provided. For example, recipients developing a program that serves specific households (e.g., a subsidy for internet access, a childcare program) may measure income at the household level. Recipients providing a service that reaches a general geographic area (e.g., a park) may measure median income of that area.

Further, recipients should generally use the income threshold for the size of the household to be served (e.g., when providing childcare to a household of five, recipients should reference the income threshold for a household of five); however, recipients may use the income threshold for a default household size of three if providing 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

[23] For the six New England states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont, HUD provides AMI for towns rather than counties. Recipients in these states should use the AMI corresponding to their town when determining thresholds for both low and moderate income.

services. See section General Provisions: Standards for Identifying Other Eligible Populations for details on applicable standards.

Applicable levels. For reference, the FPG is commonly referred to as the federal poverty level (FPL) and is related to—although distinct from—the U.S. Census Bureau's poverty threshold. The final rule uses the FPG when referring specifically to the HHS guidelines, as these are the quantitative metrics used for determining low- and moderate-income households.

The FPG by household size for 2021 is included in the table below. Recipients should refer to HHS Poverty Guidelines for this information, which is updated annually and available on the HHS website.[24] For calculating the thresholds of 40 percent and 65 percent of AMI, recipients should refer to the annual HUD Section 8 50 percent income limits by county and household size published by HUD and available on the HUD website; in particular, recipients should calculate the 40 percent threshold as 0.8 times the 50 percent income limit, and recipients should calculate the 65 percent threshold as 1.3 times the 50 percent income limit.[25] Finally, for median income of Census Tracts and other geographic areas, recipients should refer to the most recent American Community Survey 5-year estimates available through the Census website.[26]

[24] U.S. Department of Health and Human Service, HHS Poverty Guidelines for 2021, *available at* https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines.
[25] U.S. Department of Housing and Urban Development, FY 2021 Section 8 Income Limits, *available at*https://www.huduser.gov/portal/datasets/il/il21/Section8-FY21.xlsx. Recipients may refer to the list of counties (and New England towns) identified by state and metropolitan area for identifying the appropriate area. U.S. Department of Housing and Urban Development, FY 2021 List of Counties (and New England Towns) Identified by State and Metropolitan Area, *available at* https://www.huduser.gov/portal/datasets/il/il21/area-definitions-FY21.pdf.
[26] The U.S. Census Bureau provides an interactive map: U.S. Census Bureau, Median Household Income State Selection Map, *available at* https://data.census.gov/cedsci/map?q=Median%20Household%20Income&g=0100000US%2404000%24001&tid=ACSST5Y2019.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.

	2021 Federal Poverty Guidelines		
Household size	48 Contiguous States and the District of Columbia	Alaska	Hawaii
1	$12,880	$16,090	$14,820
2	$17,420	$21,770	$20,040
3	$21,960	$27,450	$25,260
4	$26,500	$33,130	$30,480
5	$31,040	$38,810	$35,700
6	$35,580	$44,490	$40.920
7	$40,120	$50,170	$46,140
8	$44,660	$55,850	$51,360
For families/households with more than 8 persons, add the following amounts for each additional person: 48 Contiguous States and the District of Columbia: $4,540 Alaska: $5,680 Hawaii: $5,220 Source: "HHS Poverty Guidelines for 2021," available at https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines.			

Rationale. In defining low income, the final rule uses both the FPG and AMI to account for national trends and regional differences. The metric of 185 percent of FPG aligns with some other programs; for instance, under the National School Lunch Program, students with household incomes under 185 percent of FPG qualify for free or reduced-price lunch, and schools often use eligibility for free or reduced-price lunch as an indicator of low-income status under Title 1-A of the Elementary and Secondary Education Act. Eligibility for other programs, such as the Federal Communications Commission's e-Rate program and the Special Supplemental Nutrition Program for Women, Infants and Children employ this metric as well. In addition, 185 percent of the FPG for a family of four is $49,025, which is approximately the wage earnings for a two-earner household in which both earners receive the median wage in occupations, such as waiters

and waitresses and hotel clerks, that were heavily impacted by COVID-19.[27] This measure is targeted toward those at the bottom of the income distribution and thus helps to promote use of SLFRF funds towards populations with the greatest needs. At the same time, with approximately one-quarter of Americans below 185 percent of the poverty threshold, this approach is broad enough to facilitate use of SLFRF funds across many jurisdictions.[28] Because regions have different cost and income levels, this definition also allows for upward adjustment based on AMI for those regions where 40 percent of AMI exceeds 185 percent of FPG. The metric of 40 percent of AMI is based on the midpoint of values often used to designate certain categories of low-income households; specifically, it is the midpoint of the 30 percent income limit and the 50 percent income limit used in programs such as the Community Development Block Grant (CDBG) Program.

In defining moderate income, the final rule uses both the FPG and AMI to account for national trends and regional differences. While there are different definitions of moderate income, 300 percent of FPG falls within the range commonly used by researchers.[29] Analysis of median wages among a sample of occupations likely impacted by the pandemic also suggests that an income cutoff of 300 percent of FPG would include many households with workers in such occupations.[30] Moreover, the metric of 300 percent of FPG covers households that, while

[27] *See* U.S. Bureau of Labor Statistics, Occupational Employment and Wage Estimates, https://www.bls.gov/oes/current/oes_nat.htm (last visited December 7, 2021).
[28] U.S. Census Bureau, Poverty Status by State, https://www.census.gov/data/tables/time-series/demo/income-poverty/cps-pov/pov-46.html (last visited December 7, 2021).
[29] For instance, Melissa Kearney et al. (2013) cap the "struggling lower middle-income class" at 250 percent of the federal poverty level, while Isabel Sawhill and Edward Rodrigue (2015) define the "middle class" as those with incomes of at least 300 percent of the poverty line. Melissa Kearney et al., "A Dozen Facts about America's Struggling Lower-Middle Class," The Hamilton Project (December 2013), https://www.hamiltonproject.org/assets/legacy/files/downloads_and_links/THP_12LowIncomeFacts_Final.pdf; Isabel Sawhill and Edward Rodrigue, "An Agenda for Reducing Poverty and Improving Opportunity," Brookings Institution, https://www.brookings.edu/wp-content/uploads/2016/07/Sawhill_FINAL.pdf.
[30] Data on median annual wages from: U.S. Bureau of Labor and Statistics, Occupational Employment and Wage Statistics, *available at* https://www.bls.gov/oes/current/oes_nat.htm (last visited December 7, 2021).

above the poverty line, often lack economic security.[31] Treasury determined the AMI threshold for moderate income by maintaining the same ratio of FPG multiplier to AMI multiplier as in the definition of low income. This anchors the threshold to the existing definitions of moderate income from the literature while taking into account geographical variation in income and expenses in the same manner as the definition of low income.

Eligibility Presumptions

Public Comment: Many commenters believed that a broader range of groups should be considered presumptively impacted and disproportionately impacted, arguing that many households had been affected by the pandemic and that broader presumed eligibility would help recipients provide assistance quickly and effectively.

Treasury also received many comments on the presumption that families living in QCTs or receiving services from Tribal governments were disproportionately impacted by the pandemic. While many commenters supported the interim final rule's recognition of disproportionate impacts of the pandemic on low-income communities, many commenters disagreed with treating QCTs as the only presumed eligible group of disproportionately impacted households, apart from households served by Tribal governments. While acknowledging a potential increase in administrative burden, commenters recommended that Treasury presume other households or geographic areas, in addition to QCTs, were disproportionately impacted; suggestions included all low- and moderate-income households, geographic areas designated as

[31] For instance, households earning between 200 and 300 percent of the FPG have significantly higher rates of food and housing insecurity than those earning above 300 percent of the FPG. Table 1, Kyle J. Caswell and Stephen Zuckerman, Food Insecurity, Housing Hardship, and Medical Care Utilization, Urban Institute (June 2018), https://www.urban.org/sites/default/files/publication/98701/2001896_foodinsecurity_housinghardship_medicalcareutilization_finalized.pdf.

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 disproportionate, or meaningfully more severe, impact from the pandemic. As discussed in the interim final rule, pre-existing disparities in health and economic outcomes magnified the impact of the COVID-19 public health emergency on certain households and communities. As with the interim final rule, under the final rule recipients may presume that households residing in QCTs or receiving services provided by Tribal governments were disproportionately impacted by the pandemic. In addition, under the final rule recipients may presume that low-income households were disproportionately impacted by the pandemic. Finally, under the final rule recipients may also presume that households residing in the U.S. territories or receiving services from territorial governments were disproportionately impacted.

Treasury notes that households presumed to be disproportionately impacted would also be presumptively impacted, as these households have not only experienced pandemic impacts but have experienced disproportionate pandemic impacts; as a result, these households are presumptively eligible for responsive services for both impacted and disproportionately impacted households.

Many different geographic, income-based, or poverty-based presumptions could be used to designate disproportionately impacted populations. The combination of permitting recipients to use QCTs, low-income households, and services provided by Tribal or territorial governments as presumptions balances these varying methods. Specifically, QCTs are a commonly used designation of geographic areas based on low incomes or high poverty rates of households in the community; for recipients providing geographically targeted services, QCTs may provide a

simple metric with readily available maps for use. However, Treasury recognizes that QCTs do not capture all underserved populations, including for reasons noted by commenters. By allowing recipients to also presume that low-income households were disproportionately impacted, the final rule provides greater flexibility to serve underserved households or communities. Data on household incomes is also readily available at varying levels of geographic granularity (e.g., Census Tracts, counties), again permitting flexibility to adapt to local circumstances and needs. Finally, Treasury notes that, as discussed further below, recipients may also identify other households, populations, and communities disproportionately impacted by the pandemic, in addition to those presumed to be disproportionately impacted.

Additionally, Tribal and territorial governments may face both disproportionate impacts of the pandemic and administrability challenges with operationalizing the income-based standard; therefore, Treasury has presumed that services provided by these governments respond to disproportionate pandemic impacts. Given a lack of regularly published data on household incomes in most territories,[32] as well as a lack of poverty guidelines developed for these jurisdictions,[33] it may be highly challenging to assess disproportionate impact in these communities according to an income- or poverty-based standard. Similarly, data on incomes in Tribal communities are not readily available.[34] Finally, as described in the sections on Public Health and Negative Economic Impacts, Tribal communities have faced particularly severe health and economic impacts of the pandemic. Similarly, available research suggests that

[32] For instance, the American Community Survey does not include all territories. U.S. Census Bureau, Areas Published, https://www.census.gov/programs-surveys/acs/geography-acs/areas-published.html (last visited November 9, 2021).
[33] U.S. Department of Health and Human Services, *supra* note 19.
[34] For instance, data from the American Community Survey is based on geographical location rather than Tribal membership. U.S. Census Bureau, My Tribal Area, https://www.census.gov/Tribal/Tribal_glossary.php.

preexisting health and economic disparities in the territories amplified the impact of the pandemic on these communities.[35]

Categorical Eligibility

Public Comment: Several commenters suggested that the final rule permit recipients to rely on a beneficiary's eligibility for other federal benefits programs as an easily administrable proxy for identifying a group or population that experienced a negative economic impact as a result of the COVID-19 public health emergency (i.e., categorical eligibility). In other words, a recipient would determine that individuals or households are eligible for an SLFRF-funded program based on the individual or household's eligibility in another program, typically another federal benefit program. Commenters noted that categorical eligibility is a common policy in program administration that can significantly ease administrative burden on both program administrators and beneficiaries.

Treasury Response: Treasury agrees that allowing recipients to identify impacted and disproportionately impacted beneficiaries based on their eligibility for other programs with similar income tests would ease administrative burden. To the extent that the other program's eligibility criteria align with a population or class that experienced a negative economic impact of the pandemic, this approach is also consistent with the process allowed under the final rule for recipients to determine that a class has experienced a negative economic impact, and then document that an individual receiving services is a member of the class. For these reasons, the final rule recognizes categorical eligibility for the following programs and populations:

[35] Lina Stoylar et. al., Challenges in the U.S. Territories: COVID-19 and the Medicaid Financing Cliff, Kaiser Family Foundation (May 18, 2021), https://www.kff.org/coronavirus-covid-19/issue-brief/challenges-in-the-u-s-territories-covid-19-and-the-medicaid-financing-cliff/.

- 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 I eligible schools[36] 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

[36] *Title I eligible schools* means schools eligible to receive services under section 1113 of Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6313), including schools served under section 1113(b)(1)(C) of that Act.

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 feedback from relevant state and local agencies, such as public health departments or social services departments. In both cases, recipients should consider the quality of the research, data, and applicability of analysis to their determination.

In designing a program or service that responds to a disproportionately impacted class, a recipient must first identify the impact and then identify an appropriate response. To assess disproportionate impact, recipients should rely on data or research that measures the public

health or negative economic impact. An assessment of the effects of a response (e.g., survey data on levels of resident support for various potential responses) is not a substitute for an assessment of the impact experienced by a particular class. Data about the appropriateness or desirability of a response may be used to assess the reasonableness of a response, once an impact or disproportionate impact has been identified but should not be the basis for assessing impact.

2. PUBLIC HEALTH

Background

On January 21, 2020, the Centers for Disease Control and Prevention (CDC) identified the first case of novel coronavirus in the United States.[37] Since that time, and through present day, the United States has faced numerous waves of the virus that have brought acute strain on health care and public health systems. At various points in the pandemic, hospitals and emergency medical services have seen significant influxes of patients; response personnel have faced shortages of personal protective equipment; testing for the virus has been scarce; and congregate living facilities like nursing homes have seen rapid spread.

Since the initial wave of the COVID-19 pandemic, the United States has faced several additional major waves that continued to impact communities and stretch public health services. The summer 2020 wave impacted communities in the south and southwest. As the weather turned colder and people spent more time indoors, a wave throughout fall and winter 2020

[37] Press Release, Centers for Disease Control and Prevention, First Travel-related Case of 2019 Novel Coronavirus Detected in United States (Jan. 21, 2020), https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html.

impacted communities in almost every region of the country as the virus reached a point of uncontrolled spread and over 3,000 people died per day due to COVID-19.[38]

In December 2020, the Food and Drug Administration (FDA) authorized COVID-19 vaccines for emergency use, and soon thereafter, mass vaccination in the United States began. At the time of the interim final rule publication in May 2021, the number of daily new infections was steeply declining as rapid vaccination campaigns progressed across the country. By summer 2021, COVID-19 cases had fallen to their lowest level since early months of the pandemic, when testing was scarce. However, throughout late summer and early fall, the Delta variant, a more infectious and transmittable variant of the SARS-CoV-2 virus, sparked yet another surge. From June to early September, the seven-day moving average of reported cases rose from 12,000 to 165,000.[39]

As of December 2021, COVID-19 in total has infected over 50 million and killed over 800,000 Americans.[40] Preventing and mitigating the spread of COVID-19 continues to require a major public health response from federal, state, local, and Tribal governments.

First, state, local, and Tribal governments across the country have mobilized to support the national vaccination campaign. As of December 2021, more than 80 percent of adults have received at least one dose, with more than 470 million total doses administered.[41] Additionally, more than 15 million children over the age of 12 have received at least one dose of the vaccine and over 47 million people have received a booster dose.[42] Vaccines for younger children, ages 5

[38] Centers for Disease Control and Prevention, COVID Data Tracker: Trends in Number of COVID-19 Cases and Deaths in the US Reported to CDC, by State/Territory, https://covid.cdc.gov/covid-data-tracker/#trends_dailytrendscases (last visited December 7, 2021).
[39] *Id.*
[40] Centers for Disease Control and Prevention, COVID Data Tracker, http://www.covid.cdc.gov/covid-data-tracker/#datatracker-home (last visited December 31, 2021).
[41] Centers for Disease Control and Prevention, COVID Data Tracker: COVID-19 Vaccinations in the United States, https://covid.cdc.gov/covid-data-tracker/#vaccinations (last visited December 7, 2021).
[42] *Id.*

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 funds to support a vaccine incentive program, providing $100 gift cards to residents at community vaccination clinics. The program aimed to target communities with high public health needs.[43] Another recipient reported that it is partnering with multiple agencies, organizations, and providers to distribute COVID-19 vaccinations to homebound residents in assisted living facilities.[44]

State, local, and Tribal governments have also continued to execute other aspects of a wide-ranging public health response, including increasing access to COVID-19 testing and rapid at-home tests, contact tracing, support for individuals in isolation or quarantine, enforcement of public health orders, new public communication efforts, public health surveillance (e.g., monitoring case trends and genomic sequencing for variants), enhancement to health care capacity through alternative care facilities, and enhancement of public health data systems to meet new demands or scaling needs.

State, local, and Tribal governments have also supported major efforts to prevent COVID-19 spread through safety measures at key settings like nursing homes, schools, congregate living settings, dense worksites, incarceration settings, and in other public facilities.

[43] Columbus, Ohio Recovery Plan, https://www.columbus.gov/recovery/.
[44] Luzerne County, Pennsylvania Recovery Plan, https://www.luzernecounty.org/DocumentCenter/View/26304/Final-Interim-Recovery-Plan-Performance-Report-83121.

This has included, for example, implementing infection prevention measures or making ventilation improvements.

In particular, state, local, and Tribal governments have mounted significant efforts to safely reopen schools. A key factor in school reopening is the ability to implement COVID-19 mitigation strategies such as providing masks and other hygiene resources, improving air-quality and ventilation, increasing outdoor learning and eating spaces, testing and contact tracing protocols, and a number of other measures.[45] For example, one recipient described plans to use SLFRF funds to further invest in school health resources that were critical components of school reopening and reducing the spread of COVID-19 in schools. Those investments include the increasing school nurses and social 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

[45] This includes implementing mitigation strategies consistent with the Centers for Disease Control and Prevention's (CDC) Guidance for COVID-19 Prevention in K-12 Schools (November 5, 2021), *available at* https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html.

adults reported symptoms of depression or anxiety, up from 11 percent in the first half of 2019.[46] The mental health impacts of the pandemic have been particularly acute for adults ages 18 to 24, racial and ethnic minorities, caregivers for adults, and essential workers, with all reporting significantly higher rates of considering suicide.[47] The proportion of children's emergency department visits related to mental health has also risen noticeably.[48] Similarly, rates of substance use and overdose deaths have spiked: preliminary data from the CDC show a nearly 30 percent increase in drug overdose mortality from April 2020 to April 2021, bringing the estimated overdose death toll for a 12-month period over 100,000 for the first time ever.[49] The CDC also found that 13 percent of adults started or increased substance use to cope with stress related to COVID-19 and 26 percent reported having symptoms of trauma- and stressor-related disorder (TRSD) related to the pandemic.[50]

Another public health challenge exacerbated by the pandemic was violent crime and gun violence, which increased during the pandemic and has disproportionately impacted low-income communities.[51] According to the Federal Bureau of Investigation (FBI), although the property crime rate fell 8 percent in 2020, the violent crime rate increased 6 percent in 2020 compared to

[46] Nirmita Panchal et al., The Implications of COVID–19 for Mental Health and Substance Abuse (Feb. 10, 2021), https://www.kff.org/coronaviruscovid-19/issue-brief/the-implications-of-covid-19- for-mental-health-and-substance-use/#:~:text= Older%20adults%20are%20also%20 more,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.
[47] *Id.*
[48] Rebecca T. Leeb et al., Mental Health-Related Emergency Department Visits Among Children Aged <18 Years During the COVID Pandemic—United States, January 1—October 17, 2020, Morb. Mortal. Wkly. Rep. 69(45):1675–80 (Nov. 13, 2020), https://www.cdc.gov/mmwr/volumes/69/wr/mm6945a3.htm.
[49] Centers for Disease Prevention and Control, National Center for Health Statistics, Provisional Drug Overdose Death Counts, https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm (last visited May 8December 6, 2021).
[50]Panchal, *supra* note 42; Mark É. Czeisler et al., *supra* note 42.
[51] The White House, FACT SHEET: More Details on the Biden-Harris Administration's Investments in Community Violence Interventions (April 7, 2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/07/fact-sheet-more-details-on-the-biden-harris-administrations-investments-in-community-violence-interventions/.

2019 data.[52] In particular, the estimated number of aggravated assault offenses rose 12 percent, while murder and manslaughter increased 30 percent from 2019 to 2020.[53] The proportion of homicides committed with firearms rose from 73 percent in 2019 to 76 percent in 2020.[54] Exposure to violence can create serious short-term and long-term harmful effects to health and development, and repeated exposure to violence may be connected to negative health outcomes.[55] Addressing community violence as a public health issue may help prevent and even reduce additional harm to individuals, households, and communities.[56]

Many communities are using SLFRF funds to invest in holistic approaches in violence prevention that are rooted in targeted outreach and addressing root causes. For example, the City of St. Louis is planning to invest in expanding a "community responder" model designed to provide clinical help and to divert non-violent calls away from the police department. Additionally, the city will expand access to mental health services, allowing residents to seek support at city recreation centers, libraries, and other public spaces.[57] Similarly, Los Angeles County will further invest in its "Care First, Jails Last" program which seeks to replace "arrest and incarceration" responses with health interventions.[58]

While the pandemic affected communities across the country, it disproportionately impacted some demographic groups and exacerbated health inequities along racial, ethnic, and

[52] Federal Bureau of Investigation, FBI Releases 2020 Crime Statistics (September 27, 2021) https://www.fbi.gov/news/pressrel/press-releases/fbi-releases-2020-crime-statistics.
[53] *Id.*
[54] *Id.*
[55] The Educational Fund to Stop Gun Violence, Community Gun Violence, https://efsgv.org/learn/type-of-gun-violence/community-gun-violence/ (last visited November 9, 2021).
[56] Giffords Law Center, Healing Communities in Crisis: Lifesaving Solutions to the Urban Gun Violence Epidemic (March 2016), https://giffords.org/wp-content/uploads/2019/01/Healing-Communities-in-Crisis.pdf.
[57] St. Louis, MO Recovery Plan, https://www.stlouis-mo.gov/government/recovery/covid-19/arpa/plan/.
[58] Los Angeles County, CA Recovery Plan, http://file.lacounty.gov/SDSInter/bos/supdocs/160391.pdf.

socioeconomic lines.[59] The CDC has found that racial and ethnic minorities are at increased risk for infection, hospitalization, and death from COVID-19, with Hispanic or Latino and Native American or Alaska Native patients at highest risk.[60]

Similarly, low-income and socially vulnerable communities have seen the most severe health impacts. For example, counties with high poverty rates also have the highest rates of infections and deaths, with 308 deaths per 100,000 compared to the U.S. average of 238 deaths per 100,000, as of December 2021.[61] Counties with high social vulnerability, as measured by factors such as poverty and educational attainment, have also fared more poorly than the national average, with 325 deaths per 100,000 as of December 2021.[62] Over the course of the pandemic, Native Americans have experienced more than one and a half times the rate of COVID-19 infections, more than triple the rate of hospitalizations, and more than double the death rate compared to White Americans.[63] Low-income and minority communities also exhibit higher rates of pre-existing conditions that may contribute to an increased risk of COVID-19

[59] Office of the White House, National Strategy for the COVID-19 Response and Pandemic Preparedness (Jan. 21, 2021), https://www.whitehouse.gov/wp-content/uploads/2021/01/National-Strategy-for-the-COVID-19-Response-and-Pandemic-Preparedness.pdf.

[60] In a study of 13 states from October to December 2020, the CDC found that Hispanic or Latino and Native American or Alaska Native individuals were 1.7 times more likely to visit an emergency room for COVID-19 than White individuals, and Black individuals were 1.4 times more likely to do so than White individuals. *See* Sebastian D. Romano et al., Trends in Racial and Ethnic Disparities in COVID–19 Hospitalizations, by Region—United States, March– December 2020, MMWR Morb Mortal Wkly Rep 2021, 70:560–565 (Apr. 16, 2021), https:// www.cdc.gov/mmwr/volumes/70/wr/ mm7015e2.htm?s_cid=mm7015e2_w.

[61] Centers for Disease Control and Prevention, COVID Data Tracker: Trends in COVID-19 Cases and Deaths in the United States, by County-level Population Factors, https://covid.cdc.gov/covid-data-tracker/#pop-factors_totaldeaths (last visited December 7, 2021).

[62] The CDC's Social Vulnerability Index includes fifteen variables measuring social vulnerability, including unemployment, poverty, education levels, single-parent households, disability status, non-English speaking households, crowded housing, and transportation access.
Centers for Disease Control and Prevention, COVID Data Tracker: Trends in COVID-19 Cases and Deaths in the United States, by Social Vulnerability Index, https://covid.cdc.gov/covid-data-tracker/#pop-factors_totaldeaths (last visited December 7, 2021).

63 Centers for Disease Control and Prevention, Risk for COVID-19 Infection, Hospitalization, and Death By Race/Ethnicity, https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html (last visited December 7, 2021).

mortality.[64] In addition, individuals living in low-income communities may have had more limited ability to socially distance or to self-isolate when ill, resulting in faster spread of the virus, and were over-represented among essential workers, who face greater risk of exposure.[65]

Social distancing measures in response to the pandemic may have also exacerbated pre-existing public health challenges. For example, for children living in homes with lead paint, spending substantially more time at home raises the risk of developing elevated blood lead levels, while screenings for elevated blood lead levels declined during the pandemic.[66] The combination of these underlying social and health vulnerabilities may have contributed to more severe public health outcomes of the pandemic within these communities, resulting in an exacerbation of pre-existing disparities in health outcomes.[67]

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,

[64] *See, e.g.*, Centers for Disease Control and Prevention, Risk of Severe Illness or Death from COVID-19 (Dec. 10, 2020), https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/racial-ethnic-disparities/disparities-illness.html (last visited December 7, 2021).
[65] Milena Almagro et al., Racial Disparities in Frontline Workers and Housing Crowding During COVID-19: Evidence from Geolocation Data (Sept. 22, 2020), NYU Stern School of Business (forthcoming), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3695249; Grace McCormack et al., Economic Vulnerability of Households with Essential Workers, JAMA 324(4):388-90 (2020), *available at* https://jamanetwork.com/journals/jama/fullarticle/2767630.
[66] *See, e.g.*, Joseph G. Courtney et al., Decreases in Young Children Who Received Blood Lead Level Testing During COVID-19 – 34 Jurisdictions, January-May 2020, Morb. Mort. Wkly. Rep. 70(5):155-61 (Feb. 5, 2021), https://www.cdc.gov/mmwr/volumes/70/wr/mm7005a2.htm; Emily A. Benfer & Lindsay F. Wiley, Health Justice Strategies to Combat COVID-19: Protecting Vulnerable Communities During a Pandemic, Health Affairs Blog (Mar. 19, 2020), https://www.healthaffairs.org/do/10.1377/hblog20200319.757883/full/.
[67] *See, e.g.*, Centers for Disease Control and Prevention, *supra* note 58; Benfer & Wiley, *supra* note 62; Nathaniel M. Lewis et al., Disparities in COVID-19 Incidence, Hospitalizations, and Testing, by Area-Level Deprivation – Utah, March 3-July 9, 2020, Morb. Mortal. Wkly. Rep. 69(38):1369-73 (Sept. 25, 2020), https://www.cdc.gov/mmwr/volumes/69/wr/mm6938a4.htm.

support efforts to prevent or decrease spread of the virus, and address other impacts of the pandemic on public health. The interim final rule implemented these provisions by identifying a non-exhaustive list of programs or services that may be funded as responding to COVID-19 ("enumerated eligible uses"), along with considerations for evaluating other potential uses of funds not explicitly listed. Enumerated eligible uses are discussed below. For guidance on how to determine whether a particular use is allowable, beyond those enumerated, see section Standards: Identifying a Public Health Impact.

Enumerated eligible uses under this section built and expanded upon permissible expenditures under the Coronavirus Relief Fund; for clarity, the interim final rule expressly listed as eligible uses the uses permissible under the Coronavirus Relief Fund, with minor exceptions.[68] The interim final rule also recognized that the nature of the COVID-19 public health emergency, and responsive policy measures, programs, and services, had changed over time and is expected to continue evolving.

The interim final rule categorized enumerated eligible uses to respond to the public health emergency into several categories: 1) COVID-19 mitigation and prevention, 2) medical expenses, 3) behavioral health care, 4) public health and safety staff, 5) expenses to improve the design and execution of health and public health programs, and 6) eligible uses to address disparities in public health outcomes. For each category in turn, this section describes public comments received and Treasury's responses, as well as comments received proposing additional enumerated eligible uses.

[68] Generally, funding uses eligible under CRF as a response to the direct public health impacts of COVID-19 will continue to be eligible under the ARPA, including those not explicitly listed in the final rule, with the following two exceptions: 1) the standard for eligibility of public health and safety payrolls has been updated (see section Public Sector Capacity and Workforce in General Provisions: Other) and 2) expenses related to the issuance of tax-anticipation notes are no longer an eligible funding use (see section Restrictions on Use: Debt Service).

Reorganizations and Cross-References: In some cases, enumerated eligible uses included in the interim final rule under responding to the public health emergency have been re-categorized in the organization of the final rule to enhance clarity. For discussion of eligible uses for public health and safety staff and to improve the design and execution of public health programs, please see section Public Sector Capacity and Workforce in General Provisions: Other. For discussion of eligible uses to address disparities in public health outcomes, please see section Assistance to Households in Negative Economic Impacts.

Conversely, discussion of eligible assistance to small businesses and nonprofits to respond to public health impacts has been moved from Assistance to Small Businesses and Assistance to Nonprofits in Negative Economic Impacts to this section. This change is consistent with the interim final rule, which provides that appropriate responses to address the public health impacts of COVID-19 may be provided to any type of entity.

a. COVID-19 MITIGATION AND PREVENTION

COVID-19 public health response and mitigation tactics. Recognizing the broad range of services and programming needed to contain COVID-19, the interim final rule provided an extensive list of enumerated eligible uses to prevent and mitigate COVID-19 and made clear that the public health response to the virus is expected to continue to evolve over time, necessitating different uses of funds.

Enumerated eligible uses of funds in this category included: vaccination programs; medical care; testing; contact tracing; support for isolation or quarantine; supports for vulnerable populations to access medical or public health services; public health surveillance (e.g., monitoring case trends, genomic sequencing for variants); enforcement of public health orders;

public communication efforts; enhancement to health care capacity, including through alternative care facilities; purchases of personal protective equipment; support for prevention, mitigation, or other services in congregate living facilities (e.g., nursing homes, incarceration settings, homeless shelters, group living facilities) and other key settings like schools; ventilation improvements in congregate settings, health care settings, or other key locations; enhancement of public health data systems; other public health responses; and capital investments in public facilities to meet pandemic operational needs, such as physical plant improvements to public hospitals and health clinics or adaptations to public buildings to implement COVID-19 mitigation tactics. These enumerated uses are consistent with guidance from public health authorities, including the CDC.

Public Comment: Many commenters were supportive of expansive enumerated eligible uses for mitigating and preventing COVID-19, noting the wide range of activities that governments may undertake and the continued changing landscape of pandemic response. Some commenters requested that Treasury engage in ongoing consideration of and consultation on evolving public health needs and resulting eligible expenses. Some commenters noted that their jurisdiction does not have an official public health program, for example smaller jurisdictions or those that do not have a health department, and requested clarification on whether their public health expenses would still be eligible in compliance with program rules.

Treasury Response: In the final rule, Treasury is maintaining an expansive list of enumerated eligible uses to mitigate and prevent COVID-19, given the wide-ranging activities that governments may take to further these goals, including "other public health responses." Note that the final rule discusses several of these enumerated uses in more detail below.

Treasury is further clarifying that when providing COVID-19 prevention and mitigation services, recipients can identify the impacted population as the general public. Treasury presumes that all enumerated eligible uses for programs and services, including COVID-19 mitigation and prevention programs and services, are reasonably proportional responses to the harm identified unless a response is grossly disproportionate to the type or extent of harm experienced. Note that capital expenditures are not considered "programs and services" and are not presumed to be reasonably proportional responses to an identified harm except as provided in section Capital Expenditures in General Provisions: Other. In other words, recipients can provide any COVID-19 prevention or mitigation service to members of the general public without any further analysis of impacts of the pandemic on those individuals and whether the service is responsive.

This approach gives recipient governments an extensive set of eligible uses that can adapt to local needs, as well as evolving response needs and developments in understanding of transmission of COVID-19. Treasury emphasizes how the enumerated eligible uses can adapt to changing circumstances. For example, when the interim final rule was released, national daily COVID-19 cases were at relatively low levels and declining;[69] as the Delta variant spread and cases peaked in many areas of the country, particularly those with low vaccination rates, government response needs and tactics evolved, and the SLFRF funds provided the ability to quickly and nimbly adapt to new public health needs. Treasury also notes that funds may be used to support compliance with and implementation of COVID-19 safety requirements, including vaccination requirements, testing programs, or other required practices.

[69] *See* Centers for Disease Control and Prevention, COVID Data Tracker, https://covid.cdc.gov/covid-data-tracker/#trends_dailycases (last visited December 7, 2021).

Recipient governments do not need to have an official health or public health program in order to utilize these eligible uses; any recipient can pursue these eligible uses, though Treasury recommends consulting with health and public health professionals to support effective implementation.

The CDC has provided recommendations and guidelines to help mitigate and prevent COVID-19. The interim final rule and final rule help support recipients in stopping the spread of COVID-19 through these recommendations and guidelines.[70] The final rule reflects changing circumstances of COVID-19 and provides a broad range of permissible uses for mitigating and preventing the spread of the disease, in a manner consistent with CDC guidelines and recommendations.

The purpose of the SLFRF funds is to mitigate the fiscal effects stemming from the COVID-19 public health emergency, including by supporting efforts to stop the spread of the virus. The interim final rule and final rule implement this objective by, in part, providing that recipients may use SLFRF funds for COVID-19 mitigation and prevention.[71] A program or service that imposes conditions on participation in or acceptance of the service that would undermine efforts to stop the spread of COVID-19 or discourage compliance with recommendations and guidelines in CDC guidance for stopping the spread of COVID-19 is not a permissible use of funds. In other words, recipients may not use funds for a program that undermines practices included in the CDC's guidelines and recommendations for stopping the spread of COVID-19. This includes programs that impose a condition to discourage compliance with practices in line with CDC guidance (e.g., paying off fines to businesses incurred for

[70] *See* Centers for Disease Control and Prevention, COVID-19, https://www.cdc.gov/coronavirus/2019-ncov/index.html (last visited November 8, 2021).
[71] *See* 35.6(b); IFR discussion of CDC guidelines.

violation of COVID-19 vaccination or safety requirements), as well as programs that require households, businesses, nonprofits, or other entities not to use practices in line with CDC guidance as a condition of receiving funds (e.g., requiring that businesses abstain from requiring mask use or employee vaccination as a condition of receiving SLFRF funds).

Vaccination programs and vaccine incentives. At the time of the interim final rule release, many vaccination programs were using mass vaccination tactics to rapidly reach Americans en masse for first vaccine doses.[72] Since that time, the FDA has authorized booster vaccine doses for certain groups and certain vaccines and has also authorized vaccines for youths[73,74] The inclusion of "vaccination programs" as an eligible use allows for adaptation as the needs of programs change or new groups become eligible for different types of vaccinations.

Public Comment: Since the release of the interim final rule, many recipient governments have also requested clarification on whether vaccine incentives are a permissible use of funds.

Treasury Response: Treasury issued guidance clarifying that "[vaccine] programs that provide incentives reasonably expected to increase the number of people who choose to get vaccinated, or that motivate people to get vaccinated sooner than they otherwise would have, are an allowable use of funds so long as such costs are reasonably proportional to the expected public health benefit."[75] This use of funds remains permissible under the final rule.

[72] Centers for Disease Control and Prevention, COVID Data Tracker: COVID-19 Vaccinations in the United States, https://covid.cdc.gov/covid-data-tracker/#vaccinations (last visited October 18, 2021).
[73] U.S. Food and Drug Administration, Coronavirus (COVID-19) Update: FDA Takes Additional Actions on the Use of a Booster Dose for COVID-19 Vaccines, https://www.fda.gov/news-events/press-announcements/fda-authorizes-pfizer-biontech-covid-19-vaccine-emergency-use-children-5-through-11-years-age (last visited November 8, 2021).
[74] U.S. Food and Drug Administration, FDA Authorizes Pfizer-BioNTech COVID-19 Vaccine for Emergency Use in Children 5 through 11 Years of Age, https://www.fda.gov/news-events/press-announcements/fda-authorizes-pfizer-biontech-covid-19-vaccine-emergency-use-children-5-through-11-years-age (last visited November 8, 2021)
[75] Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.

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);

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.

- 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 industries without any further analysis of impacts of the pandemic on those entities and whether the service is responsive.

In some cases, this means that an entity not otherwise eligible to receive assistance to respond to negative economic impacts of the pandemic, for example an entity that did not experience a negative economic impact, may still be eligible to receive assistance under this category for COVID-19 mitigation and prevention services.

Uses of funds can include loans, grants, or in-kind assistance to small businesses, nonprofits, or other entities to implement COVID-19 prevention or mitigation tactics, such as vaccination; testing; contact tracing programs; physical plant changes to enable greater use of outdoor spaces or ventilation improvements; enhanced cleaning efforts; and barriers or partitions. For example, this would include assistance to a restaurant to establish an outdoor patio, given evidence showing much lower risk of COVID-19 transmission outdoors.[76] Uses of funds can also include aid to travel, tourism, hospitality, and other impacted industries to implement COVID-19 mitigation and prevention measures to enable safe reopening, for example, vaccination or testing programs, improvements to ventilation, physical barriers or partitions, signage to facilitate social distancing, provision of masks or personal protective equipment, or consultation with infection prevention professionals to develop safe reopening plans.

Recipients providing assistance to small businesses, nonprofits, or impacted industries that includes capital expenditures (i.e., expenditures on property, facilities, or equipment) should also review the section Capital Expenditures in General Provisions: Other, which describes eligibility standards for these expenditures. Recipients providing assistances in the form of loans should review the section Treatment of Loans Made with SLFRF Funds in General Provisions: Other.

Recipients should also be aware of the difference between beneficiaries of assistance and subrecipients when working with small businesses, nonprofits, or impacted industries. As noted above, Treasury presumes that the general public, as well as small businesses, nonprofits, and impacted industries in general, has been impacted by the COVID-19 disease itself and is eligible

[76] *See* Centers for Disease Control and Prevention, Participate in Outdoor and Indoor Activities, https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/outdoor-activities.html (last visited November 8, 2021).

for services that mitigate or prevent COVID-19 spread. As such, a small business, nonprofit, or impacted industry receiving assistance to implement COVID-19 mitigation measures is a beneficiary of assistance (e.g., granting funds to a small business to develop an outdoor patio to reduce transmission). In contrast, if a recipient contracts with, or grants funds to, a small business, nonprofit, or impacted industry to carry out an eligible use for COVID-19 mitigation on behalf of the recipient, the entity is a subrecipient (e.g., contracting with a small business to operate COVID-19 vaccination sites). For further information on distinguishing between beneficiaries and subrecipients, as well as the impacts of the distinction on reporting and other requirements, see section Distinguishing Subrecipients versus Beneficiaries.

b. MEDICAL EXPENSES

Background: The interim final rule also included as an enumerated eligible use medical expenses, including medical care and services to address the near-term and potential longer-term impacts of the disease on individuals infected.

Public Comment: Some commenters sought clarification on the types of medical expenses eligible and for whom, including whether funds could be used under this category for expanding health insurance coverage (e.g., subsidies for premiums, expanding a group health plan), improvements to healthcare facilities or establishment of new medical facilities, direct costs of medical services, and costs to a self-funded health insurance plan (e.g., a county government health plan) for COVID-19 medical care.

Treasury Response: In the final rule, Treasury is maintaining this enumerated eligible use category and clarifying that it covers costs related to medical care provided directly to an individual due to COVID-19 infection (e.g., treatment) or a potential infection (e.g., testing).

This can include medical costs to uninsured individuals; deductibles, co-pays, or other costs not covered by insurance; costs for uncompensated care at a health provider; emergency medical response costs; and, for recipients with a self-funded health insurance plan, excess health insurance costs due to COVID-19 medical care. These are medical expenses due to COVID-19 and distinguish this category of eligible uses from other related eligible uses, like COVID-19 mitigation and prevention and health insurance expenses to households, to provide greater clarity for recipients in determining which category of eligible uses they should review to assess a potential use of funds. For discussion of eligibility for programs to expand health insurance coverage, see section Assistance to Households.

c. Behavioral Health Care

Background: Recognizing that the public health emergency, necessary mitigation measures like social distancing, and the economic downturn have exacerbated mental health and substance use challenges for many Americans, the interim final rule included an enumerated eligible use for mental health treatment, substance use treatment, and other behavioral health services, including a non-exhaustive list of specific services that would be eligible under this category.

Public Comment: Many commenters expressed support for the interim final rule's recognition of behavioral health impacts of the pandemic and eligible uses under this category. Several commenters requested clarification on the types of eligible services under this category, specifically whether both acute and chronic care are included as well as services that often do not directly accept insurance payments, like peer support groups. Some commenters highlighted the importance of cultural competence in providing effective behavioral health services. Some

commenters suggested that funding should be available broadly and quickly for this purpose, recommending that funding available for behavioral health not be tied to the amount of revenue loss experienced by the recipient.

Treasury Response: In the final rule, Treasury is maintaining this enumerated eligible use category and clarifying that it covers an expansive array of services for prevention, treatment, recovery, and harm reduction for mental health, substance use, and other behavioral health challenges caused or exacerbated by the public health emergency. The specific services listed in the interim final rule also remain eligible.[77]

Treasury is further clarifying that when providing behavioral health services, recipients can identify the impacted population as the general public and, as with all enumerated eligible uses, presume that all programs and services are reasonably proportional responses to the harm identified unless a response is grossly disproportionate to the type or extent of harm experienced. In contrast, capital expenditures are not 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.

[77] Hotlines or warmlines, crisis intervention, overdose prevention, infectious disease prevention, and services or outreach to promote access to physical or behavioral health primary care and preventative medicine.

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[78] or services not typically billable to insurance, such as peer support groups, costs for residence in supportive housing or recovery housing, and the 988 National Suicide Prevention Lifeline or other hotline services. Recipients may also use funds in conjunction with other federal grants or programs (see section Program Administration Provisions), though eligible services under SLFRF are not limited to those eligible under existing federal programs.

Given the public health emergency's exacerbation of the ongoing opioid and overdose crisis, Treasury highlights several ways that funds may be used to respond to opioid use disorder

[78] However, SLFRF funds may not be used to reimburse a service that was also billed to insurance.

and prevent overdose mortality.[79] Specifically, eligible uses of funds include programs to expand access to evidence-based treatment like medications to treat opioid use disorder (e.g., direct costs or incentives for emergency departments, prisons, jails, and outpatient providers to offer medications and low-barrier treatment), naloxone distribution, syringe service programs, outreach to individuals in active use, post-overdose follow up programs, programs for diversion from the criminal justice system, and contingency management interventions.

Finally, for clarity, Treasury has addressed the eligibility standard for capital expenditures, or investments in property, facilities, or equipment, in one section of this Supplementary Information; see section Capital Expenditures in General Provisions: Other. Examples of capital expenditures related to behavioral health that Treasury recognizes as eligible include behavioral health facilities and equipment (e.g., inpatient or outpatient mental health or substance use treatment facilities, crisis centers, diversion centers), as long as they adhere to the standards detailed in the Capital Expenditures section.

d. PREVENTING AND RESPONDING TO VIOLENCE

Background: The interim final rule highlighted that some types of violence had increased during the pandemic and that the ability of victims to access services had decreased, noting as an example the challenges that individuals affected by domestic violence face in accessing services. Accordingly, the interim final rule enumerated as an eligible use, in disproportionately impacted communities, evidence-based community violence intervention programs. Following the release of the interim final rule, Treasury received several recipient questions regarding whether and

[79] In line with the Department of Health and Human Services, Overdose Prevention Strategy, https://www.hhs.gov/overdose-prevention/, and the Office of National Drug Control Policy, Administration's Statement on Drug Policy Priorities for Year One (April 1, 2021), https://www.whitehouse.gov/wp-content/uploads/2021/03/BidenHarris-Statement-of-Drug-Policy-Priorities-April-1.pdf.

how funds may be used to respond to an increase in crime, violence, or gun violence in some communities during the pandemic. Treasury released further guidance identifying how enumerated eligible uses and eligible use categories under the interim final rule could support violence reduction efforts, including rehiring public sector staff, behavioral health services, and services to address negative economic impacts of the pandemic that may aid victims of crime. The guidance also identified an expanded set of enumerated eligible uses to address increased gun violence.

Public Comment: Several commenters expressed support for this use of funds.

Treasury Response: In the final rule, Treasury is maintaining enumerated eligible uses in this area and clarifying how to apply eligibility standards. Throughout the final rule, enumerated eligible uses should respond to an identified impact of the COVID-19 public health emergency in a reasonably proportional manner to the extent and type of harm experienced. Many of the enumerated eligible uses – like behavioral health services, services to improve employment opportunities, and services to address educational disparities in disproportionately impacted communities – that respond to the public health and negative economic impacts of the pandemic may also have benefits for reducing crime or aiding victims of crime. For example, the pandemic exacerbated the impact of domestic violence, sexual assault, and human trafficking; enumerated eligible uses like emergency housing assistance, cash assistance, or assistance with food, childcare, and other needs could be used to support survivors of domestic violence, sexual assault, or human trafficking who experienced public health or economic impacts due to the pandemic.

Public Comment: Several commenters expressed support for community violence intervention programs or argued that traditional public safety approaches had negatively

impacted the social determinants of health in their communities. Several commenters recommended inclusion of approaches like mental health or substance use diversion programs.

Treasury Response: Treasury recognizes the importance of comprehensive approaches to challenges like violence. The final rule includes an enumerated eligible use for community violence intervention programs in all communities, not just the disproportionately impacted communities eligible under the interim final rule. Given the increased rate of violence during the pandemic, Treasury has determined that this enumerated eligible use is responsive to the impacts of the pandemic in all communities. The final rule incorporates guidance issued after the interim final rule on specifically types of services eligible, including:

- Evidence-based practices like focused deterrence, street outreach, violence interrupters, and hospital-based violence intervention models, complete with wraparound services such as behavioral therapy, trauma recovery, job training, education, housing and relocation services, and financial assistance; and
- Capacity-building efforts at community violence intervention programs like funding more intervention workers, increasing their pay, providing training and professional development for intervention workers, and hiring and training workers to administer the programs.

Public Comment: Some commenters sought further clarification on whether some of the enumerated eligible uses are considered responsive to all crime, violent crime, or gun violence.

Treasury Response: Enumerated eligible uses that respond to an increase in gun violence may be pursued in communities experiencing an increase in gun violence associated with the pandemic, specifically: 1) hiring law enforcement officials – even above pre-pandemic levels – or paying overtime where the funds are directly focused on advancing community policing

strategies for gun violence, 2) additional enforcement efforts to reduce gun violence exacerbated by the pandemic, including prosecuting gun traffickers, dealers, and other parties contributing to the supply of crime guns, as well as collaborative federal, state, and local efforts to identify and address gun trafficking channels, and 3) investing in technology and equipment to allow law enforcement to more efficiently and effectively respond to the rise in gun violence resulting from the pandemic, for example technology to assist in the identification of guns whose serial numbers have been damaged.

3. Negative Economic Impacts

a. Assistance to Households

Background

While the U.S. economy is now on the path to a strong recovery, the public health emergency, including the necessary measures taken to protect public health, resulted in significant economic and financial hardship for many Americans. As businesses closed, consumers stayed home, schools shifted to remote education, and travel declined precipitously, over 22 million jobs were lost in March and April 2020.[80] One year later, in April 2021, the economy still remained over 8 million jobs below its pre-pandemic peak,[81] and the unemployment rate hovered around 6 percent.[82]

In the months since Treasury issued the interim final rule in May 2021, the economy has made large strides in its recovery. The economy gained over 4 million jobs in the seven months

[80] U.S. Bureau of Labor Statistics, All Employees, Total Nonfarm [PAYEMS], retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/PAYEMS (last visited December 7, 2021).
[81] *Id.*
[82] U.S. Bureau of Labor Statistics, Unemployment Rate [UNRATE], retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/UNRATE (last visited December 7, 2021).

from May to November 2021;[83] the unemployment rate fell more than 1.5 percentage points to 4.2 percent, which is the lowest rate since February 2020;[84] and the size of the nation's economy surpassed the pre-pandemic peak in the second quarter of 2021.[85]

While the economy has made immense progress in its recovery since May 2021, the economy has also faced setbacks that illustrate the continued risks to the recovery. As the Delta variant spread across the country this summer and fall, the United States faced another severe wave of cases, deaths, and strain on the healthcare system, which contributed to a slowdown in the pace of recovery in the third quarter.[86] Supply chain disruptions have also demonstrated the difficulties of restarting a global economy.[87] Moreover, although many Americans have returned to work as of November 2021, the economy remains 3.9 million jobs below its pre-pandemic peak,[88] and 2.4 million workers have dropped out of the labor market altogether relative to February 2020.[89] Thus, despite much progress, there is a continued need to respond to the pandemic's economic effects to ensure a full, broad-based, and equitable recovery.

Indeed, the pandemic's economic impacts continue to affect some demographic groups more than others. Rates of unemployment remain particularly severe among workers of color and workers with lower levels of educational attainment; for example, the overall unemployment rate in the United States was 4.2 percent in November 2021, but certain groups saw much higher

[83] U.S. Bureau of Labor Statistics, *supra* note 79.
[84] U.S. Bureau of Labor Statistics, *supra* note 81.
[85] 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).
[86] U.S. Department of the Treasury, Economy Statement by Catherine Wolfram, Acting Assistant Secretary for Economy Policy, for the Treasury Borrowing Advisory Committee (November 1, 2021), available at https://home.treasury.gov/news/press-releases/jy0453.
[87] Yuka Hayashi, IMF Cuts Global Growth Forecast Amid Supply-Chain Disruptions, Pandemic Pressures, Wall Street Journal (October 12, 2021), available at https://www.wsj.com/articles/imf-cuts-global-growth-forecast-amid-supply-chain-disruptions-warns-of-inflation-risks-11634043601.
[88] U.S. Bureau of Labor Statistics, *supra* note 79.
[89] U.S. Bureau of Labor Statistics, Civilian Labor Force Level [CLF16OV], retrieved from FRED, Federal Reserve Bank of St. Louis, https://fred.stlouisfed.org/series/CLF16OV (last visited December 7, 2021).

rates: 6.7 percent for Black workers, 5.2 percent for Hispanic or Latino workers, and 5.7 percent for workers without a high school diploma.[90] Job losses have also been particularly steep among low-wage workers, with these workers remaining furthest from recovery as of the end of 2020.[91] A severe recession, and its concentrated impact among low-income workers, has amplified food and housing insecurity, with an estimated nearly 20 million adults living in households where there is sometimes or often not enough food to eat and an estimated 12 million adults living in households that were not current on rent.[92]

While economic effects have been seen across many communities, there are additional disparities by race and income. For example, approximately half of low-income, Black, and Hispanic parents reported difficulty covering costs related to food, housing, utility, or medical care.[93] Over the course of the pandemic, inequities also manifested along gender lines, as schools closed to in-person activities, leaving many working families without childcare during the day.[94]

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[90] 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).

[91] Elise Gould & Jori Kandra, Wages grew in 2020 because the bottom fell out of the low-wage labor market, Economic Policy Institute (Feb. 24, 2021), https://files.epi.org/pdf/219418.pdf. *See also*, Michael Dalton et al., The K-Shaped Recovery: Examining the Diverging Fortunes of Workers in the Recovery from the COVID-19 Pandemic using Business and Household Survey Microdata¸ U.S. Bureau of Labor Statistics Working Paper Series (July 2021), https://www.bls.gov/osmr/research-papers/2021/pdf/ec210020.pdf.

[92] Center on Budget and Policy Priorities, Tracking the COVID–19 Recession's Effects on Food, Housing, and Employment Hardships, https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-economys-effects-on-food-housing-and (last visited December 17, 2021).

[93] Michael Karpman, Dulce Gonzalez, Genevieve M. Kenney, Parents Are Struggling to Provide for Their Families during the Pandemic, Urban Institute (May 2020), https://www.urban.org/research/publication/parents-are-struggling-provide-their-families-during-pandemic?utm_source=urban_researcher&utm_medium=email&utm_campaign=covid_parents&utm_term=lhp.

[94] Women have carried a larger share of childcare responsibilities than men during the COVID-19 crisis. *See, e.g.*, Gema Zamarro & María J. Prados, Gender differences in couples' division of childcare, work and mental health during COVID-19, Rev. Econ. Household 19:11-40 (2021), *available at* https://link.springer.com/article/10.1007/s11150-020-09534-7; Titan Alon et al., The Impact of COVID-19 on Gender Equality, National Bureau of Economic Research Working Paper 26947 (April 2020), *available at* https://www.nber.org/papers/w26947.

Women of color have been hit especially hard: the labor force participation rate for Black women has fallen by 3.6 percentage points[95] during the pandemic as compared to 1.3 percentage points for Black men[96] and 1.7 percentage points for White women.[97]

As the economy recovers, the effects of the pandemic-related recession may continue to impact households, including a risk of longer-term effects on earnings and economic potential. For example, unemployed workers, especially those who have experienced longer periods of unemployment, earn lower wages over the long term once rehired.[98] In addition to the labor market consequences for unemployed workers, recessions can also cause longer-term economic challenges through, among other factors, damaged consumer credit scores[99] and reduced familial and childhood wellbeing.[100] These potential long-term economic consequences underscore the continued need for robust policy support.

Low- and moderate-income households, those with income levels at or below 300 percent of the federal poverty level (FPL), face particular hardships and challenges. These households report much higher rates of food insecurity and housing hardships than households with higher incomes. For example, households with incomes at or below 300 percent FPL are several times

[95] U.S. Bureau of Labor Statistics, Labor Force Participation Rate - 20 Yrs. & Over, Black or African American Women [LNS11300032], retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/LNS11300032 (last visited December 7, 2021).
[96] U.S. Bureau of Labor Statistics, Labor Force Participation Rate - 20 Yrs. & Over, Black or African American Men [LNS11300031], retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/LNS11300031 (last visited December 7, 2021).
[97] U.S. Bureau of Labor Statistics, Labor Force Participation Rate - 20 Yrs. & Over, White Women [LNS11300029], retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/LNS11300029 (last visited December 7, 2021).
[98] *See*, *e.g.*, Michael Greenstone & Adam Looney, Unemployment and Earnings Losses: A Look at Long-Term Impacts of the Great Recession on American Workers, Brookings Institution (Nov. 4, 2011), https://www.brookings.edu/blog/jobs/2011/11/04/unemployment-and-earnings-losses-a-look-at-long-term-impacts-of-the-great-recession-on-american-workers/.
[99] Chi Chi Wu, Solving the Credit Conundrum: Helping Consumers' Credit Records Impaired by the Foreclosure Crisis and Great Recession, National Consumer Law Center (Dec. 2013), https://www.nclc.org/images/pdf/credit_reports/report-credit-conundrum-2013.pdf.
[100] Irwin Garfinkel, Sara McLanahan, Christopher Wimer, eds., Children of the Great Recession, Russell Sage Foundation (Aug. 2016), *available at* https://www.russellsage.org/publications/children-great-recession.

more likely to have reported struggling with food insecurity compared to households with income above 300 percent FPL.[101] Similarly, low- and moderate-income households reported being housing insecure[102] at rates more than twice as high as higher-income households, and low- and moderate-income households reported housing quality hardship[103] at rates statistically significantly greater than the rate for higher-income households.[104] The economic crisis caused by the pandemic worsened economic outcomes for workers in many low- and moderate-income households. Industries that employed low-wage workers experienced a disproportionate level of job loss. For example, from February 2020 to February 2021, the hospitality and leisure industry lost nearly 3.5 million jobs.[105] While the entire industry was impacted, 72 percent of the job losses occurred in the lowest wage service occupations compared to only a 6 percent rate of job loss in the highest wage management and finance jobs.[106] Similar trends exist in other heavily impacted industries. In public education, the lowest wage occupations, service and transportation jobs, saw a job loss rate of 20 and 26 percent, respectively.[107] During that same time period, the highest wage occupations in public education, management, actually saw jobs increase by 7 percent.[108]

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[101] Kyle J Casewell and Stephen Zuckerman, Food Insecurity, Housing Hardship, and Medical Care Utilization, Urban Institute (June 2018), available at https://www.urban.org/sites/default/files/publication/98701/2001896_foodinsecurity_housinghardship_medicalcareutilization_finalized.pdf

[102] Housing insecurity is defined as not paying the full amount of rent or mortgage and/or utility bills (gas, oil, or electricity) sometime in the previous 12 months.

[103] Housing quality hardship is defined as an affirmative response to one or more questions related to problems with a respondent's physical dwelling: pests and/or insects; leaking roof or ceiling; windows that are broken or cannot shut; exposed electrical wires; broken plumbing (toilet, hot water, other); holes in walls, ceiling, or floor; no appliances (refrigerator or stove); and no phone (of any kind).

[104] *Id.*

[105] Elise Gould and Melat Kassa. Low-wage, low-hours workers were hit hardest in the COVID-19 recession: The State of Working America 2020 employment report, Economic Policy Institute (May 2021), available at https://www.epi.org/publication/swa-2020-employment-report/.

[106] *Id.*

[107] *Id.*

[108] *Id.*

While many households suffered negative economic outcomes as a result of the COVID-19 pandemic and economic recession, households with low incomes were impacted in disproportionate and exceptional ways. From January 2020 to March 2021, low-wage workers experienced job loss at a rate five times higher than middle-wage workers, and high-wage workers actually experienced an increase in job opportunities.[109] Because workers in low-income households were more likely to lose their job or experience reductions in pay, those same households were also more likely to experience economic hardships like trouble paying utility bills, affording rent or mortgage payments, purchasing food, and paying for medical expenses.[110] The disproportionate negative impacts the pandemic has had on low-income families extend beyond financial insecurity. For example, low-income families have reported higher levels of social isolation, stress, and other negative mental health outcomes during the pandemic. While over half of all U.S. adults report that their mental health was negatively affected by the pandemic, adults with low incomes reported major negative mental health impacts at a rate nearly twice that of adults with high incomes.[111]

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

[109] R. Chetty, J. Friedman, N. Hendren, M. Stepner, & Team, T. O. I., The Economic Impacts of COVID-19: Evidence from a New Public Database Built Using Private Sector Data (No. w27431; p. w27431) (2020), National Bureau of Economic Research. https://doi.org/10.3386/w27431.
[110] M. Despard, Michal Grinstein-Weiss, Yung Chun, and Stephen Roll, COVID-19 job and income loss leading to more hunger and financial hardship, Brookings Institute (July 13, 2020), https://www.brookings.edu/blog/upfront/2020/07/13/covid-19-job-and-income-loss-leading-to-more-hunger-and-financial-hardship/.
[111] N. Panchal, R. Kamal, C. Muñana, & P. Chidambaram, The Implications of COVID-19 for Mental Health and Substance Use, Kaiser Family Foundation (February 10, 2021), https://www.kff.org/coronavirus-covid-19/issue-brief/the-implications-of-covid-19-for-mental-health-and-substance-use/.

households, as well as a standard for assessing whether uses of funds beyond those enumerated are eligible.

The interim final rule described enumerated eligible uses for assistance to households in several categories: 1) assistance to unemployed workers, 2) state Unemployment Insurance Trust Funds, 3) assistance to households, and 4) expenses to improve the efficacy of economic relief. Note that the interim final rule posed several questions to the public on enumerated eligible uses for assistance to households; comments on these questions are addressed in the relevant subject matter section below.

In addition, in recognition that pre-existing health, economic, and social disparities contributed to disproportionate pandemic impacts in certain communities, the interim final rule also provided a broader list of enumerated eligible uses to respond to the pandemic in disproportionately impacted communities, specifically: 1) building stronger communities through investments in housing and neighborhoods, 2) addressing educational disparities, and 3) promoting healthy childhood environments. In the interim final rule, under the Public Health section, recipients could also provide services to address health disparities and increase access to health and social services; these eligible uses have been re-organized into the Assistance to Households section to consolidate responses in disproportionately impacted communities and enhance clarity.

This section addresses enumerated eligible uses in the final rule to respond to negative economic impacts to households. As a reminder, recipients may presume that a household or population that experienced unemployment, experienced increased food or housing insecurity, or is low or moderate income experienced negative economic impacts resulting from the pandemic,

and recipients may provide services to them that respond to these impacts, including these enumerated eligible uses.

For guidance on how to determine whether a particular use, beyond those enumerated, is eligible; further detail on which households and communities are presumed eligible for services; and how to identify eligible households and communities beyond those presumed eligible, see section General Provisions: Structure and Standards.

Reorganizations and Cross-References: The final rule reorganizes all enumerated eligible uses for impacted and disproportionately impacted households into the section Assistance to Households, with the exception that expenses to improve the efficacy of economic relief has been re-categorized into a different section of the final rule for increased clarity; for discussion of that use category, see section General Provisions: Other.

Note that in conducting this reorganization, and based on further analysis and in response to comments, Treasury has determined that several enumerated uses included in the interim final rule for disproportionately impacted communities are directly responsive to negative economic impacts experienced by impacted households. In the final rule, these uses have been moved from "disproportionately impacted" to "impacted" households accordingly, making these services available to both disproportionately impacted and impacted households. These uses include assistance applying for public benefits or services; programs or services that address or mitigate the impacts of the COVID-19 public health emergency on childhood health or welfare, including childcare, early learning services, programs to provide home visits, and services for families involved in the child welfare system and foster youth; programs to address the impacts of lost

instructional time for students;[112] and programs or services that address housing insecurity, lack of affordable housing, or homelessness.

The following activities remain enumerated eligible uses for disproportionately impacted households: remediation of lead paint or other lead hazards; housing vouchers and assistance relocating to neighborhoods with higher levels of economic opportunity; and programs or services that address educational disparities, including assistance to high-poverty school districts to advance equitable funding across districts and geographies and evidence-based services to address the academic, social, emotional, and mental health needs of students.

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

[112]For which recipients may presume that any student who did not have access to in-person instruction for a significant period of time was impacted by the pandemic.

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."[113] Treasury also emphasized that recipients may work with court systems, nonprofits, and a wide range of other organizations to implement strategies to support housing stability and prevent evictions.

In the final rule, Treasury is maintaining these enumerated eligible uses, including those described in the interim final rule and later guidance, in line with commenters' recommendations. To enhance clarity, Treasury is also elaborating on some types of services

[113] *See FAQ 2.21*. Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.

included under this eligible use category; this remains a non-exhaustive list of eligible services. For example, eligible services under this use category include: rent, rental arrears, utility costs or arrears (e.g., electricity, gas, water and sewer, trash removal, and energy costs, such as fuel oil), reasonable accrued late fees (if not included in rental or utility arrears), mortgage payment assistance, financial assistance to allow a homeowner to reinstate a mortgage or to pay other housing-related costs related to a period of forbearance, delinquency, or default, mortgage principal reduction, facilitating mortgage interest rate reductions, counseling to prevent foreclosure or displacement, relocation expenses following eviction or foreclosure (e.g., rental security deposits, application or screening fees). Treasury is clarifying that assistance to households for delinquent property taxes, for example to prevent tax foreclosures on homes, was permissible under the interim final rule and continues to be so under the final rule. In addition, Treasury is also clarifying that recipients may administer utility assistance or address arrears on behalf of households through direct or bulk payments to utility providers to facilitate utility assistance to multiple consumers at once, so long as the payments offset customer balances and therefore provide assistance to households.

This eligible use category also includes emergency assistance for individuals experiencing homelessness, either individual-level assistance (e.g., rapid rehousing services) or assistance for groups of individuals (e.g., master leases of hotels, motels, or similar facilities to expand available shelter).

Further, Treasury is clarifying that transitional shelters (e.g., temporary residences for people experiencing homelessness) are eligible capital expenditures. Recipients seeking to use funds for capital expenditures should refer to the section Capital Expenditures in General

Provisions: Other for additional eligibility standards that apply to uses of funds for capital expenditures.

Note that this enumerated eligible use describes "emergency housing assistance," or assistance for responses to the immediate or near-term negative economic impacts of the pandemic. The final rule also clarifies and expands the ability of recipients to use SLFRF funds to address the general lack of affordable housing and housing challenges underscored by the pandemic. For discussion of affordable housing eligible uses, including services that primarily increase access to affordable, high-quality housing and support stable housing and homeownership over the long term, see the eligible use for "promoting long-term housing security: affordable housing and homelessness."

3. Emergency assistance for pressing needs: burials, home repairs, weatherization, or other needs. The interim final rule included an enumerated eligible use for emergency assistance for burials, home repairs, weatherization, and other needs; these types of programs may provide emergency assistance for pressing and unavoidable household needs. Treasury did not receive comments on this eligible use and is maintaining it in the final rule.

Background on Home Repairs and Weatherization: The economic downturn has meant fewer households had the resources needed to make necessary home repairs and improvements. In May 2021, 28 percent of landlords reported deferring maintenance and 27 percent of tenants reported maintenance requests going unanswered.[114] While small and cosmetic repairs can often

[114] Jung Hyun Choi, Laurie Goodman, and Daniel Pang, The Pandemic Is Making It Difficult for Mom-and-Pop Landlords to Maintain Their Properties, Urban Institute (July 23, 2021), https://www.urban.org/urban-wire/pandemic-making-it-difficult-mom-and-pop-landlords-maintain-their-properties.

wait, deferring major repairs, such as plumbing needs, can result in unsafe and unhealthy living environments and, eventually, the need for more expensive repairs and fixes.

In addition to repairs, many homes are in need of weatherization. Weatherization assistance helps low- and moderate-income Americans save energy, reduce their utility bills, and keeps them and their homes safe. One in three households is energy insecure,[115] meaning they do not have the ability to meet their energy needs.[116] Weatherization efforts are particularly important for low- and moderate-income households. Households of color, renters, and households with low or moderate incomes are all more likely to report energy insecurity.[117] These disparities are partially a result of economic hardship but are also caused by inequitable access to housing with proper insulation, up to date heating, cooling, and ventilation systems, and functioning and up to date lighting and appliances.[118] While programs that address the effects of energy hardships, like the Low-Income Home Energy Assistance Program (LIHEAP), are critical, weatherization attempts to address root causes by addressing issues that lead to energy insecurities.

4. Internet access or digital literacy assistance. The interim final rule included an enumerated eligible use for assistance to households for internet access or digital literacy assistance. This enumerated eligible use, which responds to the negative economic impacts of the

[115] U.S. Energy Information Administration, Residential Energy Consumption Survey (2017), Retrieved from https://www.eia.gov/consumption/residential/data/2015/hc/php/hc11.1.php.
D. Hernández, Understanding 'energy insecurity' and why it matters to health, Social Science & Medicine, 167, 1–10 (2016), https://doi.org/10.1016/j.socscimed.2016.08.029.
[116] Hernández, D. (2016). Understanding 'energy insecurity' and why it matters to health. Social Science & Medicine, 167, 1–10. https://doi.org/10.1016/j.socscimed.2016.08.029.
[117] U.S. Energy Information Administration, Residential Energy Consumption Survey (RECS) https://www.eia.gov/consumption/residential/data/2015/hc/php/hc11.1.php (last visited November 9, 2021)
[118] 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.

pandemic on a household by providing assistance that helps them secure internet access or increase their ability to use computers and the internet, is separate from the eligible use category for investments in broadband infrastructure, under Sections 602(c)(1)(D) and 603(c)(1)(D), which is used to build new broadband networks through infrastructure construction or modernization. For discussion of broadband infrastructure investment in the final rule, see section Broadband Infrastructure in Infrastructure.

Background: The COVID-19 public health emergency has underscored the importance of universally available, high-speed, reliable, and affordable broadband coverage as millions of Americans rely on the internet to participate in, among other critical activities, school, healthcare, and work. Recognizing the need for such connectivity, SLFRF funds can be used to make necessary investments in broadband infrastructure that increase access over the long term, as well as the necessary supports to purchase internet access or gain digital literacy skills needed to complete activities of daily living during the pandemic.

The National Telecommunications and Information Administration (NTIA) highlighted the growing necessity of broadband in daily lives through its analysis of NTIA Internet Use Survey data, noting that Americans turn to broadband internet service for every facet of daily life including work, study, and healthcare.[119] With increased use of technology for daily activities and the movement by many businesses and schools to operating remotely during the pandemic,

[119] *See, e.g.,* Nation Telecommunications and Information Administration, More than Half of 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.

broadband has become even more critical for people across the country to carry out their daily lives.

However, even in areas where broadband infrastructure exists, broadband access may be out of reach for millions of Americans because it is unaffordable, as the United States has some of the highest broadband prices in the Organisation for Economic Co-operation and Development (OECD).[120] According to a 2021 Pew Research Center study, 20 percent of non-broadband users say that the monthly cost of home broadband is the primary reason they do not have broadband at home, and 40 percent say that cost is one reason for their lack of home broadband.[121] Further, according to another survey, 22 percent of parents with homebound schoolchildren during the COVID-19 pandemic say that it is very or somewhat likely that their children will have to rely on public wi-fi to finish their schoolwork because there is no reliable internet connection at home; this percentage nearly doubles for lower-income parents, 40 percent of whom noted that their children will have to rely on public wi-fi.[122] The same survey showed that 36 percent of lower-income parents with homebound children say their child will not be able to complete their schoolwork because they do not have access to a computer at home.[123]

Public Comment: Many commenters highlighted the importance of broadband access during the pandemic, including for remote work and education, and argued that affordability presents a major barrier to broadband adoption by households; in other words, many households live in areas that have broadband infrastructure and service available but are unable to purchase

[120] BroadbandSearch Blog Post, How Do U.S. Internet Costs Compare To The Rest Of The World?, *available at* https://www.broadbandsearch.net/blog/internet-costs-compared-worldwide.
[121] Pew Research Center, Mobile Technology and Home Broadband 2021 (June 3, 2021), https://www.pewresearch.org/internet/2021/06/03/mobile-technology-and-home-broadband-2021/.
[122] Pew Research Center, 53% of Americans Say the Internet Has Been Essential During the COVID-19 Outbreak (April 30, 2020), https://www.pewresearch.org/internet/2020/04/30/53-of-americans-say-the-internet-has-been-essential-during-the-covid-19-outbreak/.
[123] *Id.*

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.

Public Comment: Some commenters also use the term "gap networks" to refer to equipment installed as part of wi-fi systems, such as routers, repeaters, and access points; this equipment provides consumer access to an existing broadband network and does not require new network build-out or construction. These commenters recommended that Treasury permit, as assistance to households for internet access, investments in public wi-fi networks, free wi-fi in public housing communities, and other equipment that offers internet access to end users by utilizing existing broadband networks.

Other commenters recommended that eligible uses in this category include providing devices and equipment necessary to access the internet, like computers and routers, directly to low-income households.

Treasury Response: Treasury has determined that these services, which expand internet access without constructing new networks, are an appropriate enumerated eligible use as assistance to households to respond to a negative economic impact, and they are permitted under the final rule. Treasury is clarifying that eligible uses under this category can also include a wide range of programs and services to expand internet access and digital literacy, such as subsidies for the cost of internet service, other programs that support adoption of internet service where available, digital literacy programs, or programs that provide devices and equipment to access the internet (e.g., programs that provide equipment like tablets, computers, or routers) to households. Recipients seeking to use funds for equipment should refer to the section Capital

Expenditures in General Provisions: Other for additional eligibility standards that apply to uses of funds for capital expenditures (e.g., equipment, property, and facilities).

5. Cash assistance. The interim final rule included as an enumerated eligible use cash assistance and provided that cash transfers must be "reasonably proportional" to the negative economic impact they address and may not be "grossly in excess of the amount needed to address" the impact. In assessing whether a transfer is reasonably proportional, recipients may "consider and take guidance from the per person amounts previously provided by the Federal Government in response to the COVID-19 crisis," and transfers "grossly in excess of such amounts" are not eligible.

Public Comment: Several commenters expressed support for this eligible use, noting that this is a common policy tool for some governments to support the well-being of households and individuals in their communities. Some commenters requested that Treasury set a specific dollar amount for permissible cash transfers, and Treasury has also received recipient questions on whether specific types of transfers, such as those to a substantial share of the population in the jurisdiction, would be a permissible use of funds.

Treasury Response: Treasury is maintaining this enumerated eligible use in the final rule, in line with commenters' recommendations. Because the final rule is intended to provide flexibility to recipients to respond to the particularized pandemic impacts in their communities, which may vary in type and intensity, setting a specific dollar threshold for eligible cash transfers would fail to recognize the particularized needs of communities and limit recipients' flexibility to tailor their response to those needs.

To provide greater clarity, Treasury is elaborating on the analysis that recipients may undertake to assess the eligibility of specific cash assistance programs or transfers. Cash transfers, like all eligible uses in this category, must respond to the negative economic impacts of the pandemic on a household or class of households. For the reasons discussed above, recipients may presume that low- and moderate-income households (as defined in the final rule), as well as households that experienced unemployment, food insecurity, or housing insecurity, experienced a negative economic impact due to the pandemic.

Recipients may also identify other households or classes of households that experienced a negative economic impact of the pandemic and provide cash assistance that is reasonably proportional to, and not grossly in excess of, the amount needed to address the negative economic impact. For example, in the ARPA, Congress authorized Economic Impact Payments to households at certain income levels, identifying and responding to a negative economic impact of the pandemic on these households.

Finally, Treasury has reiterated in the final rule that responses to negative economic impacts should be reasonably proportional to the impact that they are intended to address. Uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses. Reasonably proportional refers to the scale of the response compared to the scale of the harm. It also refers to the targeting of the response to beneficiaries compared to the amount of harm they experienced; for example, it may not be reasonably proportional for a cash assistance program to provide assistance in a very small amount to a group that experienced severe harm and in a much larger amount to a group that experienced relatively little harm.

6. Survivor's benefits. The interim final rule included an enumerated eligible use for survivor's benefits to surviving family members of individuals who have died from COVID-19, including cash assistance to widows, widowers, or dependents.

Public Comment: Treasury did not receive any comments on the inclusion of survivor's benefits as an enumerated use for impacted households in the interim final rule.

Treasury Response: This use of funds remains eligible under the final rule. Consistent with the general reorganization noted above, the final rule organizes survivor's benefits under assistance to households to clarify that households are the intended beneficiaries of survivor's benefits.

7. Assistance accessing or applying for public benefits or services. Recognizing that eligible households often face barriers to accessing public benefits or services that improve health and economic outcomes, the interim final rule included as an enumerated eligible use in disproportionately impacted communities, public benefits navigators to assist community members with navigating and applying for available federal, state, and local public benefits or services. Treasury also clarified in subsequent guidance after the interim final rule that this eligible use category would include outreach efforts to increase uptake of the Child Tax Credit.

Background: The under-enrollment of eligible households in social assistance programs is a well-recognized and persistent challenge. There are many reasons why a household may not be receiving a particular benefit even though they are eligible. For many federal programs, enrollment processes vary from state-to-state. Sometimes, households are simply unaware that they are eligible for a particular benefit.[124] For example, despite having one of the highest rates

[124] Amy Finkelstein & Matthew J Notowidigdo, Take-Up and Targeting: Experimental Evidence from SNAP, The Quarterly Journal of Economics, vol 134(3), pages 1505-1556 (2019), https://www.nber.org/papers/w24652.

of participation of any benefits program, nearly 20 percent of eligible individuals do not participate in the Supplementary Nutritional Assistance Program (SNAP).[125] In other cases, policies like public charge and asset testing can discourage otherwise eligible households.[126] While the gap between households that need assistance and the number of households participating in public benefit programs has always existed, narrowing that gap and ensuring households receive the support they need is critical in mitigating the negative economic impacts of the pandemic.

Public Comment: Treasury has also received feedback from recipients and stakeholders noting the need to increase awareness and uptake of assistance programs, including gaps that remain in enrollment of eligible households in programs to address the negative economic impacts of the pandemic.[127]

Treasury Response: Treasury has determined that this impact of the pandemic is widely experienced across many jurisdictions and programs or services to increase awareness and uptake of assistance programs would respond to the pandemic's negative economic impact in all communities. As such, in the final rule, this use is eligible for any impacted household or class of households, not only in disproportionately impacted communities.

[125] United States Department of Agriculture, Trends in Supplemental Nutrition Assistance Program Participation Rates: Fiscal Year 2016 to Fiscal Year 2018 (May 2021), https://fns-prod.azureedge.net/sites/default/files/resource-files/Trends2016-2018.pdf.
[126] Jeremy Barofsky et al., Spreading Fear: The Announcement Of The Public Charge Rule Reduced Enrollment In Child Safety-Net Programs, Health Affairs (October 2020), https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2020.00763.
[127] *See, e.g.*, U.S. Department of the Treasury, By ZIP Code: Number of Children under Age 18 with a Social Security Number Who Are Not Found on a Tax Year 2019 or 2020 Tax Return but who Appear on a Tax Year 2019 Form 1095 and Associated Number of Policy Holders (June 2021), https://home.treasury.gov/system/files/131/Estimated-Counts-of-Children-Unclaimed-for-CTC-by-ZIP-Code-2019.pdf.

8. Promoting healthy childhood environments. The interim final rule included programs and services that promote healthy childhood environments as an enumerated eligible use for disproportionately impacted households. The interim final rule listed three programs or services included under this use: childcare; programs to provide home visits by health professionals, parent educators, and social service professionals to individuals with young children to provide education and assistance for economic support, health needs, or child development; and services for child welfare-involved families and foster youth to provide support and education on child development, positive parenting, coping skills, or recovery for mental health and substance use. The interim final rule also included an enumerated eligible use for early learning services in disproportionately impacted communities, to address disparities in education.

Public Comment: Childcare and Early Learning: Treasury received multiple comments that were supportive of the provision of childcare. Treasury has also received multiple comments and questions indicating that recipients have identified a need for childcare for a broader range of households and communities, for example those that may need childcare in order to return to work, in addition to households and communities disproportionately impacted by the pandemic. Several commenters expressed uncertainty about how childcare facilities should interact with the boundaries of a QCT. Finally, one commenter recommended that pre-K or early learning services encompass care for infants and toddlers, arguing that these types of care are often more expensive or challenging to access for families.

Background: Childcare and Early Learning: As daycares and schools closed in-person activities during the pandemic, many working families were left without childcare during the

day.[128] Although daycare centers and schools have since reopened in many communities, there remains a persistent childcare shortage as childcare employment levels have not fully rebounded since the sharp decline in childcare employment at the beginning of the pandemic.[129] As a result, working parents in communities across the country, and more specifically women, may face challenges entering or reentering the labor force.[130]

Low-income households are also more likely to lose access to quality childcare.[131] The widespread closure of childcare centers combined with a lack of access to paid family leave means parents in low-income households are more likely to experience a reduction of income or leave their jobs due to a lack of childcare options.[132]

Additionally, childcare providers serving primarily low-income families were less likely to remain open during the pandemic because of tighter profit margins and general community financial insecurity, compared to childcare providers serving primarily high-income families.[133,134]

[128] Women have carried a larger share of childcare responsibilities than men during the COVID–19 crisis. See, e.g., Gema Zamarro & Marı´a J. Prados, Gender differences in couples' division of childcare, work and mental health during COVID– 19, Rev. Econ. Household 19:11–40 (2021), available at https://link.springer.com/article/ 10.1007/s11150-020-09534-7; Titan Alon et al., The Impact of COVID–19 on Gender Equality, National Bureau of Economic Research Working Paper 26947 (April 2020), available at https://www.nber.org/ papers/w26947.
[129] *See, e.g.*, Center For The Study Of Child Care Employment (CSCCE), Child Care Sector Jobs: BLS Analysis (November 8, 2021), https://cscce.berkeley.edu/child-care-sector-jobs-bls-analysis/; Emma K. Lee, and Zachary Parolin. The Care Burden during COVID-19: A National Database of Child Care Closures in the United States, Socius (January 2021), doi:10.1177/23780231211032028.
[130] Jason Furman, Melissa Schettini Kearney, and Wilson Powell, The Role of Childcare Challenges in the US Jobs Market Recovery During the COVID-19 Pandemic, NBER Working Paper No. 28934 (June 2021), https://www.nber.org/papers/w28934.
[131] U.S. Census Bureau, Phase 3.2 Household Pulse Survey: Table 2. Childcare Arrangements in the Last 4 Weeks for Children Under 5 Years Old, by Selected Characteristics, (Washington: 2021), available at https://www.census.gov/programs-surveys/household-pulse-survey/data.html.
[132] *Id*.
[133] N. Kalluri, C. Kelly, & A. Garg, Child Care During the COVID-19 Pandemic: A Bad Situation Made Worse. Pediatrics (2021), https://doi.org/10.1542/peds.2020-041525.
[134] National Association for the Education of Young Children, Am I Next? Sacrificing to Stay Open, Child Care Providers Face a Bleak Future Without Relief (December 2020), https://www.naeyc.org/sites/default/files/globally-shared/downloads/PDF.

In addition to disruptions to childcare, early learning services were also significantly impacted by the pandemic, and the disruption of these services had widespread ramifications for learning loss, parental support, and equity. Early learning centers have seen declined enrollment across the board, though there was a larger dip in enrollment for low-income households.[135] This lower enrollment coincides with a diminishing workforce, as similarly to childcare, early childhood educators have been leaving the profession due to long hours, low pay,[136] and health and safety concerns.[137] As a result, children's school readiness has suffered, leading to potential long-term impacts on life outcomes.[138] The impact also extended 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

[135] G. G. Weisenfeld, Impacts of Covid-19 on Preschool Enrollment and Spending, New Brunswick, NJ: National Institute for Early Education Research (2021), https://nieer.org/wp-content/uploads/2021/03/NIEER_Policy_Brief_Impacts-of-Covid-19 on_Preschool_Enrollment_and_Spending_3_16_21.pdf.
[136] Heather Long, 'The pay is absolute crap': Child-care workers are quitting rapidly, a red flag for the economy, Washington Post (September 19, 2021), https://www.washingtonpost.com/business/2021/09/19/childcare-workers-quit/.
[137] Monash University, The emotional toll of COVID-19 among early childhood educators (August 5, 2020) https://lens.monash.edu/@education/2020/08/05/1381001/the-emotional-toll-of-covid-19-among-early-childhood-educators.
[138] Daphna Bassok and Anna Shapiro, Understanding COVID-19-era enrollment drops 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/.

learning services are available to impacted households or classes of households, not just those disproportionately impacted. These eligible uses can include new or expanded services, increasing access to services, efforts to bolster, support, or preserve existing providers and services, and similar activities.

Further, Treasury is clarifying that improvements to or new construction of childcare, daycare, and early learning facilities are eligible capital expenditures. Recipients seeking to use funds for capital expenditures should refer to the section Capital Expenditures in General Provisions: Other for additional eligibility standards that apply to uses of funds for capital expenditures.

Public Comment: Home Visiting: Treasury has also received questions about whether the provision of home visiting services would be responsive to the health and mental health needs of impacted new mothers, citing the positive mental health impacts shown on the mother as well as improved outcomes for children.

Background: Home Visiting: Pregnant and recently pregnant individuals are at an increased risk for serious illness from COVID-19.[139] Furthermore, pregnant individuals with COVID-19 are more likely to experience preterm birth (delivering the baby earlier than 37 weeks).[140] In addition to heightened health risks from COVID-19, pregnant individuals may have experienced significant changes to their prenatal care during the pandemic[141] or may also have

[139] Centers for Disease Control and Prevention, Pregnant and Recently Pregnant People, https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/pregnant-people.html (last visited November 9, 2021).
[140] *Id*.
[141] Sarah Javaid, Sarah Barringer, Sarah D Compton, Elizabeth Kaselitz, Maria Muzik, Cheryl A. Moyer, The impact of COVID-19 on prenatal care in the United States: Qualitative analysis from a survey of 2519 pregnant women, Midwifery, Volume 98, 2021, 102991, ISSN 0266-6138, https://doi.org/10.1016/j.midw.2021.102991.

experienced increased mental health challenges, including high levels of depression, anxiety, loneliness, and post-traumatic stress during the pandemic.[142]

Home visiting services provided to families, particularly new mothers and newborns, feature regular home visits from trained nurses, social workers, and/or counselors who provide health care, mental health resources, positive parenting support, support in making personal health decisions, and awareness of other potentially helpful services. These functions have become even more essential at mitigating negative factors associated with the pandemic. Home visits give professionals a chance to flag potential domestic violence, which has risen worldwide over the course of the pandemic.[143] Racial health disparities can also be driven down by home visits. For example, Black women are more likely to avoid hospitals during the pandemic, and home visitors can help either assuage concerns around hospitals or give effective advice for alternative methods of childbirth.[144] Given the disproportionate effect of the pandemic on people of color, home visits are an essential equity tool that tackle major negative effects of the pandemic. These are just a few selections from the evidence that suggests many home visiting models can have a positive effect on maternal physical and mental health.[145]

Treasury Response: Home Visiting: Given the widespread impact of COVID-19 on pregnant and recently pregnant individuals, Treasury is re-categorizing home visiting services as an eligible use for impacted communities, not just disproportionately impacted communities.

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[142] 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.
[143] Amanda Taub, A New Covid-19 Crisis: Domestic Abuse Rises Worldwide, New York Times (April 6, 2020), https://www.nytimes.com/2020/04/06/world/coronavirus-domestic-violence.html.
[144] Xenia Shih Bion, Efforts to Reduce Black Maternal Mortality Complicated by COVID-19, California Health Care Foundation (April 20, 2020), https://www.chcf.org/blog/efforts-reduce-black-maternal-mortality-complicated-covid-19/.
[145] U.S. Department of Health and Human Services, Home Visiting Evidence of Effectiveness, https://homvee.acf.hhs.gov/outcomes/maternal%20health/In%20Brief.

Under the final rule, these eligible uses are available to impacted households or classes of households.

Public Comment: Child Welfare: While the interim final rule noted that certain types of assistance, particularly around child development and parenting, were eligible for child welfare-involved families, Treasury has received some recipient questions asking whether financial, educational, housing, or other supports and services are eligible uses for foster youth, including those aging out of the system, and child welfare-involved families. Other commenters asked about whether funding for kinship care would be eligible.

Background: Child Welfare: The COVID-19 pandemic placed meaningful strain on the child welfare and foster care system. Court hearings were delayed,[146] essential mental health care was shifted to a virtual environment, and attendance and performance in school among foster children dropped sharply.[147] Additionally, there was a nationwide rise of new children entering the foster care system and many states placed temporary moratoria on children aging out of the foster care system.[148] As these temporary moratoria expire, additional support will be needed to assist children exiting the system.

Additionally, financial and material hardship are causal factors in the increase of new children entering the foster care system, whether through loss of a caregiver, domestic violence,[149] or other associated costs of the pandemic. Therefore, support to decrease these

[146] National Conference of State Legislatures, Criminal Justice System Responses to COVID-19 (November 16, 2020), https://www.ncsl.org/research/civil-and-criminal-justice/criminal-justice-and-covid-19.aspx.
[147] John Burton Advocates for Youth, The Cumulative Impact of the Pandemic on Youth Who Have Been in Foster Care or Homeless (May 2020) https://jbay.org/wp-content/uploads/2021/04/JBAY-COVID-19-Impact.pdf.
[148] John Kelly, Next Week, Thousands of Foster Youth Will Age Out on the Same Day (September 21, 2021), https://imprintnews.org/subscriber-content/thousands-of-foster-youth-will-age-out-on-the-same-day/59006.
[149] Conrad-Hiebner, Aislinn, and Elizabeth Byram, The Temporal Impact of Economic Insecurity on Child Maltreatment: A Systematic Review. Trauma, Violence, & Abuse, vol. 21, no. 1, Jan. 2020, pp. 157–178, doi:10.1177/1524838018756122.

hardships will support families and increase positive outcomes for youth 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 disproportionally impacted group.

Background: The COVID-19 pandemic resulted in the widespread closure of schools across the nation. While many schools and districts reopened to in-person instruction or implemented remote learning, the shift was not immediate or without consequence. Children who received virtual only or combined remote and in-person instruction were more likely to

report experiencing negative mental- and physical health outcomes than children who received in-person instruction.[150]

Treasury Response: Under the final rule, addressing the impact of lost instructional time and/or learning loss is an enumerated eligible use for impacted households. When providing services to address lost instructional time, recipients may presume that any K-12 student who lost access to in-person instruction for a significant period of time has been impacted by the pandemic and is thus eligible for responsive services.

Interventions or services that address the impact of lost instructional time may include offering high-quality tutoring and other extended learning opportunities, providing differentiated instruction, implementing activities to meet the comprehensive needs of students, expanding and improving language access for parents and families, providing information and assistance to parents and families on how they can effectively support students, including in a distance learning environment, improving student engagement in distance education, and administering and using high-quality assessments to assess students' academic progress, among others. In designing services under this eligible use, recipients may wish to reference guidance from the Department of Education on strategies for addressing lost instructional time.[151]

The final rule also maintains a separate enumerated eligible use for addressing educational disparities in disproportionately impacted communities. This eligible use includes services to address disparities in educational outcomes that predate the pandemic and amplified its impact on underserved students; these include, for example, enhanced funding to high-poverty

[150] Verlenden JV, Pampati S, Rasberry CN, et al. Association of Children's Mode of School Instruction with Child and Parent Experiences and Well-Being During the COVID-19 Pandemic — COVID Experiences Survey, United States, October 8–November 13, 2020. MMWR Morb Mortal Wkly Rep 2021;70:369–376. DOI: http://dx.doi.org/10.15585/mmwr.mm7011a1external icon.

[151] U.S. Department of Education, Strategies for Using American Rescue Plan Funding to Address the Impact of Lost Instructional Time, August 2021. Retrieved from https://www2.ed.gov/documents/coronavirus/lost-instructional-time.pdf.

districts and providing evidence-based services to address the academic, social, emotional, and mental health needs of students.

Finally, as described in the section Public Health, recipients can provide a broad range of behavioral health services, including services for children and youth in schools, to respond to the impacts of the pandemic on mental health and other behavioral health issues. When providing behavioral health services, recipients may presume that the general public was impacted by the pandemic and provide behavioral health services to members of the general public, including children and youth in schools, without any further analysis of impacts of the pandemic on those individuals and whether the service is responsive.

10. Promoting long-term housing security: affordable housing and homelessness. Under the interim final rule, recipients may use SLFRF funds to provide a set of housing services to communities that have been disproportionately impacted by the pandemic. Specifically, the interim final rule provided that programs or services that address housing insecurity, lack of affordable housing, or homelessness, were responsive to the negative economic impacts of the pandemic when provided to disproportionately impacted households and communities. The enumerated uses included supportive housing or other programs or services to improve access to stable, affordable housing among individuals who are homeless and development of affordable housing to increase supply of affordable and high-quality living units. Many recipients have already announced plans to use SLFRF funds for affordable housing interventions in all of these categories. Treasury received many comments asking for additional clarity or flexibility in these uses.

As detailed below, based on multiple public comments and questions and Treasury's subsequent analysis, Treasury has determined that supportive housing or other programs or services to improve access to stable, affordable housing among individuals who are homeless, and the development of affordable housing to increase supply of affordable and high-quality living units are responsive to the needs of impacted populations, not only disproportionately impacted populations. This final rule reflects this clarification and builds on the objectives stated in the interim final rule to improve access to stable, affordable housing, including through interventions that increase the supply of affordable and high-quality living units, improve housing security, and support durable and sustainable homeownership.

Finally, note that "emergency housing assistance," or assistance for responses to the immediate negative economic impacts of the pandemic through services like financial assistance for rental arrears or mortgage payments, is also an eligible use category for assistance to households under the final rule; see the eligible use for "emergency housing assistance" above. The provision of housing vouchers and assistance relocating to neighborhoods with higher levels of economic opportunity remains an eligible use under assistance to disproportionately impacted households; for discussion, see the eligible use for "housing vouchers and assistance relocating" below.

Background: Affordable Housing: It is clear that the ongoing pandemic and resulting economic crisis are having a profound, long-term negative effect on the pre-existing affordable housing crisis facing low-income households.[152] 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

[152] Consumer Financial Protection Bureau, Housing insecurity and the COVID-19 pandemic (March 2020), https://files.consumerfinance.gov/f/documents/cfpb_Housing_insecurity_and_the_COVID-19_pandemic.pdf.

increase in the sale price of homes.[153] Meanwhile, many low-income renters and homeowners are struggling with lost employment and income and are behind on their housing payments.[154]

Public Comment: Affordable Housing Outside of Low-Income Geographies: A major theme in comments was that affordable housing interventions, especially development of affordable housing, should be allowed outside of QCTs, as concentrating the supply of affordable housing in low-income geographies can have the effect of increasing both concentrated poverty and racial and economic segregation, while locking lower-income households in need of housing support out of high-opportunity neighborhoods with access to employment and amenities.

Treasury Response: Affordable Housing Outside Low-Income Geographies: As previously stated, affordable housing is not confined to low-income geographies under the interim final rule. As discussed elsewhere, the interim final rule presumed that QCTs, as well as communities served by Tribal governments, were disproportionately impacted for administrative convenience, but recipients may identify other populations, households, or geographic areas with disparate impacts of COVID-19 and provide affordable housing services to them. For example, under the interim final rule, a city could determine that its low-income residents faced disproportionate impacts of COVID-19 and develop affordable housing targeted to these households. Such a scenario could include, for example, affordable projects in higher-income neighborhoods that would allow residents to live closer to jobs and well-resourced schools.

[153] Joint Center For Housing Studies Of Harvard University, The State of the Nation's Housing (June 2021), https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_State_Nations_Housing_2021.pdf.
[154] Davin Reed and Eileen Divringi, Household Rental Debt During COVID-19: Update for 2021, Federal Reserve Bank of Philadelphia (2020), available at: https://www.philadelphiafed.org/community-development/housing-and-neighborhoods/household-rental-debt-during-covid-19-update-for-2021. Further, some research suggests that liquidity may be a more important predictor of default than other factors, including income or equity. *See* Trading Equity for Liquidity (June 2019), available at https://www.jpmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-co/institute/pdf/institute-trading-equity-for-liquidity.pdf.

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 wide variety of affordable housing interventions, including production, rehabilitation, and preservation of affordable rental housing and, in some cases, affordable homeownership units. These programs allow the financing of a wide range of affordable housing activities and set clear eligibility criteria that many recipients are already familiar with.

Finally, to further support sustainable and durable homeownership, recipients may consider offering down payment assistance, such as through contributions to a homeowner's equity at origination or that establish a post-closing, mortgage reserve account on behalf of the borrower that may be utilized to make a missed or partial mortgage payment at any point during the life of the loan (e.g., if the borrower faces financial stress). Homeownership assistance that would be eligible under the Community Development Block Grant (at 24 CFR 507.201(n)) is also an eligible use of SLFRF funds.

Public Comment: Permanent Supportive Housing: Treasury has received comments encouraging the use of SLFRF funds for permanent supportive housing. This is an eligible use under the interim final rule: both the development of affordable housing (including operating

subsidies) and wraparound services such as behavioral health services, employment services, and other supportive services, are eligible responses to the public health crisis or its negative economic impacts.

Treasury Response: The final rule maintains the eligibility of permanent supportive housing as an enumerated use. Treasury is also clarifying that other affordable housing developments targeted to specialized populations are also eligible, for example recovery housing for individuals in recovery from substance use.

Public Comment: Operating Expenses: Commenters specifically asked that Treasury allow the use of SLFRF funds for operating expenses of affordable housing units, as operating subsidies are typically required to reach extremely low-income households, whose affordable rents may be lower than the ongoing cost of operating their unit.

Treasury Response: Operating expenses for eligible affordable housing were an eligible use of funds under the interim final rule and the final rule maintains this treatment. This may include capitalized operating reserves.

Rehabilitation and repair of public housing will also be considered an eligible use of SLFRF funds.

Public Comment: Affordable Housing Loans and Revolving Loan Funds: Some commenters requested that loans with maturities beyond the period of performance or revolving loan funds that revolve beyond the period of performance be eligible uses of SLFRF funds if used for affordable housing. Some commenters pointed out that for-profit developers of low-income housing through the Low-Income Housing Tax Credit (LIHTC) may be deterred from accepting grants to bridge funding gaps in current LIHTC deals by the treatment of grants to for-profit entities in the calculation of eligible basis for the LIHTC.

Treasury Response: The final rule does not change the treatment of loans from the interim final rule. For more details see section Treatment of Loans in Program Administration Provisions. Similarly, the final rule does not change the treatment of grants to support affordable housing development, including developments supported by the LIHTC: such grants are an eligible use of funds.

Additional enumerated eligible uses for assistance to impacted households. As noted above, the interim final rule posed a question on what other types of services or costs Treasury should consider as eligible uses to respond to the negative economic impacts of COVID–19. In response, commenters proposed a wide variety of additional recommended enumerated eligible uses to assist households, ranging from general categories of services (e.g., legal and social services) to services that respond to needs widely experienced across the country (e.g., access to and affordability of health insurance) to services that are most applicable to the particularized needs of certain populations or geographic areas of the United States (e.g., senior citizens, SNAP recipients, immigrants, formerly-incarcerated individuals, responding to environmental issues in certain geographic regions). Other commenters generally requested a high degree of flexibility to respond to the particular needs of their communities.

Treasury Response: Given the large number and diversity of SLFRF recipients, Treasury's approach to assistance to households in the final rule aims to clarify additional enumerated eligible uses that respond to negative economic impacts of the pandemic experienced widely in many jurisdictions across the country, making it clear and simple for recipients to pursue these enumerated eligible uses under the final rule. In the final rule, Treasury is clarifying several additional uses, which generally respond to pandemic impacts experienced broadly

across jurisdictions and populations, are eligible under the interim final rule as assistance to households and continue to be so under the final rule, as outlined below.

11. Paid sick, medical, or family leave.

Public Comment: Some commenters argued that the pandemic increased the need for paid sick or medical leave, as staying home when ill is recommended by the CDC to prevent spread of the virus but lack of access to paid sick leave often prevents workers from staying home. Other commenters recommended paid family leave as an eligible use, arguing that shortages in access to childcare or home health assistance, as well as school closures, may increase the need for family members to serve as caretakers.

Background: The COVID-19 pandemic highlighted the importance of paid leave as well as the number of workers who do not have access to paid sick and/or family leave. When workers have access to paid leave, they are less likely to report to work sick, and therefore less likely to spread illnesses in the workplace: one study demonstrates that the emergency sick leave provision of the Families First Coronavirus Response Act (FFCRA) reduced the spread of COVID-19.[155]

The lack of paid leave exacerbates financial hardships experienced as a result of the public health emergency. A 2018 survey by the Department of Labor found that two-thirds of employees that took unpaid or partial-paid leave experienced financial hardship.[156] Furthermore, because the Family and Medical Leave Act (FMLA) excludes small employers, part-time

[155] Stefan Pichler, Katherine Wen, and Nicolas R. Ziebarth, COVID-19 Emergency Sick Leave Has Helped Flatten The Curve In The United States: Study examines the impact of emergency sick leave on the spread of COVID-19, Health Affairs 39, no. 12 (2020): 2197-2204, https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.00863.
[156] Scott Brown et al., Employee and 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_FMLA2018SurveyResults_FinalReport_Aug2020.pdf.

workers, and workers who have been with their employer for less than a year, 44 percent of workers do not have access to even unpaid leave.[157] Workers of color and workers with lower incomes are less likely to have access to paid leave.[158,159]

For workers that are also caregivers for children, seniors, or other family members, there may be a similar need for – and benefits of – paid family leave. For example, some workers may have struggled during the pandemic to balance caring for children, as schools and daycares closed, and working. For new parents, paid parental leave results in fewer infant hospitalizations, lowering parental stress, increasing parental involvement, and improving the overall health of parent and child.[160] COVID-19 has also increased the levels of "caregiving intensity"[161] and "caregiving burden"[162] for those providing care to seniors or older family members.[163,164] When surveyed, more than half of caregivers reported that COVID-19 increased both the amount of

[157] *Id.*
[158] Ann P. Bartel et al., Racial and ethnic disparities in access to and use of paid family and medical leave: evidence from four nationally representative datasets, U.S. Bureau of Labor Statistics (BLS) (January 2019), https://www.bls.gov/opub/mlr/2019/article/racial-and-ethnic-disparities-in-access-to-and-use-of-paid-family-andmedical-leave.htm.
[159] U.S. Bureau of Labor Statistics, Employee Benefits in the United States (March 2019), https://www.bls.gov/ncs/ebs/benefits/2019/ownership/civilian/table31a.pdf.
[160] Maya Rossin-Slater et al., Local exposure to school shootings and youth antidepressant use, Proceedings of the National Academy of Sciences, vol 117(38), pages 23484-23489 (2020), https://www.pnas.org/content/117/38/23484; Ariel Marek Pihl and Gaetano Basso, Did California Paid Family Leave Impact Infant Health?, Journal of Policy Analysis and Management, https://onlinelibrary.wiley.com/doi/abs/10.1002/pam.2210.
[161] J. C. Jacobs, A. Laporte, C. H. Van Houtven, P. C. Coyte, Caregiving intensity and retirement status in Canada. Social Science & Medicine, 102, 74–82 (2014), https://www.sciencedirect.com/science/article/abs/pii/S0277953613006631.
[162] E. Lightfoot, R. P. Moone, Caregiving in times of uncertainty: Helping adult children of aging parents find support during the COVID-19 outbreak, Journal of Gerontological Social Work, 63(6–7), 542–552 (2020), https://www.tandfonline.com/doi/abs/10.1080/01634372.2020.1769793.
[163] Note: "Caregiving intensity" is defined as the amount and type of care provided by informal caregivers; "Caregiving burden" is defined as the impacts on physical and mental health, and health-related quality of life of informal caregivers.
[164] SA Cohen, ZJ Kunicki, MM Drohan, ML Greaney, Exploring Changes in Caregiver Burden and Caregiving Intensity due to COVID-19, Gerontology and Geriatric Medicine (January 2021), doi:10.1177/2333721421999279.

caregiving responsibilities they had as well as the negative physical and mental impacts their caregiving responsibilities had on themselves.[165]

Treasury Response: Treasury agrees that these constitute impacts of the pandemic, and accordingly, under the final rule, creating, expanding, or financially supporting paid sick, medical, or family leave programs is an enumerated eligible use of funds to respond to the negative economic impacts of the pandemic.

12. Health insurance.

Public Comment: Several commenters recommended that uses of funds to expand access to health insurance be enumerated eligible uses; commenters believed that the heightened risk of illness or hospitalization due to COVID-19 had increased the negative economic impacts of lacking health insurance.

Background: In 2019, prior to the pandemic, it was estimated that 11 percent of nonelderly adults lacked health insurance.[166] By mid-2020, job loss had resulted in an estimated 3.3 million people losing their employer sponsored insurance, resulting in an additional 2 million uninsured adults.[167] Participation in Medicaid, the Children's Health Insurance Program (CHIP), and the Affordable Care Act (ACA) marketplace played an important role in minimizing the number of people who completely lost health insurance during the early phases of the pandemic;

[165] *Id*.
[166] Jennifer Tolbert et al., Key Facts about the Uninsured Population, Kaiser Family Foundation (November 6, 2020), https://www.kff.org/uninsured/issue-brief/key-facts-about-the-uninsured-population/.
[167] Joshua Aarons et. al., As the COVID-19 Recession Extended into the Summer of 2020, More Than 3 Million Adults Lost Employer-Sponsored Health Insurance Coverage and 2 Million Became Uninsured, Urban Institute (September 18, 2020), https://www.urban.org/research/publication/covid-19-recession-extended-summer-2020-more-3-million-adults-lost-employer-sponsored-health-insurance-coverage-and-2-million-became-uninsured.

Medicaid and CHIP enrollment increased by 9 percent from February to September 2020[168] and 8.3 million people enrolled in insurance through the ACA marketplace.[169]

Although the ACA, CHIP, and Medicaid have significantly reduced the number of uninsured Americans through the pandemic and the economic downturn, adequate coverage and affordability still remains an issue for many. In 2020, 21 percent of working-age adults were inadequately insured, meaning even if they had insurance, they incurred a significant amount of out-of-pocket costs.[170] Additionally, 37 percent of adults reported struggling with medical bills or medical debt and 71 percent of adults who did not purchase insurance cited affordability as the main factor.[171]

Treasury Response: Treasury agrees that loss of health insurance, increased financial risk from lacking health insurance, or excessive out-of-pocket healthcare costs constitute negative economic impacts of the pandemic. Under the final rule, programs or services to expand access to health insurance coverage are an enumerated eligible use as assistance to households, for example, subsidies for health insurance premiums or expansion of a recipient's health insurance plan to cover additional employees who currently lack coverage.

[168] Centers for Medicare and Medicaid Services, Medicaid and CHIP Enrollment Trends Snapshot through September 2020 (Washington: 2021), available at https://www.medicaid.gov/sites/default/files/2021-01/september-medicaid-chip-enrollment-trend-snapshot.pdf.
[169] Centers for Medicare and Medicaid Services, 2021 Federal Health Insurance Exchange Weekly Enrollment Snapshot: Final Snapshot (January 12, 2021) available at https://www.cms.gov/newsroom/fact-sheets/2021-federal-health-insurance-exchange-weekly-enrollment-snapshot-final-snapshot.
[170] Sara R. Collins, Munira Z. Gunja, and Gabriella N. Aboulafia, U.S. Health Insurance Coverage in 2020: A Looming Crisis in Affordability (New York: Commonwealth Fund, 2020), available at https://www.commonwealthfund.org/publications/issue-briefs/2020/aug/looming-crisis-health-coverage-2020-biennial.
[171] *Id.*

13. Services for the unbanked and underbanked.

Public Comment: One commenter expressed support for the inclusion of services to increase banking access as an allowable expense under SLFRF. The commenter recommended that states be encouraged to offer opportunities for consumers to open safe and affordable accounts capable of receiving direct payments. The commenter emphasized that allowing unbanked and underbanked households to receive funds securely through no-fee, direct deposit will help connect or reconnect consumers to the mainstream financial system.

Background: Banking inequities can make it difficult for unbanked or underbanked households to access housing, jobs, and other important economic opportunities. Being unbanked or underbanked can also make it challenging for households to apply for and receive financial assistance, including services like pandemic emergency housing assistance.

Safe, affordable, and accessible financial services play a critical role in assisting households in the United States in managing income volatility and cash flow shortages.[172] Currently, over 5 percent of families, or 7 million households are "unbanked," meaning they do not have a bank account.[173] Low-income households, non-white households, and households with individuals with disabilities were even more likely to be unbanked. In 2019, 16 percent of Native American households, 14 percent of Black households, and 12 percent of Hispanic households were unbanked, compared to 2.5 percent of white households. Additionally, 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

[172] Federal Deposit Insurance Corporation, FDIC National Survey of Unbanked and Underbanked Households (2015), https://www.fdic.gov/householdsurvey/2015/2015execsumm.pdf.
[173] Federal Deposit Insurance Corporation, How America Banks: Household Use of Banking and Financial Services 2019 FDIC Survey, https://www.fdic.gov/analysis/household-survey/2019report.pdf.

percent of all households in the United States.[174] As a result of the COVID-19 pandemic, new social distancing protocols have, in some instances, made it more difficult to perform financial transactions with paper instruments, like banknotes, coinage, paper checks, or money orders. Households constrained to these payment methods may face challenges receiving government assistance. Additionally, businesses have transitioned to cashless payments systems to promote contactless payments.[175] As a result, unbanked individuals may face additional challenges conducting financial transactions.

Treasury Response: Recognizing these challenges, Treasury is clarifying that recipients may use SLFRF funds to provide financial services that facilitate the delivery of federal, state, or local benefits (e.g., Child Tax Credit, Earned Income Tax Credit, tax refunds, or emergency housing or food assistance funds). The following includes a non-exhaustive list of uses to provide financial services to unbanked and underbanked households:

- Provide low or no cost financial services, including in conjunction with administration of benefits, such as pre-paid debit cards, e.g., via Economic Impact Payment or General Purpose Reloadable pre-paid cards or for the development of public banking infrastructure that can support benefit delivery.
- Provide transitional services to facilitate long-term access to banking and financial services.
- Provide financial literacy programs and conduct community outreach and deploy engagement resources to increase awareness about low-cost, no-overdraft fee accounts,

[174] Board of the Governors of the Federal Reserve System, Report on the Economic Well-Being of U.S. Households in 2018 - May 2019, https://www.federalreserve.gov/publications/2019-economic-well-being-of-us-households-in-2018-banking-and-credit.htm.
[175] Zaheer Allam, The Forceful Reevaluation of Cash-Based Transactions by COVID-19 and Its Opportunities to Transition to Cashless Systems in Digital Urban Networks. Surveying the Covid-19 Pandemic and its Implications (2020): 107–117. doi:10.1016/B978-0-12-824313-8.00008-5.

pilot new strategies and approaches that help overcome barriers to banking access and support the gathering and sharing of information in ways that improve equity, such as community meetings, partnerships with community-based organizations, online surveys, focus groups, human-centered design activities, and other community engagement activities.

Assistance to Unemployed and Underemployed Workers

The interim final rule included assistance to unemployed workers as an enumerated eligible use, including "services like job training to accelerate rehiring of unemployed workers." Treasury provided further guidance, based on recipient questions after the interim final rule, that eligible uses under this section also include "other efforts to accelerate rehiring and thus reduce unemployment, such as childcare assistance, assistance with transportation to and from a jobsite or interview, and incentives for newly employed workers[,]" as well as assistance to unemployed workers seeking to start small businesses. Finally, further guidance also provided that "public jobs programs, subsidized employment, combined education and on-the-job training programs, or job training to accelerate rehiring or address negative economic or public health impacts experienced due to a worker's occupation or level of training" are all enumerated eligible uses as assistance to unemployed or underemployed workers.

The interim final rule defined eligible beneficiaries of assistance as "individuals who want and are available for work, including those who have looked for work sometime in the past 12 months or who are employed part time but who want and are available for full-time work." This definition is based on definitions used by the Bureau of Labor Statistics to define individuals currently unemployed, as well as persons marginally attached to the labor force and

working part-time for economic reasons.[176] The latter two classifications are types of labor underutilization, or "underemployed" workers.[177] Finally, the interim final rule specified that assistance to unemployed workers included both workers who lost their job during the pandemic and resulting recession and workers unemployed when the pandemic began who saw further deterioration of their economic prospects due to the pandemic.

Public Comment: Commenters generally supported the inclusion of this enumerated eligible use. One commenter recommended including assistance for underemployed workers who took jobs due to the pandemic that did not fully utilize their skillset or did not provide the hours, wages, or job quality desired. Treasury has also received recipient questions on whether job fairs or grants to businesses to hire underserved workers are eligible uses under this category. Another commenter recommended flexibility in eligible workforce development programs, arguing that rural areas may face particular challenges.

Treasury Response: Treasury is maintaining this eligible use in the final rule, including the enumerated eligible services in the interim final rule and subsequent guidance. Treasury is also confirming that job fairs or grants to businesses to hire underserved workers are eligible uses under this section.

Treasury is also enumerating that job and workforce training centers are eligible capital expenditures, so long as they adhere to the standards and presumptions detailed in the section Capital Expenditures in General Provisions: Other.

The final rule maintains the definition of eligible beneficiaries, which is aligned with the Bureau of Labor Statistics' definitions of unemployed workers and other labor underutilization,

[176] Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Concepts and Definitions, https://www.bls.gov/cps/definitions.htm (last visited November 9, 2021).
[177] *Id.*

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 workers during the pandemic.[178] The interim final rule also posed the question of what, if any, conditions should be considered to ensure that funds used under this eligible use category repair economic impacts of the pandemic and strengthen unemployment insurance systems.

Public Comment: Inclusion as an Eligible Use and Conditions: Commenters expressed mixed perspectives on this eligible use category. Some commenters supported its inclusion,

[178] Note that, while the economic harm being addressed accrued before March 3, 2021, the cost incurred to address the harm occurs after March 3, 2021 and provides assistance to unemployed workers, an eligible use of SLFRF funds.

arguing that unemployment insurance systems have faced significant costs to support unemployed workers during the pandemic and that this constitutes a negative economic impact that SLFRF funds should be able to address. Other commenters opposed this eligible use category, arguing that funds used under this category may not ultimately support unemployed workers. Some commenters noted that unemployment insurance taxes on businesses automatically increase when trust fund balances are low and suggested that permitting the deposit of funds into unemployment insurance trust funds prevents a tax increase on businesses, some of which may not have faced negative economic impacts from the pandemic, rather than providing assistance to unemployed workers. Other comments suggested that deposits are better thought of as savings for future needs than assistance to unemployed workers in the near term.

Responding to the interim final rule's question, several commenters suggested that, if Treasury maintains this eligible use, the final rule should require detailed reporting on funds used under this category or place conditions on this category to increase the likelihood that funds ultimately support unemployed workers. For example, some commenters suggested that recipients that deposit SLFRF funds into their trust fund should be barred from cutting unemployment insurance benefits for workers during the period of performance or from erecting new barriers to accessing benefits (e.g., through the application process and ongoing requirements to receive benefits). One commenter, noting that unemployment insurance benefits often provide low rates of wage replacement and do not cover some types of unemployed workers, argued that recipients should not be permitted to deposit funds into the trust fund unless the recipient concurrently expands benefits. Finally, one commenter suggested a cap on the amount of funds that can be used for this purpose.

Treasury Response: Inclusion as an Eligible Use and Conditions: In the final rule, Treasury is maintaining the inclusion of this eligible use category. Because unemployment insurance trust funds directly fund benefits to unemployed workers, maintaining the solvency of the trust fund is critical to the continued provision of assistance to unemployed workers. Further, funds deposited into the trust fund must be used as assistance to unemployed workers, an eligible use of SLFRF funds. Finally, while, in the absence of the SLFRF, trust fund deposits would likely be funded through increases on employer payroll taxes, the eligibility of uses of SLFRF funds does not depend on how obligations would otherwise be satisfied if the SLFRF were not available for this use.

While deposits to unemployment insurance trust funds generally serve as assistance to unemployed workers, recipients that make deposits but also cut unemployment insurance benefits to workers substantially decrease the likelihood that the deposited funds will assist unemployed workers. In other words, SLFRF funds deposited into an unemployment insurance trust fund generally serve as assistance to unemployed workers, unless recipients take policy actions that substantially decrease the extent to which SLFRF funds would flow to unemployed workers. As such, through December 31, 2024, recipients that deposit SLFRF funds into an unemployment insurance trust fund or use SLFRF funds to repay principal on Title XII advances, may not take action to reduce benefits available to unemployed workers by changing the computation method governing regular unemployment compensation in a way that results in a reduction of average weekly benefit amounts or the number of weeks of benefits payable (i.e., the maximum benefit entitlement).

Finally, until the final rule becomes effective on April 1, 2022, the interim final rule remains binding and effective.[179] These requirements were not in effect under the interim final rule and do not apply to funds used (i.e., obligated or expended) under the interim final rule while it is in effect. In addition, recognizing that some recipients have taken significant steps toward making a trust fund deposit or repaying principal on Title XII advances under the interim final rule, such as the legislative appropriation of funds for this purpose, even if a formal obligation has not occurred, Treasury will exercise enforcement discretion to not pursue violations of this final rule provision (i.e., the requirement not to reduce benefits) for recipients that have appropriated funds for this purpose prior to the date of adoption of the final rule consistent with the laws and procedures in their jurisdiction. Recipients should refer to Treasury's Statement Regarding Compliance with the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule and Final Rule, which provides additional detail on these issues.

Public Comment and Treasury Response: Technical Corrections and Amendments: Following the interim final rule, Treasury received recipient questions on whether paying interest on advances received under Title XII of the Social Security Act (42 U.S.C. 1321) is an eligible use of SLFRF funds; Treasury is clarifying that such use is permissible, consistent with Treasury's treatment of the eligibility of interest on Title XII advances under the Coronavirus Relief Fund.

Treasury is further clarifying that recipients may only use SLFRF funds for contributions to unemployment insurance trust funds and repayment of the principal amount due on advances

[179] *See, e.g.,* U.S. Department of the Treasury, More Information on the Conclusion of the Public Comment Period and the Interim Final Rule on the Coronavirus State and Local Fiscal Recovery Funds, https://home.treasury.gov/system/files/136/IFR-Explainer.pdf.

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 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 disproportionally negative impacts on many households and communities that were already experiencing inequality related to race, gender, age, or income before the pandemic. People of color, low-income workers, and women

disproportionately lost their jobs during the COVID-19 pandemic and experienced disproportionate rates of negative health outcomes.[180, 181]

These disproportionate negative impacts experienced by systemically underserved communities are not novel to the COVID-19 pandemic and the economic downturn. Research shows that historically underserved communities that are experiencing economic and social disparities typically experience disproportionate impacts of economic downturns and natural disasters.[182] This pattern held true for the effects of COVID-19 and the economic downturn: historically undeserved groups experienced amplified negative impacts, further widening inequality.[183]

Many communities facing systemic barriers had not yet recovered from the impact of the Great Recession before experiencing the impacts of COVID-19 and the economic downturn. For example, in 2009, at the end of the Great Recession, households without a high school diploma had an average annual income of $32,300 (measured in 2018 dollars). By 2018, nine years into the economic recovery, those same households saw their average income increase by $600. During that same time period, households with a bachelor's degree saw an increase in their average household income of $6,100 (measured in 2018 dollars).[184]

[180] U.S. Department of Health and Human Services, COVID-19 and Economic Opportunity: Inequities in the Employment Crisis, April 2021. Retrieved from https://aspe.hhs.gov/sites/default/files/migrated_legacy_files//199901/covid-economic-equity-brief.pdf.
[181] Adelle Simmons et al., Health disparities by race and ethnicity during the COVID-19 pandemic: Current evidence and policy approaches. U.S. Department of Health and Human Services https://aspe.hhs.gov/sites/default/files/migrated_legacy_files//199516/covid-equity-issue-brief.pdf.
[182] Perry, Brea L., Brian Aronson, and Bernice A. Pescosolido, Pandemic precarity: COVID-19 is exposing and exacerbating inequalities in the American heartland, National Academy of Sciences (Febuary 2021), https://www.pnas.org/content/118/8/e2020685118.
[183] *Id*.
[184] Jesse Bennet & Rakesh Kochhar, Two Recessions, Two Recoveries, Pew Research Center (December 13, 2019), https://www.pewresearch.org/social-trends/2019/12/13/two-recessions-two-recoveries-2/.

The impact pre-existing inequalities have on a household or community's ability to recover is intersectional. Research shows that pre-existing racial and gender disparities exacerbated the disproportionate economic and health impact COVID-19 and the economic downturn had on workers of color, and specifically, women of color.[185] Another study found that during the first six months of the pandemic counties that were both high-poverty and majority non-white experienced COVID-19 infection rates eight times higher than high-poverty, majority white counties.[186] Many residents in these communities are still coping with the negative health and economic impacts.

Summary of the Interim Final Rule and Final Rule Structure

As described previously, the interim final rule provided a broader list of enumerated eligible uses to respond to the pandemic in disproportionately impacted communities, in recognition that pre-existing health, economic, and social disparities contributed to disproportionate pandemic impacts in certain communities and that addressing the root causes of those disparities constitutes responding to the public health and negative economic impacts of the pandemic. The interim final rule described eligible uses in disproportionately impacted communities in four categories, spread across public health and negative economic impacts: 1) addressing disparities in public health outcomes, 2) building stronger communities through investments in housing and neighborhoods, 3) addressing educational disparities, and 4) promoting healthy childhood environments. As described above, Treasury has moved eligible uses related to community violence intervention, assistance accessing or applying to public

[185] Darrick Hamilton et al., Building an Equitable Recovery: The role of Race, Labor Markets, and Education, The New School's Institute on Race and Political Economy (February 2021).
[186] Adhikari S, Pantaleo NP, Feldman JM, Ogedegbe O, Thorpe L, Troxel AB. Assessment of Community-Level Disparities in Coronavirus Disease 2019 (COVID-19) Infections and Deaths in Large US Metropolitan Areas. JAMA Netw Open. 2020;3(7):e2016938. doi:10.1001/jamanetworkopen.2020.16938.

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 requested further clarification on their role.[187] Treasury is maintaining this eligible use in the final rule.

b. Remediation of lead paint or other lead hazards. The interim final rule included remediation of lead paint or other lead hazards as an enumerated eligible use to address health disparities.

Public Comment: Treasury received several comments asking for clarification on the eligibility of a particular use that would indirectly address lead pollution. For example, a commenter requested the ability to fund remedial actions, such as filtration and plumbing procedures to help address lead pollution. One commenter requested that private wells be eligible for funding to address contamination with substances such as lead. Other commenters requested that Treasury allow replacement of lead pipes as an eligible use of funds.

Treasury Response: Recipients may make a broad range of water infrastructure investments under section 602(c)(1)(d) and 603(c)(1)(d), which can include lead service

[187] *See, e.g.*, Centers for Disease Control and Prevention, Community Health Worker (CHW) Toolkit, https://www.cdc.gov/dhdsp/pubs/toolkits/chw-toolkit.htm (last visited November 9, 2021).

line replacement and other activities to identify and remediate lead in water. These uses are discussed in greater detail in section Water and Sewer Infrastructure of this Supplemental Information.

Treasury has further determined that several of the services identified by commenters are appropriate responses to address health disparities in disproportionately impacted households. These services were eligible under the interim final rule and continue to be so under the final rule. These services include remediation to address lead-based public health risk factors, outside of lead in water, including evaluation and remediation of lead paint, dust, or soil hazards; testing for blood lead levels; public outreach and education; and emergency protection measures, like bottled water and water filters, in areas with an action level exceedance for lead in water in accordance with the Environmental Protection Agency's Lead and Copper Rule.[188]

Further, Treasury had determined that certain capital expenditures, including improvements to existing facilities to remediate lead contaminants (e.g., removal of lead paint), are eligible responses, although this does not include construction of new facilities for the purpose of lead remediation. Recipients should make sure that all capital expenditures adhere to the standards and presumptions detailed in section Capital Expenditures in General Provisions: Other.

c. Medical facilities. Treasury received a few comments from recipients seeking to use SLFRF funds to build new medical facilities, such as hospitals or public health clinics, to serve disproportionately impacted communities. Given the central role of access to high-

[188] Environmental Protection Agency, 40 CFR 141.80(c)(1), https://www.ecfr.gov/current/title-40/chapter-I/subchapter-D/part-141/subpart-I/section-141.80.

quality medical care in reducing health disparities and addressing the root causes that led to disproportionate impact COVID-19 health impacts in certain communities, the final rule recognizes that medical equipment and facilities designed to address disparities in public health outcomes are eligible capital expenditures. This includes primary care clinics, hospitals, or integrations of health services into other settings. Recipients should make sure that all capital expenditures adhere to the standards and presumptions detailed in section Capital Expenditures in General Provisions: Other.

2. Housing vouchers and assistance relocating. In addition to other housing services, the interim final rule permitted a variety of rental assistance approaches to support low-income households in securing stable, long-term housing, including housing vouchers, residential counseling, or housing navigation assistance to facilitate household moves to neighborhoods with high levels of economic opportunity and mobility for low-income residents. Examples could include SLFRF-funded analogues to Section 8 Housing Choice vouchers; other kinds of rent subsidies, including shallow subsidies; and programs to help residents move to areas with higher levels of economic mobility.[189] Treasury did not receive public comments on these enumerated eligible uses.

Treasury Response: Treasury maintains the eligibility of vouchers and relocation assistance in the final rule.

3. Building strong, healthy communities through investments in neighborhoods. While the interim final rule included a category of enumerated eligible uses for "building stronger

[189] *See, e.g.*, Opportunity Insights, Creating Moves To Opportunity (August 2019), https://opportunityinsights.org/policy/cmto/.

communities through investments in housing and neighborhoods," the examples of services provided generally focused on housing uses. In response to questions following release of the interim final rule, Treasury issued further guidance clarifying that "investments in parks, public plazas, and other public outdoor recreation spaces may be responsive to the needs of disproportionately impacted communities by promoting healthier living environments."

Public Comment: General: A significant theme across many public comments was the importance of neighborhood environment to health and economic outcomes and the potential connections between residence in an underserved neighborhood and disproportionate impacts from the pandemic. Many commenters highlighted the connection between neighborhoods and health outcomes, including citing public health research linking neighborhood traits to health outcomes. For example, the CDC states that "neighborhoods people live in have a major impact on their health and well-being."[190] As such, CDC identifies "neighborhoods and built environment" as one of five key social determinants of health[191] 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

[190] U.S. Department of Health and Human Services, Neighborhood and Built Environment, https://health.gov/healthypeople/objectives-and-data/browse-objectives/neighborhood-and-built-environment#cit1 (last visited November 9, 2021).
[191] Social determinants of health are "the conditions in the places where people live, learn, work, and play that affect a wide range of health risks and outcomes." Centers for Disease Control and Prevention, About Social Determinants of Health (SDOH), https://www.cdc.gov/socialdeterminants/about.html (last visited November 9, 2021).

amenities in a community[192] 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 that lacking adequate access to affordable, healthy food or living in a "food desert" may contribute to disparities in diet that influence health outcomes, including contributing to pre-existing conditions that increased risk for severe COVID-19 outcomes. These commenters cited public health research finding "clear evidence for disparities in food access in the United States by income and race."[193]

Some commenters also suggested that neighborhood environment is connected to other public health outcomes, like mental health and public safety. For example, some research suggests that living in neighborhoods with green space and tree cover correlates with improved mental health outcomes.[194] Finally, some commenters argued that activities like installing

[192] In public health, this is referred to as "built environment," or the man-made physical aspects of a community (e.g., homes, buildings, streets, open spaces, and infrastructure).
[193] J Beaulac, E Kristjansson, S Cummins, A systematic review of food deserts, 1966-2007, Prev Chronic Dis 2009;6(3):A105, http://www.cdc.gov/pcd/issues/2009/jul/08_0163.htm.
[194] *See, e.g.*, Yijun Zhang et al. The Association between Green Space and Adolescents' Mental Well-Being: A Systematic Review. International journal of environmental research and public health vol. 17,18 6640 (Sep. 11 2020), doi:10.3390/ijerph17186640; EC South, BC Hohl, MC Kondo, JM MacDonald, CC Branas, Effect of Greening Vacant Land on Mental Health of Community-Dwelling Adults: A Cluster Randomized Trial, JAMA Netw Open. 2018;1(3):e180298 (2018), available at: doi:10.1001/jamanetworkopen.2018.0298.

streetlights, greening or cleanup of public spaces or land, and other efforts to revitalize public spaces would support improved public safety.[195,196]

These commenters recommended that Treasury include as an enumerated eligible use in disproportionately impacted communities projects to develop neighborhood features that promote improved health and safety outcomes, such as parks, green spaces, recreational facilities, sidewalks, pedestrian safety features like crosswalks, projects that increase access to healthy foods, streetlights, neighborhood cleanup, and other projects to revitalize public spaces.

Background: Investments in neighborhood features, including parks, recreation facilities, sidewalks, and healthy food access, can work to improve physical and mental health outcomes. Allowing people access to nature, including parks, has been connected to decreased levels of mortality and illness and increased well-being.[197] Urban park use during the COVID-19 pandemic may have declined among lower-income individuals.[198] Encouraging physical activity can also play a role in health outcomes, as a sedentary lifestyle is a risk factor for chronic diseases and more severe COVID-19 outcomes.[199] Parks, recreation facilities, and sidewalks can promote healthier living environments by allowing for safe and socially distanced recreation during the COVID-19 pandemic.

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[195] *See, e.g.,* Yanqing Xu, Cong Fu, Eugene Kennedy, Shanhe Jiang, Samuel Owusu-Agyemang, The impact of street lights on spatial-temporal patterns of crime in Detroit, Michigan, Cities, Volume 79, Pages 45-52, ISSN 0264-2751 (2018), https://doi.org/10.1016/j.cities.2018.02.021.

[196] A. Chalfin, B. Hansen, J. Lerner et al., Reducing Crime Through Environmental Design: Evidence from a Randomized Experiment of Street Lighting in New York City, Journal of Quantitative Criminology (2021), https://doi.org/10.1007/s10940-020-09490-6.

[197] *See, e.g.,* American Public Health Association, Improving Health and Wellness through Access to Nature (November 5, 2013), https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/08/09/18/improving-health-and-wellness-through-access-to-nature.

[198] LR Larson et al., Urban Park Use During the COVID-19 Pandemic: Are Socially Vulnerable Communities Disproportionately Impacted?, Front. Sustain. Cities 3:710243 (2021), https://doi.org/10.3389/frsc.2021.710243.

[199] JP Després, Severe COVID-19 outcomes — the role of physical activity. Nat Rev Endocrinol 17, 451–452 (2021). https://doi.org/10.1038/s41574-021-00521-1.

Additionally, food insecurity rates, which are higher among lower-income households and households of color, doubled among all households and tripled among households with children during the onset of COVID-19 from February 2020 to May 2020.[200] Improving healthy food access supports public health, particularly among lower-income households and households of color that face disproportionate outcomes.

Treasury Response: Treasury recognizes the connection between neighborhood built environment and physical health outcomes as discussed in the research and analysis provided by commenters, including risk factors that may have contributed to disproportionate COVID-19 health impacts in low-income communities. The final rule also recognizes that the public health impacts of the pandemic are broader than just the COVID-19 disease itself and include substantial impacts on mental health and public safety challenges like rates of violent crime, which are correlated with a neighborhood's built environment and features. As such, neighborhood features that promote improved health and safety outcomes respond to the pre-existing disparities that contributed to COVID-19's disproportionate impacts on low-income communities.

The final rule includes enumerated eligible uses in disproportionately impacted communities for developing neighborhood features that promote improved health and safety outcomes, such as parks, green spaces, recreational facilities, sidewalks, pedestrian safety features like crosswalks,[201] projects that increase access to healthy foods, streetlights,

[200] Caroline George and Adie Tomer, Beyond 'food deserts': America needs a new approach to mapping food, Brookings Institution (August 17, 2021), https://www.brookings.edu/research/beyond-food-deserts-america-needs-a-new-approach-to-mapping-food-insecurity/.

[201] However, Treasury cautions recipients that general infrastructure development, including street or road construction, remains a generally ineligible use of funds under the final rule. Sidewalks and pedestrian safety should be the predominant component of uses of funds in this category. While projects may include ancillary construction needed to execute the predominant component, a project that predominantly involves street construction or repair to benefit vehicular traffic would be ineligible.

neighborhood 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 neighborhood environments to public health and economic outcomes. Treasury agrees with commenters that high rates of vacant or

abandoned properties in a neighborhood may exacerbate public health disparities, for example through environmental contaminants that contribute to poor health outcomes or by contributing to higher rates of crime. As such, certain services for vacant or abandoned properties are eligible to address the public health and negative economic impacts of the pandemic on disproportionately impacted households or communities. Eligible activities include:

- Rehabilitation, renovation, maintenance, or costs to secure vacant or abandoned properties to reduce their negative impact
- Costs associated with acquiring and securing legal title of vacant or abandoned properties and other costs to position the property for current or future productive use
- Removal and remediation of environmental contaminants or hazards from vacant or abandoned properties, when conducted in compliance with applicable environmental laws or regulations
- Demolition or deconstruction of vacant or abandoned buildings (including residential, commercial, or industrial buildings) paired with greening or other lot improvement as part of a strategy for neighborhood revitalization
- Greening or cleanup of vacant lots, as well as other efforts to make vacant lots safer for the surrounding community
- Conversion of vacant or abandoned properties to affordable housing
- Inspection fees and other administrative costs incurred to ensure compliance with applicable environmental laws and regulations for demolition, greening, or other remediation activities

Vacant or abandoned properties are generally those that have been unoccupied for an extended period of time or have no active owner.[202] Such properties may be in significant disrepair (e.g., major structural defects; lack of weather tight conditions; or lack of useable plumbing, kitchen facilities, electricity, or heating infrastructure (not to include utilities currently out of service or disconnected but able to be reconnected and used)), or may be declared unfit for inhabitants by a government authority.

As noted above, demolition and greening (or other structure or lot remediation) of vacant or abandoned properties, including residential, commercial, or industrial buildings, is an eligible use of funds. Treasury encourages recipients to undertake these activities as part of a strategy for neighborhood revitalization and to consider how the cleared property will be used to benefit the disproportionately impacted community. Activities under this eligible use should benefit current residents and businesses, who experienced the pandemic's impact on the community.

Treasury encourages recipients to be aware of potential impacts of demolition of vacant or abandoned residential properties. Demolition activities that exacerbate the pandemic's impact on housing insecurity or lack of affordable housing are not eligible uses of funds. This risk is

[202] A state or locality may use its existing classifications of what is considered vacant or abandoned property under state law and local ordinances, as well as any corresponding processes for demolition, for these eligible uses. A recipient without a definition of vacant or abandoned property may refer to definitions used in the Department of Housing and Urban Development's Neighborhood Stabilization Program (available at the citations below); however, recipients should be aware that other federal, state, or local requirements may apply such as compliance with the Uniform Relocation Act (*see* U.S. Department of Housing and Urban Development, Real Estate Acquisition and Relocation Overview in HUD Programs, https://www.hudexchange.info/programs/relocation/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-activitiesuses/what-are-the-definitions-of-abandoned-and-foreclosed/.

generally more acute in jurisdictions with low or reasonable vacancy rates and less acute in jurisdictions with high or hyper-vacancy.[203]

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

[203] For analysis of vacancy rates considered low or high, see, e.g., page 12 of Alan Mallach, The Empty House Next Door, Lincoln Institute (May 2018), https://www.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 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.

Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. 4601, and the Department of Transportation's implementing regulations, 49 CFR Part 24, that apply to projects funded with federal financial assistance, such as SLFRF funds. Recipients should also be aware of federal, state, and local laws and regulations, outside of SLFRF program requirements, that apply to this activity. Recipients must comply with the applicable requirements of the Uniform Guidance regarding procurement, contracting, and conflicts of interest and must follow the applicable laws and regulations in their jurisdictions. Recipients must also comply with all federal, state, and local public health and environmental laws or regulations that apply to activities under this eligible use category,[204] for example, requirements around the 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

[204] *See* U.S. Environmental Protection Agency, Large-Scale Residential Demolition, https://www.epa.gov/large-scale-residential-demolition (last visited November 9, 2021) for a primer on requirements that may apply.

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[205] and play a key role in supporting the overall economic recovery as they are responsible for two-thirds of net new jobs.[206] Since the beginning of the pandemic, however, 400,000 small businesses have closed, with many more at risk.[207] Sectors with a large share of small business employment have been among those with the most drastic drops in employment.[208] The negative outlook for small businesses has continued: as of November 2021, approximately 66 percent of small businesses reported that the pandemic has had a moderate or large negative effect on their business, and over a third expect that it will take over 6 months for their business to return to their normal level of operations.[209]

This negative outlook is likely the result of many small businesses having faced periods of closure and having seen declining revenues as customers stayed home.[210] In general, small

[205] Board of Governors of the Federal Reserve System, Monetary Policy Report (June 12, 2020), https://www.federalreserve.gov/monetarypolicy/ 2020-06-mpr-summary.htm.
[206] U.S. Small Business Administration, Office of Advocacy, Small Businesses Generate 44 Percent of U.S. Economic Activity (Jan. 30, 2019), https://advocacy.sba.gov/2019/01/30/small-businesses-generate-44-percent-of-u-s-economic-activity/.
[207] Joseph R. Biden, Remarks by President Biden on Helping Small Businesses (Feb. 22, 2021), https://www.whitehouse.gov/briefing-room/speechesremarks/2021/02/22/remarks-by-president-bidenon-helping-small-businesses/.
[208] Daniel Wilmoth, U.S. Small Business Administration Office of Advocacy, The Effects of the COVID-19 Pandemic on Small Businesses, Issue Brief No. 16 (Mar. 2021), *available at* https://cdn.advocacy.sba.gov/wp-content/uploads/2021/03/02112318/COVID-19-Impact-On-Small-Business.pdf.
[209] U.S. Census Bureau, Small Business Pulse Survey, https://portal.census.gov/pulse/data/ (last visited December 7, 2021).
[210] Olivia S. Kim et al., Revenue Collapses and the Consumption of Small Business Owners in the Early Stages of the COVID-19 Pandemic (Nov. 2020), https://www.nber.org/papers/w28151.

businesses can face greater hurdles in accessing credit,[211] and many small businesses were already financially fragile at the outset of the pandemic.[212]

While businesses everywhere faced significant challenges during the pandemic, minority-owned and very small businesses have faced additional obstacles. Between February and April 2020, the number of actively self-employed Black business owners decreased by 41 percent.[213] During that same time period, Asian and Latino business owners decreased by 26 and 32 percent, respectively, compared to a 17 percent decrease in white business owners.[214] Female business owners also saw significant impacts, with businesses owned by women falling by 25 percent.[215]

Many of the disparities in how minority business owners experienced the pandemic are rooted in systemic issues present even before the pandemic. For example, before the economic downturn, only 12 percent of Black-owned businesses and 19 percent of Hispanic-owned businesses had annual earnings of over $1 million compared to 31 percent of white-owned businesses.[216] Minority-owned businesses were also overrepresented in industries hit hardest by the economic downturn (e.g., services, transportation and warehousing, healthcare and social assistance, administrative and support and waste management, and accommodation and food

[211] *See, e.g.,* Board of Governors of the Federal Reserve System, Report to Congress on the Availability of Credit to Small Businesses (Sept. 2017), *available at* https://www.federalreserve.gov/publications/2017-september-availability-of-credit-to-small-businesses.htm.
[212] Alexander W. Bartik et al., The Impact of COVID-19 on small business outcomes and expectations, PNAS 117(30): 17656-66 (July 28, 2020), *available at* https://www.pnas.org/content/117/30/17656.
[213] Robert Fairlie, The impact of COVID-19 on small business owners: Evidence from the first 3 months after widespread social-distancing restrictions, Journal of economics & management strategy (August 27, 2020), https://doi.org/10.1111/jems.12400.
[214] U.S. Small Business Administration, The Effects of the COVID-19 Pandemic on Small Businesses (March 2021), https://cdn.advocacy.sba.gov/wp-content/uploads/2021/03/02112318/COVID-19-Impact-On-Small-Business.pdf.
[215] Robert Fairlie, *supra* note 199.
[216] Federal Reserve Bank of Atlanta. 2019. Small Business Credit Survey 2019 Report on Minority-Owned Firms. December. fedsmallbusiness.org/survey/2019/report-on-minority-owned-firms

services).[217] Approximately 22 percent of all minority-owned business fell into the hardest hit industries compared to 13 percent of nonminority-owned businesses.[218]

Although disparities in annual revenue are not a direct indication of a business's ability to weather an economic downturn, they do highlight other disparities that make it more challenging for these businesses to survive the effects of the pandemic. Black-owned startups, for example, face larger challenges in raising capital, including securing business loans.[219]

Summary of the Interim Final Rule and Final Rule Structure

Summary of Interim Final Rule: As discussed above, small businesses faced significant challenges in covering payroll, mortgages or rent, and other operating costs as a result of the public health emergency and measures taken to contain the spread of the virus. Under Sections 602(c)(1)(A) and 603(c)(1)(A), recipients may "respond to the public health emergency or its negative economic impacts," by, among other things, providing "assistance to . . . small businesses." Accordingly, the interim final rule allowed recipients to provide assistance to small businesses to address the negative economic impacts faced by those businesses. A "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

[217] Ding, Lei, and Alvaro Sanchez. 2020. What Small Businesses Will Be Impacted by COVID-19? Federal Reserve Bank of Philadelphia. philadelphiafed.org/covid-19/covid-19-equity-in-recovery/what-small-businesses-will-be-impacted.
[218] Lucas Misera, An Uphill Battle: COVID-19's Outsized Toll on Minority-Owned Firms, Federal Reserve Bank of Cleveland (October 8, 2020), https://www.clevelandfed.org/newsroom-and-events/publications/community-development-briefs/db-20201008-misera-report.aspx.
[219] Robert Fairlie, A Robb, D Robinson, Black and White: Access to Capital among Minority-Owned Startups, NBER Working Paper 28154 (November 2020), https://www.nber.org/papers/w28154.

(2) Is a small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632).

Specifically, the interim final rule provided that recipients may provide assistance to small businesses to adopt safer operating procedures, weather periods of closure, or mitigate financial hardship resulting from the COVID–19 public health emergency, including:

- Loans or grants to mitigate financial hardship such as declines in revenues or impacts of periods of business closure;
- Loans, grants, or in-kind assistance to implement COVID–19 prevention or mitigation tactics; and
- Technical assistance, counseling, or other services to assist with business planning needs.

The interim final rule further provided that recipients may consider additional criteria to target assistance to businesses in need, including small businesses. Such criteria may include businesses facing financial insecurity, substantial declines in gross receipts (e.g., comparable to measures used to assess eligibility for the Paycheck Protection Program), or other economic harm due to the pandemic, as well as businesses with less capacity to weather financial hardship, such as the smallest businesses, those with less access to credit, or those serving underserved communities. The interim final rule also indicated that recipients should consider local economic conditions and business data when establishing such criteria. Finally, the interim final rule posed a question on whether there are other services or costs that Treasury should consider as eligible uses to respond to the disproportionate impacts of COVID–19 on low-income populations and communities.

Final Rule Structure: Consistent with the interim final rule approach, the final rule provides a non-exhaustive list of enumerated eligible uses for assistance to small businesses that

are impacted or disproportionately impacted by the pandemic. Further, within Assistance to Small Business, a recipient may also identify a negative economic impact experienced by small businesses and design and implement a response to that negative economic impact, beyond the uses specifically enumerated in the final rule, according to the standard described in the section Standards: Identifying a Negative Economic Impact. A recipient may also identify small businesses that have been disproportionately impacted by the public health emergency and design and implement a program that responds to the source of that disproportionate impact.

Consistent with other eligible use categories to respond to the public health and economic impacts of the pandemic, recipients may identify and serve small businesses that experienced a negative economic impact or disproportionate impact due to the pandemic, as described in the section Standards for Identifying Other Eligible Populations. For example, to identify impacted small businesses, a recipient may consider whether the small businesses faced challenges in covering payroll, mortgage or rent, or other operating costs as a result of the public health emergency and measures taken to contain the spread of the virus. In order to ease administrative burden, the final rule presumes that small businesses operating in QCTs, small businesses operated by Tribal governments or on Tribal Lands, and small businesses operating in the U.S. territories were disproportionately impacted by the pandemic.

Reorganizations and Cross-References: As detailed above, Treasury has re-categorized some uses of funds in the final rule to provide greater clarity. For discussion of assistance to small businesses and impacted industries to implement COVID-19 mitigation and prevention strategies, see section COVID-19 Mitigation and Prevention in Public Health.

Small Businesses Eligible for Assistance

Public Comment: Treasury received many comments about the general benefits or drawbacks of use of SLFRF funds to provide assistance to small businesses. Some commenters suggested that SLFRF funds should be available to assist all small businesses, rather than only businesses that experienced direct negative economic impacts due to the public health emergency. Other commenters argued that aid to small businesses should be narrowed in the final rule, asserting that SLFRF funds should instead focus on assistance to households or building public sector capacity.

Treasury also received comments requesting clarification of the types of small businesses eligible for assistance. For example, some commenters requested clarification about whether microbusinesses were included in the definition of small business. Comments also suggested that self-employed individuals and Tribal enterprises be classified as small businesses, respectively. Commenters argued that these types of small businesses are more common among low-income and minority businessowners and serve as important institutions in underserved communities.

Finally, some commenters suggested that Treasury permit broader enumerated eligible uses to assist small businesses in disproportionately impacted communities and generally strengthen economic growth in these communities. These commenters recommended that Treasury presume small businesses operating in QCTs are disproportionately impacted and eligible for broader enumerated uses.

Treasury Response: As discussed in the section Designating a Negative Economic Impact, in the final rule, recipients must identify an economic harm caused or exacerbated by the pandemic on a small business or class of small businesses to provide services that respond.

As discussed above, programs or services in this category must respond to a harm experienced by a small business or class of small businesses as a result of the public health emergency. To identify impacted small businesses and necessary response measures, recipients may consider impacts such as lost revenue or increased costs, challenges covering payroll, rent or mortgage, or other operating costs, the capacity of a small business to weather financial hardships, and general financial insecurity resulting from the public health emergency.

Recognizing the difficulties faced by small businesses in certain communities, the final rule presumes that small businesses operating in QCTs, small businesses operated by Tribal governments or on Tribal Lands, and small businesses operating in the U.S. territories were disproportionately impacted by the pandemic. This presumption parallels the final rule's approach to assistance to households, reflecting the more severe pandemic impacts in underserved communities and creating a parallel structure across different categories of eligible uses to make the structure simpler for recipients to understand and navigate.

Treasury notes that recipients may also designate a class of small businesses that experienced a negative economic impact or disproportionate negative economic impact (e.g., microbusinesses, small businesses in certain economic sectors), design an intervention to fit the impact, and document that the individual entity is a member of the class. Additional information about this framework is included in the section General Provisions: Structure and Standards.

Further, Treasury is maintaining the interim final rule definition of "small business," which used the Small Business Administration's (SBA) definition of fewer than 500 employees, or per the standard for that industry, as defined by SBA. This definition includes businesses with

very few employees, self-employed individuals, and Tribally owned businesses.[220] Finally, Treasury notes that recipients may award SLFRF funds to many different types of organizations, including small businesses, to function as a subrecipient in carrying out eligible uses of funds on behalf of a recipient government. In this case, a small business need not have experienced a negative economic impact in order to serve as a subrecipient. See section Distinguishing Subrecipients versus Beneficiaries for more detailed discussion of interactions with subrecipients, in contrast to beneficiaries of assistance.

Enumerated Eligible Uses for Assistance to Small Businesses

Public Comment: Treasury received comments requesting clarification of the types of assistance available to small businesses. For example, one commenter suggested that outdoor dining be an eligible use for SLFRF funds as assistance to small businesses. Other commenters asked for clarification about how SLFRF funds could be used to support new businesses and start-ups.

Several commenters requested clarification of whether and how recipients may provide services to business districts or downtown areas, particularly those that exist in whole or in part within a QCT, and requested reduced documentation of the specific negative economic impact for the businesses operating within those areas. These commenters argued in favor of allowing redevelopment or other support, including capital investments, in business districts that were negatively impacted by COVID-19. Several commenters also argued that funds should be

[220] In regard to counting employees, businesses owned and controlled by a Tribal government are not considered affiliates of the Tribal government and are not considered affiliates of other businesses owned by the Tribal government because of their common ownership by the Tribal government or common management, as described in 13 C.F.R. § 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).

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 requirements and applicable dates for SLFRF funds would apply to third party organizations (like economic development organizations) who receive SLFRF funds in order to establish a loan fund. In addition, commenters requested clarification on what requirements apply to loan programs with available funds remaining after December 31, 2024.

Treasury Response: SLFRF funds may be used to make loans, including to small businesses, provided that the loan is an eligible use, and the cost of the loan is tracked and reported in accordance with Treasury's Compliance and Reporting Guidance. Funds that are

unobligated after December 31, 2024 must be returned to Treasury. See section Treatment of Loans for more information about using SLFRF funds for loan programs.

c. Assistance to Nonprofits

Background: Nonprofits have faced significant challenges because of the pandemic, including increased demand for services and changing operational needs.[221] Prior to the pandemic, the median U.S. nonprofit reported that it had six months of cash on hand.[222] This varied by sector, however, with some sectors like disaster relief organizations reporting a median of 17 months cash on hand, and others, like mental health and crisis intervention organizations reporting only three months.[223] Evidence suggests that the pandemic has damaged the financial health of nonprofits, with small nonprofits, which tend to rely more heavily on donations than large nonprofits, reporting relatively larger declines in donations — 42 percent versus 29 percent, respectively.[224] Among nonprofits that collect fees for services, the median revenue amount collected from such fees fell by 30 percent from 2019 to 2020, with arts organization experiencing a 50 percent decline.[225] Nonprofits also experienced significant job losses. While employment in the nonprofit sector has recovered from its low point in 2020, as of November

[221] *See, e.g.*, Federal Reserve Bank of San Francisco, Impacts of COVID–19 on Nonprofits in the Western United States (May 2020), https://www.frbsf.org/community-development/files/impact-of-covid.
[222] Philanthropy and COVID-19: Measuring one year of giving, Candid and the Center for Disaster Philanthropy. (2021), https://www.issuelab.org/resources/38039/38039.pdf.
[223] *Id.*
[224] Elizabeth T. Boris et al., Nonprofit Trends and Impacts 2021, Urban Institute (October 7, 2021), https://www.urban.org/research/publication/nonprofit-trends-and-impacts-2021/view/full_report.
[225] *Id*.

2021, the sector remained 485,000 jobs below its pre-pandemic level.[226] In addition, some nonprofits may have experienced declines in volunteer staffing during the pandemic.[227]

At the same time, nonprofits provide a host of services for their communities, including helping Americans weather the multitude of challenges presented by the pandemic. The ARPA and the interim final rule recognized this dichotomy—nonprofits as entities that have themselves been negatively impacted by the pandemic and as entities that provide services that respond to the public health and negative economic impacts of the pandemic on households and others —by creating two roles for nonprofits.

First, under Sections 602(c)(1)(A) and 603(c)(1)(A), recipients may "respond to the public health emergency or its negative economic impacts," by, among other activities, providing "assistance to . . . nonprofits." The interim final rule defined assistance to nonprofits to include "loans, grants, in-kind assistance, technical assistance or other services, that responds to the negative economic impacts of the COVID-19 public health emergency," and "nonprofit" to mean a tax-exempt organization under Section 501(c)(3) of the U.S. Internal Revenue Code.[228]

Second, as discussed above, ARPA and the interim final rule provided that nonprofit organizations may also receive funds as subrecipients of a recipient government (i.e., a government that received SLFRF funds); subrecipients carry out an eligible use of SLFRF funds on behalf of a recipient government (e.g., a recipient government that would like to provide food assistance to impacted households may grant funds to a nonprofit organization to carry out that eligible use). Recipients generally have wide latitude to award funds to many types of

[226] Chelsea Newhouse, COVID-19 JOBS UPDATE, NOVEMBER 2021: Nonprofits add just 5,000 jobs in November, Center for Civil Society Studies at Johns Hopkins University (December 10, 2021), http://ccss.jhu.edu/november-2021-jobs/
[227] Elizabeth T. Boris et al. *supra* note 209 at p. 38.
[228] § 35.3 Definitions.

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 Transfer Process.[229]

Reorganization and Cross-References: Under the interim final rule, assistance to disproportionately impacted communities was a separate, stand-alone category. The final rule reorganizes the disproportionate impact analysis within the sections Assistance to Households, Assistance to Small Business, and Assistance to Nonprofits to better articulate how recipients can serve disproportionately impacted beneficiaries in each of those categories.

As detailed above in the Public Health subsection, in response to public comments describing uncertainty on which eligible use category should be used to assess different potential uses of funds, Treasury has re-categorized some uses of funds in the final rule to provide greater clarity. For discussion of assistance to nonprofits to implement COVID-19 mitigation and prevention strategies, see section COVID-19 Mitigation and Prevention in Public Health.

Recipients providing assistance via nonprofits involving capital expenditures (i.e., expenditures on property, facilities, or equipment) should also review the section Capital Expenditures in General Provisions: Other, which describes eligibility standards for these expenditures. Recipients providing assistances in the form of loans should review the section Treatment of Loans.

[229] The ARPA also states under "Transfer Authority" that a Recipient "may transfer funds to a private nonprofit organization," including, but not limited to, nonprofits as that term is 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. Title 42, Section 11360(17) defines a "Private nonprofit organization" to mean an organization "(A) no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual; (B) that has a voluntary board; (C) that has an accounting system, or has designated a fiscal agent in accordance with requirements established by the Secretary; and (D) that practices nondiscrimination in the provision of assistance." See section Transfers of Funds for additional information on other types of entities, including other forms of nonprofits, that may receive transfers.

Public Comment: Eligible Assistance to Impacted and Disproportionately Impacted Nonprofits: A few commenters asked Treasury to be more explicit in the final rule that recipients may use funds to provide relief directly to nonprofit organizations and to explain how nonprofits might qualify themselves for assistance and what expenses SLFRF funds may be used to cover.[230] Commenters requested that Treasury note that the pandemic is 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-

[230] While not stated specifically in the interim final rule, the Department does not require or have a preference as to the payment structure for recipients that transfer funds to subrecipients (e.g., advance payments, reimbursement basis, etc.). Ultimately, recipients must comply with the eligible use requirements and any other applicable laws or requirements and are responsible for the actions of their subrecipients or beneficiaries.

exhaustive list of enumerated eligible uses for assistance to nonprofits that are impacted or disproportionately impacted by the pandemic.

A recipient may also identify a class of nonprofits that have been disproportionately impacted by the public health emergency and design and implement a program that responds to the source of that disproportionate impact. For example, a recipient may determine that nonprofits offering after-school programs within its jurisdiction were disproportionately impacted by the pandemic due to the previous in-person, indoors nature of the work and the nonprofits' reliance on fees received for services (e.g., attendance fees). The recipient might then design an intervention to assist those nonprofits in adapting their programming (e.g., to outdoor or online venues), their revenue structure (e.g., adapting the fee for service structure or developing expertise in digital donation campaigns), or both. Additional information about this framework is included in General Provisions: Structure and Standards. In order to ease administrative burden, the final rule presumes that nonprofits operating in QCTs, operated by Tribal governments or on Tribal Lands, or operating in the U.S. territories were disproportionately impacted by the pandemic.

To summarize, a recipient may determine that certain nonprofits were impacted by the pandemic or were disproportionately impacted by the pandemic and provide responsive services.

Public Comment: Beneficiaries and Subrecipients: As noted elsewhere in this final rule, Treasury received multiple comments expressing uncertainty on how to categorize a particular activity in the eligible use categories. For instance, some commenters requested that recipients be able to use SLFRF funds for certain expenses incurred by nonprofits (e.g., unemployment charges) as a response to a public health or negative economic impact to that nonprofit; others asked if nonprofits providing certain services (e.g., social services) made them eligible for direct

assistance. Commenters also requested that Treasury acknowledge that engagement directly with nonprofit organizations in low-income communities and communities of color may allow the recipient to better assess economic harms in these areas.

Treasury Response: Beneficiaries and Subrecipients: Treasury recognizes that many nonprofits play important roles in their communities, and some may have experienced public health or negative economic impacts during the pandemic. As such, under the interim final rule and the final rule, nonprofits may be impacted by the pandemic and receive assistance as a beneficiary, as described above, and/or be a subrecipient providing services on behalf of a recipient.[231]

Specifically, the interim final rule also allowed for, and the final rule maintains, the ability for the recipient to transfer, e.g., via grant or contract, funds to nonprofit entities to carry out an eligible use on behalf of the recipient. Treasury notes that recipients may award SLFRF funds to many different types of organizations to carry out eligible uses of funds and serve beneficiaries on behalf of a recipient government (e.g., assisting in a vaccination campaign, operating a job training program, developing affordable housing). When a recipient provides funds to an organization to carry out eligible uses of funds and serve beneficiaries, the organization becomes a subrecipient. In this case, a nonprofit need not have experienced a negative economic impact in order to serve as a subrecipient.

In the context of SLFRF, nonprofits of all types may be subrecipients. Treasury is not restricting the types of nonprofits that can operate as subrecipients, rather allowing recipients to decide what form best meets the needs of their community. Therefore, a "nonprofit" that is

[231] Note, this response is meant to clarify the difference between nonprofits as beneficiaries and nonprofits as subrecipients. It is not meant to limit the types of relationships that a recipient may enter into with a nonprofit as permitted under the Uniform Guidance.

acting as subrecipient could include, but is not limited to, a nonprofit as that term is defined in paragraph (17) of section 401 of the McKinney-Vento Homeless Assistance.[232] See section Distinguishing Subrecipients versus Beneficiaries for further information. Additional guidance on determining subrecipient status may be found in the Uniform Guidance.[233]

Recipients may transfer funds to subrecipients in several ways, including advance payments and on a reimbursement basis. Ultimately, recipients must comply with the eligible use requirements and any other applicable laws or requirements and are responsible for the actions of their subrecipients or beneficiaries.

As part of accepting the Award Terms and Conditions for SLFRF, each recipient agreed to maintain a conflict-of-interest policy consistent with 2 C.F.R. § 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,

[232] *See* sections 602(c)(3) and 603(c)(3) of the Social Security Act. Section 401 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11360(17) defines a "private nonprofit organization" to mean an organization "(A) no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual; (B) that has a voluntary board; (C) that has an accounting system, or has designated a fiscal agent in accordance with requirements established by the Secretary; and (D) that practices nondiscrimination in the provision of assistance."

501(c)(19)s, nonprofits with "historical significance") could be eligible for direct assistance as beneficiaries.

Treasury Response: Definition of Nonprofit: The final rule expands the definition of nonprofits to mean 501(c)(3) organizations and 501(c)(19) organizations.[234] The 501(c)(3) classification includes a wide range of organizations with varying charitable or public service-oriented goals (e.g., housing, food assistance, job training). As discussed above, these nonprofit organizations often experienced hardship due to increased needs for services combined with decreased donations and other sources of funding. In response to comments, Treasury has expanded the definition of nonprofit to include 501(c)(19) organizations, which includes veterans' organizations, to provide recipients more flexibility and in alignment with the definition of nonprofit adopted by the CARES Act, wherein 501(c)(3)s and 501(c)(19)s were eligible for assistance.[235]

Public Comment: Reporting Requirements: One commenter asked Treasury to clarify if nonprofits that receive direct assistance as beneficiaries are required to comply with guidelines and reporting requirements.

Treasury Response: Reporting Requirements: Nonprofits that receive direct assistance as beneficiaries are not subrecipients under SLFRF and are therefore not required to comply with SLFRF reporting requirements. However, the recipient must comply with SLFRF reporting requirements, which would require reporting obligations and expenditures for assistance to

[234] § 35.3 Definitions.

[235] Treasury considered expanding the definition of nonprofit to include 501(c)(6) organizations, as Congress later did in the Coronavirus Response and Consolidated Appropriations Act of 2021, but ultimately decided to retain the original CARES Act definition. To the extent impacted by the pandemic, 501(c)(6) organizations may be eligible to receive funds to support eligible uses that align with their overall purpose (e.g., tourism promotion in aid of an impacted industry).

nonprofits. The recipient may also choose to establish other forms of reporting or accountability as a part of the recipient's direct assistance program.

A nonprofit entity that receives a transfer from a recipient is a subrecipient. Per the Uniform Guidance, subrecipients must adhere to the same requirements as recipients. Therefore, a nonprofit subrecipient may only receive funds to carry out an eligible use of SLFRF funds and must comply with any reporting and compliance requirements. Note that recipients are ultimately responsible for reporting information to Treasury and must collect any necessary information from their subrecipients to complete required reporting.

d. Aid to Impacted Industries

The interim final rule allowed for "aid to tourism, travel, and hospitality, and other impacted industries" that responds to the negative economic impacts of the COVID-19 public health emergency. In designating other impacted industries, Treasury specified that recipients should consider the "extent of the economic impact as compared to tourism, travel, and hospitality" and "whether impacts were due to the COVID-19 pandemic, as opposed to longer-term economic or industrial trends unrelated to the pandemic."[236] Treasury identified declines in employment and revenue as possible metrics to compare the economic impact on a particular industry relative to the tourism, travel, and hospitality industries.

Treasury further provided that aid should be limited to businesses, attractions, business districts, and Tribal development districts[237] that were operating prior to the pandemic and affected by required closures and other efforts to contain the pandemic. Examples of eligible aid

[236] Coronavirus State and Local Fiscal Recovery Funds, 86 Fed. Reg. at 26795.
[237] For a definition of "Tribal development districts," please see FAQ 2.9 at the following: Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.

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.

First, recipients should identify an industry to be assessed. In identifying this industry, the final rule provides recipients the flexibility to define its substantive or geographic scope.[238] Recipients may identify a broad sector that encompasses a number of sub-industries, or they may identify a specific sub-industry to be assessed. For example, a recipient may identify "personal care services" as an industry, or they may identify a more specific category within the "personal care services" industry (e.g., barber shops) as an industry. In defining the industry, Treasury encourages recipients to define narrow and discrete industries eligible for aid. Recipients are not required to follow, but may consider following, industry classifications under the North American Industry Classification System (NAICS). Treasury notes that the larger and more diverse the sector, the more difficult it may be to demonstrate that the larger and less specific sector is negatively impacted in the same way given the scale and diversity of businesses within it.

State or territory recipients may also define a constituent industry with greater geographic precision than state or territory-wide. For example, a state may identify a particular industry in a certain region of the state that was negatively impacted by the pandemic, even if the same industry in the rest of the state did not see a meaningful negative economic impact from the pandemic. State recipients oversee large and diverse industries, sometimes with differences in economic activity between geographic regions. Allowing greater geographic precision allows recipients to target aid to those that need it most, ensuring that state averages do not conceal hard-hit areas in their state.

[238] Once an industry is designated as impacted, aid should be generally broadly available to businesses in the industry that qualify. Recipients should document how they defined the scope of their industry and how they determined that the industry was impacted. For states and territories, this includes documenting their justification for defining a constituent industry with greater geographic precision than state or territory-wide.

Second, to determine whether the industry is "impacted," recipients should compare the negative economic impacts of the public health emergency on the identified industry to the impacts observed on the travel, tourism, and hospitality industries.

1. *Simplified test.* An industry is presumed to be impacted if the industry experienced employment loss of at least 8 percent.

   Specifically, a recipient should compare the percent change in the number of employees of the recipient's identified industry and the national Leisure & Hospitality sector in the three months before the pandemic's most severe impacts began (a straight three-month average of seasonally-adjusted employment data from December 2019, January 2020, and February 2020) with the latest data as of the final rule release (a straight three-month average of seasonally-adjusted employment data from September 2021, October 2021, and November 2021).[239] The national Leisure & Hospitality sector largely represents the national travel, tourism, and hospitality industries enumerated in the statute. According to the Bureau of Labor Statistics, employment has fallen by approximately 8 percent for the national Leisure & Hospitality sector when comparing the most recent three-month period available as of the date of adoption of the final rule to the three-month period immediately before the public health emergency. Therefore, if the identified industry has suffered an employment loss of at least 8 percent, the final rule presumes the industry to be an "impacted industry."

   For parity and simplicity, smaller recipients without employment data that measure industries in their specific jurisdiction may use data available for a broader unit

[239] National Leisure & Hospitality supersector employment data can be found on the U.S. Bureau of Labor Statistics website: U.S. Bureau of Labor Statistics, Leisure and Hospitality, https://www.bls.gov/iag/tgs/iag70.htm (last visited December 7, 2021).

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.

Treasury Response: In response to commenters' requests for clarification on eligible aid, the final rule requires that aid to impacted industries, including to Tribal development districts, be designed to address the harm experienced by the impacted industry.

First, recipients should identify a negative economic impact, i.e., an economic harm, that is experienced by businesses in the impacted industry. Second, recipients should select a response that is designed to address the identified economic harm resulting from or exacerbated by the public health emergency. Responses must also be related and reasonably proportional to the extent and type of harm experienced; uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses. Recipients should consider the further discussion of this standard provided in the sections Standards: Designating a Public Health Impact and Standards: Designating a Negative Economic Impact.

These responses may take the form of direct spending by recipients to promote an industry or support for businesses within an "impacted" industry that experienced a negative economic impact (e.g., through a grant program). Examples of eligible responses include:

- Aid to mitigate financial hardship due to declines in revenue or profits by supporting payroll costs and compensation of returning employees for lost pay and benefits during the COVID-19 pandemic, as well as support of operations and maintenance of existing equipment and facilities, such as rent, leases, and utilities;
- Aid for technical assistance, counseling, and other services to assist with business planning needs; and
- Aid to implement COVID-19 mitigation and infection prevention measures, such as vaccination or testing programs, is broadly eligible for many types of entities, including travel, tourism, hospitality, and other impacted industries. Recipients providing aid to

impacted industries for COVID-19 public health measures should review the section Assistance to Businesses to Implement COVID-19 Strategies in Public Health, which describes types of eligible uses of funds in this category.

To address the identified harms, responses (e.g., aid through a grant program) should be generally broadly available to all businesses within the impacted industry to avoid the risk of self-dealing, preferential treatment, and conflicts of interest.[240] Treasury encourages recipients to design aid programs such that funds are first used for operational expenses that are generally recognized as ordinary and necessary for the recipient's operation, such as payroll, before being used on other types of costs. As noted in the section General Standards: Structure and Standards, uses of funds that do not respond to the negative economic impacts of the pandemic, such as excessive compensation to employees, is ineligible.

The final rule maintains the interim final rule's requirement that aid may only be considered responsive to the negative economic impacts of the pandemic if it supports businesses, attractions, and Tribal development districts operating prior to the pandemic and affected by required closures and other efforts to contain the pandemic. Further, to facilitate transparency and accountability, the final rule maintains the interim final rule's requirement that recipients publicly report assistance provided to private-sector businesses under this eligible use, including tourism, travel, hospitality, and other impacted industries, and its connection to negative economic impacts of the public health emergency. Recipients also should maintain

[240] As part of accepting the Award Terms and Conditions for SLFRF, each recipient agreed to maintain a conflict-of-interest policy consistent with 2 C.F.R. § 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.

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 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[241] for *public safety, public health, health care, human services, and similar employees*[242] of a recipient government, for the portion of the employee's time that is spent responding to COVID-19. For administrative convenience, the recipient may consider *public health and safety* employees to be entirely devoted to responding to COVID-19, and therefore their full payroll and covered benefits eligible to be covered, if the employee, or his or her operating unit or division, is "primarily dedicated" to responding to COVID-19, meaning that more than half of the employee, unit, or division's time is dedicated to responding to COVID-19. Recipients may consider other presumptions for assessing the extent to which an employee, division, or operating unit is responding to COVID-19. Recipients must periodically reassess their determination and maintain records to support their assessment, such as payroll records, attestations from supervisors or staff, or regular work product or correspondence; recipients need not track staff hours. The interim final rule also posed a question on how long recipients should be able to use funds for staff responding to COVID-19 and what other measures or presumptions

[241] In general, if an employee's wages and salaries are an eligible use of SLFRF funds, recipients may treat the employee's covered benefits as an eligible use of SLFRF funds. For purposes of SLFRF funds, covered benefits include costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (federal and state), workers compensation insurance, and Federal Insurance Contributions Act (FICA) taxes (which includes Social Security and Medicare taxes). As described further in the section Deposits into Pension Funds in Restrictions on Use, that limitation on use does not apply to pension contributions that are part of regular payroll contributions for employees whose wages and salaries are an eligible use of SLFRF funds.

[242] Note that the interim final rule adapted prior guidance issued 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.

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[243] 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

[243] Note that this category encompasses both public health and health care employees; both are treated as public health employees for the purposes of this eligible use category.

dedicated to COVID-19 response, while others proposed that public health and safety workers who primarily serve QCTs or low- and moderate-income areas be presumed to be primarily dedicated to COVID-19 response, given the disproportionate impacts of the pandemic in those communities. Similarly, Tribal communities recommended that their public health staff be presumed eligible due to the disproportionate impact of the pandemic on their communities. Some commenters proposed that they be able to use the administrative convenience for staff outside of public health and safety that are responding to COVID-19 (i.e., to be able to pay the full payroll and covered benefits for any staff "primarily dedicated" to COVID-19 response).

Treasury Response: In the final rule, Treasury is maintaining the approach in the interim final rule, including elaborations issued in further guidance, but providing additional clarification on its application, including methods to apply the approach to minimize administrative burden. Treasury notes that recipients may assess the extent to which staff are dedicated to responding to COVID-19 through a variety of means, including establishing presumptions or assessing public health and safety staff at the division or operating unit level. For example, a recipient could consider the amount of time spent by employees in its public health department's epidemiology division in responding to COVID-19 and, if a majority of its employees are dedicated to responding to COVID-19, determine that the entire division is primarily dedicated to responding to COVID-19. Treasury also clarifies that recipients may use reasonable estimates to establish administrable presumptions; for example, a recipient could estimate, based on discussions with staff, the general share of time that employees in a specific role or type of position spend on COVID-19 related tasks and apply that share of time to all employees in that position.

Recipients are generally required to be able to support uses of SLFRF funds as eligible, including, in this instance, maintenance of records to support an assessment that public health

and safety staff are primarily dedicated to responding to COVID-19. As noted above, recipients may use reasonable estimates to implement this provision. Recipients should maintain records on how they developed these estimates and need not track staff hours. Treasury notes that records retained can include payroll records (e.g., the number and type of staff in various positions), attestations from supervisors or staff (e.g., self-attestation of share of time spent on COVID-19), or regular work product or correspondence (e.g., calendars, e-mail 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 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 200 CFR Part 200 Subpart E. This option provides administrative simplicity for recipients that would simply like to restore pre-pandemic positions and would not like to hire above the pre-pandemic baseline.

To pursue the second option, recipients should undergo the analysis provided below. In short, this option allows recipients to pay for payroll and covered benefits associated with the recipient increasing its number of budgeted full-time equivalent employees (FTEs) up to 7.5 percent above its pre-pandemic employment baseline, which adjusts for the continued underinvestment in state and local governments since the Great Recession. State and local government employment as a share of population in 2019 remained considerably below its share prior to the Great Recession in 2007, which presented major risks to recipients mounting a response to the COVID-19 public health emergency. The *adjustment factor* of 7.5 percent results from estimating how much larger 2019 state and local government employment would have needed to be for the share of state and local government employment to population in 2019 to have been back at its 2007 level and is intended to correct for this gap.

Recipients should complete the steps described below. Recipients may choose whether to conduct this analysis on a government-wide basis or for an individual department, agency, or authority.

- *Step One:* Identify the recipient's budgeted FTE level on January 27, 2020. This includes all budgeted positions, filled and unfilled. This is called the *pre-pandemic baseline.*
- *Step Two:* Multiply the *pre-pandemic baseline* by 1.075 (that is, 1 + *adjustment factor*). This is called the *adjusted pre-pandemic baseline.*
- *Step Three:* Identify the recipient's budgeted FTE level on March 3, 2021, which is the beginning of the period of performance for SLFRF funds. Recipients may, but are not required to, exclude FTEs dedicated to responding to the COVID-19 public health emergency.[244] This is called the *actual number of FTEs.*
- *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

[244] Recipients may determine that a portion of an FTE's time is dedicated to responding to the COVID-19 public health emergency. Further, for administrative convenience, the recipient may 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.

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 1000 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 1000 * 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, 1075 – 750 = 325 FTEs). Specifically, the recipient would be able to use SLFRF to fund payroll and covered benefits for up to 325 FTEs that begin their employment on or after March 3, 2021, for costs obligated by December 31, 2024, and expended by December 31, 2026, consistent with the Uniform Guidance's Cost Principles, as long as SLFRF funds are used for additional FTEs hired over the recipient's 750 FTE level (which is its March 3, 2021 budgeted FTE level).

In hiring new employees, the final rule encourages recipients to ensure a diverse workforce. The final rule also prohibits recipients from using funds to temporarily fill positions

during a labor dispute, as this would not constitute responding to the public health or negative economic impacts of the pandemic. Further, recipients must ensure that its hiring practices do not violate conflict-of-interest policies.[245] Total compensation for a hired employee that is substantially in excess of typical compensation for employees of their experience and tenure within the recipient's government, without a corresponding business case, may indicate a potential conflict-of-interest in fact or appearance.

Providing additional funding for employees who experienced pay cuts and furloughs. In recognition of the economic hardship caused by pay cuts and furloughs, additional funds may be provided to employees who experienced pay cuts or were furloughed since the onset of the pandemic on January 27, 2020. Recipients must be able to substantiate that the pay cut or furlough was substantially due to the public health emergency or its negative economic impacts (e.g., fiscal pressures on state and local budgets) and should document their assessment. As a reminder, this additional funding must be reasonably proportional to the negative economic impact of the pay cut or furlough on the employee, which would include taking into account unemployment insurance (UI) benefits that a furloughed employee may have received during the furloughed period. Treasury presumes that additional funds beyond the difference in pay had the employee not received a pay cut or been furloughed would not be reasonably proportional.

Recipients may also provide premium pay to certain employees, as detailed further in section Premium Pay.

[245] As part of accepting the Award Terms and Conditions for SLFRF, each recipient agreed to maintain a conflict-of-interest policy consistent with 2 C.F.R. § 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.

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 supplementary information on data analysis, evidence building, and program evaluation in the Compliance and Reporting Guidance.

Public Comment: Treasury received positive comments about the opportunity to invest in data and technology upgrades with SLFRF funds. For example, one commenter noted that investing in technology for better connectivity, coupled with software and hardware upgrades, will allow the workforce to be more productive. Treasury also received comments seeking clarification on using funds for investments in data and technology, including whether upgrading government websites to improve community outreach and investing in technologies that support social distancing were eligible uses.

Treasury Response: Governments with high capacity to use data and evidence to administer programs are more likely to be responsive to the needs of their community, more

transparent about their community impact, and more resilient to emergencies such as the pandemic and its economic impacts.[246] Treasury recognizes that collecting high-quality data and developing community-driven, evidence-based programs requires resources to hire and build the capacity of staff, adopt new processes and systems, and use new technology and tools in order to effectively develop, execute, and evaluate programs. As such, Treasury is clarifying that recipients may use SLFRF funds toward the following non-exhaustive list of uses to address the data, evidence, and program administration needs of recipients. Additional information may be provided in the Compliance and Reporting Guidance.

- Program evaluation and evidence resources to support building and using evidence to improve outcomes, including development of Learning Agendas[247] to support strategic evidence building, selection of evidence-based interventions, and program evaluations including impact evaluations (randomized control trials and quasi-experimental designs) as well as rapid-cycle evaluations, process or implementation evaluations, outcome evaluations, and cost-benefit analyses. Recipients are encouraged to undertake rigorous program evaluations when practicable, assess the impact of their programs by beneficiary demographics (including race, ethnicity, gender, income, and other relevant factors), and engage with community stakeholders (including intended beneficiaries) when developing Learning Agendas and designing evaluations to ensure that programmatic, cultural, linguistic, and historical nuances are accurately and respectfully addressed.

[246] Results for America, Invest in What Works State Standard of Excellence (August 2020), https://2020state.results4america.org/2020_State-Standard-of-Excellence.pdf.

[247] Learning Agendas are systematic plans to identify, prioritize, answer important questions about programs and policies using analytic techniques that are appropriate to the type of question asked. For more information on learning agendas, please see OMB Memorandum M-19-23, available at: https://www.whitehouse.gov/wp-content/uploads/2019/07/M-19-23.pdf and and OMB Memorandum M-21-27, available at: https://www.whitehouse.gov/wp-content/uploads/2021/06/M-21-27.pdf.

Recipients are also encouraged to use relevant evidence Clearinghouses,[248] among other sources, to assess the level of evidence for their interventions and identify evidence-based models that could be applied in their jurisdiction (meaning models with strong or moderate evidence; see Compliance and Reporting Guidance for details on these terms).

- Data analysis resources to gather, assess, and use data for effective policy-making and real-time tracking of program performance to support effective implementation of SLFRF-funded programs and programs that respond to the public health emergency and its negative economic impacts, or which households, small businesses, or impacted industries are accessing during the pandemic that are funded by other sources. These resources include but are not limited to data gathering, data cleaning, data analysis, data infrastructure, data management, data sharing, data transparency, performance management, outcomes-based budgeting, outcomes-based procurement, and other data needs. Treasury encourages the disaggregation of data to identify disparate program impacts and the use of cross-jurisdictional data sharing to better measure and implement government programs.
- 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

[248] 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.

systems, to increase public access and improve public delivery of government programs and services (including in the judicial, legislative, or executive branches).

- Community outreach and engagement resources to support the gathering and sharing of information in ways that improve equity and effective implementation of SLFRF-funded programs and programs that respond to the public health emergency and its negative economic impacts, or which households, small businesses, or impacted industries are accessing during the pandemic that are funded by other sources. These methods include but are not limited to community meetings, online surveys, focus groups, human-centered design activities, behavioral science techniques, and other community engagement tools.
- Capacity building resources to support using data and evidence in designing, executing, and evaluating programs, including hiring public sector staff, contractors, academics, consultants, and others with expertise in evaluation, data, technology, and community engagement as well as technical assistance support for public sector staff, staff of subrecipients, and community partners to support effective implementation of SLFRF-funded programs and programs that respond to the public health emergency and its negative economic impacts, or which households, small businesses, or impacted industries are accessing during the pandemic that are funded by other sources.

Administrative Needs Caused or Exacerbated by the Pandemic

As described in guidance and the interim final rule, SLFRF funds may be used to address administrative needs of recipient governments that were caused or exacerbated by the pandemic. Guidance following the interim final rule included several examples of this, for example, uses of funds to address backlogs resulting from pandemic-related shutdowns (e.g., backlogs in court

systems).[249] This also includes 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.

[249] *See FAQ 2.19.* Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf. In the case of courts specifically, this includes "implementing COVID-19 safety measures to facilitate court operations, hiring additional court staff or attorneys to increase speed of case resolution, and other expenses to expedite case resolution are eligible uses."

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.

Overview of General Standards

In considering whether a capital expenditure would be eligible under the public health and negative economic impacts eligible use category, recipients must satisfy the requirements for all uses under the public health and negative economic impacts eligible use category, including identifying an impact or harm and designing a response that addresses or responds to the identified impact or harm. Responses must be reasonably designed to benefit the individual or class that experienced the impact or harm and must be related and reasonably proportional to the extent and type of impact or harm. Recipients should consult further details on this standard provided in the sections Standards: Designating a Public Health Impact and Standards: Designating a Negative Economic Impact under General Provisions: Structure and Standards.

In addition to the framework described above, for projects with total expected capital expenditures of $1 million or greater, recipients must complete and meet the substantive requirements of a Written Justification for their capital expenditure, except for Tribal governments as discussed below. This Written Justification helps clarify the application of this interpretive framework to capital expenditures, while recognizing that the needs of communities differ. In particular, this justification reflects the fact that the time required for a large construction project may make capital expenditures less responsive to pandemic-related needs relative to other types of responses. In addition, as discussed in section Timeline for Use of SLFRF Funds of this Supplemental Information, SLFRF funds must be obligated by December 31, 2024 and expended by December 31, 2026. Capital expenditures may involve long lead-times, and the Written Justification may support recipients in analyzing proposed capital expenditures to confirm that they conform to the obligation and expenditure timing requirements. Further, such large projects may be less likely to be reasonably proportional to the harm

identified. For example, construction of a new, larger public facility for the purpose of increasing the ability to socially distance generally would not be considered a reasonably proportional response compared to other less time- and resource-intensive options that may be available and would be equally or more effective. Other solutions, such as improvements in ventilation, could be made more quickly and are typically more cost effective than construction of a new, larger facility. The needs of communities differ, and recipients are responsible for identifying uses of SLFRF funds that best respond to these needs. The Written Justification recognizes this while also establishing consistent documentation and reporting to support monitoring and compliance with the ARPA and final rule. Finally, the Written Justification also reflects the fact that infrastructure projects are generally not within scope of this eligible use category. See section Uses Outside the Scope of this Category in General Provisions: Other.

As noted above, Tribal governments are not required to complete the Written Justification for projects with total capital expenditures of $1 million or greater. Tribal governments generally have limited administrative capacity due to their small size and corresponding limited ability to supplement staffing for short-term programs. In addition, Tribal governments are already subject to unique considerations that require additional administrative processes and administrative burden for Tribal government decision making, including capital expenditures. Tribal governments generally are subject to a jurisdictionally complex sets of rules and regulations in the case of improvements to land for which the title is held in trust by the United States for a Tribe (Tribal Trust Lands).[250] This includes the requirement in certain circumstances to seek the input or approval of one or more federal agencies such the Department of the Interior, which holds fee title of Tribal Trust Lands.

[250] See 25 U.S.C. 5108.

As a result of their limited administrative capacity and unique and complex rules and regulations applicable to Tribal governments operating on Tribal Trust Lands, Tribal governments would experience significant and redundant administrative burden by also being required to complete a Written Justification for applicable capital expenditures. While Tribal governments are not required to complete the Written Justification for applicable capital expenditures, the associated substantive requirements continue to apply, including the requirement that a capital expenditure must be reasonably designed to benefit the individual or class that experienced the identified impact or harm and must be related and reasonably proportional to the extent and type of impact or harm. Note that, as a general matter, Treasury may also request further information on SLFRF expenditures and projects, including capital expenditures, as part of the regular SLFRF reporting and compliance process, including to assess their eligibility under the final rule.

The Written Justification should (1) describe the harm or need to be addressed; (2) explain why a capital expenditure is appropriate to address the harm or need; and (3) compare the proposed capital expenditure against alternative capital expenditures that could be made. The information required for the Written Justification reflects the framework applicable to all uses under the public health and negative economic impacts eligible use category, providing justification for the reasonable design, relatedness, and reasonable proportionality of the capital expenditure in response to the harm or impact identified.

1. *Description of harm or need to be addressed:* Recipients should provide a description of the specific harm or need to be addressed, and why the harm was exacerbated or caused by the public health emergency. When appropriate, recipients may provide quantitative

information on the extent and type of the harm, such as the number of individuals or entities affected.

2. *Explanation of why a capital expenditure is appropriate:* Recipients should provide an independent assessment demonstrating why a capital expenditure is appropriate to address the specified harm or need. This should include an explanation of why existing capital equipment, property, or facilities would be inadequate to addressing the harm or need and why policy changes or additional funding to pertinent programs or services would be insufficient without the corresponding capital expenditures. Recipients are not required to demonstrate that the harm or need would be irremediable but for the additional capital expenditure; rather, they may show that other interventions would be inefficient, costly, or otherwise not reasonably designed to remedy the harm without additional capital expenditure.
3. *Comparison of the proposed capital expenditure against alternative capital expenditures:* Recipients should provide an objective comparison of the proposed capital expenditure against at least two alternative capital expenditures and demonstrate why their proposed capital expenditure is superior to alternative capital expenditures that could be made. Specifically, recipients should assess the proposed capital expenditure against at least two alternative types or sizes of capital expenditures that are potentially effective and reasonably 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 throughout 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 eligible. For example,

constructing a new correctional facility would generally not be a proportional response to an increase in the rate of certain crimes or overall crime as most correctional facilities have historically accommodated fluctuations in occupancy.[251] In addition, construction of new congregate facilities, which would generally be expected to involve expenditures greater than $1 million, would generally not be a proportional response to mitigate or prevent COVID-19, because such construction is generally expected to be more costly than alternative approaches or capital expenditures that may be equally or more effective in decreasing spread of the disease.[252] These alternatives include personal protective equipment, ventilation improvements, utilizing excess capacity in other facilities or wings, or temporary facility capacity expansions.

Large capital expenditures intended for general economic development or to aid the travel, tourism, and hospitality industries – such as convention centers and stadiums – are, on balance, generally not reasonably proportional to addressing the negative economic impacts of the pandemic, as the efficacy of a large capital expenditure intended for general economic development in remedying pandemic harms may be very limited compared to its cost.[253]

[251] *See, e.g.,* "Economic Perspectives on Incarceration and the Criminal Justice System," Council of Economic Advisers (April 2016), pg. 36-43.

[252] For instance, the CDC has published detailed recommendations for nursing homes, long-term care facilities, and correctional and detention facilities, on infection prevention and control. Many of these recommendations are relatively low cost, such as proper use of PPE. In addition, increasing vaccination rates among nursing home staff is among the most important ways to decrease the spread of the disease. Centers for Disease Control and Prevention, Interim Infection Prevention and Control Recommendations to Prevent SARS-CoV-2 Spread in Nursing Homes (September 10, 2021), https://www.cdc.gov/coronavirus/2019-ncov/hcp/long-term-care.html#anchor_1631030153017.

[253] For instance, researchers have found no consistent positive relationship between building sports facilities and local economic development. As Siegfried and Zimbalist (2000, 103) write in a review of the literature, "independent work on the economic impact of stadiums and arenas has uniformly found that there is no statistically significant positive correlation between sports facility construction and economic development." John Siegfried and Andrew Zimbalist, The Economics of Sports Facilities and Their Communities, Journal of Economic Perspectives 14, no. 3 (Summer 2000): 95-114, https://www.aeaweb.org/articles?id=10.1257/jep.14.3.95.

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.

If a project has total expected capital expenditures of	**and the use is enumerated by Treasury as eligible, then[254]**	**and the use is beyond those enumerated by Treasury as eligible, then[255]**
Less than $1 million	No Written Justification required	No Written Justification required
Greater than or equal to $1 million, but less than $10 million	Written Justification required but recipients are not required to submit as part of regular reporting to Treasury	Written Justification required and recipients must submit as part of regular reporting to Treasury
$10 million or more	Written Justification required and recipients must submit as part of regular reporting to Treasury	

[254] Whether or not a Written Justification is required, recipients should still determine that the response is related and reasonably proportional to the public health emergency and its negative economic impacts. Treasury recognizes that enumerated eligible uses are "related" to the public health emergency and its negative economic impacts and presumed to be reasonably proportional, except recipients pursuing projects with expected total capital expenditures equal to or greater than $1 million should still independently determine that the expenditures are a reasonably proportional response. Enumerated projects with total expected capital expenditures under $1 million receive a safe harbor and deemed to meet the related and reasonably proportional standard.

[255] Whether or not a Written Justification is required, recipients should still determine that the response is related and reasonably proportional to the public health emergency and its negative economic impacts. Treasury presumes that projects with total expected capital expenditures under $1 million are reasonably proportional in size to responding to the public health emergency and its negative economic impacts; however, recipients should determine that the response otherwise meets the requirements of the standard, including that the response is related to the public health emergency and its negative economic impacts.

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, 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 C.F.R. 200 applies to capital expenditures unless stated otherwise. Importantly, this includes 2 C.F.R. 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 C.F.R. 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[256] 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."

[256] In this context, a pass-through entity means a recipient of SLFRF funds.

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 in all sections of the public health and negative economic impacts eligible use category, including in impacted and disproportionately impacted communities. The proposed additional uses included general categories of services (e.g., legal and social services, long-term investments to remediate long-term disparities, response to natural disasters). Other suggested uses of funds respond to needs widely experienced across the country (e.g., access to and affordability of health insurance). Finally, other suggested uses of funds were highly specific (e.g., healthcare equipment for a specific health condition, fire hydrants, weather alert systems) or most applicable to the particularized needs to certain populations or geographic areas of the United States (e.g., senior citizens, immigrants, formerly incarcerated individuals, responding to environmental issues in certain geographic regions). Other commenters generally requested a high degree of flexibility to respond to the particular needs of their communities.

Treasury Response: Given the large number and diversity of SLFRF recipients, Treasury has aimed to include as enumerated eligible uses programs, services, and capital expenditures that respond to public health and negative economic impacts of the pandemic experienced widely in many jurisdictions across the country, making it clear and simple for recipients to pursue these enumerated eligible uses under the final rule. This provides enumerated eligible uses that many recipients may want to pursue, while including uses that are responsive to the pandemic's impacts across the diverse range of SLFRF recipients. In the final rule, Treasury has clarified several additional uses that generally respond to pandemic impacts experienced broadly across jurisdictions and populations.

Treasury has not chosen to include as enumerated uses all uses proposed by commenters; given the significant range, and in some cases highly specific nature, of the proposed uses Treasury was not able to assess that the proposed uses would respond to negative economic impacts experienced generally across the country, supporting an enumerated eligible use available to all recipients presumptively.

However, Treasury emphasizes that the enumerated eligible uses are non-exhaustive and that other uses, beyond those enumerated, are eligible. Treasury recognizes that the impacts of the pandemic vary over time, by jurisdiction, and by population; as such, the final rule provides flexibility for recipients to identify other public health or negative economic impacts to additional households, small businesses, or nonprofits, including classes of these entities, and pursue programs and services that respond to those impacts. Treasury also notes that some populations are presumed to be impacted or disproportionately impacted by the pandemic, and thus eligible for responsive services; these presumed eligible populations may encompass many

individuals in the specific populations for whom commenters recommended services. For details on these issues, see section General Provisions: Structure and Standards.

Infrastructure, Community Development, and General Economic Development

Some potential additions to enumerated eligible uses were also recommended by several commenters each but are not included as enumerated eligible uses in the final rule.

Public Comment: Infrastructure: In the interim final rule, Treasury noted that a "general infrastructure project, for example, typically would not be included [in this eligible use category] unless the project responded to a specific pandemic public health need."

Numerous commenters requested that Treasury permit investments in infrastructure as a response to the public health and negative economic impacts of the pandemic. While these comments most commonly recommended that constructing and maintaining roads and surface transportation infrastructure be eligible, the proposed uses for infrastructure ranged widely and included parking lots, bridges, traffic management infrastructure, solid waste disposal facilities, and utility infrastructure (outside of water, sewer, and broadband).

Many commenters argued that infrastructure development and maintenance is a pressing need in their communities and that their communities had less need for water, sewer, and broadband infrastructure or other eligible uses to respond to the public health and negative economic impacts of the pandemic. Other commenters argued that these uses would stimulate the economy, attract businesses, or allow for tourist movement; these commenters argued that, by generally supporting a stronger economy or facilitating conditions that are more conducive to business activity and tourism, these uses respond to the negative economic impacts of the pandemic.

Treasury Response: In the final rule, Treasury is maintaining the approach under the interim final rule that general infrastructure projects, including roads, streets, and surface transportation infrastructure, would generally not be eligible, unless the project responded to a specific pandemic public health need or a specific negative economic impact.

The ARPA expressly includes infrastructure if it is "necessary" and in water, sewer, or broadband, suggesting that the statute contemplates only those types of infrastructure. Further, responding to the public health and negative economic impacts of the pandemic requires identifying whether, and the extent to which, there has been a harm that resulted from the COVID-19 public health emergency and whether, and the extent to which, the use would respond or address this harm. Uses of funds intended to generally grow the economy and therefore enhance opportunities for workers and businesses would not be an eligible use, because such assistance is not reasonably designed to impact individuals or classes that have been identified as having experienced a negative economic impact. In other words, there is not a reasonable connection between the assistance provided and an impact on the beneficiaries. Such an activity would be attenuated from and thus not reasonably designed to benefit the households that experienced the negative economic impact.

Note, however, that Treasury has clarified that capital expenditures that are related and reasonably proportional to responding to the public health and economic impacts of the pandemic are eligible uses of funds, in addition to programs and services; for details on eligibility criteria for capital expenditures, see section Capital Expenditures in General Provisions: Other.

Public Comment: Community Development Block Grant: Several commenters recommended that Treasury enumerate as eligible uses those eligible under the Department of

Housing and Urban Development's Community Development Block Grant (CDBG) or the Housing and Community Development Act of 1974, which established the CDBG program. Commenters requested that these uses be eligible either to respond to the negative economic impacts of the pandemic, or in the alternate the disproportionate negative economic impacts of the pandemic in certain communities. Under the CDBG program, recipient governments may undertake a wide range of community and economic development services and projects. Commenters reasoned that many state and local governments are familiar with this program, and that aligning to its eligible uses may help recipients easily understand and pursue eligible projects. Commenters also noted that Treasury had chosen to align with existing federal programs in other eligible use categories, namely water infrastructure, in the interim final rule.

Treasury Response: In the final rule, Treasury is not including all categories of projects permissible under CDBG as enumerated eligible uses to respond to the public health and negative economic impacts of the pandemic. Because CDBG permits such a broad range of activities, including services to individual households, communities, small businesses, general economic development activities, and capital expenditures, Treasury determined that it was more appropriate to assess the underlying types of projects eligible within CDBG and whether each type of project responds to the negative economic impacts of the pandemic. In other words, Treasury considered whether various types of community and economic development projects respond to the impacts of the pandemic in different communities and circumstances. In the final rule, Treasury addresses the eligibility of these various types of projects in each relevant eligible use category within public health and negative economic impacts under SLFRF, including assistance for impacted households, disproportionately impacted households, disproportionately impacted small businesses, and capital expenditures.

Public Comment: General Economic Development: Treasury provided guidance following the interim final rule that general economic development or workforce development would generally not be eligible as it does not respond to a negative economic impact of the COVID-19 public health emergency.

Some commenters recommended that Treasury expand enumerated eligible uses to include general economic development activities, beyond those that respond to negative economic impacts of the pandemic, such as creating an economic development strategy for the jurisdiction's overall economic growth, creating a general workforce development strategy, or providing funds to businesses that did not experience negative economic impacts to carry out economic development activities or to incentivize the addition or retention of jobs. Commenters supportive of assistance to businesses for general economic development activities argued that subsidies to businesses increase job growth and that, in some cases, assistance to companies that excelled during the public health emergency would help create more job opportunities for workers or expand the jurisdiction's tax base and produce funds to support government services. In contrast, other commenters argued that academic research consistently finds that economic development subsidies have a negligible, or even negative, economic effect, citing research findings to this effect.[257]

[257] See, e.g., Matthew D. Mitchell et al., The Economics of a Targeted Economic Development Subsidy (Arlington, VA: Mercatus Center at George Mason University, 2019), 5, available at https://www.mercatus.org/publications/government-spending/economics-targeted-economic-development-subsidy; Timothy J. Bartik, Who Benefits from Economic Development Incentives? How Incentive Effects on Local Incomes and the Income Distribution Vary with Different Assumptions about Incentive Policy and the Local Economy (Upjohn Institute Technical Report No. 13-034, W.E. Upjohn Institute for Employment Research, March 1, 2018), available at: https://research.upjohn.org/up_technicalreports/34/; Cailin Slattery and Owen Zidar, Evaluating State and Local Business Tax Incentives, Journal of Economic Perspectives 34, no. 2 (2020): 90–118, available at: https://www.aeaweb.org/articles?id=10.1257/jep.34.2.90; Kenneth Thomas, The State of State and Local Subsidies to Business (Mercatus Policy Brief, Mercatus Center at George Mason University, Arlington, VA, October 2019), available at: https://www.mercatus.org/system/files/thomas_-_policy_brief_-_the_state_of_state_and_local_subsidies_to_business_-_v1.pdf; Dennis Coates, Growth Effects of Sports Franchises, Stadiums, and Arenas: 15 Years Later (Mercatus Working Paper, Mercatus Center at George Mason

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

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.

commenters finding that business subsidies have limited or negative economic impact also suggests that such a response may not be reasonably designed to benefit households and other entities impacted by the pandemic. Similarly, planning activities for an economic development or workforce strategy regarding general future economic growth do not provide a program, service, or capital expenditure that responds to negative economic impacts of the pandemic.

However, Treasury notes that the final rule includes as enumerated eligible uses many types of assistance that respond to negative economic impacts of the pandemic and may produce economic development benefits. For example, see sections Assistance to Unemployed Workers, Assistance to Small Businesses, and Capital Expenditures.

B. PREMIUM PAY

Background and Summary of the Interim Final Rule

Sections 602(c)(1)(B) and 603(c)(1)(B) of the Social Security Act, as added by the ARPA, provide that SLFRF funds may be used "to respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers of the . . . government that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work."

Premium pay is designed to compensate workers that, by virtue of their employment, were forced to take on additional burdens and make great personal sacrifices as a result of the COVID-19 pandemic. Premium pay can be thought of as hazard pay by another name.[258]

[258] *See* U.S. Department of Labor, *Hazard Pay*, https://www.dol.gov/general/topic/wages/hazardpay (last visited October 18, 2021).

During the public health emergency, employers' policies on COVID-19-related premium pay or hazard pay have varied widely, with many essential workers not yet compensated for the heightened risks they have faced and continue to face.[259] Many of these workers earn lower wages on average and live in socioeconomically underserved communities as compared to the general population.[260] A recent study found that 25 percent of essential workers were estimated to have low household income, with 13 percent in high-risk households.[261] The low pay of many essential workers makes them less able to cope with the financial consequences of the pandemic or their work-related health risks. As Americans return to work and governments relax certain rules, essential workers will continue to bear the brunt of the risk of maintaining the ongoing operation of vital facilities and services. The added health risk to essential workers is one prominent way in which the pandemic has amplified pre-existing socioeconomic inequities. Premium pay is designed to address the disparity between the critical services provided by and the risks taken by essential workers and the relatively low compensation they tend to receive.

The interim final rule established a three-part framework for recipients seeking to use SLFRF funds for premium pay. First, to receive premium pay one must be an eligible worker. Second, an eligible worker must also perform essential work. Finally, premium pay must respond to workers performing essential work during the COVID-19 public health emergency. Most of the comments received by Treasury pertaining to premium pay related to these three requirements. Comments also addressed the definition of premium pay generally and posed questions regarding premium pay program structuring. This section responds to the comments by

[259] Economic Policy Institute, Only 30% of those working outside their home are receiving hazard pay (June 16, 2020), https://www.epi.org/press/only-30-of-those-working-outside-their-home-are-receiving-hazard-pay-black-and-hispanic-workers-are-most-concerned-about-bringing-the-coronavirus-home/.
[260] McCormack, *supra* note 61.
[261] *Id*.

addressing the three requirements in turn, then the overall definition of premium pay and, finally, program structure.

Eligible Workers

The ARPA defines "eligible workers" as "those workers needed to maintain continuity of operations of essential critical infrastructure sectors and additional sectors as each . . . [government] may designate as critical to protect the health and wellbeing of [its] residents." The interim final rule supplemented this definition by identifying a list of "essential critical infrastructure sectors" whose workers are eligible workers, based on the list of sectors in the HEROES Act, a bill introduced in the House of Representatives in 2020 that would have provided premium pay to essential workers.[262] In addition to the critical infrastructure sectors defined in the interim final rule, the chief executive (or equivalent) of a recipient government may designate additional non-public[263] 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.

[262] *See* H.R. 6800, 116th Cong. (2020).
[263] Note that the sectors defined in the interim final rule already include all state, local, and Tribal government employees.

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 employees of recipient governments are already included in the interim final rule definition of "eligible worker." A more specific eligibility system (e.g., linking eligibility to specific occupational or industry codes) would have provided more certainty but would have been much more rigid. In contrast, the current definition is flexible enough to give recipients the ability to tailor their premium pay programs to meet their needs while ensuring that programs focus on sectors where workers were forced to shoulder substantial risk as a result of the COVID-19 pandemic. Furthermore, the critical infrastructure sectors defined in the interim final rule already include many of the occupations that commenters requested be added. For example, Treasury received many comments from public workers asking to be included in the definition of "eligible worker" even though these workers already fall within the scope of "any work

performed by an employee of a State, local, or Tribal government." Treasury has clarified in the final rule that the chief executive's discretion to designate additional sectors as critical relates only to "non-public" sectors, since all public employees of recipient governments are already included in the definition of "eligible worker." While all such public employees are "eligible workers" and the chief executive (or equivalent) of a recipient government may designate additional non-public sectors as critical, in order to receive premium pay, these workers must still meet the other premium pay requirements (e.g., performing essential work).

Treasury recognizes that the list of "essential critical infrastructure sectors" includes both occupations and sectors. Recipients, if uncertain which occupations are included in a critical infrastructure sector, may consult government occupational classifications if helpful but are not required to do so.[264] Furthermore, a recipient government does not need to submit to Treasury for approval its designation of a sector as essential critical infrastructure; rather, Treasury will defer to the reasonable interpretation of the recipient government and the discretion of the recipient's chief executive in making such designations. If a recipient is unsure if a non-public sector is covered by the definition in the final rule,[265] the chief executive (or equivalent) of a recipient government may also identify the non-public sector as critical so long as the chief executive deems the non-public sector necessary to protecting the health and wellbeing of residents. Treasury has, where possible, clarified the definition of "essential critical infrastructure sectors." For instance, Treasury has clarified in the final rule that work performed by an employee of a Tribal government includes an employee of a Tribal enterprise and discussed in this

[264] *See, e.g.,* sources such as Bureau of Labor Statistics, Occupational Outlook Handbook, which provide information on which professions or occupations are typically included in interpretations of a sector, https://www.bls.gov/ooh/.
[265] Public sector workers are "eligible workers" under the interim final rule and final rule.

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 (or grantee) uses SLFRF funds to provide premium pay to an employee and the pay or grant would increase a worker's total pay above 150 percent of their residing state or county's average annual wage for all occupations, as defined by the BLS Occupational Employment and Wage Statistics, whichever is higher, on an annual basis, then the recipient must provide, whether for themselves or on behalf of a grantee, written justification to Treasury detailing how the award responds to eligible workers performing essential work.

Public Comment: Treasury received numerous comments on the wage threshold and the written justification requirement. Several commenters supported the threshold as a way to encourage recipients to target premium pay to lower-income, eligible workers. Some commenters even asked Treasury to make the wage threshold a firm restriction, above which an eligible worker could not receive premium pay. Others agreed with the threshold but also requested flexibility to use existing worker classifications as an administratively simple way to identify workers for whom premium pay would be responsive. For instance, a few commenters asked Treasury to allow recipients or grantees to presume that premium pay "responds to" eligible workers performing essential work when it is provided to employees who are not exempt

from the Fair Labor Standards Act (FLSA) overtime provisions — a test that employers are routinely required to apply.[266]

In contrast, several commenters disagreed with the threshold and the requirement for written justification. A few commenters thought the threshold was too low to capture employees in certain critical infrastructure sectors (e.g., public safety, waste collection) and that it did not sufficiently account for the variance in economic need across different geographic areas and family structures. Some smaller communities argued that the threshold was difficult to calculate and apply.

Other commenters proposed revisions for how the threshold is calculated. For instance, a few commenters asked Treasury to consider using alternative earnings measures such as median income. Similarly, another commenter asked Treasury to consider the incomes of workers with different levels of seniority in developing any income thresholds for permitting or reporting on premium pay.

Finally, there was also some uncertainty as to the threshold and the requirement for written justification. Some commenters interpreted the threshold as a hard cap on who was eligible for premium pay, which is not the case. Relatedly, some commenters also requested further guidance on what recipients should include in the written justification submitted to the Secretary.

Treasury Response: The final rule makes some modifications to the determination of when premium pay "responds to" eligible workers performing essential work during the public health emergency. Under the interim final rule, premium pay was responsive if either the workers' pay was below a wage threshold or, if the pay was above a wage threshold, the

[266] *See generally* 29 U.S.C. 207(a); U.S. Department of Labor, Overtime Pay Requirements of the FLSA (Fact Sheet No. 23), https://www.dol.gov/agencies/whd/fact-sheets/23-flsa-overtime-pay.

recipient submitted written justification to Treasury explaining how the premium pay was responsive. The final rule retains these two means of establishing premium pay in response to workers performing essential work and adds an additional means of demonstrating that premium pay is responsive. Under the final rule, a recipient may also show that premium pay is responsive by demonstrating that the eligible worker receiving premium pay is not exempt from the FLSA overtime provisions.[267] This change will expand the number of workers eligible to receive premium pay[268] 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.

[267] Department of Labor, Overtime Pay, https://www.dol.gov/agencies/whd/overtime; *see also* 29 U.S.C. § 207.
[268] Among workers that report working overtime, roughly 41-44 percent of workers earn above $50,000 per year, which is slightly less than the national average annual wage for all employees according to the Bureau of Labor Statistics' Occupational Employment and Wage Statistics, available at https://www.bls.gov/oes/. See also U.S. Census Bureau, Basic Monthly CPS, January 2019 through December 2019, available at https://www.census.gov/data/datasets/time-series/demo/cps/cps-basic.html. Notes: Annual earnings reflect weekly wages multiplied by 52. Usual weekly earnings are computed by BLS to include earnings from work such as tips, overtime, regular wages, etc., but not non-labor sources of income such as government transfers and capital gains. Pre-overtime earnings are computed by taking the difference of usual weekly earnings and earnings from overtime last week and multiplying by 52. Note, some sources multiply weekly earnings by 50 instead of 52 to account for unpaid time off and holidays, so these figures may be slightly larger than those reported elsewhere. Either assumption may overestimate earnings if workers do not work year-round.

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 final rule incorporated this

definition and emphasized that premium pay should be in addition to compensation typically received.

Public Comment: Several submitted comments related to the definition of "premium pay." Several commenters asked Treasury to clarify certain aspects of the interim final rule and statutory definition of premium pay. For instance, a few commenters asked whether the $25,000 limit applies to the annual amount of premium pay received or the aggregate amount of premium pay received over the period of performance. A few commenters requested flexibility as to how premium pay may be awarded, including flexibility to make monthly or quarterly payments or lump sum payments. Finally, commenters requested additional clarification as to how premium pay should be calculated. For instance, a commenter asked how to calculate the amount of and account for overtime pay and other incentive pay.[269]

Treasury Response: Treasury has clarified some of these issues in the final rule. For example, Treasury has clarified in the final rule that the $25,000 per employee limit is for the entire period of performance, not an annual cap. Further, recipients have discretion with respect to the way in which premium pay is awarded to eligible workers (e.g., monthly, quarterly, lump sum), provided that the total premium pay awarded to any eligible worker does not exceed $13 per hour or $25,000 over the period of performance. Finally, a recipient may award premium pay to an eligible worker in addition to the overtime pay already earned by the eligible worker but in no instance may the portion of the compensation funded with SLFRF funds exceed $13 per hour, even if strict time-and-a-half calculation requires more.[270] To the extent that an employer is

[269] *See* 29 U.S.C. 207(a) ("[A]t a rate not less than one and one-half times the regular rate at which he is employed.").

[270] All recipients are required to comply with otherwise applicable laws, including any wage and hour requirements in the Fair Labor Standards Act. *See generally*, Department of Labor, *Wages and the Fair Labor Standards Act*, https://www.dol.gov/agencies/whd/flsa.

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 C.F.R. § 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 C.F.R. § 200.112. Pursuant to this policy, decisions concerning SLFRF funds must be free of undisclosed personal or organizational conflicts of interest, both in fact and in appearance. Consistent with this policy, elected officials are prohibited from using their official position and control over SLFRF funds for their own private gain. This policy also prohibits, among other things, elected officials from steering funds to projects in which they have a financial interest or using funds to pay themselves premium pay.

C. Revenue Loss

Background

Sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act provide that SLFRF funds may be used "for the provision of government services to the extent of the reduction in revenue of such . . . government due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year of the . . . government prior to the emergency." This provision allows recipients experiencing budget shortfalls to use payments from the SLFRF funds to avoid cuts to government services and, thus, enables state, local, and

Tribal governments to continue to provide valuable services and ensures that fiscal austerity measures do not hamper the broader economic recovery.

State and local government budgets experienced stress in fiscal year 2020 as delayed tax filings and pandemic-related business closures caused revenues to decline sharply.[271] Twenty-two state governments took actions to close budget gaps in fiscal year 2020[272] and nearly 80 percent of cities reported being less able to meet the fiscal needs of their communities relative to fiscal year 2019.[273] Surveys of Tribal governments and Tribal enterprises conducted in 2020 found majorities of respondents reporting substantial cost increases and revenue decreases, with Tribal governments reporting reductions in health care, housing, social services, and economic development activities as a result of reduced revenues.[274]

The economic recovery, aided by the broad distribution of COVID-19 vaccines and the deployment of federal stimulus, has led to a strong rebound in total state and local government revenue and is contributing to a brighter fiscal outlook for most jurisdictions as compared to the earlier months of the public health emergency. For the fiscal year ending June 30, 2021, total state and local government tax revenues increased 21 percent relative to the same period in 2020, reflecting the combined impact of the modified tax filing deadline in 2020 and an improving economy.[275] However, despite a stable budget situation overall, many governments face

[271] In the second quarter of 2020, quarterly state and local tax revenues as reported by the U.S. Census Bureau fell 19 percent compared to the second quarter of 2019; U.S. Census Bureau, Quarterly Summary of State and Local Tax Revenue, https://www.census.gov/programs-surveys/qtax.html.
[272] National Association of State Budget Officers, Fiscal Survey of the States (Fall 2020), *available at* https://higherlogicdownload.s3.amazonaws.com/NASBO/9d2d2db1-c943-4f1b-b750-0fca152d64c2/UploadedImages/Fiscal%20Survey/NASBO_Fall_2020_Fiscal_Survey_of_States_S.pdf
[273] National League of Cities, City Fiscal Conditions (2020), available at https://www.nlc.org/wp-content/uploads/2020/08/City_Fiscal_Conditions_2020_FINAL.pdf
[274] Surveys conducted by the Center for Indian Country Development at the Federal Reserve Bank of Minneapolis in March, April, and September 2020. Elijah Moreno & Heather Sobrepena, Tribal entities remain resilient as COVID–19 batters their finances, Federal Reserve Bank of Minneapolis (Nov. 10, 2020), https://www.minneapolisfed.org/article/2020/tribal-entities-remain-resilient-as-covid-19-batters-their-finances.
[275] Analysis of Quarterly Summary of State and Local Tax Revenue, U.S. Census Bureau, supra note 255

uncertainty as the COVID-19 pandemic continues to impact commuting patterns, hospitality and tourism, and other drivers of jurisdictions' economies. Thirty-five percent of cities still report being less able to meet financial needs than in fiscal year 2020,[276] and over half of surveyed Tribal governments and Tribal enterprises reported losing at least 40 percent of their revenue since the start of the pandemic.[277] Budget challenges persist as governments work to mitigate and contain COVID-19 and help citizens weather the economic downturn.

State, local, and Tribal government budgets affect the broader economic recovery. During the period following the 2007-2009 recession, state and local government budget pressures led to fiscal austerity that was a significant drag on the overall economic recovery.[278] Inflation-adjusted state and local government revenue did not return to the previous peak until 2013,[279] while employment in the sector returned to the previous peak in August 2019, nearly a decade later.[280] Just months after recouping losses from the previous downturn, the COVID-19 pandemic caused state and local government employment to contract again, but this time more sharply: by May 2020, state and local government payrolls fell 7.7 percent compared to February 2020. Despite

[276] National League of Cities, City Fiscal Conditions (2021), *available at* https://www.nlc.org/wp-content/uploads/2021/10/2021-City-Fiscal-Conditions-Report-2021.pdf
[277] Center for Indian Country Development and Federal Reserve Bank of Minneapolis, One Year Into COVID-19, Pandemic's Negative Effects Persist in Indian Country (May 2021), *available at* https://www.minneapolisfed.org/article/2021/one-year-into-covid-19-pandemics-negative-effects-persist-in-indian-country
[278] *See, e.g.*, Nora Fitzpatrick et al., Fiscal Drag from the State and Local Sector?, Liberty Street Economics Blog, Federal Reserve Bank of New York (June 27, 2012), https:// libertystreeteconomics.newyorkfed.org/2012/06/fiscal-drag-from-the-state-and-local-sector.html; Jiri Jonas, Great Recession and Fiscal Squeeze at U.S. Subnational Government Level, IMF Working Paper 12/184, (July 2012), available at https://www.imf.org/external/pubs/ft/wp/2012/wp12184.pdf; Gordon, supra note 13.
[279] State and local government general revenue from own sources, adjusted for inflation using the Bureau of Economic Analysis' implicit price deflator for GDP. U.S. Census Bureau, Annual Survey of State Government Finances and U.S. Bureau of Economic Analysis, National Income and Product Accounts, https://www.census.gov/programs-surveys/gov-finances.html.
[280] U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, https://fred.stlouisfed.org/series/CES9092000001 and https://fred.stlouisfed.org/series/CES9093000001.

improvement, non-federal public sector job growth continues to lag behind the rest of the U.S. labor market recovery.[281]

Summary of Interim Final Rule

As stated above, the Social Security Act provides that SLFRF funds may be used "for the provision of government services to the extent of the reduction in revenue of such . . . government due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year of the . . . government prior to the emergency." The interim final rule provided a formula for calculating revenue loss through a four-step process:

- Step 1: Identify revenues collected in the most recent full fiscal year prior to the public health emergency (i.e., last full fiscal year before January 27, 2020), called the *base year revenue.*
- Step 2: Estimate *counterfactual revenue*, which is the amount of revenue the recipient would have expected in the absence of the downturn caused by the pandemic. The counterfactual revenue is equal to *base year revenue* * [(1 + *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

[281] Pew Research, State and Local Government Job Growth Lags as Economy Recovers (September 2021), *available at* https://www.pewtrusts.org/en/research-and-analysis/articles/2021/09/14/state-and-local-government-job-growth-lags-as-economy-recovers.

emergency.[282] This approach to the growth rate provides recipients with the option to use a standardized growth adjustment when calculating the counterfactual revenue trend and thus minimizes administrative burden, while not disadvantaging recipients with revenue growth that exceeded the national average prior to the COVID-19 public health emergency by permitting these recipients to use their own revenue growth rate over the preceding three years.

- Step 3: Identify *actual revenue*,[283] which equals revenues collected over the twelve months immediately preceding the calculation date.
- Step 4: The extent of the reduction in revenue is equal to *counterfactual revenue* less *actual revenue*. If *actual revenue* exceeds *counterfactual revenue*, the extent of the reduction in revenue is set to zero for that calculation date.

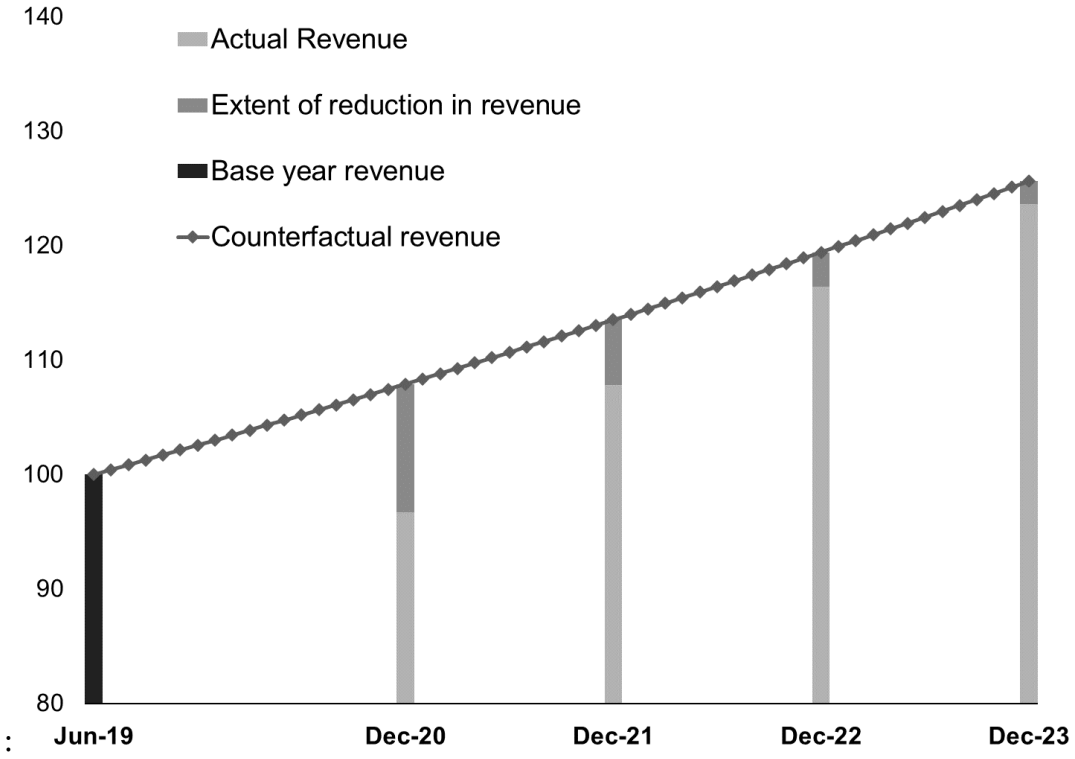
For illustration, consider a hypothetical recipient with *base year revenue* equal to 100 (Step 1) that ends on June 30, 2019. In Step 2, the hypothetical recipient finds that the average annual growth across all state and local government "General Revenue from Own Sources" in the most recent three years of available data, 5.2 percent, is greater than the recipient's average annual revenue growth in the three full fiscal years prior to the public health emergency. In this illustration, *n* (months elapsed) and *counterfactual revenue* would be equal to:

As of:	12/31/2020	12/31/2021	12/31/2022	12/31/2023
n (months elapsed)	18	30	42	54
Counterfactual revenue:	107.9	113.5	119.4	125.6

[282] At the time the interim final rule was published, the average annual growth across all state and local government "General Revenue from Own Sources" in the most recent three years of available data (2015-2018) was 4.1%, which was presented as one option for the growth adjustment. Since the interim final rule was published, 2019 data has been made available, which increases this rate to 5.2%. The final rule updates the percentage to 5.2%, as shown in Step 2.

[283] As explained below, in the final rule, recipients must adjust actual revenue amounts based on certain tax policy changes.

The figure below illustrates the reduction in revenue for the hypothetical recipient calculated in accordance with the methodology.



Finally, as explained in greater detail below, the clear meaning of the statutory phrase "due to the COVID-19 public health emergency" is that it is referring to revenue reductions caused by the public health emergency. As such, it does not include revenue reduced for reasons other than the public health emergency. Treasury in the interim final rule presumed that any reduction in revenue relative to the counterfactual estimate would be considered revenue lost due to the pandemic and thereby relieved recipients of the administrative burden of determining the extent to which reduction in revenue was due to the public health emergency. The calculation methodology in the interim final rule implicitly assumed that recipients did not suffer a loss in revenue due to the public health emergency if they did not experience a reduction in aggregate

revenue compared to the counterfactual estimate. The interim final rule invited comments on whether Treasury should revise its presumption to "take into account other factors, including actions taken by the recipient as well as the expiration of the COVID-19 public health emergency, in determining whether to presume that revenue losses are 'due to' the COVID-19 public health emergency."

Treasury received a substantial number of comments on the revenue loss provisions set forth in the interim final rule. These comments largely pertained to the following topics: the overall methodology for calculating revenue loss; the definition of "revenue"; whether revenue should be aggregated or calculated on some alternative basis (e.g., source-by-source or fund-by-fund); the appropriate calculation dates (i.e., fiscal year or calendar year); the presumption that all revenue loss is due to the pandemic; the base year; and the definition of "government services."

Overall Methodology for Calculating Revenue Loss

As noted above, the interim final rule provided a formula for recipients to calculate revenue loss by comparing actual revenues received during a given time-period with a counterfactual amount of revenue based on revenues in the base year and an adjustment for expected growth in revenue each year.

Public Comment: Treasury received many public comments on the overall methodology for calculating revenue loss. Some recipients, including smaller governments, have expressed concern regarding the burden associated with the calculation of revenue loss, particularly the burden involved in calculating the amount of general revenue, given that the definition of general revenue in the interim final rule does not always align with the definition of revenue already

calculated by recipients for other purposes, and requested clarifications regarding a number of components, including the definition of revenue. Commenters also asked for clarification on the relationship between revenue loss calculations across different calculation dates. Other commenters argued that the revenue loss formula does not precisely capture the nuances of local revenues or their particular situation. For example, some commenters stated that requiring that revenues be aggregated fails to capture decreases in revenue sources that cannot easily be made up for with other revenue sources.

Treasury Response: In the final rule, Treasury is largely maintaining the revenue loss formula as set forth in the interim final rule. To address comments that the formula for calculating revenue loss was difficult to apply, Treasury is including an option for recipients to use a standard allowance for revenue loss. Specifically, in the final rule, recipients will be permitted to elect a fixed amount of loss that can then be used to fund government services. This fixed amount, referred to as the "standard allowance," is set at $10 million total for the entire period of performance. Although Treasury anticipates that this standard allowance will be most helpful to smaller local governments and Tribal governments, any recipient can use this standard allowance instead of calculating revenue loss pursuant to the formula above, so long as recipients employ a consistent methodology across the period of performance (i.e., choose either the standard allowance or the regular formula). Treasury intends to amend its reporting forms to provide a mechanism for recipients to make a one-time, irrevocable election to utilize either the revenue loss formula or the standard allowance.

The $10 million level is based on average revenue loss across state and local governments, taking into consideration potential variation in revenue types and losses and continued uncertainty faced by many recipients regarding revenue shortfalls. To calculate this

estimate, Treasury applied a variation of the final rule's revenue loss calculation on available aggregate state and local government tax revenue data as reported by the Census Bureau for the first calculation date of December 31, 2020. This estimate accounts for expected variation across recipient experiences and reflects the fact that the final rule revenue loss calculation provides recipients several options for specific aspects (e.g., calendar year or fiscal year basis; use of average state and local revenue growth rate or specific local rate). Treasury compared actual calendar year 2020 tax revenues, in aggregate for all state and local governments, to several counterfactual trends that vary based on the end date of the fiscal base year.[284] Treasury also assessed counterfactual trends using different revenue growth rates (e.g., the three-year average growth rates of total state and local government general revenue for both fiscal years ending in 2016-2018 and fiscal years ending in 2017-2019; the three-year average growth rates of total state and local government tax revenues for fiscal years ending in 2017-2019; and the one-year growth rate for total state and local government tax revenue in the last full fiscal year before the public health emergency). To account for the fact that the initial estimate, based on tax revenue, only includes a subset of recipient aggregate general revenue, Treasury applied a scaling factor to recognize that tax revenues generally make up just over half of general revenue collected by state and local governments (i.e., Treasury scaled up its estimate based on tax revenue to produce an estimate for total general revenue).[285] The resulting calculation was then extrapolated over the four-year period of performance and divided by a population of interest to arrive at an average loss estimate.

[284] Because the Census Bureau's state and local government tax revenue data is reported on a quarterly frequency, fiscal base year end dates of March 31, June 30, September 30, and December 31 were used in this assessment.
[285] Annual Survey of State and Local Government Finances (2019).

As noted above, Treasury estimated a range of scenarios to account for different values of the variables that would impact average losses. For example, the end date of the fiscal base year and growth rate of counterfactual revenue impact the overall estimate of revenue loss. In addition, this estimate takes into consideration the limitations in the available data. The governments covered by the Census Bureau's survey do not entirely align with SLFRF recipients. The Census Bureau's figures are based on 50 state governments, all local government property tax collectors and local government non-property tax imposers, representing at a minimum the more than 38,000 "General Purpose Governments" defined by Census. However, there are only roughly 32,000 recipients of SLFRF funds. Thus, Treasury considered the difference between the number and type of entities in the Census Bureau data and the SLFRF recipients.

Based on this methodology, Treasury estimates that average revenue loss (determined by comparing the counterfactual revenue to actual revenue) may range from $0 to $11.7 million per recipient over the period of performance.[286] Treasury settled on a point estimate toward the upper end of the range of potential averages, in part, to account for significant variation in the experiences of recipient governments: some recipients likely experienced losses at the upper end of this range of potential averages. A point estimate toward the upper end of the range errs toward ensuring more recipients' experiences are covered and increases the utility of the standard allowance for SLFRF recipients. Specifically, the program includes a very large number of recipients with relatively smaller awards; these recipients have tended to describe having greater difficulty completing the regular revenue loss calculation. Thus, selecting a point estimate toward the higher end of the expected range not only increases the likelihood that the

[286] This is the range of averages that Treasury calculated by varying the aforementioned assumptions.

standard allowance will reflect the experience of a larger number of SLFRF recipients but is more responsive to the comments of those with smaller awards. In addition, using a point estimate toward the upper end of the range accounts for the difficulty and uncertainty in predicting revenue losses years into the future, throughout the period of performance.[287]

Finally, Treasury selected a single allowance level, as opposed to varying levels, to further the goals of simplicity, flexibility, and administrability. Furthermore, data limitations make it difficult to distinguish between types of local governments.[288]

General Revenue

The interim final rule adopted a definition of "general revenue" based largely on the components reported under "General Revenue from Own Sources" in the Census Bureau's Annual Survey of State and Local Government Finances. Under the interim final rule, general revenue included revenue collected by a recipient and generated from its underlying economy, and it would capture a range of different types of tax revenues, as well as other types of revenue that are available to support government services.[289] Specifically, revenue under the interim final rule included money that is received from tax revenue, current charges, and miscellaneous general revenues and excluded refunds and other correcting transactions, proceeds from issuance of debt or the sale of investments, agency or private trust transactions, revenue from utilities,

[287] See, e.g., Government Accountability Office, State and Local Governments: Fiscal Conditions During the COVID-19 Pandemic in Selected States (July 2021) (noting that "[s]tate and local government revenues partly depend on the overall economy, and actions to stem the spread of the virus drastically reduced economic activity."); Board of Governors of the Federal Reserve System, Monetary Policy Report (July 9, 2021) (noting that the pandemic "pushed down state and local government tax collections" and that while some of the drag is "abating" state and local "government payrolls . . . have only edged up from their lows at the onset of the pandemic").
[288] Local government tax revenue data in the Census Bureau's Quarterly Summary of State and Local Tax Revenue, *supra* note 255, is provided on an aggregated basis.
[289] The Department also released guidance clarifying how a recipient may determine whether a particular entity is "part of the recipient's government." *See FAQ 3.14*. Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.

social insurance trust revenues, and intergovernmental transfers from the federal government, including transfers made pursuant to section 9901 of the ARPA.[290] In the case of Tribal governments, it also included revenue from Tribal business enterprises.

Public Comment: Many commenters asked Treasury to include certain items in the definition of "general revenue." For instance, several commenters that operate their own utilities asked that revenue from utilities be included, arguing that declines in utility revenue directly affect contributions to their general funds. Many of these commenters noted that moratoriums on utility shutoffs and a decline in collections have resulted in significant budgetary pressures.

Some commenters also asked for the exclusion of certain intergovernmental transfers in the definition of general revenue, including transfers of shared revenue from the state.[291] Other commenters asked for the inclusion of certain transfers from the federal government, including fees paid for services and grants that are, in effect, paid for the provision of services.

Treasury also received multiple requests to include revenue from Tribal enterprises in the definition of "general revenue" and that "Tribal enterprise" be defined broadly. Others asked for the ability to choose whether to include revenue from Tribal enterprises.

Finally, some commenters requested that the definition of general revenue exclude certain sources of revenue, such as revenue sources that do not support a general fund (i.e.,

[290] The interim final rule stated that "general revenue" and "tax revenue" excludes refunds and other correcting transactions. Instead of "excluding" refunds and other correcting transactions, the Census Bureau methodology upon which those definitions are based provides that general revenue and tax revenue are determined "net of" refunds and other correcting transactions. The use of "excluding" in the interim final rule is substantively the same as the Census Bureau methodology. However, to be consistent with the terminology used by the Census Bureau, the final rule uses "net of" instead of "excluding." Current charges are defined as "charges imposed for providing current services or for the sale of products in connection with general government activities." It includes revenues such as public education institution, public hospital, and toll revenues. Miscellaneous general revenue comprises of all other general revenue of governments from their own sources (i.e., other than utility and insurance trust revenue), including rents, royalties, lottery proceeds, and fines.

[291] The interim final rule excluded governmental transfers from the Federal Government, but it did not exclude intergovernmental transfers from other governmental units for purposes of the revenue loss provisions.

revenue sources that are restricted in use). Commenters also asked that general revenue exclude revenue from special assessments, settlements that make the recipient whole for past expenditures, and one-time revenues such as revenue from the sale of property.

Treasury Response: In the final rule, Treasury has maintained the definition of "general revenue" from the interim final rule with two exceptions.

Treasury has adjusted the definition to allow recipients that operate utilities that are part of their own government to choose whether to include revenue from these utilities in their revenue loss calculation. This change responds to comments from recipients indicating that revenue from utilities is used to fund other government services and that utility revenues have declined on aggregate.[292] This approach is consistent with other eligible uses, which recognize decreased ability of many households to make utility payments; see section Assistance to Households, which identifies utility assistance as an enumerated eligible use of funds, including through direct or bulk payments to utilities for consumer assistance. Furthermore, for utilities or other entities (e.g., certain service districts) that are not part of the recipient government, a transfer from the utility to the recipient constitutes an intergovernmental transfer and therefore is included in the definition of "general revenue."[293]

Treasury has also added liquor store revenue to the definition of general revenue. The Supplemental Information to the interim final rule stated that the definition of tax revenue would include liquor store revenue, but the text of the rule did not include it. Accordingly, in the final rule, Treasury is clarifying that revenue includes liquor store revenue. However, Treasury

[292] U.S. Energy Information Administration, Annual Electric Utility Data (October 2021), *available at https://www.eia.gov/electricity/sales_revenue_price/*.
[293] FAQ 3.14 provides further guidance on how to determine what entities constitute a government for purposes of calculating revenue loss. *See* Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.

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 $10 million, 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 appropriate to calculate the reduction in revenue by source.

Public Comment: Treasury received many comments stating that revenue loss should be calculated on a source-by-source basis. Some commenters argued that a source-by-source approach would be administratively simpler. Other commenters argued that calculating revenue loss source-by-source would better reflect the impact of the COVID-19 pandemic on their ability to fund government services because revenue gains in one source cannot always be used to make up for losses in another. For similar reasons, other commenters asked that revenue loss be calculated on a fund basis.

Treasury Response: Treasury considered alternative methods (e.g., source-by-source, fund-by-fund) but ultimately determined to maintain the calculation of revenue loss in the aggregate. The pandemic has had different effects on recipients (and their revenues), and

Treasury recognized that one particular type of revenue or one particular source may have experienced a greater amount of loss for some recipients. However, the statute refers only to "*the* reduction in revenue of such State, local government, or Tribal government." The statute is thus clear that Treasury is to refer to the aggregate revenue reduction of the recipient due to the public health emergency. Further, this provision is designed to address declines in the recipients' overall ability to pay for governmental services, and calculating revenue loss on an aggregate basis provides a more accurate representation of the effect of the pandemic on overall revenues and the fiscal health of the recipient. In many circumstances, recipient governments have flexibility to use revenues from an array of sources and offset declines in some sources with gains in others. While the details and configuration of this flexibility vary widely across recipient governments, calculating revenue loss on a source-by-source or fund-by-fund basis would not capture how recipient governments balance their budgets in the regular course of business. Accordingly, the final rule maintains the requirement that revenue loss is to be calculated on an aggregate basis.

Calculation Dates

Public Comment: Under the interim final rule, recipients calculate revenue loss as of the end of the calendar year. Treasury received many comments requesting that recipients be permitted to calculate revenue loss as of the end of their fiscal year. Commenters argued that doing so would be simpler and less burdensome on recipients and that financial data as of the end of the fiscal year is audited and therefore more reliable. Commenters also argued that recipients' fiscal years are structured around the timing of major revenue sources, and that the Census Bureau uses fiscal years in its Annual Survey.

Treasury also received comments about the use of multiple calculation dates. Several Tribal governments stated that they would not see ongoing revenue losses due to the COVID-19 public health emergency and asked to be able to determine revenue loss as of the first calculation date. Several commenters asked whether revenue loss is determined independently for each year, so that a gain in one year does not offset a loss in another, or whether revenue loss is cumulative from the beginning of the pandemic.

Treasury Response: In the final rule, Treasury has made adjustments to give recipients more flexibility with respect to calculation dates and to clarify certain elements. Specifically, the final rule provides recipients the option to choose whether to calculate revenue loss on a fiscal year or calendar year basis, though they must choose a consistent basis for loss calculations throughout the period of performance. Treasury has also clarified in the final rule that revenue loss is calculated separately for each year such that the calculation of revenue lost in one year does not affect the calculation of revenue lost in prior or future years.

Presumption that Revenue Loss is Due to the Pandemic

As stated above, sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act provide that SLFRF funds may be used "for the provision of government services to the extent of the reduction in revenue of such . . . government due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year of the . . . government prior to the emergency." As discussed in the interim final rule, although revenue may decline for reasons unrelated to COVID–19, in order to minimize the administrative burden on recipients in calculating revenue loss and take into consideration the devastating effects of the COVID–19

public health emergency, any reduction in revenue relative to the counterfactual estimate was presumed in the interim final rule to be considered revenue lost due to the pandemic.

Treasury stated in the Supplementary Information to the interim final rule that it was considering when, if ever, during the period of performance it would be appropriate to reevaluate the presumption that all losses are attributable to the public health emergency. Treasury also sought comment on whether to take into account other factors, including actions taken by the recipient as well as the expiration of the COVID–19 public health emergency, in determining whether to presume that revenue losses are "due to" the COVID–19 public health emergency.

Public Comment: Treasury received many comments in support of the presumption, as well as some opposed. Some commenters argued that the presumption eases the administrative burden on recipients because, without it, it would be difficult to identify which losses are attributable to the COVID-19 public health emergency. Many commenters also argued that Treasury should maintain the presumption because recipients are likely to experience losses due to the public health emergency even after the end of the public health emergency. Treasury also received comments asking that it adjust any revenue loss calculation to account for tax changes enacted by the recipient. In particular, some commenters noted that some recipients had increased taxes in order to meet additional demands for government services or to address declines in revenue due to the pandemic. These tax increases have in some cases offset some or all of the actual revenue loss attributable to the public health emergency. Because the interim final rule calculates revenue loss by reference to actual revenue collected, commenters argued that the calculation of revenue loss "due to" the public health emergency needs to take into consideration the effects of tax increases by deducting the effect of these tax increases from actual revenue collected.

Treasury Response: In the final rule, Treasury has maintained the presumption that a reduction in a recipient's revenue is due to the public health emergency with certain adjustments to respond to comments and to better account for revenue loss "due to the COVID-19 public health emergency." The final rule makes adjustments to the presumption to take into account certain government actions to change tax policy. In particular, Treasury is adjusting the presumption to account for changes to tax policy by providing that changes in revenue that are caused by tax increases or decreases adopted after the issuance of the final rule will not be treated as due to the public health emergency.

Presumption of Revenue Loss "Due To" the Pandemic

In enacting sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act, Congress provided that a state, local government, or Tribal government could use funds to "cover costs . . . for the provision of government services," but only "to the extent of the reduction in revenue . . . due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year . . . prior to the emergency." In doing so, Congress recognized that the pandemic was causing significant disruption to economic activity and sought to minimize the impact of associated revenue losses on the ability of the recipient to provide government services when such services were needed most.[294] The text of the statute itself reinforces this important context: The law specifically limits funds to cover revenue losses that both are "due to the COVID-19 public health emergency" and could impact "the provision of government services."

[294] *See also* sections 602(a)(1) and 603(a) of the Social Security Act (appropriating the funds for payment to recipients in order to "mitigate the fiscal effects stemming from the public health emergency").

Courts have recognized that the phrase "due to" can refer to various causal standards.[295] Here, in the context of Congress's addressing economic disruptions caused by the COVID-19 pandemic that could impact both revenues and government services, the key consideration is whether a revenue loss experienced by the recipient resulted from the exogenous impacts of the public health emergency (and were thus "due to" the pandemic) or instead from the recipient's own discretionary actions (and, in this context, were not "due to" the pandemic). Reductions in revenue due to the public health emergency does not cover revenue reductions that resulted from a recipient's own discretionary actions.

In the interim final rule, Treasury included a presumption that all revenue loss is due to the pandemic in order to minimize the administrative burden on recipients discussed above and take into consideration the devastating effects of the COVID–19 public health emergency. Based on comments, Treasury believes that the reasons for the presumption continue to be valid and has determined to maintain the presumption in the final rule with certain modifications. In particular, at this point in the course of the pandemic, with the fiscal pressure on state and local governments having been significantly reduced, it is appropriate for Treasury to reassess aspects of this presumption. As discussed below, the final rule requires recipients to exclude the value of tax policy changes adopted after January 6, 2022.

Recipients of the SLFRF range from states to the smallest local governments. At the time that the interim final rule was adopted, it was important for recipients to be able to calculate with ease and certainty their amount of revenue loss so that they could begin deploying these funds to continue to maintain essential government services. To this end, the presumption in the interim final rule provided a relatively simple formula for all recipients to use, but the exigent need for

[295] *U.S. Postal Service v. Postal Regulatory Comm'n*, 640 F.3d 1263 (D.C. Cir. 2011); *see Kimber v. Thiokol Corp.*, 196 F.3d 1092, 1100 (10th Cir. 1999); *Adams v. Director, OWCP*, 886 F.2d 818, 821 (6th Cir. 1989).

recipients to immediately deploy funds for the provision of government services has decreased and the benefit of the presumption in reducing administrative burden is less relevant for those governments that are not likely to avail themselves of the standard allowance described above.

Consistent with these considerations, the final rule requires recipients to exclude revenue loss due to tax changes adopted after January 6, 2022. Eliminating revenue loss due to tax changes from the presumption is appropriate given the significance of tax revenue as a portion of all revenue for state and local governments, the direct impact of tax policy decisions on revenue collected, and the relative ease with which recipients can isolate the estimated effect of a tax change on revenue.[296] Most state budgeting processes require a "budget score," often developed through a consensus process with executive and legislative branch experts,[297] and Treasury expects that larger localities, those most likely to utilize the revenue loss formula rather than the standard allowance, also regularly use revenue or budget estimates when considering changes to tax policies. As such, in many cases, recipients already prepare estimates of the impact of tax changes on revenue, and as discussed below, Treasury will generally permit recipients to rely on such estimates in adjusting their revenue loss calculations.

Reductions in revenue that are not attributable to tax changes would continue to be subject to the presumption. A requirement that recipients evaluate the revenue effect of changes in discretionary policy actions other than tax changes would be more difficult for recipients than evaluating the changes attributable to tax changes given that state and local governments do not generally prepare estimates of the revenue effects of other actions. Finally, as noted above, taxes

[296] Treasury considered whether to also eliminate the presumption with respect to losses resulting from other changes in policy, such as decreases in user fees or fines. However, the effects of these changes are more minor overall and would be more challenging to accurately identify and quantify, so the administrability benefit of the presumption for recipients outweighs whatever distortion there might be as a result of not reflecting such changes.
[297] *See generally*, National Association of State Budget Officers, Budget Processes in the States, (2021), available at https://higherlogicdownload.s3.amazonaws.com/NASBO/9d2d2db1-c943-4f1b-b750-0fca152d64c2/UploadedImages/Budget%20Processess/NASBO_2021_Budget_Processes_in_the_States_S.pdf

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.[298]

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.

[298] The final rule does not permit recipients to reflect the effects of other changes in policy, such as increases in fees adopted after adoption of the final rule. Treasury understands that the main beneficiaries of such a change would be those recipients that will benefit from the standard allowance provided for in the final rule and that for other recipients the administrative burden on recipients needed to calculate these adjustments would outweigh the benefit of having a somewhat larger amount of funds available for government services.

Previously Adopted Tax Changes

As discussed above, the final rule will not require recipients to reflect the revenue effects of tax increases or decreases adopted prior to the adoption of the final rule. Recipients that adopted a tax change in a previous period will not be required to recalculate the amount of revenue loss as of prior calculation dates or to reflect the fiscal impacts of such tax changes in calculation dates after the effective date of the final rule. However, the final rule will permit recipients to elect to reflect the revenue effects of their tax changes adopted between the beginning of the public health emergency and the adoption of the final rule.[299] If a recipient elects to do so, it must do so with respect to all of its tax changes 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;

[299] The final rule also addresses the possibility that some recipients may have fiscal years ending during the period between January 6, 2022 and April 1, 2022; such recipients' election to reflect tax changes from prior periods would also apply to changes during this period with respect to the calculation date in this period.

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[300] 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.

[300] Pay-go infrastructure funding refers to the practice of funding capital projects with cash-on-hand from taxes, fees, grants, and other sources, rather than with borrowed sums.

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 promote efficiency.[301] Treasury encourages recipients to use strong labor standards, including project labor agreements (PLAs) and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions. Treasury also recommends that recipients prioritize in their

[301] Treasury received several comments related to its encouragement of certain wage and labor standards in the Supplementary Information to the interim final rule. Some commenters opposed this encouragement, arguing that even encouragement and reference to PLAs and prevailing wage laws could lead to confusion or make it more likely that recipients would apply labor standards in ways that would discourage competition and raise project costs. Conversely, some commenters supported the encouragement of the use of certain standards, including giving preference to employers that meet certain employment standards (e.g., those that maintain high safety and training standards) because it would support the goal of completing water, sewer, and broadband projects efficiently and safely. As in the interim final rule, this encouragement does not impose a legally binding restriction on recipients.

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, as supplemented by Department of Labor regulations (29 CFR Part 5).

Treasury will continue to seek information from recipients on their workforce plans and water, sewer, and broadband projects undertaken with SLFRF funds. This reporting will support transparency and competition by enhancing available information on the services being provided.

Since publication of the interim final rule, Treasury has provided recipients with additional guidance and instructions on the reporting requirements.[302]

Environmental and Other Generally Applicable Requirements

Treasury cautions that, as is the case with all projects engaged in using the SLFRF funds, all projects must comply with applicable federal, state, and local law. In the case of infrastructure projects in particular, this includes environmental and permitting laws and regulations. Likewise, as with all capital expenditure projects using SLFRF funds, projects must be undertaken and completed in a manner that is technically sound, meaning that they must meet design and construction methods and use materials that are approved, codified, recognized, fall under standard or acceptable levels of practice, or otherwise are determined to be generally acceptable by the design and construction industry.

1. WATER AND SEWER INFRASTRUCTURE

Sections 602(c)(1)(D) and Section 603(c)(1)(D) of the Social Security Act provide that recipients may use the SLFRF funds "to make necessary investments in water [and] sewer… infrastructure." The interim final rule permitted a broad range of necessary investments in projects that improve access to clean drinking water and improve wastewater and stormwater infrastructure systems. As discussed below, after review of comments received on the interim final rule, Treasury has made changes in the final rule to expand the scope of eligible water and sewer projects.

[302] *See* U.S. Department of the Treasury, *Compliance and Reporting Guidance*, 21 (June 24, 2021), https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf.

Summary of Interim Final Rule and Final Rule Structure

Background: In the interim final rule, Treasury aligned eligible uses of the SLFRF with the wide range of types or categories of projects that would be eligible to receive financial assistance through the Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF) administered by the Environmental Protection Agency (EPA). By referring to these existing programs, with which many recipients are already familiar, Treasury intended to provide flexibility to recipients to respond to the needs of their communities while facilitating recipients' identification of eligible projects. Furthermore, by aligning SLFRF eligible uses with these existing programs, Treasury could ensure that projects using the SLFRF are limited to "necessary investments."

Public Comment: Treasury received many comments responding to the water and sewer infrastructure provisions of the interim final rule from state, local, and Tribal governments, industry trade associations, public interest groups, private individuals, and other interested parties. Commenters requested that Treasury provide a wider set of eligible uses for water and sewer infrastructure beyond those uses articulated by the DWSRF and CWSRF, suggesting that Treasury expand the definition of necessary water and sewer infrastructure.

Treasury Response: In response to commenters, Treasury is expanding the eligible use categories for water and sewer infrastructure, discussed in further detail below. Because the interim final rule aligned the definition of necessary water and sewer infrastructure with the eligible uses included in the DWSRF and CWSRF, Treasury is reflecting in the final rule a revised standard for determining a necessary water and sewer infrastructure investment for eligible water and sewer uses beyond those uses that are eligible under the DWSRF and CWSRF.

Interpretation of Necessary Investments and Water and Sewer Infrastructure

Necessary Investments: As discussed above, Treasury considers an investment in infrastructure to be necessary if it is (1) responsive to an identified need to achieve or maintain an adequate minimum level of service, which for some eligible project categories may include a reasonable projection of increased need, whether due to population growth or otherwise and (2) a cost-effective means for meeting that need, taking into account available alternatives. In addition, in the case of investments in drinking water service infrastructure to supply drinking water to satisfy a projected increase in population, the project must also be projected to be sustainable over its estimated useful life. As detailed further below, DWSRF and CWSRF eligible projects continue to be presumed to be necessary investments under the final rule, with the exception of projects for the rehabilitation of dams and reservoirs, which the EPA has permitted in certain circumstances under the DWSRF and, as discussed below, are addressed separately in the final rule.

In evaluating whether a project would respond to a need to achieve or maintain an adequate minimum level of service, a recipient should consider whether it would meet the needs of the population to be served and would satisfy applicable standards. For example, a drinking water project must be sized such that it provides an adequate volume of water to households and other customers and must meet applicable standards for drinking water quality under the Safe Drinking Water Act (SDWA). Similarly, a centralized wastewater treatment project should be designed to manage updated estimated flow rates and comply with Clean Water Act requirements. These requirements are already reflected in the eligibility criteria of the DWSRF and CWSRF, respectively.

In evaluating whether a project is a cost-effective means of providing the water or sewer service, the recipient should consider the need for the project, the costs and benefits of the project compared to alternatives, and the effectiveness of the project in meeting the identified need. Recipients are not required to conduct a full cost-benefit analysis; however, they should consider and analyze relevant factors. For example, a recipient may not use funds to pursue a costly dam rehabilitation to provide drinking water to a community if it could provide the same service with a significantly smaller investment by drawing water from another available reservoir, assuming that doing so would meet the other requirements of the final rule. As detailed further below, recipients are only required to assess cost-effectiveness of projects for the creation of new drinking water systems, dam and reservoir rehabilitation projects, or projects for the extension of drinking water service to meet population growth needs.

Certain DWSRF eligibilities are already subject to a cost-effectiveness test. Specifically, projects that create new drinking water systems must be a cost-effective solution to addressing the identified problem.[303] The EPA also imposes a cost-effectiveness condition on dam and reservoir rehabilitation projects undertaken pursuant to its class deviation from the DWSRF rule. These projects are particularly expensive and, unlike in the case of other types of eligible projects, there are often available alternatives to conducting these projects. Projects for the extension of drinking water service to meet population growth needs are also often particularly expensive, and there are often different ways to meet the needs of expanding populations. Treasury will accordingly require that recipients engage in a cost-effectiveness analysis when engaging in projects for the creation of new drinking water systems, dam and reservoir rehabilitation projects, or projects for the extension of drinking water service to meet population

[303] *See* 40 CFR 35.3520(b)(2)(vi).

growth needs. Other types of eligible water or sewer projects will not be subject to this cost-effectiveness test, including lead line replacement and lead remediation.[304]

In the case of projects that expand drinking water service infrastructure to satisfy a projected increase in population, the project must also be sustainable, meaning that the project can continue providing the adequate minimum level of service for its estimated useful life, taking into account projected impacts of changes to the climate and other expected demands on the source of water. For example, a reservoir rehabilitation project may not be pursued if the reservoir will no longer be able to provide an adequate source of drinking water before the end of the estimated useful life of the improvements to the reservoir. In areas currently impacted by drought or where drought conditions are expected to be more frequent or more severe in the future, sources of drinking water may be diminished more quickly than in prior periods. In considering how much of a source of water will be available in the future for the drinking water project, a recipient must consider that a source of water may be drawn upon or otherwise used for other current and expected uses, including use by fish and other wildlife.

The final rule applies this sustainability condition to projects that expand drinking water service infrastructure to satisfy a projected increase in population but not to other drinking water projects. When a new source of water is required to remedy an existing threat to public health, as in the case of source projects eligible under the DWSRF, sustainability should be a consideration, but in some cases, the need to replace a contaminated source may mean that a less sustainable choice may be made. When faced with such an issue, such as in the case of a contaminated well system, a project to replace the contaminated source can be said to be

[304] In such cases, either the projects are presumptively cost-effective (e.g., lead projects would always be considered cost-effective given the costs imposed by lead poisoning) or a cost-effectiveness test is less relevant given the lack of available alternatives or the relatively low cost of the project.

"necessary" even if the replaced source is not sustainable over the long term. Expediency may dictate that a shorter-term solution is pursued if it is cost-effective and will prevent health issues while a longer-term solution can be found. In contrast, an expansion to accommodate population growth cannot be said to be necessary if it is not sustainable over its estimated useful life.

Not included in the list of criteria above is the requirement in the interim final rule that the project be unlikely to be made using private sources of funds. Given that it may be difficult to assess in a particular case what the probability of private investment in a project would be, Treasury has eliminated this standard from the meaning of necessary but nevertheless encourages recipients to apply funds to projects that would provide the greatest public benefit.

Water and Sewer Infrastructure: As stated above, Congress provided that SLFRF funds are available for "necessary water, sewer, and broadband infrastructure." Treasury interprets the reference to water and sewer uses consistent with the inclusion of broadband uses. Water, sewer, and broadband infrastructure all involve the provision of essential services to residents, businesses, and other consumers. As the pandemic has made clear, access to broadband has itself become essential for individuals and businesses to participate in education, commerce, work, and civic matters and to receive health care and social services.

Water and sewer services provided broadly to the public as essential services include the provision of drinking water and the removal, management, and treatment of wastewater and stormwater.[305] Although governments are engaged in other infrastructure related to water, including irrigation projects, transportation projects, and recreation projects, such projects go

[305] In many jurisdictions, stormwater flows into the sewer system rather than into a separate stormwater system. The separate inclusion of "water" and "sewer" infrastructure also makes clear that "water" in this context cannot refer to all uses relevant to water. Given that sewer systems carry wastewater (and often stormwater), if water infrastructure were to refer to all water-related infrastructure in this context, it would make the inclusion of sewer infrastructure redundant.

beyond the scope of what is provided to all residents as an essential service. Provision of drinking water and removal, management, and treatment of wastewater and stormwater are the typical responsibilities of "water and sewer" authorities throughout the country, and there is a tremendous need for improvements to the ability of state, local, and Tribal governments to provide such services, including to address the consequences of deferred maintenance and additional resiliency needed to adapt to changes to the climate.[306]

Although the meaning of water and sewer infrastructure for purposes of sections 602(c)(1)(D) and 603(c)(1)(D) of the Social Security Act does not include all water-related uses, Treasury has made clear in this final rule that investments to infrastructure include a wide variety of projects. Treasury interprets the word "infrastructure" in this context broadly to mean the underlying framework or system for achieving the given public purpose, whether it be provision of drinking water or management of wastewater or stormwater.[307] As discussed below, this can include not just storm drains and culverts for the management of stormwater, for example, but also bioretention basins and rain barrels implemented across a watershed, including on both

[306] In addition, Treasury interprets the eligible uses of SLFRF funds against the background of the Coronavirus Relief Fund (CRF), for which the SLFRF funds are, in part, a successor. CRF recipients expressed great interest in using the CRF to pursue water infrastructure projects, including provision of drinking water and internal plumbing on Tribal lands and in Alaskan villages, and broadband projects throughout the country; Treasury permitted these projects given the connection to the public health emergency (see Coronavirus Relief Fund for States, Tribal Governments, and Certain Eligible Local Governments, 86 FR 4182, 4190, 4192 (Jan. 15, 2021), but the short deadline for use of funds made it difficult to use CRF funds in this way. Congress' inclusion of the water, sewer, and broadband clause in the ARPA, along with the SLFRF funds' longer eligible use date, is responsive to this unmet need.

As discussed below, Congress in the Infrastructure Investment and Jobs Act amended sections 602(c) and 603(c) of the Social Security Act to add a new paragraph as sections 602(c)(4) and 603(c)(5), respectively, providing that SLFRF funds may be used to meet non-federal matching requirements of any authorized Bureau of Reclamation project. This authority was added as a separately enumerated eligible use regardless of whether the underlying project would be an eligible use of SLFRF funds under the water and sewer infrastructure eligible use category.

[307] *See, e.g.,* section 502 of the Federal Water Pollution Control Act (33 U.S.C. 1362), defining "green infrastructure" as "the range of measures that use plant or soil systems, permeable pavement or other permeable surfaces or substrates, stormwater harvest and reuse, or landscaping to store, infiltrate, or evapotranspirate stormwater and reduce flows to sewer systems or to surface waters."

public and private property, that together reduce the amount of runoff that needs to be managed by traditional infrastructure.

Further, Treasury understands that investments in infrastructure include improvements that increase the capacity of existing infrastructure and extend the useful life of existing infrastructure. Accordingly, water and sewer infrastructure investment projects include those that conserve water, thereby reducing pressure on infrastructure for the provision of drinking water, and that recycle wastewater and stormwater, thereby reducing pressure on the infrastructure for treating and managing wastewater and stormwater.

As with other infrastructure projects and capital expenditure projects that are permitted as responses to the public health emergency and its negative economic impacts, costs for planning and design and associated pre-project costs are eligible uses of SLFRF funds. Costs for the acquisition of land are also eligible, but only if needed for the purposes of locating eligible project components. Recipients should ensure that they have the technical, financial, and managerial capability to ensure compliance with the requirements of the SDWA, or that the assistance will ensure compliance and the owners or operators of the systems will undertake feasible and appropriate changes in operations to ensure compliance over the long-term.

Drinking Water State Revolving Fund and Clean Water State Revolving Fund

Background: As stated above, in the interim final rule, Treasury included eligible uses of the DWSRF and the CWSRF as eligible uses of the SLFRF in the water and sewer infrastructure category. By providing that projects eligible under the DWSRF and the CWSRF are also eligible uses of SLFRF funds, the interim final rule permitted a broad range of projects that improve drinking water infrastructure, such as building or upgrading facilities and transmission,

distribution, and storage systems, including replacement of lead service lines. With respect to clean water and wastewater infrastructure, the interim final rule provided that recipients may use SLFRF funds to construct publicly owned treatment infrastructure, manage and treat stormwater or subsurface drainage water, and facilitate water reuse, among other uses. Consistent with the DWSRF and the CWSRF, the interim final rule provided that SLFRF funds may be used for cybersecurity needs to protect water or sewer infrastructure, such as developing effective cybersecurity practices and measures at drinking water systems and publicly owned treatment works.

Use of DWSRF and CWSRF to Support Climate Change Adaptations. Many of the types of projects eligible under either the DWSRF or CWSRF also support efforts to address climate change. For example, by taking steps to manage potential sources of pollution and preventing these sources from reaching sources of drinking water, projects eligible under the DWSRF and CWSRF may reduce energy required to treat drinking water. Similarly, projects eligible under the DWSRF and CWSRF include measures to conserve and reuse water, for example through projects to reuse or recycle wastewater, stormwater, or subsurface drainage water. Treasury encourages recipients to consider green infrastructure investments and projects to improve resilience to the effects of climate change. For example, more frequent and extreme precipitation events combined with construction and development trends have led to increased instances of stormwater runoff, water pollution, and flooding. Green infrastructure projects that support stormwater system resiliency could include bioretention basins that provide water storage and filtration benefits, and green streets, where vegetation, soil, and engineered systems are combined to direct and filter rainwater from impervious surfaces. In cases of a natural disaster,

recipients may also use SLFRF funds for water infrastructure to provide relief, such as interconnecting water systems or rehabilitating existing wells during an extended drought.

Public Comment: Many commenters expressed support for the interim final rule's alignment of the use of funds for water and sewer infrastructure under the SLFRF with the project categories provided through the EPA's DWSRF and CWSRF programs.

Many commenters also provided recommendations about the specific types of water infrastructure projects that should be eligible under the final rule. In many of these cases, commenters recommended that Treasury include project types that are already eligible under the DWSRF and CWSRF and thus eligible under the interim final rule and final rule. For example, several commenters requested that aquifer recharge projects, or other groundwater protection and restoration projects, be included as eligible uses of SLFRF when certain aquifer recharge projects that 1) implement a nonpoint source pollution management program[308] or 2) constitute reuse of 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

[308] Specifically, this would include desalination projects that decrease the burden on aquifers where there is causal relationship between aquifer withdrawals and saltwater intrusion if the projects implement a nonpoint source pollution 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.

DWSRF and CWSRF. Treasury emphasizes that this further clarification does not represent a change in eligibility. Treasury encourages recipients to reference EPA handbooks for the DWSRF and CWSRF, which provide further information and detail about the types of projects eligible under those programs and thus under the final rule.

Eligible projects under the DWSRF. Eligibilities under the DWSRF, the interim final rule, and the final rule include projects that address present or prevent future violations of health-based drinking water standards. These include projects needed to maintain compliance with existing national primary drinking water regulations for contaminants with acute and chronic health effects. Projects to replace aging infrastructure are also eligible uses if they are needed to maintain compliance or further the public health protection objectives of section 1452 of the SDWA.[309] The following project categories are eligible under the DWSRF, were eligible under the interim final rule, and continue to be eligible under the final rule:

(i) *Treatment projects,* including installation or upgrade of facilities to 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.

[309] *See* 42 U.S.C. 300j-12(a)(2)(B) (limiting financial assistance used by a public water system to expenditures (including expenditures for planning, design, siting, and associated preconstruction activities, or for replacing or rehabilitating aging treatment, storage, or distribution facilities of public water systems, but not including monitoring, operation, and maintenance expenditures of a type or category which the Administrator of the EPA has determined, through guidance, will facilitate compliance with national primary drinking water regulations applicable to the system under 42 U.S.C. 300g–1 or otherwise significantly further the health protection objectives of the SWDA); *See also* 40 CFR 35.3520(b).

(iv) *Storage projects*, including installation or upgrade of eligible storage facilities, including finished water reservoirs, to prevent microbiological contaminants from entering a public water system.

(v) *Consolidation projects*, including projects needed to consolidate water supplies where, for example, a supply has become contaminated or a system is unable to maintain compliance for technical, financial, or managerial reasons.

(vi) *Creation of new systems*, including those that, upon completion, will create a community water system to address existing public health problems with serious risks caused by unsafe drinking water provided by individual wells or surface water sources. Eligible projects are also those that create a new regional community water system by consolidating existing systems that have technical, financial, or managerial difficulties. Projects to address existing public health problems associated with individual wells or surface water sources must be limited in scope to the specific geographic area affected by contamination. Projects that create new regional community water systems by consolidating existing systems must be limited in scope to the service area of the systems being consolidated.

Ineligible projects under the DWSRF. Federally-owned public water systems and for-profit noncommunity water systems are not eligible to receive DWSRF funds and therefore SLFRF funds.[310] The acquisition of water rights, laboratory fees for routine compliance monitoring, and operation and maintenance expenses are not costs associated with investments in infrastructure and thus would not be eligible under the final rule. [311] Projects needed primarily to serve future population growth are also ineligible under the DWSRF; the treatment of such

[310] *See* 40 CFR 35.3520(d)(1).
[311] *See id at* § 35.3520(e)(2)-(4).

projects under the final rule is discussed separately below under "Expansion of Drinking Water Service." Projects eligible under the DWSRF must be sized only to accommodate a reasonable amount of population growth expected to occur over the useful life of the project.

Eligible projects under the CWSRF. The final rule continues to allow the use of SLFRF funds for projects eligible under the CWSRF, consistent with the interim final rule. Under the CWSRF, a project must meet the criteria of one of the following CWSRF eligibilities to be eligible for assistance. Section 603(c) of the Clean Water Act (CWA)[312] provides that the CWSRF can provide assistance:

> (i) to any municipality, intermunicipal, interstate, or state agency for construction of publicly owned treatment works (as defined in section 212 of the CWA);[313]
>
> (ii) for the implementation of a management program established under section 319 of the CWA;[314]
>
> (iii) for the development and implementation of a conservation and management plan under section 320 of the CWA;[315]
>
> (iv) for the construction, repair, or replacement of decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage. Eligible projects include, but are not limited to, the construction of new decentralized systems (e.g., individual onsite systems and cluster systems), as well as the upgrade, repair, or replacement of existing systems.
>
> (v) for measures to manage, reduce, treat, or recapture stormwater or subsurface drainage water. Publicly and privately owned, permitted and unpermitted projects that manage,

[312] 33 U.S.C. 1383(c).
[313] *Id.* § 1292.
[314] *Id.* § 1329.
[315] *Id.*. § 1330.

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. Equipment to reuse effluent (e.g., gray water, condensate, and wastewater effluent reuse systems) is eligible.

(vii) for the development and implementation of watershed projects meeting the criteria set forth in section 122 of the CWA.[316] Projects that develop or implement a watershed pilot project related to at least one of the six areas identified in section 122 of the CWA are eligible: watershed management of wet weather discharges, stormwater best management practices, watershed partnerships, integrated water resource planning, municipality-wide stormwater management planning, or increased resilience of treatment works.

(viii) to any municipality, intermunicipal, interstate, or state agency for measures to reduce the energy consumption needs for publicly owned treatment works. Projects may include, but are not limited to, the installation of energy efficient lighting, HVAC,

[316] *Id.* § 1274.

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 that manage, reduce, treat, or recapture stormwater or subsurface drainage water are also eligible, including real-time control systems for combined sewer overflow management, and sediment control. Culvert infrastructure projects are eligible under the CWSRF if they 1) implement a nonpoint source management plan, 2) implement National Estuary Program Comprehensive Conservation and Management Plan, or 3) implement a stormwater management plan with the goal of providing a water quality benefit. Stormwater projects under the CWSRF also encompass a number of eligible green infrastructure categories, such as green roofs, green streets, and green walls, rainwater harvesting collection, storage, management, and distribution systems, real-time control systems for harvested rainwater, infiltration basins, constructed wetlands, including surface flow and subsurface flow (e.g., gravel) wetlands, bioretention/bioswales (e.g., bioretention basins, tree boxes), permeable pavement, wetland, riparian, or shoreline creation, protection, and restoration, establishment or restoration of urban tree canopy, and replacement of gray infrastructure with green infrastructure including purchase and demolition costs.

In addition to the eligible uses under the CWSRF, Treasury is expanding the eligible uses under the final rule to include stormwater system infrastructure projects regardless of whether there is an expected water quality benefit from the project. Treasury anticipates that this eligible use will allow recipients to manage increased volumes of stormwater as a result of changes to the climate. For example, the final rule now permits the use of SLFRF funds for the repair, replacement, or removal of culverts or other road-stream crossing infrastructure to the extent the purpose of the project is to manage stormwater. In addition, Treasury understands that the repair, replacement, or removal of culverts may necessitate the repair or upgrade of roads. As noted in guidance issued after the interim final rule, recipients may use SLFRF funds for road repairs and upgrades that interact directly with an eligible stormwater infrastructure project. All stormwater infrastructure projects undertaken should incorporate updated design features and current best practices.

Private Wells and Septic Systems

Public Comment: Several commenters requested that the scope of eligible projects be expanded to allow for the expenditure of SLFRF funds on private wells or septic systems. Commenters noted that wells may be contaminated with dangerous substances, including arsenic, lead, radon, and PFAS (per- and polyfluoroalkyl). Commenters also suggested that, because rural and underserved communities are often reliant on these infrastructure types for their drinking water or wastewater needs, lack of appropriate funding to maintain these systems could present health and safety issues that disproportionately affect certain communities.

Treasury Response: Consistent with the CWSRF, the installation, repair, or replacement of private septic units continues to be an eligible use of SLFRF funds under the final rule. For

example, eligible projects include those that address groundwater contamination resulting from faulty septic units and those that would connect failing septic systems to centralized wastewater treatment. Consistent with the DWSRF, connecting homes served by a private well to a public water system is an eligible use of SLFRF funds.

In addition, Treasury has provided in the final rule that recipients may use SLFRF funds for an expanded set of infrastructure projects that improve access to and provision of safe drinking water for individuals served by residential wells. Eligible projects under this category include rehabilitation of private wells, testing initiatives to identify contaminants in wells, and treatment activities and remediation strategies that address contamination.

Remediating Lead in Water

Public Comment: Several commenters emphasized the need to fully remediate lead contamination, especially in structures that serve the public or populations like children that are particularly vulnerable to the effects of lead exposure, such as schools and daycares. Many American households and an estimated 400,000 schools and childcare centers currently lack safe drinking water.[317]

Treasury Response: The replacement of lead service lines, up to premise plumbing, is an eligible use under the DWSRF and continues to be an eligible use of SLFRF funds. Such projects are eligible regardless of the pipe material of the replacement lines and ownership of the property on which the service line is located. Lead service line replacement projects can serve households, schools, or any other entities. Given the lifelong impacts of lead exposure for children and the

[317] The White House, Updated Fact Sheet: Bipartisan Infrastructure Investment and Jobs Act (August 2, 2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/08/02/updated-fact-sheet-bipartisan-infrastructure-investment-and-jobs-act/.

widespread prevalence of lead service lines, Treasury encourages recipients to consider projects to replace lead service lines.

In addition, Treasury is providing in the final rule that for lead service line replacement projects, recipients must replace the full length of the service line, and not just a partial portion of the service line. Some water utilities, when replacing service lines, will only replace the "public portion" of the service line and physically slice through the lead service line at the public/private line. This action can result in elevated drinking water lead levels for some period of time after replacement, suggesting the potential for harm, rather than benefit during that time period.[318] Requiring replacement of the full length of the service line is also consistent with the requirements of the EPA's Lead and Copper Rule Revisions for water systems that have an action level exceedance for lead[319] and certain other water systems.[320]

Treasury is expanding eligible uses of SLFRF funds to include infrastructure projects eligible under EPA grant programs authorized by the WIIN Act.[321] Eligible projects under these programs include the installation or re-optimization of corrosion control treatment, replacing lead service lines, replacing galvanized pipes downstream of a lead service line (other than lead pipes within a home as discussed below), and maintaining an inventory of the drinking water system's service lines. Water quality testing, compliance monitoring, and remediation activities in schools and other childcare facilities, as well as activities necessary to respond to a contaminant, are

[318] *See* EPA Science Advisory Board, Evaluation of the Effectiveness of Partial Lead Service Line Replacements, (September 2011), https://www.epa.gov/sdwa/science-advisory-board-evaluation-effectiveness-partial-lead-service-line-replacements (advising against partial lead service line replacement).
[319] Environmental Protection Agency, *supra* note 191.
[320] Environmental Protection Agency, National Primary Drinking Water Regulations: Lead and Copper Rule Revisions, 86 FR 4198. 40 CFR 141.84, and preamble *at* 4215, January 15, 2021, https://www.federalregister.gov/d/2020-28691; scheduled to become effective December 16, 2021, Environmental Protection Agency, 86 FR 31939, https://www.federalregister.gov/d/2021-12600.
[321] Eligible uses of funds include those eligible under the Small, Underserved, and Disadvantaged Communities Grant (Section 2104), Reduction in Lead Exposure via Drinking Water Grant Program (Section 2105) and Lead Testing in School and Child Care Program Drinking Water Grant Program (Section 2107).

eligible uses of SLFRF funds.[322] Remediation 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

[322] Such testing and remediation programs would be an eligible use of SLFRF funds given that they 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.

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 commenters argued that dams and reservoirs play an important role in providing municipal water supply and water to irrigate farmland, including in areas impacted by recent droughts. Other commenters noted that a large number of dams are currently classified as high-hazard structures, the failure of which would have severe consequences for public safety and the local environment. With respect to reservoirs, commenters articulated that changing climate conditions have necessitated upgrades to reservoir infrastructure to ensure existing facilities can meet the local water needs of a community. Commenters noted that communities facing drought may also need to adjust or enhance reservoirs to maintain adequate water supply.

In contrast, several commenters suggested that infrastructure projects related to dams and reservoirs should not be considered eligible uses of SLFRF funds. These commenters noted that alternate sources of funding exist for dam and reservoir projects and that dams and reservoir infrastructure could result in negative impacts to Tribal communities and negative environmental impacts, including harm to wildlife habitats.

Treasury Response: Treasury understands that many dams and reservoirs in need of rehabilitation are dams and reservoirs whose primary purpose is to provide drinking water. As discussed above, SLFRF funds are available for projects related to the provision of drinking

water. Moreover, since issuance of the interim final rule, the EPA has adopted a class deviation from the DWSRF regulations that permits such dam and reservoir rehabilitation projects in certain circumstances.[323] In approving this class deviation, the EPA recognized that many dams used for drinking water are aging and deteriorating and pose a public health risk to communities; that current dam conditions do not meet state safety standards; and that reservoir capacity has diminished and requires dredging to meet drinking water needs of the existing population.

Treasury's final rule provides that funds may be used for rehabilitation of dams and reservoirs if the primary purpose of the dam or reservoir is for drinking water supply and the rehabilitation project is necessary for continued provision of drinking water supply. In considering whether a dam or reservoir project is necessary for the provision of drinking water supply, a recipient may take into consideration future population growth in certain circumstances, as discussed under "Expansion of Drinking Water Service Infrastructure" below, but the project must in any case be designed to support no more than a reasonable level of projected increased need. The recipient must also determine that the project is cost-effective, i.e., that there are not significantly superior alternatives that are available, taking into consideration the relative costs and benefits of the project as compared to those alternatives.

This change to the final rule would permit a wide variety of projects.[324] The limitation in the final rule to rehabilitation of existing dams and reservoirs reflects the scope of the EPA class deviation referenced above and Treasury's understanding of the significant need for investments

[323] *See* EPA, Approval of Class Exception from the Regulatory Prohibitions on the Use of Drinking Water State Revolving Fund for Rehabilitation of Dams and Reservoirs (July 14, 2021), available at https://www.epa.gov/system/files/documents/2021-07/dwsrf-class-deviation-dam-reservoir-rehab-2021_0.pdf.
[324] As noted in the EPA's class deviation, examples of dam rehabilitation projects include spillway reconstruction or repair; dam resurfacing, patching, or other structural repairs, including minimal height increases if needed to maintain the structural integrity of the dam; grouting for seepage control or liquefaction remediation (e.g., epoxy resin, asphalt, or rock); repair or replacement of drainage systems; and seismic stability efforts (e.g., anchors). Examples of reservoir rehabilitation projects include sedimentation dredging and reservoir lining.

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 conversation 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.

Public Comment: Several commenters requested that the removal of dams and associated habitat restoration should be eligible uses of SLFRF funds, noting that in some cases, dam removal will improve water quality while removing long-term operational expenses for the recipient.

Treasury Response: Dam removal projects and associated stream and habitat restoration projects are eligible uses of the CWSRF and continue to be eligible under the final rule when the removal implements either a nonpoint source management program plan or a National Estuary Program Comprehensive Conservation and Management Plan or when the removal will provide

a water quality benefit. Habitat restoration projects more generally may also be eligible under the CWSRF and the final rule if they constitute a form of stormwater infrastructure.

Expansion of Drinking Water Service Infrastructure

Public Comment: Commenters asked for the ability to use funds for drinking water projects for the purpose of meeting needs arising from future growth, which, given the restrictions applicable to the DWSRF, was not permitted under the interim final rule.

Treasury Response: As provided for in the SDWA, the DWSRF is meant to serve the public health needs of the existing population. The EPA regulation implementing the DWSRF program provides that projects needed primarily to serve future population growth are not eligible uses of the DWSRF. A project that is intended primarily to address public health or regulatory compliance issues for the existing service population may be sized for a "reasonable" amount of population growth over the useful life of the project.[325]

ARPA does not include the same limitation as the SDWA. Accordingly, the final rule provides that recipients may use SLFRF funds for projects that are needed to support increased population in certain cases. ARPA limits projects to those investments that are "necessary." As discussed above, Treasury interprets this to mean that the investments must be (1) responsive to an identified need to achieve or maintain an adequate minimum level of service, which for some eligible project categories may include a reasonable projection of increased need, whether due to population growth or otherwise and (2) a cost-effective means for meeting that need, taking into account available alternatives. For this eligible use category, expansion of drinking water service infrastructure, the project must also be projected to be sustainable over its estimated useful life.

[325] *See* 40 CFR 35.3520(e)(5).

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 or drinking water. See "Interpretation of Necessary Investments and Water and Sewer Infrastructure" above for more information.

Non-Federal Matching Requirements for Authorized Bureau of Reclamation Projects

The Infrastructure Investment and Jobs Act amends sections 602(c) and 603(c) of the Social Security Act to add an additional eligible use of SLFRF funds, providing that SLFRF funds "may be used for purposes of satisfying any non-Federal matching requirement required for [an authorized Bureau of Reclamation project]."[326]

This amendment permits the use of SLFRF funds to meet non-federal matching requirements of any authorized Bureau of Reclamation project, regardless of whether the underlying project would be an eligible use of SLFRF funds under the water and sewer infrastructure eligible use category. These amendments are effective as of March 11, 2021, as if included in the ARPA at the time of its enactment.[327] Treasury will provide further guidance to recipients on the scope of Bureau of Reclamation water projects and expenses covered by this provision.

Floodplain Management and Flood Mitigation Projects

Public Comment: Several commenters requested that projects to address floodwater, including floodplain management and flood mitigation projects, be included as an eligible use of SLFRF funds. Within this category of floodplain management and flood mitigation infrastructure, several commenters requested that the installation of levees, flood walls, sea

[326] *See* Pub. L. No. 117-58, § 40909(a)—(b) (Nov. 15, 2021).
[327] *See id.* § 40909(c).

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 and sewer projects under the ARPA, as discussed above.

Irrigation

Public Comment: Some commenters requested that irrigation projects be an eligible use because they consider such projects to be critical infrastructure. Several commenters supported this request by noting that irrigation systems may be used to replenish aquifers and recharge wells, in addition to delivering water for irrigation. One commenter also noted that the national irrigation system is antiquated and in need of repair.

Treasury Response: Some irrigation projects were eligible under the interim final rule and continue to be eligible under the final rule as a result of their inclusion as eligible projects under the CWSRF. For example, water efficient irrigation equipment that reduces the runoff of nutrients and implements a management program established under section 319 of the CWA and/or a conservation and management plan under section 320 of the CWA are eligible uses

under the CWSRF and therefore continue to be an eligible use of SLFRF funds under the final rule. Likewise, projects to receive and distribute reclaimed water for irrigation systems or other agricultural use are eligible under the CWSRF and therefore continue to be an eligible use under the final rule. Unlike projects for the improvement of irrigation systems generally, these reclaimed water projects are related to wastewater treatment and stormwater management, which are within the scope of the meaning of water and sewer infrastructure for purposes of ARPA.

Treasury considered commenter requests for inclusion of additional irrigation infrastructure and determined that irrigation projects more generally are not permitted under the final rule. Although these types of projects may be water-related infrastructure, they are not the sort of generally-provided essential services included within the meaning of water and sewer projects under ARPA, as discussed above.

Consumer Incentive Programs

Public Comment: One commenter requested that consumer incentive programs in the areas of water use efficiency, conservation, green infrastructure, reuse, and other distributed solutions be an allowable use of SLFRF.

Treasury Response: The DWSRF and CWSRF eligibilities include the development and implementation of incentive and educational programs that address and promote water conservation, source water protection, and efficiency related to infrastructure improvements, e.g., incentives such as rebates to install green infrastructure such as rain barrels or promote other water conservation activities. Treasury clarifies that such project types were eligible under the interim final rule and continue to be eligible under the final rule.

2. BROADBAND INFRASTRUCTURE

Under the ARPA, recipient governments may use SLFRF funds to make "necessary investments in…broadband infrastructure." In the Supplementary Information to the interim final rule, Treasury interpreted necessary investments in infrastructure as investments "designed to provide an adequate minimum level of service and [that] are unlikely to be made using private sources of funds." Treasury explained that, with respect to broadband specifically, such necessary investments include projects that "establish [] or improve [] broadband service to underserved populations to reach an adequate level to permit a household to work or attend school, and that are unlikely to be met with private sources of funds."

Summary of Interim Final Rule, Public Comments, and Treasury Response

Summary of Interim Final Rule: In implementing the ARPA, the interim final rule provided that eligible broadband infrastructure investments are limited to those that are designed to provide service to unserved or underserved households or businesses, defined as those that lack access to a wireline connection capable of reliably delivering at least minimum speeds of 25 Mbps download and 3 Mbps upload. The interim final rule also provided that eligible projects under the SLFRF are limited to those that are designed to deliver, upon project completion, service that reliably meets or exceeds symmetrical upload and download speeds of 100 Mbps. In instances where it would not be practicable for a project to deliver such service speeds because of the geography, topography, or excessive costs associated with such a project, the interim final rule provided that the project would be required to be designed to deliver, upon project completion, service that reliably meets or exceeds 100 Mbps download speed and between at

least 20 Mbps and 100 Mbps upload speeds and be scalable to a minimum of 100 Mbps symmetrical for download and upload speeds.

In addition, Treasury, in the Supplementary Information to the interim final rule, encouraged recipients to pursue a number of other objectives. First, Treasury encouraged recipients to prioritize investments in fiber-optic infrastructure wherever feasible and focus on projects that deliver a physical broadband connection by prioritizing projects that achieve last-mile connections. Second, Treasury encouraged recipients to integrate affordability options into their program design. Third, Treasury encouraged recipients to prioritize support for local networks owned, operated, or affiliated with local governments, nonprofits, and cooperatives. Fourth, Treasury encouraged recipients to avoid investing in locations with existing agreements to build reliable wireline service with minimum speeds of 100 Mbps download and 20 Mbps upload by December 31, 2024, in order to avoid duplication of efforts and resources. Finally, following release of the interim final rule, Treasury provided further guidance clarifying some aspects of broadband infrastructure eligibility, specifically on flexibility for recipients to determine eligible areas to be served,[328] middle-mile projects,[329] pre-project development costs,[330] broadband connections to schools or libraries,[331] and the applicability of the National Environmental Policy Act (NEPA) and the Davis-Bacon Act.[332]

Summary of Public Comments: Treasury received several comments on the interim final rule's requirements regarding eligible areas for investment and build-to speed standards, as well as Treasury's encouragements in the Supplementary Information of the interim final rule. Many

[328] *See FAQ 6.8, 6.9, 6.11.* Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.
[329] *See FAQ 6.10. Id.*
[330] *See FAQ 6.12. Id.*
[331] *See FAQ 6.16. Id.*
[332] *See FAQ 6.4, 6.17. Id.*

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 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 C.F.R. 200.216 and 2 C.F.R. 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, the final rule incorporates guidance issued by Treasury following the interim final rule on middle-mile projects,[333] pre-project development costs,[334] broadband connections to schools or libraries,[335] and applicability of the National Environmental Policy Act (NEPA) and Davis-Bacon Act.[336]

The remainder of this section provides additional details on the final rule. Specifically, these sections address: (1) eligible areas for investment; (2) build-to speed standards; (3) affordability; (4) public networks; (5) duplication of efforts and resources; (6) cybersecurity; and (7) use of funds to meet non-federal match under the Infrastructure Investment and Jobs Act.

Eligible Areas for Investment

The interim final rule limited eligible broadband investments to projects focused on delivering service to unserved or underserved locations, defined as households or businesses that lack access to a wireline connection capable of reliably delivering at least minimum speeds of 25 Mbps download and 3 Mbps upload. This targeted approach was generally consistent with certain speed thresholds used in other federal programs to identify eligible areas for federal investment in broadband infrastructure, such as the FCC's Rural Digital Opportunity Fund (RDOF) program and the National Telecommunication and Information Administration's (NTIA's) Broadband Infrastructure Program, and generally aligns with the FCC's benchmark for an "advanced telecommunications capability" for wireline broadband services.

[333] *See FAQ 6.10*. Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.
[334] *See FAQ 6.12*. *Id.*
[335] *See FAQ 6.16*. *Id.*
[336] *See FAQ 6.4, 6.17*. *Id.*

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[337] was too 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.

[337] In the remainder of this Supplementary Information, "25/3 Mbps" refers to broadband infrastructure that is designed to reliably meet or exceed at least 25 Mbps download speeds and 3 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.

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 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 "reliabl[e]" connection, including providing details as to latency, jitter, and other technical specifications that would meet that standard, and what it means for certain

technologies, such as copper and other outdated technologies, to be deemed presumptively unreliable.

Other commenters supported the interim final rule's approach on eligible areas for investment or suggested tightening eligibility even further. They argued that higher speed thresholds beyond 25/3 Mbps would likely lead to investments in or building of new broadband infrastructure in areas already served by broadband at speeds these commenters considered sufficient; these areas, commenters suggested, are less in need of federal assistance and permitting investments here could divert funding away from rural areas to more densely populated areas.

Treasury Response: The final rule expands eligible areas for investment by requiring recipients to invest in projects designed to provide service to households and businesses with an identified need for additional broadband infrastructure investment. Recipients have flexibility to identify a need for additional broadband infrastructure investment: examples of need include lack of access to a connection that reliably meets or exceeds symmetrical 100 Mbps download and upload speeds, lack of affordable access to broadband service, or lack of reliable broadband service. Recipients are encouraged to prioritize projects that are designed to provide service to locations not currently served by a wireline connection that reliably delivers at least 100 Mbps of download speed and 20 Mbps of upload speed, as many commenters indicated that those without such service constitute hard-to-reach areas in need of subsidized broadband deployment.

Households and businesses with an identified need for additional broadband infrastructure investment do not have to be the only ones in the service area served by an eligible broadband infrastructure project. Indeed, serving these households and businesses may require a

holistic approach that provides service to a wider area, for example, in order to make ongoing service of certain households or businesses within the service area economical.

Consistent with further guidance issued by Treasury,[338] in determining areas for investment, recipients may choose to consider any available data, including but not limited to documentation of existing broadband internet service performance, federal and/or state collected broadband data, user speed test results, interviews with community members and business owners, reports from community organizations, and any other information they deem relevant.

In evaluating such data, recipients may take into account a variety of factors, including whether users actually receive internet service at or above the speed thresholds at all hours of the day, whether factors other than speed such as latency, jitter, or deterioration of the existing connections make their user experience unreliable, and whether the existing service is being delivered by legacy technologies, such as copper telephone lines (typically using Digital Subscriber Line technology) or early versions of cable system technology (DOCSIS 2.0 or earlier),[339] and other factors related to 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

[338] *See FAQ 6.11*. Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.

[339] Legacy technologies such as copper telephone lines (typically using Digital Subscriber Line technology) and early versions of cable system technology (DOCSIS 2.0 or earlier) typically lag on speeds, latency, and other factors, as compared to more modern technologies like fiber-optic. *See, e.g.*, https://www.fcc.gov/sites/default/files/tech_transitions_network_upgrades_that_may_affect_your_service.pdf (comparing copper to fiber and noting that copper wire networks have "limited speeds," are "susceptible to signal interference/loss," and have a "relatively short life"); https://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).

offer broadband at a given speed is not dispositive.

Build-to Speed Standards

The interim final rule provided that a recipient may use funds to make investments in broadband infrastructure that is designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds. In cases where it is not practicable, because of the excessive cost of the project or the geography or topography of the area to be served by the project, eligible projects may be designed to reliably meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed, so long as it is scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed. Relatedly, Treasury in the Supplementary Information to the interim final rule encouraged recipients to prioritize investments in fiber-optic infrastructure wherever feasible and to prioritize projects that achieve last-mile connections.

Public Comment: Many commenters discussed the advantages of setting minimum symmetrical download and upload speeds of reliable 100 Mbps as the speed threshold for new projects. Some commenters indicated support for the interim final rule's standard as it takes into account growing demands on internet use resulting from pandemic broadband usage and suggested that such a standard will help to ensure that networks built with SLFRF funds remain valuable for years to come, even as demands continue to accelerate, particularly on upload speeds. Some also indicated that the interim final rule standard has the effect of prioritizing the use of fiber-optic infrastructure to deliver such speeds, which some noted was a “gold standard” future-proof technology, although some commenters noted that other technologies like fixed wireless have been shown to deliver such speeds in certain circumstances.

Other commenters suggested that 100 Mbps symmetrical speeds were unnecessary given current broadband usage needs and that such high standards may have the potential to slow down expansion to unserved or underserved rural areas. Some argued that setting this symmetrical threshold may limit the type of technologies that can be used, thereby decreasing competition and limiting flexibility to recipients whose communities might be better served by technologies such as wireless solutions or inexpensive gap networks. Commenters suggested alternate minimum speeds, ranging from 25/3 Mbps (which some argued best balances reaching all communities and maximizing the impact of federal funds) to 100/20 Mbps (which some argued best serves the typical broadband usage patterns of households and businesses, including new pandemic-driven needs). A few commenters suggested a higher minimum speed, such as gigabit speeds, advocating that such speeds were necessary for a network to last at least a decade.

Many commenters supported the interim final rule's lower speed standards for projects where it is impracticable to meet minimum reliable speeds of 100 Mbps symmetrical, as it provides flexibility for recipients to invest in hard-to-reach areas, such as those in mountainous regions. A few commenters indicated that Treasury should more clearly define the characteristics of a location eligible for this exception. Some indicated that the minimum standard for all new projects should be 100 Mbps symmetrical. In contrast, others argued that scalability to 100 Mbps symmetrical should not be a requirement to meet today’s demands, particularly in hard-to-reach areas.

Some commenters requested that Treasury clarify eligibility for middle-mile projects as these projects potentially provide connectivity to far-reaching areas, while other commenters suggested that last-mile projects generally require more capital investment and are therefore most in need of government support.

Treasury Response: The final rule maintains the interim final rule's requirement that eligible projects be designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds, with the interim final rule's exception for projects where it is impracticable to build to such speeds due to excessive cost, geography, or topography of the area to be served by the project. Given the build time associated with broadband infrastructure projects, these standards will enable SLFRF funds to fund lasting infrastructure that will be able to accommodate increased network demand once the network is complete,[340] while providing flexibility for certain locations to meet lower speed standards where 100 Mbps symmetrical speeds are impracticable.

To illustrate the accelerating need for higher upload speeds, by one measure, mean upload speeds as of October 2021 increased to 75.21 Mbps as compared to 62.11 Mbps a year earlier.[341] Jurisdictions are increasingly responding to the growing demands of their communities for high speeds; for example, Illinois requires 100 Mbps symmetrical service as the construction standard for their state broadband grant programs. The 100 Mbps symmetrical standard accounts for increased pandemic internet usage and provides adequate upload speeds for individuals and businesses to accommodate interactive applications such as virtual learning and videoconferencing, while also helping ensure that funding is responsibly used to provide a true and lasting benefit for years to come. Treasury continues to encourage recipients to prioritize investments in fiber-optic infrastructure wherever feasible, as such advanced technology enables the next generation of application solutions for all communities and is capable of delivering

[340] Using the Federal Communications Commission (FCC) Broadband Speed Guide, a household with two telecommuters and two to three remote learners today are estimated to need 100 Mbps download to work simultaneously. *See* Federal Communications Commission, Broadband Speed Guide, available at https://www.fcc.gov/consumers/guides/broadband-speed-guide (last visited October 28, 2021).
[341] United States' Mobile and Broadband Internet Speeds—Speedtest Global Index, available at https://www.speedtest.net/global-index/united-states#fixed.

superior, reliable performance and is generally most efficiently scalable to meet future needs.[342] In designing these projects, recipients should ensure that the broadband infrastructure provides "reliable" service at required speeds and are not required to rely on providers' advertised speeds in their assessments.

Consistent with further guidance issued by Treasury,[343] while recipients are permitted to make investments in "middle-mile" connections that otherwise satisfy the requirements of the final rule, Treasury continues to encourage recipients to focus on 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

[342] Bennett Cyphers, The Case for Fiber to the Home, Today: Why Fiber is a Superior Medium for 21st Century Broadband, Electronic Frontier Foundation (October 16, 2019), https://www.eff.org/wp/case-fiber-home-today-why-fiber-superior-medium-21st-century-broadband.
[343] *See FAQ 6.10*, Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.

affordability when determining whether an area is unserved or underserved by broadband. Some commenters indicated that the final rule should allow for the construction of broadband networks in low-income neighborhoods including low-cost or no-cost gap networks, even in areas with existing service at the speeds required under the interim final rule. Other commenters voiced support for direct subsidies to low-income communities to afford broadband service, which would provide additional incentives for providers to serve these communities.

Treasury Response: In response to many commenters that highlighted the importance of affordability in providing meaningful access to necessary broadband infrastructure, the final rule provides additional requirements to address the affordability needs of low-income consumers in accessing broadband networks funded by SLFRF. Recipients must require the service provider for a completed broadband infrastructure investment project that provides service to households to:

- Participate in the Federal Communications Commission's (FCC) Affordable Connectivity Program (ACP); or
- Otherwise provide access to a broad-based affordability program to low-income consumers in the proposed service area of the broadband infrastructure that provides benefits to households commensurate with those provided under the ACP.

Recipients must require providers to participate in or provide access to these programs through the life of the ACP. This requirement will no longer apply once the SLFRF-funded broadband infrastructure is no longer in use.

Furthermore, Treasury also recognizes the importance of affordable broadband access for all consumers beyond those that are low income. As part of their project selection process, recipients are encouraged to consult with the community on the general affordability needs of the

target markets in the proposed service area. Additionally, recipients are encouraged to require that services provided by a broadband infrastructure project include at least one low-cost option offered without data usage caps at speeds that are sufficient for a household with multiple users to simultaneously telework and engage in remote learning. Treasury will require recipients to report speed, pricing, and any data allowance information as part of their mandatory reporting to Treasury.

Further, Treasury is clarifying that, as a response to the public health and negative economic impacts of the pandemic, recipients may provide households and communities impacted by the pandemic with subsidies to help pay for internet service, digital literacy programs, broadband adoption programs, and device programs that provide discounted or no-cost devices for low-income households to access the internet. For further discussion of this eligible use category, see the section Internet Assistance in Assistance to Households in Public Health and Negative Economic Impacts.

Public Networks

The interim final rule encouraged recipients to prioritize support for local networks owned, operated, or affiliated with local governments, nonprofits, and cooperatives.

Public Comment: Many commenters voiced their support for Treasury's encouragement that recipients work with governmental or community entities to establish local networks, arguing that they have been shown to effectively provide broadband access to areas that would otherwise be left with unaffordable or insufficient service. These commenters suggested that, since these entities are less driven by financial returns to investment than private providers, in

some circumstances they may be able to provide robust service at a lower price as compared to private providers, along with potentially increasing local competition in a service area.

Other commenters argued against Treasury's encouragement, remarking that private businesses have a robust track record of serving hard-to-reach customers. These commenters argued that commercial providers have greater technical and operational expertise in deploying and operating broadband networks and may be able to construct broadband networks with greater efficiency. Additionally, some commenters argued that providing what they considered an unfair competitive advantage for government- or community-owned or operated networks may hurt consumers over time.

Treasury Response: The final rule maintains the interim final rule's encouragement for recipients to prioritize support for broadband networks owned, operated by, or affiliated with local governments, nonprofits, and cooperatives, given that these networks have less pressure to generate profits and a commitment to serve entire communities.[344] This encouragement provides flexibility for recipients to select providers that best fit their needs, while noting the critical role that networks owned, operated, or affiliated with local governments and community organizations can play in providing sufficient coverage, affordable access, or increased competition in the broadband sector.

Duplication of Efforts and Resources

Public Comment: Some commenters raised concerns that Treasury's encouragement in the interim final rule that recipients avoid funding projects in locations with an existing

[344] The Executive Office of the President, Community-Based Broadband Solutions (January 2015), https://obamawhitehouse.archives.gov/sites/default/files/docs/community-based_broadband_report_by_executive_office_of_the_president.pdf

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, 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 C.F.R. Part 200, 2 C.F.R. 200.216 implements certain provisions of the NDAA and contains prohibitions on the use of federal financial assistance to procure or obtain certain telecommunications and video surveillance services or equipment provided or produced by designated entities, including certain entities owned or controlled by the People's Republic of China. In addition, 2 C.F.R. 200.471 provides that certain telecommunications and video surveillance costs associated with 2 C.F.R. 200.216 are unallowable.

Further, the final rule allows for modernization of cybersecurity for existing and new broadband infrastructure as an eligible use under sections 602(c)(1)(D) and 603(c)(1)(D) as such investments are necessary for the reliability and resiliency of broadband infrastructure.[345] Recipients may provide necessary investments in cybersecurity, including modernization of hardware and software, for existing and new broadband infrastructure regardless of their speed delivery standards. The final rule maintains the interim final rule's provision that allows for

[345] For more on the importance of cybersecurity to the reliability and resiliency of broadband networks, see: Federal Communications Commission, https://docs.fcc.gov/public/attachments/FCC-10-63A1.doc; Brookings Institute, Protecting the Cybersecurity of America's Networks (February 11, 2021), https://www.brookings.edu/blog/techtank/2021/02/11/protecting-the-cybersecurity-of-americas-networks/.

broader modernization of cybersecurity, including hardware, software, and protection of critical infrastructure as an eligible provision of government services, to the extent of revenue loss due to the pandemic, under sections 602(c)(1)(C) and 603(c)(1)(C).

Use of Funds to Meet Non-federal Match under the Infrastructure Investment and Jobs Act

The Infrastructure Investment and Jobs Act specifies that, except as otherwise provided, an entity using funding under section 60102 of the law for broadband deployment "shall provide, or require a subgrantee to provide, a contribution, derived from non-Federal funds (or funds from a Federal regional commission or authority) . . . of not less than 25 percent of project costs."[346] It further states that the matching contribution may include funds provided to an eligible entity or subgrantee under the American Rescue Plan Act for the purpose of deployment of broadband service, which includes funds provided under the SLFRF program.

SLFRF and the program established under section 60102 of the Infrastructure Investment and Jobs Act are separate programs with separate requirements. While section 60102 allows states and other eligible entities to use SLFRF funds as the source of matching funds for broadband deployment, the requirements of the SLFRF program still apply. As such, recipients that use SLFRF funds to meet the section 60102 matching requirement will continue to be subject to the requirements of the SLFRF program.

[346] *See* Infrastructure Investment and Jobs Act, Pub. L. No. 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[347]), 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[348] 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.

[347] In this sub-section, "recipient governments" refers only to states and territories. In other sections, "recipient governments" refers more broadly to eligible governments receiving funding from the SLFRF.
[348] For brevity, this phrase is referred to as "changes in law, regulation, or interpretation" for the remainder of this Supplementary Information.

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 argued that the generous amount of SLFRF funds provided to those governments gave recipient governments little choice as to whether to accept the SLFRF funds and, as a result, the offset provision is coercive. In describing these concerns and arguments, several of these commenters referenced litigation regarding the offset provision.[349] Many of these commenters also expressed concern regarding the interim final rule's implementation of the offset provision. Some of these commenters argued that Treasury lacked the authority to implement the provision, asserting that the significance of the provision required Congress to make an explicit delegation of rulemaking authority and provide clearer principles by which Treasury should implement the provision. Finally, one commenter argued that the offset provision should only apply if the recipient expressly and intentionally uses SLFRF funds to offset a reduction in revenue, arguing that the term "offset" implies a deliberate use SLFRF funds to "pay for" a tax cut.

[349] *See*, *e.g.*, State of West Virginia v. U.S. Department of the Treasury, No. 7:21-cv-00465-LSC, 2021 WL 2952863 (N.D. Ala. Jul. 14, 2021); State of Ohio v. Yellen, No. 1:21-cv-181, 2021 WL 2712220 (S.D. Ohio Jul. 1, 2021).

As discussed in the interim final rule, the offset provision does not prevent a recipient government from enacting a broad variety of tax changes. Rather, the offset provision prevents a recipient government from using SLFRF funds to offset a revenue reduction resulting from a tax cut. A recipient government would only be considered to have used SLFRF funds to offset a reduction in net tax revenue resulting from changes in law, regulation, or interpretation if, and to the extent that, the recipient government could not identify sufficient funds from sources other than SLFRF funds to offset the reduction in net tax revenue. Only if sufficient funds from other sources cannot be identified to cover the full cost of the reduction in net tax revenue resulting from changes in law, regulation, or interpretation, will the remaining amount not covered by these sources be considered to have been offset by SLFRF funds, in contravention of the offset provision. Consistent with the statutory text, the approach taken in the interim final rule recognizes that, because money is fungible, even if SLFRF funds are not explicitly or directly used to cover the costs of changes that reduce net tax revenue, those funds may be used in a manner inconsistent with the statute by indirectly being used to substitute for the state's or territory's funds that would otherwise have been needed to cover the costs of the reduction. As discussed below, the scope of changes in law, regulation, or interpretation is further limited to those that the recipient government voluntarily enacted during the covered period.

Congress has the authority under the Spending Clause in Article I, section 8 of the Constitution to specify the permissible and impermissible uses of federal grants. The Supreme Court has repeatedly "upheld Congress's authority to condition the receipt of funds on the States' complying with restrictions on the use of those funds, because that is the means by which

Congress ensures that the funds are spent according to its view of the 'general Welfare.'"[350] "The power to keep a watchful eye on expenditures … is bound up with congressional authority to spend in the first place."[351] Assertions that the amount of SLFRF funds are sufficiently large to be coercive are inconsistent with the Supreme Court's reasoning in *NFIB*, which distinguished between conditions placed on new federal funds and conditions placed on existing federal funds and not based on the size of funds.[352] Further, the conditions placed on the use of SLFRF funds under the ARPA – both the eligible uses and additional limitations on deposits into pension funds and the offset provision – were well known to recipient governments prior to recipient governments requesting to receive SLFRF funds. Finally, the ARPA provides Treasury with the express authority "to issue such regulations as may be necessary or appropriate to carry out" section 602, which includes the offset provision.

A number of commenters expressed concern regarding the burden associated with complying with the offset provision and the interim final rule. Similarly, other commenters argued that the framework provided in the interim final rule complicated implementation of the offset provision. Treasury took several steps to minimize burden for recipient governments in the interim final rule. For example, the interim final rule incorporates the types of information and modeling already used by states and territories in their own fiscal and budgeting processes. By incorporating existing budgeting processes and capabilities, states and territories will be able to assess and evaluate the relationship of tax and budget decisions to uses of SLFRF funds based on

[350] National Fed'n of Indep. Bus. v. Sebelius (NFIB), 567 U.S. 519, 580 (2012) (plurality opinion); see, e.g., South Dakota v. Dole, 483 U.S. 203, 206-208 (1987); Gruver v. Louisiana Bd. of Supervisors for Louisiana State Univ. Agric. & Mech. Coll., 959 F.3d 178, 183 (5th Cir.), cert. denied, 141 S. Ct. 901 (2020). For additional discussion of these issues, *see, e.g.*, Brief Reply for Appellants, Ohio v. Yellen, No. 21-3787 (6th Cir. Oct. 26, 2021).
[351] *Sabri v. United States*, 541 U.S. 600, 608 (2004).
[352] The new federal funds offered by the Affordable Care Act totaled $100 billion per year. Even the dissenting Justices agreed that "Congress could have made just the new funding provided under the ACA contingent on acceptance of the terms of the Medicaid Expansion," although they disagreed with the majority about whether that funding condition was severable. NFIB at 687-688 (joint dissent).

information they likely have or can readily obtain. This approach ensures that recipient governments have the information they need to understand the implications of their decisions regarding the use of SLFRF funds—and, in particular, whether they are using the funds to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or interpretation, making the funds potentially subject to recoupment. To further reduce burden, Treasury is considering whether the scope of reporting requirements can be further tailored.

As described in greater detail below, Treasury is finalizing its implementation of the offset provision largely without change. This approach is consistent with the text of the ARPA. The remainder of this section discusses and responds to comments on specific aspects of the framework.

1. *Definitions*

Covered change. The offset provision is triggered by a reduction in net tax revenue resulting from "a change in law, regulation, or administrative interpretation." Consistent with this language, the interim final rule defines a "covered change" to include any final legislative or regulatory action, a new or changed administrative interpretation, and the phase-in or taking effect of any statute or rule where the phase-in or taking effect was not prescribed prior to the start of the covered period. Thus, the offset provision applies only to actions for which the change in policy occurs during the covered period; it excludes regulations or other actions that implement a change or law substantively enacted prior to March 3, 2021. For example, covered changes do not include a change in rate that is triggered automatically and based on statutory or

regulatory criteria in effect prior to the covered period.[353] Changed 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

[353] For example, a state law that sets its earned income tax credit (EITC) at a fixed percentage of the federal EITC will see its EITC payments automatically increase—and thus its tax revenue reduced—because of the federal government's expansion of the EITC in the ARPA *See, e.g.*, Tax 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).

Treasury clarify whether covered changes must be broad-based policies or whether administrative decisions applicable to individuals would be considered covered changes.

Treasury Response: Section 602(c)(2)(A) applies to any change that "reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise or delays the imposition of any tax or tax increase." Accordingly, and consistent with this statutory text, the final rule applies to covered changes that reduce any tax, which can include tax abatements, but does not apply to loans, grants, or other types of interventions that do not reduce tax revenue.[354] In addition, by including changes in regulation or administrative interpretation, in addition to changes in law, within the scope of the offset provision, the ARPA recognizes that a recipient government may make a covered change through its legislature or may delegate the authority to make a covered change including, but not limited to, to a sub-unit of government. Treasury has revised the definition of "covered change" in the final rule using the statutory language above to make clear that the offset provision only applies to such changes in law, regulation, or administrative interpretation. With respect to the question of whether covered changes could include administrative decisions applicable to individuals, as discussed above, a covered change includes a change in law, regulation, or administrative interpretation that reduces any tax. Such changes may apply to one or more individuals or entities, provided that – consistent with the statutory text – they result from a change in law, regulation, or administrative interpretation.

Prior enactment and phase-in.

Public Comment: A number of commenters expressed concern, or requested clarification, regarding changes that were enacted prior to the covered period but take effect or phase-in during the covered period. Several commenters argued that the definition of covered change

[354] Assistance must be consistent with eligible uses of SLFRF funds. *See* section Eligible Uses of this Supplementary Information.

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[355] and including other changes over the past several years. Regardless of the particular method of conformity and the effect on net tax revenue, Treasury views such changes as permissible under the offset provision.

Accordingly, and for the reasons discussed above, Treasury is maintaining the definition of covered change without change.

Tax revenue. The interim final rule's definition of "tax revenue" is based on the Census Bureau's definition of taxes, used for its Annual Survey of State Government Finances.[356] It provides a consistent, well-established definition with which states and territories will be familiar and is consistent with the approach taken in section Revenue Loss of this Supplementary Information describing the implementation of sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act regarding revenue loss. A number of commenters expressed concern and requested clarification regarding the definition of "tax revenue." These comments and responses are discussed in section Revenue Loss of this Supplemental Information and, for the reasons discussed above, Treasury is finalizing the definition of tax revenue without change and maintaining a consistent definition of "tax revenue."[357]

Baseline. For purposes of measuring a reduction in net tax revenue, the interim final rule measures actual changes in tax revenue relative to a revenue baseline (baseline). The baseline is calculated as fiscal year 2019 (FY 2019) tax revenue indexed for inflation in each year of the

[355] *See* Statement on State Fiscal Recovery Funds and Tax Conformity, April 7, 2021, available at https://home.treasury.gov/news/press-releases/jy0113.
[356] U.S. Census Bureau, Annual Survey of State and Local Government Finances Glossary, https://www.census.gov/programs-surveys/state/about/glossary.html (last visited Apr. 30, 2021).
[357] As discussed in section Revenue Loss of this Supplementary Information, for purposes of measuring revenue lost due to the pandemic under sections 602(c)(1)(C) and 603(c)(1)(C), recipients must adjust the amount of revenue lost to reflect changes that resulted from a tax increase or decrease. These adjustments do not apply to or affect the definition of tax revenue.

covered period, with inflation calculated using the Bureau of Economic Analysis's Implicit Price Deflator.[358]

Public Comment: Some commenters expressed concern regarding the choice of FY 2019 as the baseline, arguing that the choice lacked justification and would make the offset provision more restrictive as applied to recipient governments that experienced a decline in revenue independent of making any covered changes.

Treasury Response: Measuring a "reduction" in net tax revenue requires identification of a baseline. In other words, a "reduction" can be assessed only by comparing two amounts. The Act defines "covered period" to begin on March 3, 2021, and thus the baseline year must end prior to March 3, 2021. As discussed in the interim final rule, FY 2019 is the last full fiscal year prior to the COVID-19 public health emergency, and thus is consistent with the statutory definition and does not include the extraordinary effects of the pandemic that began in 2020. Further, as discussed above, the interim final rule recognizes three potential ways that a recipient government may offset or "pay for" a reduction in net tax revenue due to a covered change: increases in taxes, decreases in spending, and organic revenue growth. U.S. gross domestic product rebounded to exceed its pre-pandemic level in 2021,[359] suggesting that an FY 2019 pre-pandemic baseline is a reasonable comparator for future revenue levels and provides recipients with flexibility to identify organic growth as a permissible offset. Finally, this baseline year is consistent with the approach directed by sections 602(c)(1)(C) and 603(c)(1)(C), which identify

[358] U.S. Department of Commerce, Bureau of Economic Analysis, GDP Price Deflator, https://www.bea.gov/data/prices-inflation/gdp-price-deflator (last visited Apr. 30, 2021). The FY 2019 baseline revenue is adjusted annually for inflation to allow for direct comparison of actual tax revenue in each year (reported in nominal terms) to baseline revenue in common units of measurement; without inflation adjustment, each dollar of reported actual tax revenue would be worth less than each dollar of baseline revenue expressed in 2019 terms.

[359] Economy Statement by Catherine Wolfram, Acting Assistant Secretary for Economy Policy, for the Treasury Borrowing Advisory Committee November 1, 2021 (Nov. 1, 2021), *available at* https://home.treasury.gov/news/press-releases/jy0453.

the "most recent full fiscal year of the [state, territory, or Tribal government] prior to the emergency" as the comparator for measuring revenue loss. For these reasons, Treasury is finalizing the definition of "baseline" without change.

The interim final rule includes several other definitions that are applicable to the implementation of the offset provision, such as the term "reporting year."[360] Commenters did not express concern regarding other definitions in the interim final rule.

2. *Framework*

The interim final rule provides a step-by-step framework, to be used in each reporting year, to determine whether a state or territory used SLFRF funds to offset a reduction in net tax revenue. Consistent with section 602(c)(2) and the interim final rule, the final rule applies to states and territories:

(1) *Covered changes that reduce tax revenue.* Under the interim final rule, a recipient government identifies and values covered changes that the recipient government predicts will have the effect of reducing tax revenue in a given reporting year, similar to the way it would in the ordinary course of its budgeting process. The interim final rule states that the value of these covered changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, that aligns with the recipient government's existing approach for measuring the effects of fiscal policies, and that measures these effects relative to a current law baseline. If the recipient would prefer, the covered changes may also be reported based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s), relative to the current law baseline prior to the

[360] One commenter requested clarification that references to fiscal year refer to the fiscal year of the recipient. "Reporting year" is defined in the interim final rule and final rule to mean "a single year or partial year within the covered period, aligned to the current fiscal year of the State or Territory during the covered period."

change(s).[361] Further, estimation approaches may not use dynamic methodologies that incorporate the projected effects of macroeconomic growth because macroeconomic growth is accounted for separately in the framework.

Estimation.

Public Comment: A number of commenters expressed concern that estimating the value of covered changes required a number of assumptions and that the actual effects of covered changes on tax revenue would be difficult to predict. Several commenters expressed support for the interim final rule's approach to dynamic scoring methodologies, and one commenter argued that the final rule should prohibit the use of prior cash balances in calculations of permissible tax cuts.

Treasury Response: Treasury recognizes that estimating the effects of covered changes requires assumptions and that many other factors influence the amount of tax revenue received. The interim final rule addresses these concerns in several ways. First, in general and where possible, reporting should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. This approach offers recipient governments the flexibility to determine their reporting methodology based on their existing budget scoring practices and capabilities. In addition, by relying on scoring methodologies that do not incorporate projected effects of macroeconomic growth, the estimation of the value of covered changes relies on fewer assumptions and thus provide greater consistency among states and territories. Finally, as discussed below, the interim final rule includes a de minimis threshold, below which the sum of covered changes will be deemed not to have any revenue-reducing effects.

[361] By permitting recipient governments to use actual or estimated values, the interim final rule and final rule provide flexibility to recipients and thus minimizes burden.

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 generally would not be able to offset a reduction in net tax revenue occurring after December 31, 2024.

For these reasons, Treasury is maintaining this element of the interim final rule without change.

(2) *In excess of the de minimis*. Under the framework established in the interim final rule, after establishing that a covered change occurred, the recipient government next calculates the total value of all covered changes in the reporting year resulting in revenue reductions, identified in Step 1. If the total value of the revenue reductions resulting from these changes is below the de minimis level, the recipient government is deemed not to have any revenue-reducing changes for the purpose of determining the recognized net reduction. If the total is above the de minimis level, the recipient government must identify sources of in-year revenue to cover the full costs of changes that reduce tax revenue. Under the interim final rule, the de minimis level is calculated as 1 percent of the reporting year's baseline.

Public Comment: Many commenters supported the inclusion of the de minimis, noting that the de minimis protects recipients from penalty resulting from minor or incidental changes, minimizes administrative burden, and enhances predictability of the application of the offset provision. Some commenters expressed concern that the fixed threshold could result in cliff effects.

Treasury Response: A clear de minimis threshold supports recipient governments' compliance with the offset provision. A de minimis level recognizes the inherent challenges and uncertainties that recipient governments face, and thus allows relatively small reductions in tax revenue without consequence. In other words, states and territories may make many small changes to alter the composition of their tax revenues or implement other policies with marginal effects on tax revenues. They may also make changes based on projected revenue effects that turn out to differ from actual effects, unintentionally resulting in minor revenue changes that are not fairly described as "resulting from" tax law changes. However, a de minimis does not automatically result in consequences under the offset provision, since a recipient government could demonstrate that other, non-SLFRF funds to offset a net reduction in tax revenue. Accordingly, any cliff effects associated with a clear de minimis threshold are mitigated by other aspects of the framework.

Public Comment: Commenters expressed a range of views regarding the amount of the de minimis. Some commenters argued that the de minimis was too generous, noting that the choice of 1 percent could, in some cases, permit reductions in net tax revenue of hundreds of millions of dollars. These commenters advocated that the de minimis be lowered (e.g., to 25 basis points) or be tied to a fixed amount. Other commenters argued that the choice of de minimis was not well

supported by the statute, advocated for a larger de minimis and suggested that the amount be tied to the recipient government's total expenditures in the prior fiscal year.

Treasury Response: Treasury adopted a de minimis threshold as an administrative accommodation for the reasons discussed above. As discussed in the interim final rule, Treasury determined that the 1 percent de minimis level reflects the historical reductions in revenue due to minor changes in state fiscal policies and was determined by assessing the historical effects of state-level tax policy changes in state EITCs implemented to effect policy goals other than reducing net tax revenues.[362]

For these reasons, Treasury is adopting the 1 percent de minimis without change.

(3) *Safe harbor.* Next, under the interim final rule, if the revenue reduction caused by the covered changes exceeds the 1 percent de minimis threshold, the recipient government compares the reporting year's actual tax revenue to the baseline. If actual tax revenue is greater than the baseline, Treasury will deem the recipient government not to have any recognized net reduction for the reporting year, and therefore to be in a safe harbor and outside the ambit of the offset provision. This approach is consistent with the ARPA, which contemplates recoupment of SLFRF funds only in the event that such funds are used to offset a reduction in net tax revenue. If net tax revenue has not been reduced, the offset provision does not apply. In the event that actual tax revenue is above the baseline, the organic revenue growth that has occurred, plus any other revenue-raising changes, by definition must have been enough to offset the in-year costs of any covered changes. One commenter argued that the offset for organic growth be adjusted to reflect population growth. To minimize administrative burden, and for the reasons discussed

[362] Data provided by the Urban-Brookings Tax Policy Center for state-level EITC changes for 2004-2017.

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 areas, and then using those state or territory funds to offset tax cuts. Such an approach helps ensure that SLFRF funds are not used to "indirectly" offset revenue reductions due to covered changes.

Department, agency, or authority.

Public Comment: Several commenters supported the interim final rule's approach to considering spending cuts at the department, agency, or authority level, on the basis that this approach is supported by the statutory language prohibiting SLFRF funds from being used to "directly or indirectly" offset a reduction in net tax revenue. On the other hand, some commenters argued that the methodology for identifying offsetting spending cuts was too restrictive; specifically, that measurement at the agency or department-level may not adequately account for the size and various programs that could occur in one agency or department. One commenter argued that recipient governments should instead be permitted to consider spending cuts on a more granular sub-unit of a department but noted that this additional flexibility would come at the cost of transparency and clarity.

Treasury Comment: Treasury recognizes that some recipients may vary in their budgeting processes, with some budgeting on a department level and others budgeting at more or less granular sub-units of government. Relying on spending at a department, agency, or authority level allows recipient governments to report how SLFRF funds have been spent using reporting units already incorporated into their budgeting process.

Spending cuts baseline.

Under the interim final rule, to calculate the amount of spending cuts that are available to offset a reduction in tax revenue, the recipient government must first consider whether there has been a reduction in total net spending, excluding SLFRF funds (net reduction in total spending). This approach ensures that reported spending cuts actually create fiscal space, rather than simply offset other spending increases. A net reduction in total spending is measured as the difference between total spending in each reporting year, excluding SLFRF funds spent, relative to total spending for the recipient's fiscal year ending in 2019, adjusted for inflation. Measuring reductions in spending relative to 2019 reflects the fact that the fiscal space created by a spending cut persists so long as spending remains below its original level, even if it does not decline further, relative to the same amount of revenue.

Public Comment: Several commenters expressed concern regarding the measurement of spending cuts relative to the recipient's FY 2019, for example arguing that the choice did not take into account increases in spending in 2020. As one commenter noted, the fiscal year 2020 required extraordinary intervention by recipient governments and the ongoing public health emergency continues to require extraordinary intervention.

Treasury Response: FY 2019 provides a reasonable and relatively generous baseline for considering spending because it is the last full fiscal year prior to the COVID-19 public health emergency and governments' extraordinary efforts to address the impact of the pandemic. This approach also aligns with the FY 2019 baseline for measuring revenue loss. Measuring spending cuts from year to year would, by contrast, not recognize any available funds to offset revenue reductions unless spending continued to decline, failing to reflect the actual availability of funds created by a persistent change and limiting the discretion of states and territories.

For the reasons discussed above, Treasury is adopting the approach taken in the interim final rule without change.

(5) *Identification of amounts subject to recoupment.* If a recipient government (i) reports covered changes that reduce tax revenue (Step 1); (ii) to a degree greater than the de minimis (Step 2); (iii) has experienced a reduction in net tax revenue (Step 3); and (iv) lacks sufficient revenue from other, permissible sources to pay for the entirety of the reduction (Step 4), then the recipient government will be considered to have used SLFRF funds to offset a reduction in net tax revenue, up to the amount that revenue has actually declined. That is, the maximum value of the reduction revenue due to covered changes that a recipient government must cover is capped at the difference between the baseline and actual tax revenue.[363] In the event that the baseline is above actual tax revenue but the difference between them is less than the sum of revenue reducing changes that are not paid for with other, permissible sources, organic revenue growth has implicitly offset a portion of the reduction. The revenue reduction cap implements this approach for permitting organic revenue growth to cover the cost of tax cuts.

Finally, a recipient government may request reconsideration of any amounts identified in a notice from Treasury as subject to recoupment under this framework. Comments and responses to the recoupment process are discussed in section Remediation and Recoupment of this Supplemental Information.

3. *Reporting*

To facilitate the implementation of the framework above, and in addition to reporting required on eligible uses, recipient governments are required to report certain information. The interim final rule indicated that Treasury would provide additional guidance at a later date and

[363] This cap is applied in section 35.8(c) of the final rule, calculating the amount of funds used in violation of the tax offset provision.

that, on an annual basis, it expected each recipient government would be required to provide the following information:

- Actual net tax revenue for the reporting year;
- Each revenue-reducing change made to date during the covered period and the in-year value of each change;
- Each revenue-raising change made to date during the covered period and the in-year value of each change; and
- Each covered spending cut made to date during the covered period, the in-year value of each cut, and documentation demonstrating that each spending cut is covered as prescribed under the interim final rule.

Since the adoption of the interim final rule, Treasury has provided guidance on reporting regarding eligible uses and has required recipient governments to indicate whether they have made covered changes and the value of such changes.[364]

Reporting burden.

Public Comment: Some commenters argued that the framework for identifying and reporting impermissible offsets was burdensome and that the burdens should be accounted for under Executive Order 13132 (Federalism, August 4, 1999).

Treasury Response: Taking into consideration comments received regarding burden, Treasury is considering a tiered approach to reporting on the offset provision. Specifically, under this approach, a recipient would only be required to report information to the extent needed to determine whether SLFRF funds had been used to offset a reduction in net tax revenue. For example, a recipient government would be required to report information regarding permissible

[364] *See* Reporting Guidance, Section C.11, available at https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf.

offsets only if it had also reported covered changes that were in excess of the de minimis and had reported a net reduction in tax revenue. Treasury will provide additional guidance and instructions on the reporting requirements at a later date.

As discussed in section Regulatory Analyses of this Supplemental Information, Treasury maintains that the final rule does not have federalism implications within the meaning of Executive Order 13132 (Federalism, August 4, 1999). In the ARPA, Congress requires states and territories to repay the Secretary for amounts used in violation of the prohibition on using SLFRF funds to offset reductions in net tax revenue, and it authorizes the Secretary to issue regulations to carry out this limitation and other requirements of the statute. Section 6(b) of Executive Order 13132 contemplates that certain regulations will be required by statute, as is the case with the interim final rule and the final rule, in which case section 6(b)(2)(B)'s requirement to include a federalism summary impact statement in the Supplementary Information to the regulation does not apply. Notwithstanding the above, Treasury has engaged in efforts to consult and work cooperatively with affected state, local, and Tribal government officials and associations in the process of developing the interim final rule.

Reporting transparency.

Public Comment: Several commenters argued that information supporting the net tax offset calculation should be publicly available. Some of these commenters requested that reporting be made available in a machine-readable format, and others advocated that recipient governments disclose this information on their local budget agency's website. These commenters argued that making information regarding tax changes publicly available would increase transparency and accountability. Further, several commenters suggested that Treasury provide a mechanism for citizens to register their concerns about particular tax actions.

Treasury Response: As discussed in other sections, reporting requirements promote transparency and accountability for the general public and constituents of recipient governments to understand how state, local, and Tribal governments have used SLFRF funds. Since the publication of the interim final rule, Treasury issued supplementary reporting guidance in the Compliance and Reporting Guidance and in the User Guide: Treasury's Portal for Recipient Reporting (User Guide), which addresses the particular content and form of required reporting. Treasury will continue to issue updated guidance prior to each reporting period clarifying any modifications to requested report content and will continue to consider how reporting can best support transparency and accountability while minimizing recipient administrative burden. Further, as discussed in the section Remediation and Recoupment, Treasury may address potential violations of this final rule based on both information submitted from recipients, either through quarterly reports or self-reporting, and from other sources of information (e.g., information submitted from the public).

2. DEPOSIT INTO PENSION FUNDS

Background: Subsection 602(c)(2)(B) of the Social Security Act provides that "[n]o State or territory may use funds made available under this section for deposit into any pension fund." Similarly, subsection 603(c)(2) of the Social Security Act provides that "[n]o metropolitan city, nonentitlement unit of local government, or county may use funds made available under this section for deposit into any pension fund."

For purposes of this restriction on pension deposits, the interim final rule defined deposit to mean "an extraordinary payment of an accrued, unfunded liability." The interim final rule also specified that a deposit does not include routine contributions made as part of a payroll

obligation, such as the normal cost component of a pension contribution or the component that consists of amortization of unfunded liabilities calculated by reference to the employer's payroll costs. The interim final rule applied the restriction on pension deposits to all recipients.

Public Comment: Several commenters observed that the statutory restriction on deposits into pension funds does not apply to Tribal governments.

Treasury Response: In response, Treasury is clarifying in the final rule that the pension restriction does not apply to Tribal governments.

Public Comment: Treasury also received a comment expressing concern that the interim final rule permitted recipients to make a larger than usual pension contribution, so long as the timing of that contribution aligns with the historical timing of contributions.

Treasury Response: The interim final rule prohibited the use of SLFRF funds from the ARPA to make extraordinary payments, and the Supplementary Information to the interim final rule said that a payment would be an extraordinary payment if it reduces a liability incurred prior to the start of the COVID-19 public health emergency and occurs outside the recipient's regular timing for making the payment. At the same time, however, as suggested by the comment Treasury received, a payment made at the regular time for pension contributions may very well be an extraordinary payment, for example, if it is larger than a regular payment would have been. Such a payment would be a restricted use.

Public Comment: Other commenters asked which pension contributions are permitted.

Treasury Response: To be an eligible use of SLFRF funds, a use must 1) be eligible under one of the eligible use categories and 2) not contravene any of the applicable restrictions on uses of funds. Some pension contributions may be eligible because they both fit within an eligible use category and do not contravene the restriction on deposits into pension funds (i.e.,

they are not an extraordinary payment of an accrued, unfunded liability). For example, payroll and covered benefits for public health and safety staff responding to COVID-19 are an eligible use of funds to respond to the public health and negative economic impacts of the pandemic; routine pension contributions as part of an employee's regular covered benefits are permissible under that eligible use category.

B. Other Restrictions on Use of Funds

1. Debt Service and Replenishing Financial Reserves

The Supplementary Information to the interim final rule provided that debt service is not an eligible use of funds either to respond to the public health emergency or its negative economic impacts or as a provision of government services to the extent of revenue loss.[365] The interim final rule also provided that replenishing financial reserves (e.g., rainy day funds) is not an eligible use of funds either to respond to the public health emergency or its negative economic impacts or as a provision of government services to the extent of revenue loss.[366]

As explained in greater detail below, Treasury, in the final rule, has retained these restrictions and is clarifying that these restrictions on the use of SLFRF funds apply to all eligible use categories.

[365] "[G]overnment services would not include interest or principal on any outstanding debt instrument, including, for example, short-term revenue or tax anticipation notes, or fees or issuance costs associated with the issuance of new debt. For the same reasons, government services would not include satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring in a judicial, administrative, or regulatory proceeding, except if the judgment or settlement required the provision of government services." 86 Fed. Reg. 26796-97 (May 17, 2021).

[366] "In addition, replenishing financial reserves (e.g., rainy day or other reserve funds) would not be considered provision of a government service, since such expenses do not directly relate to the provision of government services."

Public Comments

Several commenters suggested that debt service and reserve replenishment should qualify as the provision of a government service and be an eligible use of funds, up to the amount of revenue loss due to the pandemic. Many commenters indicated that they had been forced to borrow money or dip into reserve funds to continue providing government services during the public health emergency and that using SLFRF funds for resulting debt service or reserve replenishment costs should therefore be considered a government service.

Many comments from Tribal governments noted that their governments depend on revenue from Tribal enterprises to pay government debts and provide services. The comments suggest that it should be an eligible use of SLFRF to replace lost revenue from these enterprises that would typically be used to pay debt service costs. Other commenters argued that paying the interest or principal on debt should in some cases be considered provision of government services and an eligible use of funds as such expenditures facilitate the provision of government services.

Some commenters argued that debt costs or reserve drawdowns during the public health emergency constitute a negative economic impact to recipient governments, and thus debt service or reserve replenishment should be an eligible use to respond to that negative economic impact. For example, several commenters suggested that there should be a specific carve-out allowing the use of SLFRF funds for debt service on debt incurred for government services after January 27, 2020, the start of the public health emergency, or short-term debt incurred for this purpose. Others suggested that recipient governments should be able to service debt, up to the amount of debt incurred in direct response to the pandemic. These commenters generally

reasoned that the cost of responding to the public health emergency and its negative economic impacts prior to APRA's passage constitutes a negative economic impact of the pandemic.

Some commenters argued that the specific impacts of the pandemic on the travel, tourism, and hospitality sector had affected their ability to meet debt service costs. For example, some commenters explained that specific tax streams (e.g., hotel room taxes) or revenue sources (e.g., hospitality generally) are tied to specific debt instruments and that these revenue sources had declined during the public health emergency; commenters argued that this constitutes a negative economic impact that SLFRF funds should be permitted to address.

Finally, some commenters questioned why servicing debt incurred after March 3, 2021 for an otherwise eligible project (e.g., a broadband infrastructure project) would not be an eligible use of funds.

On the other hand, many commenters expressed support for the interim final rule's prohibition on use of funds for debt service and reserve replenishment. These commenters largely argued that SLFRF funds should be used to provide current services to communities in response to the public health emergency and that use of funds for debt service or reserve replenishment represented, respectively, payment for past costs or savings for potential future costs. In addition to the prohibition on debt service and reserve replenishment, some commentors suggested that the final rule should also prevent funds from being used for state UI trust fund replenishment or for paying off debt owed through UI trust funds. One commenter argued that Treasury should further restrict recipient governments, for example by preventing recipients from making cuts to an allowable budget item, filling the budget gap with SLFRF funds, and then using the savings from the initial cut for debt service or reserve replenishment.

Treasury Response

The final rule maintains the restriction on the use of funds for debt service or reserve replenishment for the reasons described below and clarifies that this restriction applies to all eligible use categories.

First, debt service and reserve replenishment costs do not constitute the provision of services to constituents. As noted in the interim final rule, financing expenses – such as issuance of debt or payment of debt service – do not provide services or aid to citizens. Similarly, contributions to rainy day funds and similar financial reserves constitute savings for future spending needs. As such, these expenses do not respond to the current and ongoing public health and negative economic impacts of the pandemic, nor do they provide a government service.

Second, payments from the SLFRF are intended to be used prospectively (see section Timeline for Use of SLFRF Funds). The interim final rule provided that funds may be used for costs incurred beginning on March 3, 2021, which Treasury has maintained in the final rule. Use of funds for debt service on indebtedness issued prior to March 3, 2021 necessarily entails using funds for costs incurred during prior time periods, rather than the present response to the public health emergency and its negative economic impacts or to provide government services.

Third, SLFRF funds provide recipients with substantial latitude to use funds to support the diverse needs in their communities. With SLFRF resources available, recipients have less need to incur debt for otherwise-eligible SLFRF uses.

Finally, given the strong performance of overall revenues and low municipal bond yields, state and local governments generally do not face high levels of fiscal stress. Limits on debt service or replenishment of reserves would not have a substantial impact on recipients' ability to provide services. The ratio of state and local debt-to-GDP, which spiked briefly during the

pandemic, has recovered to its pre-pandemic level and remains well below levels seen during the Great Recession.[367]

2. Settlements and Judgments

The interim final rule also provided that satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring in a judicial, administrative, or regulatory proceeding would not be an eligible use of funds to respond to the public health and negative economic impacts of the pandemic or as a government service provided under the revenue loss eligible use category. However, if the judgment or settlement requires the recipient to provide services that are otherwise eligible under an SLFRF eligible use category, specifically if the settlement or judgment requires the recipient to provide services to respond to the COVID-19 public health emergency or its negative economic impacts or to provide government services, then those costs are eligible uses of SLFRF funds. 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

[367] Table Z.1 of the Financial Accounts of the United States, Board of Governors of the Federal Reserve System, and Table 1.1.5 of National Income and Product Accounts, Bureau of Economic Analysis.

and Conditions, and application of the ARPA statute, applied under the interim final rule, and they continue to apply under the final rule.

A primary purpose of the SLFRF in the ARPA is to support efforts to stop the spread of COVID-19.[368] As discussed above, recipients of SLFRF funds are required to comply with the Award Terms and Conditions established for the use of such funds. The interim final rule and final rule implement this objective by, in part, providing that recipients may use SLFRF funds for COVID-19 mitigation and prevention.[369] See section Public Health in Public Health and Negative Economic Impacts.

The CDC has provided recommendations and guidelines to help mitigate and prevent COVID-19 and has identified vaccines and masks as two of the best tools to prevent the spread of COVID-19. The interim final rule and final rule help support recipients in stopping the spread of COVID-19 through these recommendations and guidelines. Consistent with the purpose of the ARPA and as implemented through the interim final rule and final rule, a recipient may not use SLFRF funds for a program, service, or capital expenditure that includes a term or condition that undermines efforts to stop the spread of COVID-19. A program or service that imposes conditions on participation or acceptance of the service that would undermine efforts to stop the spread of COVID-19 or discourage compliance with recommendations and guidelines in CDC guidance for stopping the spread of COVID-19 is not a permissible use of SLFRF funds.

In other words, recipients may not use funds for a program that undermines practices included in the CDC's guidelines and recommendations for stopping the spread of COVID-19. This includes programs that impose a condition to discourage compliance with practices in line with CDC guidance (e.g., paying off fines to businesses incurred for violation of COVID-19

[368] *See* Sec. 602(a)(1); 603(a)(1); 602(c)(1); 603(c)(1).
[369] *See* 35.6(b); IFR discussion of CDC guidelines.

vaccination or safety requirements), as well as programs that require households, businesses, nonprofits, or other entities not to use practices in line with CDC guidance as a condition of receiving funds (e.g., requiring that businesses abstain from requiring mask use or employee vaccination as a condition of receiving SLFRF funds).

Second, a recipient may not use SLFRF funds in violation of the conflict of interest requirements contained in the Award Terms and Conditions or the Office of Management and Budget's Uniform Guidance, including any self-dealing or violation of ethics rules. Recipients are required to establish policies and procedures to manage potential conflicts of interest.[370] Treasury may provide further guidance on the types of activities or conflicts that the recipient's policies and procedures must cover.

Lastly, recipients should also be cognizant that federal, state, and local laws and regulations, outside of SLFRF program requirements, may apply. Recipients may not use revenue loss funds, for instance, to violate other background laws that limit the scope of activities that may be conducted as "government services," including other state and federal laws. State and local procurement, contracting, and conflicts-of-interest laws and regulations may include applicable requirements, including, for example, required procurement processes for contractor selection or competitive price setting. Furthermore, recipients are also required to comply with other federal, state, and local background laws, including environmental laws[371] and federal civil rights and nondiscrimination requirements, which include prohibitions on

[370] Specifically, the Award Terms and Conditions provide that "Recipient understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 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 C.F.R. § 200.112."

[371] *See* United States 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.

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).[372]

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

[372] An exception is statutes that do not apply unless explicitly stated, including, e.g., the National Environmental Policy Act and the Davis-Bacon Act.

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 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,[373] 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

[373] 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.

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. 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.[374] Because Treasury interpreted the definition of an NEU[375] 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 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.

[374] The Guidance on Distribution of Funds to Nonentitlement Units of Local Government can be found at this link: https://home.treasury.gov/system/files/136/NEU_Guidance.pdf. The Nonentitlement Unit of Local Government Definitional and Data Methodology can be found at this link: https://home.treasury.gov/system/files/136/NEU_Methodology.pdf.

[375] 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.

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 C.F.R. §§ 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,[376] 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,

[376] Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.

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 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,[377] 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:

[377] *See FAQ 4.10. Id.*

  - 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.

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."[378] Several commenters 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.[379] Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect costs.

[378] 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.
[379] *Id*.

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.[380] 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.

[380] Coronavirus Relief Fund for States, Tribal Governments, and Certain Eligible Local Governments, 86 FR at 4192.

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.[381]

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

[381] *See FAQ 4.11*. Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.

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.[382] 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

[382] 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

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 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).[383] Treasury has addressed many of these comments in the Compliance and Reporting Guidance and User Guide and will continue to issue updated guidance prior to each reporting period clarifying any modifications to requested report content. Treasury notes that the interim final rule did not address the specific content and data elements required in reporting, the reporting portal or submission process, and the specific form of reporting (e.g., example templates, machine readability); comments on these topics are outside the scope of the final rule and, as noted, are addressed instead in Compliance and Reporting Guidance.

[383] 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.

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.[384] 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.

[384] *Id.*

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 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.[385]

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.[386] If a potential violation is identified, Treasury will provide the recipient an initial written notice of the

[385] *Id.*
[386] Treasury will also consider the tax offset provision on an annual basis.

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.[387] Treasury has clarified that a recipient must invoke and exhaust the procedures available under

[387] Funds subject to recoupment cannot later be returned.

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 violation,[388] 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.[389] This process also will allow the Secretary to take into consideration the

[389] 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).

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.[390] 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.

[390] Treasury intends to work with recipients to support the use of SLFRF funds consistent with the law.

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 and13563. 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 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.[391] 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.[392]

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

[391] *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.
[392] See, e.g., Fitzpatrick, *supra* note 262.

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 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.[393] 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,

[393] *See* U.S. Bureau of Labor Statistics, Occupational Employment and Wage Estimates, https://www.bls.gov/oes/current/oes_nat.htm (last visited November 9, 2021).

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 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 CSWRF 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.[394] 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.[395] 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

[394] Further, the final rule encourages, but does not require, that recipients pursue broadband infrastructure projects in locations not currently served by a wireline connection that reliably delivers at least 100 Mbps of download speed and 20 Mbps of upload speed.

[395] 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).

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.[396] 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 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.

[396] *See* Federal Communications Commission, Broadband Speed Guide, available at https://www.fcc.gov/consumers/guides/broadband-speed-guide (last visited October 28, 2021).

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.[397]

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

[397] *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.

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	**# Respondents**	**# Responses Per Respondent**	**Total Responses**	**Hours per Response**	**Total Burden in Hours**	**Cost to Respondents ($48.80 per hour*)**
Recipient Payment Form	5,050	1	5,050	.25 (15 minutes)	1,262.5	$61,610
Acceptance of Award Terms	5,050	1	5,050	.25 (15 minutes)	1,262.5	$61,610
Title VI Assurances	5,050	1	5,050	.50 (30 minutes)	2,525	$123,220
Tribal Employment Information Form	584	1	584	.75 (45 minutes)	438	$21,374

Request for Extension Form	96	1	96	1	96	$4,685
Annual Recovery Plan Performance Report	430	1	430	100	43,000	$2,098,400
NEU Distribution Template	55	2	110	10	1,100	$53,680
Non-UGLG Distribution Template	55	2	110	5	550	$26,840
Transfer Forms	1,500	1	1,500	1	1,500	$73,200
Project and Expenditure Report	37,000	1	37,000	5	185,000	$9,028,000
Total	**54,870**		**54,980**		**236,735**	**$11,552,619**

* Bureau of Labor Statistics, U.S. Department of Labor, Occupational Outlook Handbook, Accountants and Auditors, on the Internet at https://www.bls.gov/ooh/business-and-financial/accountants-and-auditors.htm (visited March 28, 2020). Base wage of $33.89/hour increased by 44 percent to account for fully loaded employer cost of employee compensation (benefits, etc.) for a fully loaded wage rate of $48.80.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the Administrative Procedure Act or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the Federal Register. 5 U.S.C. 603, 604.

Rules that are exempt from notice and comment under the APA or any other law are also exempt from the RFA 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. Amend 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 Public Law 117-2), which amends Title VI of the Social Security Act (42 U.S.C. 801 *et seq*.) by adding sections 602 and 603 to establish the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Fund.

§ 35.2 Applicability.

This part applies to states, territories, Tribal governments, metropolitan cities, nonentitlement units of local government, counties, and units of general local government that accept a payment or transfer of funds made under section 602 or 603 of the Social Security Act.

§ 35.3 Definitions.

Baseline means tax revenue of the recipient for its fiscal year ending in 2019, adjusted for inflation in each reporting year using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States.

Capital expenditures has the same meaning given in 2 CFR 200.1.

County means a county, parish, or other equivalent county division (as defined by the Census Bureau).

Covered benefits include, but are not limited to, the costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (Federal and State), workers' compensation insurance, and Federal Insurance Contributions Act taxes (which includes Social Security and Medicare taxes).

Covered change means a change in law, regulation, or administrative interpretation that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase. A change in law includes any final legislative or regulatory action, a new or changed administrative interpretation, and the phase-in or taking effect of any statute or rule if the phase-in or taking effect was not prescribed prior to the start of the covered period.

Covered period means, with respect to a state or territory, the period that:

(1) Begins on March 3, 2021; and

(2) Ends on the last day of the fiscal year of such State or territory in which all funds received by the State or territory from a payment made under section 602 or 603 of the Social Security Act have been expended or returned to, or recovered by, the Secretary.

COVID-19 means the Coronavirus Disease 2019.

COVID-19 public health emergency means the period beginning on January 27, 2020 and lasting until the termination of the national emergency concerning the COVID-19 outbreak declared pursuant to the National Emergencies Act (50 U.S.C. 1601 *et seq*.).

Deposit means an extraordinary payment of an accrued, unfunded liability. The term deposit does not refer to routine contributions made by an employer to pension funds as part of the employer's obligations related to payroll, such as either a pension contribution consisting of a normal cost component related to current employees or a component addressing the amortization of unfunded liabilities calculated by reference to the employer's payroll costs.

Eligible employer means an employer of an eligible worker who performs essential work.

Eligible workers means workers needed to maintain continuity of operations of essential critical infrastructure sectors, including health care; emergency response; sanitation, disinfection,

and cleaning work; maintenance work; grocery stores, restaurants, food production, and food delivery; pharmacy; biomedical research; behavioral health work; medical testing and diagnostics; home- and community-based health care or assistance with activities of daily living; family or childcare; social services work; public health work; vital services to Tribes; any work performed by an employee of a State, local, or Tribal government; educational work, school nutrition work, and other work required to operate a school facility; laundry work; elections work; solid waste or hazardous materials management, response, and cleanup work; work requiring physical interaction with patients; dental care work; transportation and warehousing; work at hotel and commercial lodging facilities that are used for COVID-19 mitigation and containment; work in a mortuary; and work in critical clinical research, development, and testing necessary for COVID-19 response.

(1) With respect to a recipient that is a metropolitan city, nonentitlement unit of local government, or county, workers in any additional non-public sectors as each chief executive officer of such recipient may designate as critical to protect the health and well-being of the residents of their metropolitan city, nonentitlement unit of local government, or county; or

(2) With respect to a State, territory, or Tribal government, workers in any additional non-public sectors as each Governor of a State or territory, or each Tribal government, may designate as critical to protect the health and well-being of the residents of their State, territory, or Tribal government.

Essential work means work that:

(1) Is not performed while teleworking from a residence; and

(2) Involves:

(i) Regular in-person interactions with patients, the public, or coworkers of the individual that is performing the work; or

(ii) Regular physical handling of items that were handled by, or are to be handled by patients, the public, or coworkers of the individual that is performing the work.

Funds means, with respect to a recipient, amounts provided to the recipient pursuant to a payment made under section 602(b) or 603(b) of the Social Security Act or transferred to the recipient pursuant to section 603(c)(4) of the Social Security Act.

General revenue means money that is received from tax revenue, current charges, and miscellaneous general revenue, excluding refunds and other correcting transactions and proceeds from issuance of debt or the sale of investments, agency or private trust transactions, and intergovernmental transfers from the Federal Government, including transfers made pursuant to section 9901 of the American Rescue Plan Act. General revenue also includes revenue from liquor stores that are owned and operated by state and local governments. General revenue does not include revenues from utilities, except recipients may choose to include revenue from utilities that are part of their own government as general revenue provided the recipient does so consistently over the remainder of the period of performance. Revenue from Tribal business enterprises must be included in general revenue.

Intergovernmental transfers means money received from other governments, including grants and shared taxes.

Low-income household means a household with:

(1) Income at or below 185 percent of the Federal Poverty Guidelines for the size of its household based on the poverty guidelines published most recently by the Department of Health and Human Services; or

(2) Income at or below 40 percent of the Area Median Income for its county and size of household based on data published most recently by the Department of Housing and Urban Development.

Micro-business means a small business that has five or fewer employees, one or more of whom owns the small business.

Moderate-income household means a household with:

(1) Income at or below 300 percent of the Federal Poverty Guidelines for the size of its household based on poverty guidelines published most recently by the Department of Health and Human Services; or

(2) Income at or below 65 percent of the Area Median Income for its county and size of household based on data published most recently by the Department of Housing and Urban Development.

Metropolitan city has the meaning given that term in section 102(a)(4) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(4)) and includes cities that relinquish or defer their status as a metropolitan city for purposes of receiving allocations under section 106 of such Act (42 U.S.C. 5306) for fiscal year 2021.

Net reduction in total spending is measured as the State or territory's total spending for a given reporting year excluding its spending of funds, subtracted from its total spending for its fiscal year ending in 2019, adjusted for inflation using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States for that reporting year.

Nonentitlement unit of local government means a "city," as that term is defined in section 102(a)(5) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(5)), that is not a metropolitan city.

Nonprofit means a nonprofit organization that is exempt from Federal income taxation and that is described in section 501(c)(3) or 501(c)(19) of the Internal Revenue Code.

Obligation means an order placed for property and services and entering into contracts, subawards, and similar transactions that require payment.

Pension fund means a defined benefit plan and does not include a defined contribution plan.

Period of performance means the time period described in § 35.5 during which a recipient may obligate and expend funds in accordance with sections 602(c)(1) and 603(c)(1) of the Social Security Act and this subpart.

Premium pay means an amount of up to $13 per hour that is paid to an eligible worker, in addition to wages or remuneration the eligible worker otherwise receives, for all work performed by the eligible worker during the COVID-19 public health emergency. Such amount may not exceed $25,000 in total over the period of performance with respect to any single eligible worker. Premium pay may be awarded to non-hourly and part-time eligible workers performing essential work. Premium pay will be considered to be in addition to wages or remuneration the eligible worker otherwise receives if, as measured on an hourly rate, the premium pay is:

(1) With regard to work that the eligible worker previously performed, pay and remuneration equal to the sum of all wages and remuneration previously received plus up to $13 per hour with no reduction, substitution, offset, or other diminishment of the eligible worker's previous, current, or prospective wages or remuneration; or

(2) With regard to work that the eligible worker continues to perform, pay of up to $13 per hour that is in addition to the eligible worker's regular rate of wages or remuneration, with no

reduction, substitution, offset, or other diminishment of the worker's current and prospective wages or remuneration.

Qualified census tract has the same meaning given in 26 U.S.C. 42(d)(5)(B)(ii)(I).

Recipient means a State, territory, Tribal government, metropolitan city, nonentitlement unit of local government, county, or unit of general local government that receives a payment made under section 602(b) or 603(b) of the Social Security Act or transfer pursuant to section 603(c)(4) of the Social Security Act.

Reporting year means a single year or partial year within the covered period, aligned to the current fiscal year of the State or territory during the covered period.

Secretary means the Secretary of the Treasury.

State means each of the 50 States and the District of Columbia.

Small business means a business concern or other organization that:

(1) Has no more than 500 employees or, if applicable, the size standard in number of employees established by the Administrator of the Small Business Administration for the industry in which the business concern or organization operates, and

(2) Is a small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632).

Tax revenue means revenue received from a compulsory contribution that is exacted by a government for public purposes excluding refunds and corrections and, for purposes of § 35.8, intergovernmental transfers. Tax revenue does not include payments for a special privilege granted or service rendered, employee or employer assessments and contributions to finance retirement and social insurance trust systems, or special assessments to pay for capital improvements.

Territory means the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or American Samoa.

Title I eligible schools means schools eligible to receive services under section 1113 of Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6313), including schools served under section 1113(b)(1)(C) of that Act.

Tribal enterprise means a business concern:

(1) That is wholly owned by one or more Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments; or

(2) That is owned in part by one or more Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments, if all other owners are either United States citizens or small business concerns, as these terms are used and consistent with the definitions in 15 U.S.C. 657a(b)(2)(D).

Tribal government means the recognized governing body of any Indian or Alaska Native Tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published on January 29, 2021, pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).

Unemployment rate means the U-3 unemployment rate provided by the Bureau of Labor Statistics as part of the Local Area Unemployment Statistics program, measured as total unemployment as a percentage of the civilian labor force.

Unemployment trust fund means an unemployment trust fund established under section 904 of the Social Security Act (42 U.S.C. 1104).

Unit of general local government has the meaning given to that term in section 102(a)(1) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(1)).

§ 35.4 Reservation of authority, reporting.

(a) *Reservation of authority.* Nothing in this part shall limit the authority of the Secretary to take action to enforce conditions or violations of law, including actions necessary to prevent evasions of this subpart.

(b) *Extensions or accelerations of timing.* The Secretary may extend or accelerate any deadline or compliance date of this part, including reporting requirements that implement this subpart, if the Secretary determines that such extension or acceleration is appropriate. In determining whether an extension or acceleration is appropriate, the Secretary will consider the period of time that would be extended or accelerated and how the modified timeline would facilitate compliance with this subpart.

(c) *Reporting and requests for other information.* During the period of performance, recipients shall provide to the Secretary periodic reports providing detailed accounting of the uses of funds, modifications to a State or Territory's tax revenue sources, and such other information as the Secretary may require for the administration of this section. In addition to regular reporting requirements, the Secretary may request other additional information as may be necessary or appropriate, including as may be necessary to prevent evasions of the requirements of this subpart. False statements or claims made to the Secretary may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in Federal awards or contracts, and/or any other remedy available by law.

§ 35.5 Use of funds.

(a) *In general*. A recipient may only use funds to cover costs incurred during the period beginning March 3, 2021, and ending December 31, 2024, for one or more of the purposes enumerated in sections 602(c)(1) and 603(c)(1) of the Social Security Act, as applicable, including those enumerated in § 35.6, subject to the restrictions set forth in sections 602(c)(2) and 603(c)(2) of the Social Security Act, as applicable.

(b) *Costs incurred.* A cost shall be considered to have been incurred for purposes of paragraph (a) of this section if the recipient has incurred an obligation with respect to such cost by December 31, 2024.

(c) *Return of funds.* A recipient must return any funds not obligated by December 31, 2024. A recipient must also return funds obligated by December 31, 2024 but not expended by December 31, 2026.

§ 35.6 Eligible uses.

(a) *In general*. Subject to §§ 35.7 and 35.8, a recipient may use funds for one or more of the purposes described in paragraphs (b) through (f) of this section.

(b) *Responding to the public health emergency or its negative economic impacts.* A recipient may use funds to respond to the public health emergency or its negative economic impacts if the use meets the criteria provided in subparagraph (b)(1) or is enumerated in subparagraph (b)(3); provided that, in the case of a use of funds for a capital expenditure under subparagraph (b)(1) or (b)(3), the use of funds must also meet the criteria provided in subparagraph (b)(4). 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 subparagraph (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 subparagraph (b)(1) or (b)(3):

(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 (a) 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 (b) 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 [INSERT

EFFECTIVE DATE], 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 [ ]. 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 [ ]

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) equals:

$$Max\ \{[Base\ Year\ Revenue * (1 + Growth\ Adjustment)^{(n_t/12)}] - Actual\ General\ Revenue;\ 0\}$$

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), except:

(1) For purposes of all calculation dates on or after [INSERT EFFECTIVE DATE], 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 [INSERT EFFECTIVE DATE], 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; and

(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 (3), the recipient must also make the adjustments referenced in paragraph (3) 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 subparagraphs (e)(1) and (e)(3) of 40 CFR § 35.3520; and

(2) The requirement in subparagraph (b)(1) of 40 CFR § 35.3520 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 paragraph (a) of 40 CFR § 35.3520.

(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).

§ 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.

Dated:

_____

Jacob Leibenluft,
Chief Recovery Officer.

Coronavirus State & Local Fiscal Recovery Funds: Overview of the Final Rule

U.S. DEPARTMENT OF THE TREASURY

January 2022

The Overview of the Final Rule provides a summary of major provisions of the final rule for informational purposes and is intended as a brief, simplified user guide to the final rule provisions.

The descriptions provided in this document summarize key provisions of the final rule but are non-exhaustive, do not describe all terms and conditions associated with the use of SLFRF, and do not describe all requirements that may apply to this funding. Any SLFRF funds received are also subject to the terms and conditions of the agreement entered into by Treasury and the respective jurisdiction, which incorporate the provisions of the final rule and the guidance that implements this program.

Contents

Introduction 4
Overview of the Program 6
Replacing Lost Public Sector Revenue 9
Responding to Public Health and Economic Impacts of COVID-19 12
Responding to the Public Health Emergency 14
Responding to Negative Economic Impacts 16
Assistance to Households 17
Assistance to Small Businesses 21
Assistance to Nonprofits 23
Aid to Impacted Industries 24
Public Sector Capacity 26
Public Safety, Public Health, and Human Services Staff 26
Government Employment and Rehiring Public Sector Staff 27
Effective Service Delivery 28
Capital Expenditures 30
Framework for Eligible Uses Beyond those Enumerated 32
Premium Pay 35
Water & Sewer Infrastructure 37
Broadband Infrastructure 39
Restrictions on Use 41
Program Administration 43

Introduction

The Coronavirus State and Local Fiscal Recovery Funds (SLFRF), a part of the American Rescue Plan, delivers $350 billion to state, local, and Tribal governments across the country to support their response to and recovery from the COVID-19 public health emergency. The program ensures that governments have the resources needed to:

- Fight the pandemic and support families and businesses struggling with its public health and economic impacts,
- Maintain vital public services, even amid declines in revenue, and
- Build a strong, resilient, and equitable recovery by making investments that support long-term growth and opportunity.

EARLY PROGRAM IMPLEMENTATION

In May 2021, Treasury published the Interim final rule (IFR) describing eligible and ineligible uses of funds (as well as other program provisions), sought feedback from the public on these program rules, and began to distribute funds. The IFR went immediately into effect in May, and since then, governments have used SLFRF funds to meet their immediate pandemic response needs and begin building a strong and equitable recovery, such as through providing vaccine incentives, development of affordable housing, and construction of infrastructure to deliver safe and reliable water.

As governments began to deploy this funding in their communities, Treasury carefully considered the feedback provided through its public comment process and other forums. Treasury received over 1,500 comments, participated in hundreds of meetings, and received correspondence from a wide range of governments and other stakeholders.

KEY CHANGES AND CLARIFICATIONS IN THE FINAL RULE

The final rule delivers broader flexibility and greater simplicity in the program, responsive to feedback in the comment process. Among other clarifications and changes, the final rule provides the features below.

Replacing Lost Public Sector Revenue

The final rule offers a standard allowance for revenue loss of up to $10 million, allowing recipients to select between a standard amount of revenue loss or complete a full revenue loss calculation. Recipients that select the standard allowance may use that amount – in many cases their full award – for government services, with streamlined reporting requirements.

Public Health and Economic Impacts

In addition to programs and services, the final rule clarifies that recipients can use funds for capital expenditures that support an eligible COVID-19 public health or economic response. For example, recipients may build certain affordable housing, childcare facilities, schools, hospitals, and other projects consistent with final rule requirements.

In addition, the final rule provides an expanded set of households and communities that are presumed to be "impacted" and "disproportionately impacted" by the pandemic, thereby allowing recipients to provide responses to a broad set of households and entities without requiring additional analysis. Further, the final rule provides a broader set of uses available for these communities as part of COVID-19 public health and economic response, including making affordable housing, childcare, early learning, and services to address learning loss during the pandemic eligible in all impacted communities and making certain community development and neighborhood revitalization activities eligible for disproportionately impacted communities.

Further, the final rule allows for a broader set of uses to restore and support government employment, including hiring above a recipient's pre-pandemic baseline, providing funds to employees that experienced pay cuts or furloughs, avoiding layoffs, and providing retention incentives.

Premium Pay

The final rule delivers more streamlined options to provide premium pay, by broadening the share of eligible workers who can receive premium pay without a written justification while maintaining a focus on lower-income and frontline workers performing essential work.

Water, Sewer & Broadband Infrastructure

The final rule significantly broadens eligible broadband infrastructure investments to address challenges with broadband access, affordability, and reliability, and adds additional eligible water and sewer infrastructure investments, including a broader range of lead remediation and stormwater management projects.

FINAL RULE EFFECTIVE DATE

The final rule takes effect on April 1, 2022. Until that time, the interim final rule remains in effect; funds used consistently with the IFR while it is in effect are in compliance with the SLFRF program.

However, recipients can choose to take advantage of the final rule's flexibilities and simplifications now, even ahead of the effective date. Treasury will not take action to enforce the interim final rule to the extent that a use of funds is consistent with the terms of the final rule, regardless of when the SLFRF funds were used. Recipients may consult the *Statement Regarding Compliance with the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule and Final Rule*, which can be found on Treasury's website, for more information on compliance with the interim final rule and the final rule.

Overview of the Program

The Coronavirus State and Local Fiscal Recovery Funds (SLFRF) program provides substantial flexibility for each jurisdiction to meet local needs within the four separate eligible use categories. This Overview of the Final Rule addresses the four eligible use categories ordered from the broadest and most flexible to the most specific.

Recipients may use SLFRF funds to:

- **Replace lost public sector revenue**, using this funding to provide government services up to the amount of revenue loss due to the pandemic.
    - Recipients may determine their revenue loss by choosing between two options:
        - A standard allowance of up to $10 million in aggregate, not to exceed their award amount, during the program;
        - Calculating their jurisdiction's specific revenue loss each year using Treasury's formula, which compares actual revenue to a counterfactual trend.
    - Recipients may use funds up to the amount of revenue loss for government services; generally, services traditionally provided by recipient governments are government services, unless Treasury has stated otherwise.
- **Support the COVID-19 public health and economic response** by addressing COVID-19 and its impact on public health as well as addressing economic harms to households, small businesses, nonprofits, impacted industries, and the public sector.
    - Recipients can use funds for programs, services, or capital expenditures that respond to the public health and negative economic impacts of the pandemic.
    - To provide simple and clear eligible uses of funds, Treasury provides a list of enumerated uses that recipients can provide to households, populations, or classes (i.e., groups) that experienced pandemic impacts.
    - Public health eligible uses include COVID-19 mitigation and prevention, medical expenses, behavioral healthcare, and preventing and responding to violence.
    - Eligible uses to respond to negative economic impacts are organized by the type of beneficiary: assistance to households, small businesses, and nonprofits.
        - Each category includes assistance for "impacted" and "disproportionately impacted" classes: impacted classes experienced the general, broad-based impacts of the pandemic, while disproportionately impacted classes faced meaningfully more severe impacts, often due to preexisting disparities.
        - To simplify administration, the final rule presumes that some populations and groups were impacted or disproportionately impacted and are eligible for responsive services.

- Eligible uses for assistance to impacted households include aid for re-employment, job training, food, rent, mortgages, utilities, affordable housing development, childcare, early education, addressing learning loss, and many more uses.
- Eligible uses for assistance to impacted small businesses or nonprofits include loans or grants to mitigate financial hardship, technical assistance for small businesses, and many more uses.

- Recipients can also provide assistance to impacted industries like travel, tourism, and hospitality that faced substantial pandemic impacts, or address impacts to the public sector, for example by re-hiring public sector workers cut during the crisis.
- Recipients providing funds for enumerated uses to populations and groups that Treasury has presumed eligible are clearly operating consistently with the final rule. Recipients can also identify (1) other populations or groups, beyond those presumed eligible, that experienced pandemic impacts or disproportionate impacts and (2) other programs, services, or capital expenditures, beyond those enumerated, to respond to those impacts.

- **Provide premium pay for eligible workers performing essential work**, offering additional support to those who have and will bear the greatest health risks because of their service in critical sectors.
  - Recipients may provide premium pay to eligible workers – generally those working in-person in key economic sectors – who are below a wage threshold or non-exempt from the Fair Labor Standards Act overtime provisions, or if the recipient submits justification that the premium pay is responsive to workers performing essential work.
- **Invest in water, sewer, and broadband infrastructure**, making necessary investments to improve access to clean drinking water, to support vital wastewater and stormwater infrastructure, and to expand affordable access to broadband internet.
  - Recipients may fund a broad range of water and sewer projects, including those eligible under the EPA's Clean Water State Revolving Fund, EPA's Drinking Water State Revolving Fund, and certain additional projects, including a wide set of lead remediation, stormwater infrastructure, and aid for private wells and septic units.
  - Recipients may fund high-speed broadband infrastructure in areas of need that the recipient identifies, such as areas without access to adequate speeds, affordable options, or where connections are inconsistent or unreliable; completed projects must participate in a low-income subsidy program.

While recipients have considerable flexibility to use funds to address the diverse needs of their communities, some restrictions on use apply across all eligible use categories. These include:

- **For states and territories:** No offsets of a reduction in net tax revenue resulting from a change in state or territory law.

- **For all recipients except for Tribal governments:** No extraordinary contributions to a pension fund for the purpose of reducing an accrued, unfunded liability.

- **For all recipients:** No payments for debt service and replenishments of rainy day funds; no satisfaction of settlements and judgments; no uses that contravene or violate the American Rescue Plan Act, Uniform Guidance conflicts of interest requirements, and other federal, state, and local laws and regulations.

Under the SLFRF program, funds must be used for costs incurred on or after March 3, 2021. Further, funds must be obligated by December 31, 2024, and expended by December 31, 2026. This time period, during which recipients can expend SLFRF funds, is the "period of performance."

In addition to SLFRF, the American Rescue Plan includes other sources of funding for state and local governments, including the Coronavirus Capital Projects Fund to fund critical capital investments including broadband infrastructure; the Homeowner Assistance Fund to provide relief for our country's most vulnerable homeowners; the Emergency Rental Assistance Program to assist households that are unable to pay rent or utilities; and the State Small Business Credit Initiative to fund small business credit expansion initiatives. Eligible recipients are encouraged to visit the Treasury website for more information.

Replacing Lost Public Sector Revenue

The Coronavirus State and Local Fiscal Recovery Funds provide needed fiscal relief for recipients that have experienced revenue loss due to the onset of the COVID-19 public health emergency. Specifically, SLFRF funding may be used to pay for "government services" in an amount equal to the revenue loss experienced by the recipient due to the COVID-19 public health emergency.

Government services generally include any service traditionally provided by a government, including construction of roads and other infrastructure, provision of public safety and other services, and health and educational services. Funds spent under government services are subject to streamlined reporting and compliance requirements.

In order to use funds under government services, recipients should first determine revenue loss. They may, then, spend up to that amount on general government services.

DETERMINING REVENUE LOSS

Recipients have two options for how to determine their amount of revenue loss. Recipients must choose one of the two options and cannot switch between these approaches after an election is made.

1. **Recipients may elect a "standard allowance" of $10 million to spend on government services through the period of performance.**

   Under this option, which is newly offered in the final rule Treasury presumes that up to $10 million in revenue has been lost due to the public health emergency and recipients are permitted to use that amount (not to exceed the award amount) to fund "government services." The standard allowance provides an estimate of revenue loss that is based on an extensive analysis of average revenue loss across states and localities, and offers a simple, convenient way to determine revenue loss, particularly for SLFRF's smallest recipients.

   All recipients may elect to use this standard allowance instead of calculating lost revenue using the formula below, including those with total allocations of $10 million or less. Electing the standard allowance does not increase or decrease a recipient's total allocation.

2. **Recipients may calculate their actual revenue loss according to the formula articulated in the final rule.**

   Under this option, recipients calculate revenue loss at four distinct points in time, either at the end of each calendar year (e.g., December 31 for years 2020, 2021, 2022, and 2023) or the end of each fiscal year of the recipient. Under the flexibility provided in the final rule, recipients can choose whether to use calendar or fiscal year dates but must be consistent throughout the period of performance. Treasury has also provided several adjustments to the definition of general revenue in the final rule.

   To calculate revenue loss at each of these dates, recipients must follow a four-step process:

a. Calculate revenues collected in the most recent full fiscal year prior to the public health emergency (i.e., last full fiscal year before January 27, 2020), called the *base year revenue.*

b. Estimate *counterfactual revenue*, which is equal to the following formula, where *n* is the number of months elapsed since the end of the base year to the calculation date:

$$base\ year\ revenue\ \times (1 + growth\ adjustment)^{\frac{n}{12}}$$

The *growth adjustment* is the greater of either a standard growth rate—5.2 percent—or the recipient's average annual revenue growth in the last full three fiscal years prior to the COVID-19 public health emergency.

c. Identify *actual revenue*, which equals revenues collected over the twelve months immediately preceding the calculation date.

Under the final rule, recipients must adjust actual revenue totals for the effect of tax cuts and tax increases that are adopted after the date of adoption of the final rule (January 6, 2022). Specifically, the estimated fiscal impact of tax cuts and tax increases adopted after January 6, 2022, must be added or subtracted to the calculation of actual revenue for purposes of calculation dates that occur on or after April 1, 2022.

Recipients may subtract from their calculation of actual revenue the effect of tax increases enacted prior to the adoption of the final rule. Note that recipients that elect to remove the effect of tax increases enacted before the adoption of the final rule must also remove the effect of tax decreases enacted before the adoption of the final rule, such that they are accurately removing the effect of tax policy changes on revenue.

d. Revenue loss for the calculation date is equal to *counterfactual revenue* minus *actual revenue* (adjusted for tax changes) for the twelve-month period. If actual revenue exceeds counterfactual revenue, the loss is set to zero for that twelve-month period. Revenue loss for the period of performance is the sum of the revenue loss on for each calculation date.

The supplementary information in the final rule provides an example of this calculation, which recipients may find helpful, in the Revenue Loss section.

SPENDING ON GOVERNMENT SERVICES

Recipients can use SLFRF funds on government services up to the revenue loss amount, whether that be the standard allowance amount or the amount calculated using the above approach. **Government services generally include *any service* traditionally provided by a government**, unless Treasury has stated otherwise**.** Here are some common examples, although this list is not exhaustive:

- ✓ Construction of schools and hospitals
- ✓ Road building and maintenance, and other infrastructure
- ✓ Health services
- ✓ General government administration, staff, and administrative facilities
- ✓ Environmental remediation
- ✓ Provision of police, fire, and other public safety services (including purchase of fire trucks and police vehicles)

Government services is the most flexible eligible use category under the SLFRF program, and funds are subject to streamlined reporting and compliance requirements. Recipients should be mindful that certain restrictions, which are detailed further in the Restrictions on Use section and apply to all uses of funds, apply to government services as well.

Responding to Public Health and Economic Impacts of COVID-19

The Coronavirus State and Local Fiscal Recovery Funds provide resources for governments to meet the public health and economic needs of those impacted by the pandemic in their communities, as well as address longstanding health and economic disparities, which amplified the impact of the pandemic in disproportionately impacted communities, resulting in more severe pandemic impacts.

The eligible use category to respond to public health and negative economic impacts is organized around the types of assistance a recipient may provide and includes several sub-categories:

- public health,
- assistance to households,
- assistance to small businesses,
- assistance to nonprofits,
- aid to impacted industries, and
- public sector capacity.

In general, to identify eligible uses of funds in this category, recipients should (1) identify a COVID-19 public health or economic impact on an individual or class (i.e., a group) and (2) design a program that responds to that impact. Responses should be related and reasonably proportional to the harm identified and reasonably designed to benefit those impacted.

To provide simple, clear eligible uses of funds that meet this standard, Treasury provides a non-exhaustive list of enumerated uses that respond to pandemic impacts. Treasury also presumes that some populations experienced pandemic impacts and are eligible for responsive services. In other words, recipients providing enumerated uses of funds to populations presumed eligible are clearly operating consistently with the final rule.[1]

Recipients also have broad flexibility to (1) identify and respond to other pandemic impacts and (2) serve other populations that experienced pandemic impacts, beyond the enumerated uses and presumed eligible populations. Recipients can also identify groups or "classes" of beneficiaries that experienced pandemic impacts and provide services to those classes.

[1] However, please note that use of funds for enumerated uses may not be grossly disproportionate to the harm. Further, recipients should consult the Capital Expenditures section for more information about pursuing a capital expenditure; please note that enumerated capital expenditures are not presumed to be reasonably proportional responses to an identified harm except as provided in the Capital Expenditures section.

Step	1. Identify COVID-19 public health or economic impact	2. Design a response that addresses or responds to the impact
Analysis	• Can identify impact to a specific household, business or nonprofit or to a class of households, businesses, or nonprofits (i.e., group) • Can also identify disproportionate impacts, or more severe impacts, to a specific beneficiary or to a class	• Types of responses can include a program, service, or capital expenditure • Response should be related and reasonably proportional to the harm • Response should also be reasonably designed to benefit impacted individual or class
Simplifying Presumptions	• Final Rule presumes certain populations and classes are impacted and disproportionately impacted	• Final Rule provides non-exhaustive list of enumerated eligible uses that respond to pandemic impacts and disproportionate impacts

To assess eligibility of uses of funds, recipients should first determine the sub-category where their use of funds may fit (e.g., public health, assistance to households, assistance to small businesses), based on the entity that experienced the health or economic impact.[2] Then, recipients should refer to the relevant section for more details on each sub-category.

While the same overall eligibility standard applies to all uses of funds to respond to the public health and negative economic impacts of the pandemic, each sub-category has specific nuances on its application. In addition:

- Recipients interested in using funds for capital expenditures (i.e., investments in property, facilities, or equipment) should review the Capital Expenditures section in addition to the eligible use sub-category.
- Recipients interested in other uses of funds, beyond the enumerated uses, should refer to the section on "Framework for Eligible Uses Beyond Those Enumerated."

[2] For example, a recipient interested in providing aid to unemployed individuals is addressing a negative economic impact experienced by a household and should refer to the section on assistance to households. Recipients should also be aware of the difference between "beneficiaries" and "sub-recipients." Beneficiaries are households, small businesses, or nonprofits that can receive assistance based on impacts of the pandemic that they experienced. On the other hand, sub-recipients are organizations that carry out eligible uses on behalf of a government, often through grants or contracts. Sub-recipients do not need to have experienced a negative economic impact of the pandemic; rather, they are providing services to beneficiaries that experienced an impact.

RESPONDING TO THE PUBLIC HEALTH EMERGENCY

While the country has made tremendous progress in the fight against COVID-19, including a historic vaccination campaign, the disease still poses a grave threat to Americans' health and the economy. Providing state, local, and Tribal governments the resources needed to fight the COVID-19 pandemic is a core goal of the Coronavirus State and Local Fiscal Recovery Funds, as well as addressing the other ways that the pandemic has impacted public health. Treasury has identified several public health impacts of the pandemic and enumerated uses of funds to respond to impacted populations.

- **COVID-19 mitigation and prevention.** The pandemic has broadly impacted Americans and recipients can provide services to prevent and mitigate COVID-19 to the general public or to small businesses, nonprofits, and impacted industries in general. Enumerated eligible uses include:

  - ✓ Vaccination programs, including vaccine incentives and vaccine sites
  - ✓ Testing programs, equipment and sites
  - ✓ Monitoring, contact tracing & public health surveillance (e.g., monitoring for variants)
  - ✓ Public communication efforts
  - ✓ Public health data systems
  - ✓ COVID-19 prevention and treatment equipment, such as ventilators and ambulances
  - ✓ Medical and PPE/protective supplies
  - ✓ Support for isolation or quarantine
  - ✓ Ventilation system installation and improvement
  - ✓ Technical assistance on mitigation of COVID-19 threats to public health and safety
  - ✓ Transportation to reach vaccination or testing sites, or other prevention and mitigation services for vulnerable populations
  - ✓ Support for prevention, mitigation, or other services in congregate living facilities, public facilities, and schools
  - ✓ Support for prevention and mitigation strategies in small businesses, nonprofits, and impacted industries
  - ✓ Medical facilities generally dedicated to COVID-19 treatment and mitigation (e.g., ICUs, emergency rooms)
  - ✓ Temporary medical facilities and other measures to increase COVID-19 treatment capacity
  - ✓ Emergency operations centers & emergency response equipment (e.g., emergency response radio systems)
  - ✓ Public telemedicine capabilities for COVID-19 related treatment

- **Medical expenses.** Funds may be used for expenses to households, medical providers, or others that incurred medical costs due to the pandemic, including:
  - ✓ Unreimbursed expenses for medical care for COVID-19 testing or treatment, such as uncompensated care costs for medical providers or out-of-pocket costs for individuals
  - ✓ Paid family and medical leave for public employees to enable compliance with COVID-19 public health precautions
  - ✓ Emergency medical response expenses
  - ✓ Treatment of long-term symptoms or effects of COVID-19

- **Behavioral health care, such as mental health treatment, substance use treatment, and other behavioral health services.** Treasury recognizes that the pandemic has broadly impacted Americans' behavioral health and recipients can provide these services to the general public to respond. Enumerated eligible uses include:
  - ✓ Prevention, outpatient treatment, inpatient treatment, crisis care, diversion programs, outreach to individuals not yet engaged in treatment, harm reduction & long-term recovery support
  - ✓ Enhanced behavioral health services in schools
  - ✓ Services for pregnant women or infants born with neonatal abstinence syndrome
  - ✓ Support for equitable access to reduce disparities in access to high-quality treatment
  - ✓ Peer support groups, costs for residence in supportive housing or recovery housing, and the 988 National Suicide Prevention Lifeline or other hotline services
  - ✓ Expansion of access to evidence-based services for opioid use disorder prevention, treatment, harm reduction, and recovery
  - ✓ Behavioral health facilities & equipment

- **Preventing and responding to violence.** Recognizing that violence – and especially gun violence – has increased in some communities due to the pandemic, recipients may use funds to respond in these communities through:
  - ✓ Referrals to trauma recovery services for victims of crime
  - ✓ Community violence intervention programs, including:
    - Evidence-based practices like focused deterrence, with wraparound services such as behavioral therapy, trauma recovery, job training, education, housing and relocation services, and financial assistance
  - ✓ In communities experiencing increased gun violence due to the pandemic:
    - Law enforcement officers focused on advancing community policing
    - Enforcement efforts to reduce gun violence, including prosecution
    - Technology & equipment to support law enforcement response

RESPONDING TO NEGATIVE ECONOMIC IMPACTS

The pandemic caused severe economic damage and, while the economy is on track to a strong recovery, much work remains to continue building a robust, resilient, and equitable economy in the wake of the crisis and to ensure that the benefits of this recovery reach all Americans. While the pandemic impacted millions of American households and businesses, some of its most severe impacts fell on low-income and underserved communities, where pre-existing disparities amplified the impact of the pandemic and where the most work remains to reach a full recovery.

The final rule recognizes that the pandemic caused broad-based impacts that affected many communities, households, and small businesses across the country; for example, many workers faced unemployment and many small businesses saw declines in revenue. The final rule describes these as “impacted" households, communities, small businesses, and nonprofits.

At the same time, the pandemic caused disproportionate impacts, or more severe impacts, in certain communities. For example, low-income and underserved communities have faced more severe health and economic outcomes like higher rates of COVID-19 mortality and unemployment, often because pre-existing disparities exacerbated the impact of the pandemic. The final rule describes these as “disproportionately impacted” households, communities, small businesses, and nonprofits.

To simplify administration of the program, the final rule presumes that certain populations were “impacted” and “disproportionately impacted” by the pandemic; these populations are presumed to be eligible for services that respond to the impact they experienced. The final rule also enumerates a non-exhaustive list of eligible uses that are recognized as responsive to the impacts or disproportionate impacts of COVID-19. Recipients providing enumerated uses to populations presumed eligible are clearly operating consistently with the final rule.

As discussed further in the section Framework for Eligible Uses Beyond Those Enumerated, recipients can also identify other pandemic impacts, impacted or disproportionately impacted populations or classes, and responses.

However, note that the final rule maintains that general infrastructure projects, including roads, streets, and surface transportation infrastructure, would generally not be eligible under this eligible use category, unless the project responded to a specific pandemic public health need or a specific negative economic impact. Similarly, general economic development or workforce development – activities that do not respond to negative economic impacts of the pandemic but rather seek to more generally enhance the jurisdiction’s business climate – would generally not be eligible under this eligible use category.

Assistance to Households

Impacted Households and Communities

Treasury presumes the following households and communities are impacted by the pandemic:

- ✓ Low- or-moderate income households or communities
- ✓ Households that experienced unemployment
- ✓ Households that experienced increased food or housing insecurity
- ✓ Households that qualify for the Children's Health Insurance Program, Childcare Subsidies through the Child Care Development Fund (CCDF) Program, or Medicaid
- ✓ *When providing affordable housing programs*: households that qualify for the National Housing Trust Fund and Home Investment Partnerships Program
- ✓ *When providing services to address lost instructional time in K-12 schools*: any student that lost access to in-person instruction for a significant period of time

Low- or moderate-income households and communities are those with (i) income at or below 300 percent of the Federal Poverty Guidelines for the size of the household based on the most recently published poverty guidelines or (ii) income at or below 65 percent of the area median income for the county and size of household based on the most recently published data. For the vast majority of communities, the Federal Poverty Guidelines are higher than the area's median income and using the Federal Poverty Guidelines would result in more households and communities being presumed eligible. Treasury has provided an easy-to-use spreadsheet with Federal Poverty Guidelines and area median income levels on its website.

Recipients can measure income for a specific household or the median income for the community, depending on whether the response they plan to provide serves specific households or the general community. The income thresholds vary by household size; recipients should generally use income thresholds for the appropriate household size but can use a default household size of three when easier for administration or when measuring income for a general community.

The income limit for 300 percent of the Federal Poverty Guidelines for a household of three is $65,880 per year.[3] In other words, recipients can always presume that a household earning below this level, or a community with median income below this level, is impacted by the pandemic and eligible for services to respond. Additionally, by following the steps detailed in the section Framework for Eligible Uses Beyond Those Enumerated, recipients may designate additional households as impacted or disproportionately impacted beyond these presumptions, and may also pursue projects not listed below in response to these impacts consistent with Treasury's standards.

[3] For recipients in Alaska, the income limit for 300 percent of the Federal Poverty Guidelines for a household of three is $82,350 per year. For recipients in Hawaii, the income limit for 300 percent of the Federal Poverty Guidelines for a household of three is $75,780 per year.

Treasury recognizes the enumerated projects below, which have been expanded under the final rule, as eligible to respond to impacts of the pandemic on households and communities:

- ✓ Food assistance (e.g., child nutrition programs, including school meals) & food banks
- ✓ Emergency housing assistance: rental assistance, mortgage assistance, utility assistance, assistance paying delinquent property taxes, counseling and legal aid to prevent eviction and homelessness & emergency programs or services for homeless individuals, including temporary residences for people experiencing homelessness
- ✓ Health insurance coverage expansion
- ✓ Benefits for surviving family members of individuals who have died from COVID-19
- ✓ Assistance to individuals who want and are available for work, including job training, public jobs programs and fairs, support for childcare and transportation to and from a jobsite or interview, incentives for newly-employed workers, subsidized employment, grants to hire underserved workers, assistance to unemployed individuals to start small businesses & development of job and workforce training centers
- ✓ Financial services for the unbanked and underbanked
- ✓ Burials, home repair & home weatherization
- ✓ Programs, devices & equipment for internet access and digital literacy, including subsidies for costs of access
- ✓ Cash assistance
- ✓ Paid sick, medical, and family leave programs
- ✓ Assistance in accessing and applying for public benefits or services
- ✓ Childcare and early learning services, home visiting programs, services for child welfare-involved families and foster youth & childcare facilities
- ✓ Assistance to address the impact of learning loss for K-12 students (e.g., high-quality tutoring, differentiated instruction)
- ✓ Programs or services to support long-term housing security: including development of affordable housing and permanent supportive housing
- ✓ Certain contributions to an Unemployment Insurance Trust Fund[4]

[4] Recipients may only use SLFRF funds for contributions to unemployment insurance trust funds and repayment of the principal amount due on advances received under Title XII of the Social Security Act up to an amount equal to (i) the difference between the balance in the recipient's unemployment insurance trust fund as of January 27, 2020 and the balance of such account as of May 17, 2021, plus (ii) the principal amount outstanding as of May 17, 2021 on any advances received under Title XII of the Social Security Act between January 27, 2020 and May 17, 2021. Further, recipients may use SLFRF funds for the payment of any interest due on such Title XII advances. Additionally, a recipient that deposits SLFRF funds into its unemployment insurance trust fund to fully restore the pre-pandemic balance may not draw down that balance and deposit more SLFRF funds, back up to the pre-pandemic balance. Recipients that deposit SLFRF funds into an unemployment insurance trust fund, or use SLFRF funds to repay principal on Title XII advances, may not take action to reduce benefits available to unemployed workers by changing the computation method governing regular unemployment compensation in a way that results in a reduction of average weekly benefit amounts or the number of weeks of benefits payable (i.e., maximum benefit entitlement).

Disproportionately Impacted Households and Communities

Treasury presumes the following households and communities are disproportionately impacted by the pandemic:

- ✓ Low -income households and communities
- ✓ Households residing in Qualified Census Tracts
- ✓ Households that qualify for certain federal benefits[5]
- ✓ Households receiving services provided by Tribal governments
- ✓ Households residing in the U.S. territories or receiving services from these governments

Low-income households and communities are those with (i) income at or below 185 percent of the Federal Poverty Guidelines for the size of its household based on the most recently published poverty guidelines or (ii) income at or below 40 percent of area median income for its county and size of household based on the most recently published data. For the vast majority of communities, the Federal Poverty Guidelines level is higher than the area median income level and using this level would result in more households and communities being presumed eligible. Treasury has provided an easy-to-use spreadsheet with Federal Poverty Guidelines and area median income levels on its website.

Recipients can measure income for a specific household or the median income for the community, depending on whether the service they plan to provide serves specific households or the general community. The income thresholds vary by household size; recipients should generally use income thresholds for the appropriate household size but can use a default household size of three when easier for administration or when measuring income for a general community.

The income limit for 185 percent of the Federal Poverty Guidelines for a household of three is $40,626 per year.[6] In other words, recipients can always presume that a household earning below this level, or a community with median income below this level, is disproportionately impacted by the pandemic and eligible for services to respond.

[5] These programs are Temporary Assistance for Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP), Free- and Reduced-Price Lunch (NSLP) and/or School Breakfast (SBP) programs, Medicare Part D Low-Income Subsidies, Supplemental Security Income (SSI), Head Start and/or Early Head Start, Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), Section 8 Vouchers, Low-Income Home Energy Assistance Program (LIHEAP), and Pell Grants. For services to address educational disparities, Treasury will recognize Title I eligible schools as disproportionately impacted and responsive services that support the school generally or support the whole school as eligible.

[6] For recipients in Alaska, the income limit for 185 percent of the Federal Poverty Guidelines for a household of three is $50,783 per year. For recipients in Hawaii, the income limit for 185 percent of the Federal Poverty Guidelines for a household of three is $46,731 per year

Treasury recognizes the enumerated projects below, which have been expanded under the final rule, as eligible to respond to disproportionate impacts of the pandemic on households and communities:

- ✓ Pay for community health workers to help households access health & social services
- ✓ Remediation of lead paint or other lead hazards
- ✓ Primary care clinics, hospitals, integration of health services into other settings, and other investments in medical equipment & facilities designed to address health disparities
- ✓ Housing vouchers & assistance relocating to neighborhoods with higher economic opportunity
- ✓ Investments in neighborhoods to promote improved health outcomes
- ✓ Improvements to vacant and abandoned properties, including rehabilitation or maintenance, renovation, removal and remediation of environmental contaminants, demolition or deconstruction, greening/vacant lot cleanup & conversion to affordable housing[7]
- ✓ Services to address educational disparities, including assistance to high-poverty school districts & educational and evidence-based services to address student academic, social, emotional, and mental health needs
- ✓ Schools and other educational equipment & facilities
- ✓ Responses available to respond to impacts of the pandemic on households and communities (including those listed on page 18)

[7] Please see the final rule for further details and conditions applicable to this eligible use. This includes Treasury's presumption that demolition of vacant or abandoned residential properties that results in a net reduction in occupiable housing units for low- and moderate-income individuals in an area where the availability of such housing is lower than the need for such housing is ineligible for support with SLFRF funds.

Assistance to Small Businesses

Small businesses have faced widespread challenges due to the pandemic, including periods of shutdown, declines in revenue, or increased costs. The final rule provides many tools for recipients to respond to the impacts of the pandemic on small businesses, or disproportionate impacts on businesses where pre-existing disparities like lack of access to capital compounded the pandemic's effects.

Small businesses eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "small business," specifically:

1. Have no more than 500 employees, or if applicable, the size standard in number of employees established by the Administrator of the Small Business Administration for the industry in which the business concern or organization operates, and
2. Are a small business concern as defined in section 3 of the Small Business Act[8] (which includes, among other requirements, that the business is independently owned and operated and is not dominant in its field of operation).

Impacted Small Businesses

Recipients can identify small businesses impacted by the pandemic, and measures to respond, in many ways; for example, recipients could consider:

- ✓ Decreased revenue or gross receipts
- ✓ Financial insecurity
- ✓ Increased costs
- ✓ Capacity to weather financial hardship
- ✓ Challenges covering payroll, rent or mortgage, and other operating costs

Assistance to small businesses that experienced negative economic impacts includes the following enumerated uses:

- ✓ Loans or grants to mitigate financial hardship, such as by supporting payroll and benefits, costs to retain employees, and mortgage, rent, utility, and other operating costs
- ✓ Technical assistance, counseling, or other services to support business planning

Disproportionately Impacted Small Businesses

Treasury presumes that the following small businesses are disproportionately impacted by the pandemic:

[8] 15 U.S.C. 632.

- ✓ Small businesses operating in Qualified Census Tracts
- ✓ Small businesses operated by Tribal governments or on Tribal lands
- ✓ Small businesses operating in the U.S. territories

Assistance to disproportionately impacted small businesses includes the following enumerated uses, which have been expanded under the final rule:

- ✓ Rehabilitation of commercial properties, storefront improvements & façade improvements
- ✓ Technical assistance, business incubators & grants for start-up or expansion costs for small businesses
- ✓ Support for microbusinesses, including financial, childcare, and transportation costs

Assistance to Nonprofits

Nonprofits have faced significant challenges due to the pandemic's increased demand for services and changing operational needs, as well as declines in revenue sources such as donations and fees. Nonprofits eligible for assistance are those that experienced negative economic impacts or disproportionate impacts of the pandemic and meet the definition of "nonprofit"—specifically those that are 501(c)(3) or 501(c)(19) tax-exempt organizations.

Impacted Nonprofits

Recipients can identify nonprofits impacted by the pandemic, and measures to respond, in many ways; for example, recipients could consider:

- ✓ Decreased revenue (e.g., from donations and fees)
- ✓ Financial insecurity
- ✓ Increased costs (e.g., uncompensated increases in service need)
- ✓ Capacity to weather financial hardship
- ✓ Challenges covering payroll, rent or mortgage, and other operating costs

Assistance to nonprofits that experienced negative economic impacts includes the following enumerated uses:

- ✓ Loans or grants to mitigate financial hardship
- ✓ Technical or in-kind assistance or other services that mitigate negative economic impacts of the pandemic

Disproportionately Impacted Nonprofits

Treasury presumes that the following nonprofits are disproportionately impacted by the pandemic:

- ✓ Nonprofits operating in Qualified Census Tracts
- ✓ Nonprofits operated by Tribal governments or on Tribal lands
- ✓ Nonprofits operating in the U.S. territories

Recipients may identify appropriate responses that are related and reasonably proportional to addressing these disproportionate impacts.

Aid to Impacted Industries

Recipients may use SLFRF funding to provide aid to industries impacted by the COVID-19 pandemic. Recipients should first designate an impacted industry and then provide aid to address the impacted industry's negative economic impact.

This sub-category of eligible uses does not separately identify disproportionate impacts and corresponding responsive services.

1. **Designating an impacted industry.** There are two main ways an industry can be designated as "impacted."

    1. If the industry is in the travel, tourism, or hospitality sectors (including Tribal development districts), the industry is impacted.

    2. If the industry is outside the travel, tourism, or hospitality sectors, the industry is impacted if:

        a. The industry experienced at least 8 percent employment loss from pre-pandemic levels,[9] or

        b. The industry is experiencing comparable or worse economic impacts as the national tourism, travel, and hospitality industries as of the date of the final rule, based on the totality of economic indicators or qualitative data (if quantitative data is unavailable), and if the impacts were generally due to the COVID-19 public health emergency.

    Recipients have flexibility to define industries broadly or narrowly, but Treasury encourages recipients to define narrow and discrete industries eligible for aid. State and territory recipients also have flexibility to define the industries with greater geographic precision; for example, a state may identify a particular industry in a certain region of a state as impacted.

2. **Providing eligible aid to the impacted industry.** Aid may only be provided to support businesses, attractions, and Tribal development districts operating prior to the pandemic and affected by required closures and other efforts to contain the pandemic. Further, aid should be generally broadly available to all businesses within the impacted industry to avoid potential conflicts of interest, and Treasury encourages aid to be first used for operational expenses, such as payroll, before being used on other types of costs.

[9] Specifically, a recipient should compare the percent change in the number of employees of the recipient's identified industry and the national Leisure & Hospitality sector in the three months before the pandemic's most severe impacts began (a straight three-month average of seasonally-adjusted employment data from December 2019, January 2020, and February 2020) with the latest data as of the final rule (a straight three-month average of seasonally-adjusted employment data from September 2021, October 2021, and November 2021). For parity and simplicity, smaller recipients without employment data that measure industries in their specific jurisdiction may use data available for a broader unit of government for this calculation (e.g., a county may use data from the state in which it is located; a city may use data for the county, if available, or state in which it is located) solely for purposes of determining whether a particular industry is an impacted industry.

Treasury recognizes the enumerated projects below as eligible responses to impacted industries.

- ✓ Aid to mitigate financial hardship, such as supporting payroll costs, lost pay and benefits for returning employees, support of operations and maintenance of existing equipment and facilities
- ✓ Technical assistance, counseling, or other services to support business planning
- ✓ COVID-19 mitigation and infection prevention measures (see section Public Health)

As with all eligible uses, recipients may pursue a project not listed above by undergoing the steps outlined in the section Framework for Eligible Uses Beyond Those Enumerated.

PUBLIC SECTOR CAPACITY

Recipients may use SLFRF funding to restore and bolster public sector capacity, which supports government's ability to deliver critical COVID-19 services. There are three main categories of eligible uses to bolster public sector capacity and workforce: Public Safety, Public Health, and Human Services Staff; Government Employment and Rehiring Public Sector Staff; and Effective Service Delivery.

Public Safety, Public Health, and Human Services Staff

SLFRF funding may be used for payroll and covered benefits for public safety, public health, health care, human services and similar employees of a recipient government, for the portion of the employee's time spent responding to COVID-19. Recipients should follow the steps below.

1. **Identify eligible public safety, public health, and human services staff.** Public safety staff include:

   - ✓ Police officers (including state police officers)
   - ✓ Sheriffs and deputy sheriffs
   - ✓ Firefighters
   - ✓ Emergency medical responders
   - ✓ Correctional and detention officers
   - ✓ Dispatchers and supervisor personnel that directly support public safety staff

   Public health staff include:

   - ✓ Employees involved in providing medical and other physical or mental health services to patients and supervisory personnel, including medical staff assigned to schools, prisons, and other such institutions
   - ✓ Laboratory technicians, medical examiners, morgue staff, and other support services essential for patient care
   - ✓ Employees of public health departments directly engaged in public health matters and related supervisory personnel

   Human services staff include:

   - ✓ Employees providing or administering social services and public benefits
   - ✓ Child welfare services employees
   - ✓ Child, elder, or family care employees

2. **Assess portion of time spent on COVID-19 response for eligible staff.**

   Recipients can use a variety of methods to assess the share of an employees' time spent responding to COVID-19, including using reasonable estimates—such as estimating the share of time based on discussions with staff and applying that share to all employees in that position.

   For administrative convenience, recipients can consider public health and safety employees entirely devoted to responding to COVID-19 (and their payroll and benefits fully covered by SLFRF) if the

employee, or his or her operating unit or division, is "primarily dedicated" to responding to COVID-19. Primarily dedicated means that more than half of the employee, unit, or division's time is dedicated to responding to COVID-19.

Recipients must periodically reassess their determination and maintain records to support their assessment, although recipients do not need to track staff hours.

3. **Use SLFRF funding for payroll and covered benefits for the portion of eligible staff time spent on COVID-19 response.** SLFRF funding may be used for payroll and covered benefits for the portion of the employees' time spent on COVID-19 response, as calculated above, through the period of performance.

Government Employment and Rehiring Public Sector Staff

Under the increased flexibility of the final rule, SLFRF funding may be used to support a broader set of uses to restore and support public sector employment. Eligible uses include hiring up to a pre-pandemic baseline that is adjusted for historic underinvestment in the public sector, providing additional funds for employees who experienced pay cuts or were furloughed, avoiding layoffs, providing worker retention incentives, and paying for ancillary administrative costs related to hiring, support, and retention.

- **Restoring pre-pandemic employment.** Recipients have two options to restore pre-pandemic employment, depending on the recipient's needs.

  - *If the recipient simply wants to hire back employees for pre-pandemic positions:* Recipients may use SLFRF funds to hire employees for the same positions that existed on January 27, 2020 but that were unfilled or eliminated as of March 3, 2021. Recipients may use SLFRF funds to cover payroll and covered benefits for such positions through the period of performance.

  - *If the recipient wants to hire above the pre-pandemic baseline and/or would like to have flexibility in positions:* Recipients may use SLFRF funds to pay for payroll and covered benefits associated with the recipient increasing its number of budgeted FTEs up to 7.5 percent above its pre-pandemic baseline. Specifically, recipients should undergo the following steps:

    a. Identify the recipient's budgeted FTE level on January 27, 2020. This includes all budgeted positions, filled and unfilled. This is called the *pre-pandemic baseline*.
    b. Multiply the pre-pandemic baseline by 1.075. This is called the *adjusted pre-pandemic baseline*.
    c. Identify the recipient's budgeted FTE level on March 3, 2021, which is the beginning of the period of performance for SLFRF funds. Recipients may, but are not required to, exclude the number of FTEs dedicated to responding to the COVID-19 public health emergency. This is called the *actual number of FTEs*.
    d. Subtract the *actual number of FTEs* from the *adjusted pre-pandemic baseline* to calculate the number of FTEs that can be covered by SLFRF funds. Recipients do not have to hire for the same roles that existed pre-pandemic.

Recipients may use SLFRF funds to cover payroll and covered benefits through the period of performance; these employees must have begun their employment on or after March 3, 2021. Recipients may only use SLFRF funds for additional FTEs hired over the March 3, 2021 level (i.e., the *actual number of FTEs*).

- **Supporting and retaining public sector workers.** Recipients can also use funds in other ways that support the public sector workforce.[10] These include:
    - **Providing additional funding for employees who experienced pay reductions or were furloughed** since the onset of the pandemic, up to the difference in the employee's pay, taking into account unemployment benefits received.
    - **Maintaining current compensation levels to prevent layoffs.** SLFRF funds may be used to maintain current compensation levels, with adjustments for inflation, in order to prevent layoffs that would otherwise be necessary.
    - **Providing worker retention incentives, including reasonable increases in compensation** to persuade employees to remain with the employer as compared to other employment options. Retention incentives must be entirely additive to an employee's regular compensation, narrowly tailored to need, and should not exceed incentives traditionally offered by the recipient or compensation that alternative employers may offer to compete for the employees. Treasury presumes that retention incentives that are less than 25 percent of the rate of base pay for an individual employee or 10 percent for a group or category of employees are reasonably proportional to the need to retain employees, as long as other requirements are met.
- **Covering administrative costs associated with administering the hiring, support, and retention programs above.**

Effective Service Delivery

SLFRF funding may be used to improve the efficacy of public health and economic programs through tools like program evaluation, data, and outreach, as well as to address administrative needs caused or exacerbated by the pandemic. Eligible uses include:

- **Supporting program evaluation, data, and outreach through:**

[10] Recipients should be able to substantiate that these uses of funds are substantially due to the public health emergency or its negative economic impacts (e.g., fiscal pressures on state and local budgets) and respond to its impacts. See the final rule for details on these uses.

- ✓ Program evaluation and evidence resources
- ✓ Data analysis resources to gather, assess, share, and use data
- ✓ Technology infrastructure to improve access to and the user experience of government IT systems, as well as technology improvements to increase public access and delivery of government programs and services
- ✓ Community outreach and engagement activities
- ✓ Capacity building resources to support using data and evidence, including hiring staff, consultants, or technical assistance support

- **Addressing administrative needs, including:**
  - ✓ Administrative costs for programs responding to the public health emergency and its economic impacts, including non-SLFRF and non-federally funded programs
  - ✓ Address administrative needs caused or exacerbated by the pandemic, including addressing backlogs caused by shutdowns, increased repair or maintenance needs, and technology infrastructure to adapt government operations to the pandemic (e.g., video-conferencing software, data and case management systems)

CAPITAL EXPENDITURES

As described above, the final rule clarifies that recipients may use funds for programs, services, and capital expenditures that respond to the public health and negative economic impacts of the pandemic. Any use of funds in this category for a capital expenditure must comply with the capital expenditure requirements, in addition to other standards for uses of funds.

Capital expenditures are subject to the same eligibility standard as other eligible uses to respond to the pandemic's public health and economic impacts; specifically, they must be related and reasonably proportional to the pandemic impact identified and reasonably designed to benefit the impacted population or class.

For ease of administration, the final rule identifies enumerated types of capital expenditures that Treasury has identified as responding to the pandemic's impacts; these are listed in the applicable sub-category of eligible uses (e.g., public health, assistance to households, etc.). Recipients may also identify other responsive capital expenditures. Similar to other eligible uses in the SLFRF program, no pre-approval is required for capital expenditures.

To guide recipients' analysis of whether a capital expenditure meets the eligibility standard, recipients (with the exception of Tribal governments) must complete and meet the requirements of a written justification for capital expenditures equal to or greater than $1 million. For large-scale capital expenditures, which have high costs and may require an extended length of time to complete, as well as most capital expenditures for non-enumerated uses of funds, Treasury requires recipients to submit their written justification as part of regular reporting. Specifically:

<table>
<tr><th>If a project has total capital expenditures of</th><th>and the use is enumerated by Treasury as eligible, then</th><th>and the use is beyond those enumerated by Treasury as eligible, then</th></tr>
<tr><td>Less than $1 million</td><td>No Written Justification required</td><td>No Written Justification required</td></tr>
<tr><td>Greater than or equal to $1 million, but less than $10 million</td><td>Written Justification required but recipients are not required to submit as part of regular reporting to Treasury</td><td rowspan="2">Written Justification required and recipients must submit as part of regular reporting to Treasury</td></tr>
<tr><td>$10 million or more</td><td>Written Justification required and recipients must submit as part of regular reporting to Treasury</td></tr>
</table>

A Written Justification includes:

- *Description of the harm or need to be addressed.* Recipients should provide a description of the specific harm or need to be addressed and why the harm was exacerbated or caused by the public health emergency. Recipients may provide quantitative information on the extent and the type of harm, such as the number of individuals or entities affected.

- *Explanation of why a capital expenditure is appropriate.* For example, recipients should include an explanation of why existing equipment and facilities, or policy changes or additional funding to pertinent programs or services, would be inadequate.
- *Comparison of proposed capital project against at least two alternative capital expenditures and demonstration of why the proposed capital expenditure is superior.* Recipients should consider the effectiveness of the capital expenditure in addressing the harm identified and the expected total cost (including pre-development costs) against at least two alternative capital expenditures.

Where relevant, recipients should consider the alternatives of improving existing capital assets already owned or leasing other capital assets.

Treasury presumes that the following capital projects are generally ineligible:

- ✗ Construction of new correctional facilities as a response to an increase in rate of crime
- ✗ Construction of new congregate facilities to decrease spread of COVID-19 in the facility
- ✗ Construction of convention centers, stadiums, or other large capital projects intended for general economic development or to aid impacted industries

In undertaking capital expenditures, Treasury encourages recipients to adhere to strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions. Treasury also encourages recipients to prioritize in their procurements employers with high labor standards and to prioritize employers without recent violations of federal and state labor and employment laws.

FRAMEWORK FOR ELIGIBLE USES BEYOND THOSE ENUMERATED

As described above, recipients have broad flexibility to identify and respond to other pandemic impacts and serve other populations that experienced pandemic impacts, beyond the enumerated uses and presumed eligible populations. Recipients should undergo the following steps to decide whether their project is eligible:

Step	1. Identify COVID-19 public health or economic impact	2. Design a response that addresses or responds to the impact
Analysis	• Can identify impact to a specific household, business or nonprofit or to a class of households, businesses or nonprofits (i.e., group) • Can also identify disproportionate impacts, or more severe impacts, to a specific beneficiary or to a class	• Types of responses can include a program, service, or capital expenditure • Response should be related and reasonably proportional to the harm • Response should also be reasonably designed to benefit impacted individual or class

1. **Identify a COVID-19 public health or negative economic impact on an individual or a class.** Recipients should identify an individual or class that is "impacted" or "disproportionately impacted" by the COVID-19 public health emergency or its negative economic impacts as well as the specific impact itself.

    - "Impacted" entities are those impacted by the disease itself or the harmful consequences of the economic disruptions resulting from or exacerbated by the COVID-19 public health emergency. For example, an individual who lost their job or a small business that saw lower revenue during a period of closure would both have experienced impacts of the pandemic.

    - "Disproportionately impacted" entities are those that experienced disproportionate public health or economic outcomes from the pandemic; Treasury recognizes that pre-existing disparities, in many cases, amplified the impacts of the pandemic, causing more severe impacts in underserved communities. For example, a household living in a neighborhood with limited access to medical care and healthy foods may have faced health disparities before the pandemic, like a higher rate of chronic health conditions, that contributed to more severe health outcomes during the COVID-19 pandemic.

    The recipient may choose to identify these impacts at either the individual level or at a class level. If the recipient is identifying impacts at the individual level, they should retain documentation supporting the impact the individual experienced (e.g., documentation of lost revenues from a small business). Such documentation can be streamlined in many cases (e.g., self-attestation that a household requires food assistance).

    Recipients also have broad flexibility to identify a "class" – or a group of households, small businesses, or nonprofits – that experienced an impact. In these cases, the recipients should

first identify the class and the impact that it faced. Then, recipients only need to document that the individuals served fall within that class; recipients do not need to document a specific impact to each individual served. For example, a recipient could identify that restaurants in the downtown area faced substantial declines in revenue due to decreased foot traffic from workers; the recipient could develop a program to respond to the impact on that class and only needs to document that the businesses being served are restaurants in the downtown area.

Recipients should keep the following considerations in mind when designating a class:

- **There should be a relationship between the definition of the class and the proposed response.** Larger and less-specific classes are less likely to have experienced similar harms, which may make it more difficult to design a response that appropriately responds to those harms.
- **Classes may be determined on a population basis or on a geographic basis**, and the response should be appropriately matched. For example, a response might be designed to provide childcare to single parents, regardless of which neighborhood they live in, or a response might provide a park to improve the health of a disproportionately impacted neighborhood.
- **Recipients may designate classes that experienced disproportionate impact**, by assessing the impacts of the pandemic and finding that some populations experienced meaningfully more severe impacts than the general public. To determine these disproportionate impacts, recipients:
    - May designate classes based on academic research or government research publications (such as the citations provided in the supplementary information in the final rule), through analysis of their own data, or through analysis of other existing data sources.
    - May also consider qualitative research and sources to augment their analysis, or when quantitative data is not readily available. Such sources might include resident interviews or feedback from relevant state and local agencies, such as public health departments or social services departments.
    - Should consider the quality of the research, data, and applicability of analysis to their determination in all cases.
- **Some of the enumerated uses may also be appropriate responses to the impacts experienced by other classes of beneficiaries**. It is permissible for recipients to provide these services to other classes, so long as the recipient determines that the response is also appropriate for those groups.
- **Recipients may designate a class based on income level, including at levels higher than the final rule definition of "low- and moderate-income."** For example, a recipient may identify that households in their community with incomes above the final rule threshold for low-income nevertheless experienced disproportionate impacts from the pandemic and provide responsive services.

2. **Design a response that addresses or responds to the impact.** Programs, services, and other interventions must be reasonably designed to benefit the individual or class that experienced

the impact. They must also be related and reasonably proportional to the extent and type of impact experienced. For example, uses that bear no relation or are grossly disproportionate to the type or extent of the impact would not be eligible.

"Reasonably proportional" refers to the scale of the response compared to the scale of the harm, as well as the targeting of the response to beneficiaries compared to the amount of harm they experienced; for example, it may not be reasonably proportional for a cash assistance program to provide a very small amount of aid to a group that experienced severe harm and a much larger amount to a group that experienced relatively little harm. Recipients should consider relevant factors about the harm identified and the response to evaluate whether the response is reasonably proportional. For example, recipients may consider the size of the population impacted and the severity, type, and duration of the impact. Recipients may also consider the efficacy, cost, cost-effectiveness, and time to delivery of the response.

For disproportionately impacted communities, recipients may design interventions that address broader pre-existing disparities that contributed to more severe health and economic outcomes during the pandemic, such as disproportionate gaps in access to health care or pre-existing disparities in educational outcomes that have been exacerbated by the pandemic.

Premium Pay

The Coronavirus State and Local Fiscal Recovery Funds may be used to provide premium pay to eligible workers performing essential work during the pandemic. Premium pay may be awarded to eligible workers up to $13 per hour. Premium pay must be in addition to wages or remuneration (i.e., compensation) the eligible worker otherwise receives. Premium pay may not exceed $25,000 for any single worker during the program.

Recipients should undergo the following steps to provide premium pay to eligible workers.

1. **Identify an "eligible" worker.** Eligible workers include workers "needed to maintain continuity of operations of essential critical infrastructure sectors." These sectors and occupations are eligible:

   - ✓ Health care
   - ✓ Emergency response
   - ✓ Sanitation, disinfection & cleaning
   - ✓ Maintenance
   - ✓ Grocery stores, restaurants, food production, and food delivery
   - ✓ Pharmacy
   - ✓ Biomedical research
   - ✓ Behavioral health
   - ✓ Medical testing and diagnostics
   - ✓ Home and community-based health care or assistance with activities of daily living
   - ✓ Family or child care
   - ✓ Social services
   - ✓ Public health
   - ✓ Mortuary
   - ✓ Critical clinical research, development, and testing necessary for COVID-19 response
   - ✓ State, local, or Tribal government workforce
   - ✓ Workers providing vital services to Tribes
   - ✓ Educational, school nutrition, and other work required to operate a school facility
   - ✓ Laundry
   - ✓ Elections
   - ✓ Solid waste or hazardous materials management, response, and cleanup
   - ✓ Work requiring physical interaction with patients
   - ✓ Dental care
   - ✓ Transportation and warehousing
   - ✓ Hotel and commercial lodging facilities that are used for COVID-19 mitigation and containment

   Beyond this list, the chief executive (or equivalent) of a recipient government may designate additional non-public sectors as critical so long as doing so is necessary to protecting the health and wellbeing of the residents of such jurisdictions.

2. **Verify that the eligible worker performs "essential work,"** meaning work that:

   - Is not performed while teleworking from a residence; and
   - Involves either:
     a. regular, in-person interactions with patients, the public, or coworkers of the individual that is performing the work; or
     b. regular physical handling of items that were handled by, or are to be handled by, patients, the public, or coworkers of the individual that is performing the work.

3. **Confirm that the premium pay "responds to" workers performing essential work during the COVID-19 public health emergency.** Under the final rule, which broadened the share of eligible workers who can receive premium pay without a written justification, recipients may meet this requirement in one of three ways:

    - Eligible worker receiving premium pay is earning (with the premium included) at or below 150 percent of their residing state or county's average annual wage for all occupations, as defined by the Bureau of Labor Statistics' Occupational Employment and Wage Statistics, whichever is higher, on an annual basis; or

    - Eligible worker receiving premium pay is not exempt from the Fair Labor Standards Act overtime provisions; or

    - If a worker does not meet either of the above requirements, the recipient must submit written justification to Treasury detailing how the premium pay is otherwise responsive to workers performing essential work during the public health emergency. This may include a description of the essential worker's duties, health, or financial risks faced due to COVID-19, and why the recipient determined that the premium pay was responsive. Treasury anticipates that recipients will easily be able to satisfy the justification requirement for front-line workers, like nurses and hospital staff.

Premium pay may be awarded in installments or lump sums (e.g., monthly, quarterly, etc.) and may be awarded to hourly, part-time, or salaried or non-hourly workers. Premium pay must be paid in addition to wages already received and may be paid retrospectively. A recipient may not use SLFRF to merely reimburse itself for premium pay or hazard pay already received by the worker, and premium pay may not be paid to volunteers.

Water & Sewer Infrastructure

The Coronavirus State and Local Fiscal Recovery Funds may be used to make necessary investments in water and sewer infrastructure. State, local, and Tribal governments have a tremendous need to address the consequences of deferred maintenance in drinking water systems and removal, management, and treatment of sewage and stormwater, along with additional resiliency measures needed to adapt to climate change.

Recipients may undertake the eligible projects below:

PROJECTS ELIGIBLE UNDER EPA'S CLEAN WATER STATE REVOLVING FUND (CWSRF)

Eligible projects under the CWSRF, and the final rule, include:

- ✓ Construction of publicly owned treatment works
- ✓ Projects pursuant to implementation of a nonpoint source pollution management program established under the Clean Water Act (CWA)
- ✓ Decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage
- ✓ Management and treatment of stormwater or subsurface drainage water
- ✓ Water conservation, efficiency, or reuse measures
- ✓ Development and implementation of a conservation and management plan under the CWA
- ✓ Watershed projects meeting the criteria set forth in the CWA
- ✓ Energy consumption reduction for publicly owned treatment works
- ✓ Reuse or recycling of wastewater, stormwater, or subsurface drainage water
- ✓ Security of publicly owned treatment works

Treasury encourages recipients to review the EPA handbook for the CWSRF for a full list of eligibilities.

PROJECTS ELIGIBLE UNDER EPA'S DRINKING WATER STATE REVOLVING FUND (DWSRF)

Eligible drinking water projects under the DWSRF, and the final rule, include:

- ✓ Facilities to improve drinking water quality
- ✓ Transmission and distribution, including improvements of water pressure or prevention of contamination in infrastructure and lead service line replacements
- ✓ New sources to replace contaminated drinking water or increase drought resilience, including aquifer storage and recovery system for water storage
- ✓ Green infrastructure, including green roofs, rainwater harvesting collection, permeable pavement
- ✓ Storage of drinking water, such as to prevent contaminants or equalize water demands
- ✓ Purchase of water systems and interconnection of systems
- ✓ New community water systems

Treasury encourages recipients to review the EPA handbook for the DWSRF for a full list of eligibilities.

ADDITIONAL ELIGIBLE PROJECTS

With broadened eligibility under the final rule, SLFRF funds may be used to fund additional types of projects— such as additional stormwater infrastructure, residential wells, lead remediation, and certain rehabilitations of dams and reservoirs — beyond the CWSRF and DWSRF, if they are found to be "necessary" according to the definition provided in the final rule and outlined below.

- ✓ Culvert repair, resizing, and removal, replacement of storm sewers, and additional types of stormwater infrastructure
- ✓ Infrastructure to improve access to safe drinking water for individual served by residential wells, including testing initiatives, and treatment/remediation strategies that address contamination
- ✓ Dam and reservoir rehabilitation if primary purpose of dam or reservoir is for drinking water supply and project is necessary for provision of drinking water
- ✓ Broad set of lead remediation projects eligible under EPA grant programs authorized by the Water Infrastructure Improvements for the Nation (WIIN) Act, such as lead testing, installation of corrosion control treatment, lead service line replacement, as well as water quality testing, compliance monitoring, and remediation activities, including replacement of internal plumbing and faucets and fixtures in schools and childcare facilities

A "necessary" investment in infrastructure must be:

(1) responsive to an identified need to achieve or maintain an adequate minimum level of service, which may include a reasonable projection of increased need, whether due to population growth or otherwise,
(2) a cost-effective means for meeting that need, taking into account available alternatives, and
(3) for investments in infrastructure that supply drinking water in order to meet projected population growth, projected to be sustainable over its estimated useful life.

Please note that DWSRF and CWSRF-eligible projects are generally presumed to be necessary investments. Additional eligible projects generally must be responsive to an identified need to achieve or maintain an adequate minimum level of service. Recipients are only required to assess cost-effectiveness of projects for the creation of new drinking water systems, dam and reservoir rehabilitation projects, or projects for the extension of drinking water service to meet population growth needs. Recipients should review the supplementary information to the final rule for more details on requirements applicable to each type of investment.

APPLICABLE STANDARDS & REQUIREMENTS

Treasury encourages recipients to adhere to strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions. Treasury also encourages recipients to prioritize in their procurements employers with high labor standards and to prioritize employers without recent violations of federal and state labor and employment laws.

Broadband Infrastructure

The Coronavirus State and Local Fiscal Recovery Funds may be used to make necessary investments in broadband infrastructure, which has been shown to be critical for work, education, healthcare, and civic participation during the public health emergency. The final rule broadens the set of eligible broadband infrastructure investments that recipients may undertake.

Recipients may pursue investments in broadband infrastructure meeting technical standards detailed below, as well as an expanded set of cybersecurity investments.

BROADBAND INFRASTRUCTURE INVESTMENTS

Recipients should adhere to the following requirements when designing a broadband infrastructure project:

1. **Identify an eligible area for investment.** Recipients are encouraged to prioritize projects that are designed to serve locations without access to reliable wireline 100/20 Mbps broadband service (meaning service that reliably provides 100 Mbps download speed and 20 Mbps upload speed through a wireline connection), but are broadly able to invest in projects designed to provide service to locations with an identified need for additional broadband investment. Recipients have broad flexibility to define need in their community. Examples of need could include:

   - ✓ Lack of access to a reliable high-speed broadband connection
   - ✓ Lack of affordable broadband
   - ✓ Lack of reliable service

   If recipients are considering deploying broadband to locations where there are existing and enforceable federal or state funding commitments for reliable service of at least 100/20 Mbps, recipients must ensure that SLFRF funds are designed to address an identified need for additional broadband investment that is not met by existing federal or state funding commitments. Recipients must also ensure that SLFRF funds will not be used for costs that will be reimbursed by the other federal or state funding streams.

2. **Design project to meet high-speed technical standards.** Recipients are required to design projects to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds. In cases where it is not practicable, because of the excessive cost of the project or geography or topography of the area to be served by the project, eligible projects may be designed to reliably meet or exceed 100/20 Mbps and be scalable to a minimum of symmetrical 100 Mbps download and upload speeds.

   Treasury encourages recipients to prioritize investments in fiber-optic infrastructure wherever feasible and to focus on projects that will achieve last-mile connections. Further, Treasury encourages recipients to prioritize support for broadband networks owned, operated by, or affiliated with local governments, nonprofits, and co-operatives.

3. **Require enrollment in a low-income subsidy program.** Recipients must require the service provider for a broadband project that provides service to households to either:

   - ✓ Participate in the FCC's Affordable Connectivity Program (ACP)
   - ✓ Provide access to a broad-based affordability program to low-income consumers that provides benefits commensurate to ACP

   Treasury encourages broadband services to also include at least one low-cost option offered without data usage caps at speeds sufficient for a household with multiple users to simultaneously telework and engage in remote learning. Recipients are also encouraged to consult with the community on affordability needs.

CYBERSECURITY INVESTMENTS

SLFRF may be used for modernization of cybersecurity for existing and new broadband infrastructure, regardless of their speed delivery standards. This includes modernization of hardware and software.

APPLICABLE STANDARDS & REQUIREMENTS

Treasury encourages recipients to adhere to strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions. Treasury also encourages recipients to prioritize in their procurements employers with high labor standards and to prioritize employers without recent violations of federal and state labor and employment laws.

Restrictions on Use

While recipients have considerable flexibility to use Coronavirus State and Local Fiscal Recovery Funds to address the diverse needs of their communities, some restrictions on use of funds apply.

OFFSET A REDUCTION IN NET TAX REVENUE

- **States and territories may not use this funding to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or administrative interpretation beginning on March 3, 2021, through the last day of the fiscal year in which the funds provided have been spent.** If a state or territory cuts taxes during this period, it must demonstrate how it paid for the tax cuts from sources other than SLFRF, such as by enacting policies to raise other sources of revenue, by cutting spending, or through higher revenue due to economic growth. If the funds provided have been used to offset tax cuts, the amount used for this purpose must be repaid to the Treasury.

DEPOSITS INTO PENSION FUNDS

- **No recipients except Tribal governments may use this funding to make a deposit to a pension fund.** Treasury defines a "deposit" as an extraordinary contribution to a pension fund for the purpose of reducing an accrued, unfunded liability. While pension deposits are prohibited, recipients may use funds for routine payroll contributions connected to an eligible use of funds (e.g., for public health and safety staff). Examples of extraordinary payments include ones that:
  - Reduce a liability incurred prior to the start of the COVID-19 public health emergency and occur outside the recipient's regular timing for making the payment
  - Occur at the regular time for pension contributions but is larger than a regular payment would have been

ADDITIONAL RESTRICTIONS AND REQUIREMENTS

Additional restrictions and requirements that apply across all eligible use categories include:

- **No debt service or replenishing financial reserves.** Since SLFRF funds are intended to be used prospectively, recipients may not use SLFRF funds for debt service or replenishing financial reserves (e.g., rainy day funds).

- **No satisfaction of settlements and judgments.** Satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring in a judicial, administrative, or regulatory proceeding is itself not an eligible use. However, if a settlement requires the recipient to provide services or incur other costs that are an eligible use of SLFRF funds, SLFRF may be used for those costs.

- **Additional general restrictions.** SLFRF funds may not be used for a project that conflicts with or contravenes the purpose of the American Rescue Plan Act statute (e.g., uses of funds that

undermine COVID-19 mitigation practices in line with CDC guidance and recommendations) and may not be used in violation of the Award Terms and Conditions or conflict of interest requirements under the Uniform Guidance. Other applicable laws and regulations, outside of SLFRF program requirements, may also apply (e.g., laws around procurement, contracting, conflicts-of-interest, environmental standards, or civil rights).

Program Administration

The Coronavirus State and Local Fiscal Recovery Funds final rule details a number of administrative processes and requirements, including on distribution of funds, timeline for use of funds, transfer of funds, treatment of loans, use of funds to meet non-federal match or cost-share requirements, administrative expenses, reporting on use of funds, and remediation and recoupment of funds used for ineligible purposes. This section provides a summary for the most frequently asked questions.

TIMELINE FOR USE OF FUNDS

Under the SLFRF, funds must be used for costs incurred on or after March 3, 2021. Further, costs must be obligated by December 31, 2024, and expended by December 31, 2026.

TRANSFERS

Recipients may undertake projects on their own or through subrecipients, which carry out eligible uses on behalf of a recipient, including pooling funds with other recipients or blending and braiding SLFRF funds with other sources of funds. Localities may also transfer their funds to the state through section 603(c)(4), which will decrease the locality's award and increase the state award amounts.

LOANS

Recipients may generally use SLFRF funds to provide loans for uses that are otherwise eligible, although there are special rules about how recipients should track program income depending on the length of the loan. Recipients should consult the final rule if they seek to utilize these provisions.

NON-FEDERAL MATCH OR COST-SHARE REQUIREMENTS

Funds available under the "revenue loss" eligible use category (sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act) generally may be used to meet the non-federal cost-share or matching requirements of other federal programs. However, note that SLFRF funds may not be used as the non-federal share for purposes of a state's Medicaid and CHIP programs because the Office of Management and Budget has approved a waiver as requested by the Centers for Medicare & Medicaid Services pursuant to 2 CFR 200.102 of the Uniform Guidance and related regulations.

SLFRF funds beyond those that are available under the revenue loss eligible use category may not be used to meet the non-federal match or cost-share requirements of other federal programs, other than as specifically provided for by statute. As an example, the Infrastructure Investment and Jobs Act provides that SLFRF funds may be used to meet the non-federal match requirements of authorized Bureau of Reclamation projects and certain broadband deployment projects. Recipients should consult the final rule for further details if they seek to utilize SLFRF funds as a match for these projects.

ADMINISTRATIVE EXPENSES

SLFRF funds may be used for direct and indirect administrative expenses involved in administering the program. For details on permissible direct and indirect administrative costs, recipients should refer to Treasury's Compliance and Reporting Guidance. Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect costs.

REPORTING, COMPLIANCE & RECOUPMENT

Recipients are required to comply with Treasury's Compliance and Reporting Guidance, which includes submitting mandatory periodic reports to Treasury.

Funds used in violation of the final rule are subject to remediation and recoupment. As outlined in the final rule, Treasury may identify funds used in violation through reporting or other sources. Recipients will be provided with an initial written notice of recoupment with an opportunity to submit a request for reconsideration before Treasury provides a final notice of recoupment. If the recipient receives an initial notice of recoupment and does not submit a request for reconsideration, the initial notice will be deemed the final notice. Treasury may pursue other forms of remediation and monitoring in conjunction with, or as an alternative to, recoupment.

REVISIONS TO THE OVERVIEW OF THE FINAL RULE:

- January 18, 2022 (p. 4, p. 16): Clarification that the revenue loss standard allowance is "up to" $10 million under the Replacing Lost Public Sector Revenue eligible use category; addition of further information on the eligibility of general infrastructure, general economic development, and worker development projects under the Public Health and Negative Economic Impacts eligible use category.
- March 17, 2022 (p. 18): Specified that provision of child nutrition programs is available to respond to impacts of the pandemic on households and communities.

23-028

Type of Action:
☒ **Resolution**
☐ **Ordinance**
☐ **TIDD Resolution**

City Council Action and Executive Summary

District:	☒ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ N/A		
1st Reading:		**Adopted:**	September 6, 2022
Drafter:	Vince Banegas	**Department:**	Community Development
Program:	Community Planning	**Line of Business:**	Community Planning

Title: **A RESOLUTION REVERSING A DENIAL DECISION OF THE PLANNING AND ZONING COMMISSION REGARDING A VARIANCE REQUEST OF ± 300 FEET TO THE MINIMUM 300-FOOT BUFFER DISTANCE REQUIRED BETWEEN A CANNABIS FACILITY AND A QUALIFYING SCHOOL.**

TYPE OF ACTION: ☐ **Administrative** ☐ **Legislative** ☒ **Quasi-Judicial**

PURPOSE(S) OF ACTION:

Consider appeal from applicant Re: Planning and Zoning Commission denial decision

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

This case is an appeal of a denial decision by the Planning and Zoning Commission involving a variance request of ± 300 feet to the minimum 300-foot buffer distance required between a cannabis facility and a qualifying school. In this case, the distance is measured from the building footprint of a cannabis facility to the property line of the school. The proposed cannabis facility is an existing pharmacy (Pharmtrue/Mesilla Valley Pharmacy) that also processes or compounds CBD (Cannabidiol) based products for its customers. The pharmacy and the CBD processing/compounding and sales are allowed use at the subject location which is at 227 S. Main Street. The need for the variance stems from the pharmacy wishing to expand current operations by including THC (Tetrahydrocannabinol) as part of their product/medicinal offering. THC is the subject of the recently adopted cannabis regulations. Said regulations require the subject buffer distance as described above. The subject property is 0.381 acres and is zoned DDC-MS (Downtown Development Code - Main Street). The existing New America School is located adjacent to the subject property and shares a side property line with the subject property.

As defined, a variance is a deviation from the numerical requirements of the zoning code, sign code, and landscape provisions of the design standards. The granting of a variance shall not merely serve as a convenience to the applicant, but shall be the minimum necessary for relief in achieving the applicant's stated objective(s) or demonstrable hardship. Hardships are not considered personal or monetary, but may consider: 1) physical hardships relative to the property; and/or 2) the potential for spurring economic development at a neighborhood or city-wide scale; and/or 3) monetary consideration not as a whole, but relative to options available to meet stated objectives when strict application of code cause considerable monetary hardship.

As submitted, the applicant's justification for the variance request utilized criteria #2 and #3 above. More specifically, the applicant cited that the need to relocate operations to a location other than the present site would pose significant economic hardship to the business. The implication in the material provided is that with the introduction of cannabis-related products within current operations, business is likely to grow increasing GRT and job opportunities thus spurring economic development at both the neighborhood and city-wide level.

The subject property is situated within the Downtown Development Code (DDC) zoning district. The boundaries for this district vary but envelop many of the properties between Picacho Avenue (north), El Molino Boulevard (south), Campo Street (east), and Alameda Boulevard (west). The DDC is broken up into three sub-districts called General Urban (GU), Downtown (DT), and Main Street (MS). The subject property is within the MS sub-district and is intended to accommodate higher intensity mixed-use buildings of retail, office, institutional, and multi-family residential nature. This district is found along either side of Main Street. Outside of this district sits the Downtown (DT) district and beyond that sits the limited General Urban (GU) district and civic spaces.

In terms of land use, the area is surrounded by retail, office, institutional, and service-related uses. This mix of land use is what the MS district seeks to accommodate and what the Elevate Las Cruces Comprehensive Plan seeks to achieve within the Downtown Place Type. The pharmacy aligns itself with this land-use model and serves as a valuable asset to the neighborhood.

On April 26, 2022, at the Planning and Zoning Regular Public Hearing, the variance request was considered. Discussion on the request was relatively robust in context to public input and Commission discussion. The Commission generally felt torn in that the existing pharmacy business had been operating at the subject location for some time with no adverse impacts on the adjacent school. It was noted that the pharmacy very likely filled prescriptions often with more impactful medication than cannabis. The Commission also realized that the request being sought involved a 100% deviation from the required buffer distance in place which is intended to protect school-age children from exposure to cannabis-related marketing and related retail activity; a point that a representative of New Americas School voiced concern over. Staff advised of the public input that had been received prior to the meeting, all of which was in opposition. Several members of the public in attendance spoke in opposition to the request citing school impacts and proximity. Others spoke in favor citing the medicinal value THC-based medication/product could provide when more traditional medication treatments fell short of expectations. Ultimately, the Planning and Zoning Commission by a vote of 0-6-0 (one seat vacant) to deny the request as presented.

SUPPORT INFORMATION:

EXHIBIT A CC
EXHIBIT B CC
ATTACHMENT "A", P&Z Staff Report for Case 22VO0500011.
ATTACHMENT "B", Approved 04-26-22 P&Z Minutes
ATTACHMENT "C", Public Input
ATTACHMENT "D", Appeal Letter

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

P&Z

ANNUAL BUDGET APPROVAL:

☐ Yes
☒ No
☐ N/A

Does this action amend the Capital Improvement Plan (CIP)?

☐ Yes
☐ No
☒ N/A

Does this action align with Elevate Las Cruces?

☐ Yes

☐ No
☒ N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will reverse the denial decision made by the Planning and Zoning Commission and will approve the variance. The applicant will be allowed to incorporate THC into their product offering as proposed.
2. Vote "No"; this will uphold the denial decision made by the Commission. The applicant will not be able to incorporate THC into their product offering as proposed.
3. Vote to "Amend"; this could allow the City Council to modify the Resolution by voting "Yes" and adding conditions as determined appropriate.
4. Vote to "Table"; this could allow the City Council to table/postpone the Resolution and direct staff accordingly.

RESOLUTION 23-028

A RESOLUTION REVERSING A DENIAL DECISION OF THE PLANNING AND ZONING COMMISSION REGARDING A VARIANCE REQUEST OF ± 300 FEET TO THE MINIMUM 300-FOOT BUFFER DISTANCE REQUIRED BETWEEN A CANNABIS FACILITY AND A QUALIFYING SCHOOL.

The City Council is informed that:

WHEREAS, Joaquin Acosta, applicant, has submitted a request for a variance of ± 300 feet to the minimum 300-foot buffer distance required between a cannabis facility (building footprint) to the property line of a qualifying school (New America School); and

WHEREAS, Pharmtrue/Mesilla Valley Pharmacy has occupied the subject property immediately adjacent to New America School since early 2021, has compounded CBD (Cannabidiol) as part of their medicinal offering and now wishes to expand by incorporating THC (Tetrahydrocannabinol) based product into their business plan; and

WHEREAS, the THC and/or cannabis component requires consideration of the buffer distance from qualifying schools/daycares, other cannabis locations, and single-family zoning pursuant to recently adopted cannabis regulation; and

WHEREAS, the subject property is ± 0.381 acres, zoned Downtown Development Code - Main Street (DDC-MS) which allows the property to be used as a pharmacy, with or without cannabis provided all applicable regulations are followed; and

WHEREAS, the Planning and Zoning Commission, after conducting a public hearing on April 26, 2022, denied the variance request by a vote of 0-6-0 (1 commission seat vacant).

NOW, THEREFORE, Be it Resolved by the Governing Body of the City of Las Cruces:

(I)

THAT the denial of the ± 300-foot variance request to the minimum 300-foot buffer distance required between a cannabis facility (building footprint) to the property line of a qualifying school (New America School) is hereby reversed.

(II)

THAT the applicant Pharmtrue/Mesilla Valley Pharmacy is hereby allowed to retail, compound and otherwise incorporate cannabis/THC based product into their operation pursuant to the 2001 Las Cruces Zoning Code, as amended and all applicable New Mexico State regulations governing cannabis.

(III)

THATCity staff is hereby authorized to do all deeds as necessary in the accomplishment of the herein above.

DONE AND APPROVED this day of

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

EXHIBIT "A", Site Map

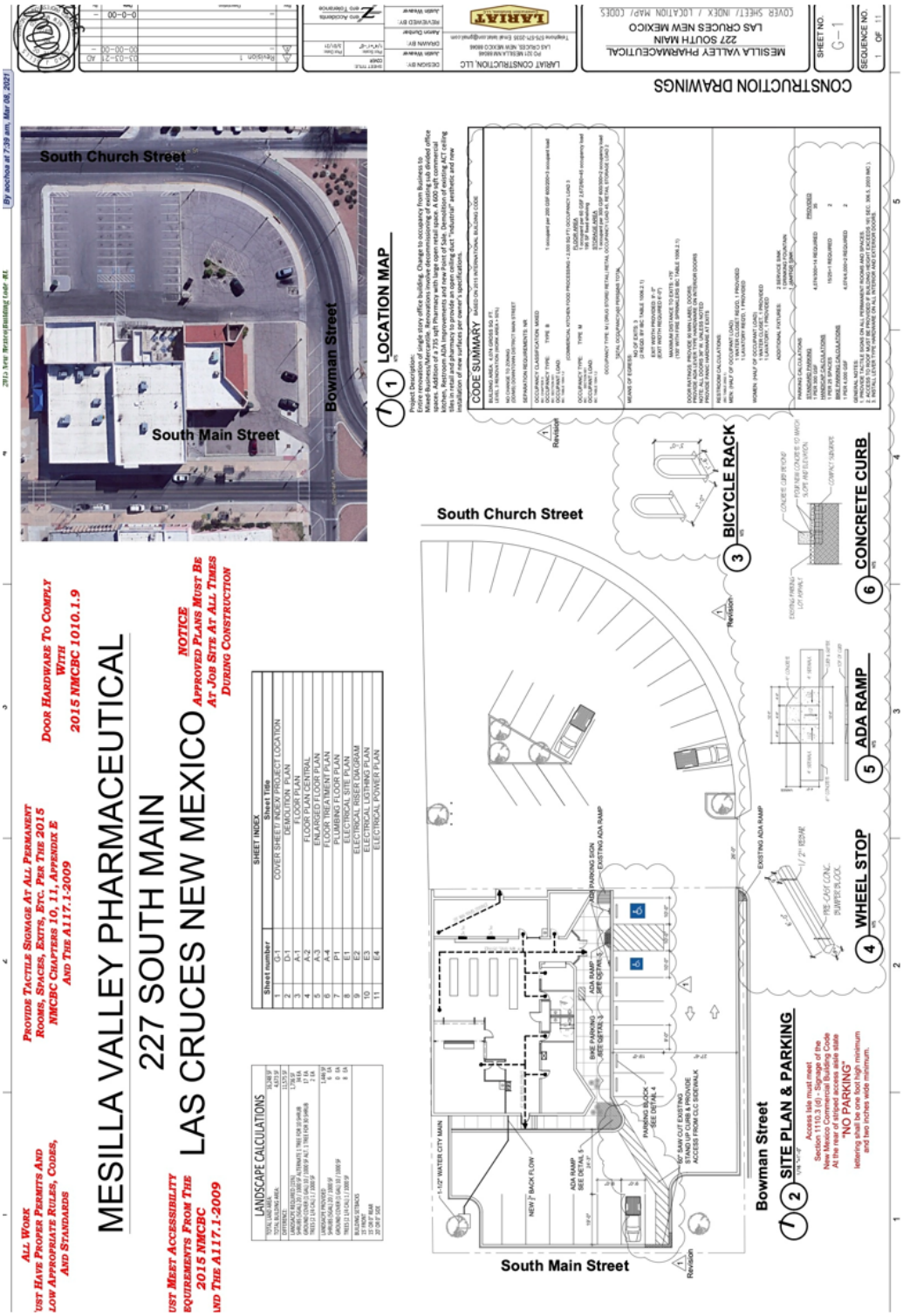


EXHIBIT "B"

FINDINGS OF FACT FOR CASE: 22VO0500011

1. The subject property encompasses + 0.381 acres where Mesilla Valley Pharmacy has legally operated and whose operation includes the compounding and retailing of CBD related products immediately adjacent to the New America School.
2. With the proposed inclusion of Cannabis related product at this location, a buffer distance of 300 feet (building footprint to a qualifying school property line) is required resulting in the need for a full 300-foot deviation to the buffer standard.
3. When Cannabis regulations were drafted, significant discussion regarding buffer distances for schools and daycares took place with concerns over how best to limit exposure to school-age children.
4. No variance case has been approved involving a 100% variance to the buffer requirement.
5. The New America School has provided protest based on proximity of the cannabis establishment and is concerned about operational and student impacts regarding cannabis exposure.
6. Although several policies and actions within Elevate Las Cruces Comprehensive Plan lend support to the request in terms of broader land use and economic development matters, the recent regulation is interpreted to override this policy as a means of protecting specific groups/populations from exposure to an emerging drug/medication and its use.
7. If denied, this action would not be contrary to Section 38-10 K. (Criteria for Decisions) of the 2001 Las Cruces Zoning Code, as amended in that staff found no demonstrable, physical hardship with this request. That said, the applicant's arguments regarding monetary hardship and economic development have merit.
8. As per Section 38-2 (Purpose and Intent) three provisions further support a denial decision in that the request falls short on fostering a rational relationship between different land uses for the mutual benefit of all, ensuring that development proposals are sensitive to the character of existing neighborhoods, and mitigating conflicts among neighbors.

City of Las Cruces
MOUNTAINS OF OPPORTUNITY

ATTACHMENT "A"

VARIANCE

Planning & Zoning Commission 04/26/22

CASE 22VO0500011: VARIANCE

STAFF CONTACT:	Vincent Banegas, (575) 528-3085 vbanegas@las-cruces.org
OWNER:	Pharmtrue Cannabis Retail and Manufacturing
REPRESENTATIVE:	Joaquin Acosta, Pharmtrue Cannabis Retail and Manufacturing
DISTRICT:	District #1
SITE ADDRESS:	227 S. Main Street
EXISTING ZONING:	DDC-MS (Downtown Development Code – Main Street)
REQUEST:	A variance request of ± 300 feet to the minimum 300-foot buffer distance required between a cannabis facility and a qualifying school (property line).
CONCURRENT APPLICATIONS:	N/A
RECOMMENDATION:	Denial

SUMMARY OF REQUEST CASE 22VO0500011:
A variance request of ± 300 feet to the minimum 300-foot buffer distance required between a cannabis facility and a qualifying school (property line). The subject property is zoned DDC-MS (Downtown Development Code – Main Street), ± 0.381 acres in size and is generally located at the northeast corner of S. Main Street and E. Bowman Avenue, along the downtown mall. Submitted by Joaquin Acosta, Pharmtrue Cannabis Retail and Manufacturing.

SUMMARY OF RECOMMENDATION:
Staff is recommending **Denial** based on the findings listed below:

1. The subject property encompasses ± 0.381 acres where Mesilla Valley Pharmacy has legally operated and whose operation includes the compounding and retailing of CBD related products immediately adjacent to the New America School.
2. With the proposed inclusion of Cannabis related product at this location, a buffer distance of 300 feet (building footprint to a qualifying school property line) is required resulting in the need for a full 300-foot deviation to the buffer standard.

3. When Cannabis regulations were drafted, significant discussion regarding buffer distances for schools and daycares took place with concerns over how best to limit exposure to school-age children.
4. No variance case has been approved involving a 100% variance to the buffer requirement.
5. The New America School has provided protest based on proximity of the cannabis establishment and is concerned about operational and student impacts regarding cannabis exposure.
6. Although several policies and actions within Elevate Las Cruces Comprehensive Plan lend support to the request in terms of broader land use and economic development matters, the recent regulation is interpreted to override this policy as a means of protecting specific groups/populations from exposure to an emerging drug/medication and its use.
7. If denied, this action would **not** be contrary to Section 38-10 K. (Criteria for Decisions) of the 2001 Las Cruces Zoning Code, as amended in that staff found no demonstrable, physical hardship with this request. That said, the applicant's arguments regarding monetary hardship and economic development have merit.
8. As per Section 38-2 (Purpose and Intent) three provisions further support a denial decision in that the request falls short on fostering a rational relationship between different land uses for the mutual benefit of all, ensuring that development proposals are sensitive to the character of existing neighborhoods, and mitigating conflicts among neighbors.

PROPOSAL AND LAND USE HISTORY

PROJECT DESCRIPTION:

Pharmtrue is proposing to locate at 227 S. Main Street, the existing location of Mesilla Valley Pharmacy along the Downtown Mall. The company's focus is on preparing and selling healthcare products such as those incorporating CBD. The proposed operation involves the compounding and packaging of product for wholesale and retail some of which will occur on-site. In talking with the business owner, no extraction processes will occur at this location. Their product will be both CBD (Cannabidiol) and THC (tetrahydrocannabinol) based. It is the THC component that triggers cannabis regulatory compliance which in this case, requires the variance as indicated. If the product under consideration was solely CBD based, this variance would not be required.

The proposed operation will have space for "compounding", retail, and lab functions. The buffer distance measurement to the New America School property line was submitted as 0 feet in that the building walls separating each use are attached and/or shared. The distance required is 300 feet. The parcel is zoned DDC-MS and encompasses ± 0.381 acres in size. Be advised that the business owner will be required to follow all applicable codes and City requirements in terms of any site modifications and building improvements either proposed or required for expansion of the existing operation.

HISTORY:
The property is part of the Las Cruces Original Townsite. The structure proposed to house all operations associated with Pharmtrue / Mesilla Valley Pharmacy was built in 1977. Throughout the years, various land uses have been placed on the property with the last known use being the pharmacy in place today.

ZONING DECISION CRITERIA AND POLICIES

POLICY	DOES IT COMPLY?
Neighborhood Character and Compatibility	No
Thoroughfare Plan	Yes
Criteria for Decisions: Article 2, Section 38-10 (K) of the 2001 Zoning Code	Yes & No

NEIGHBORHOOD CHARACTER AND COMPATIBILITY:
Located at the northeast corner of S. Main Street and E. Bowman Avenue along the downtown mall, development of the property is consistent with others in the immediate vicinity. Many land uses in the area are commercial, service, office and institutional. With extensive, planning, substantial investment and renewed development interest, the downtown area and the associated properties are seeing a resurgence. The Elevate Las Cruces Comprehensive Plan identifies the area as the Downtown Place Type whose development vision is to "...include a mix of residential and non-residential land uses that are associated with a thriving and vibrant central business district. The place type supports institutional, cultural, employment, shopping, and entertainment uses while also providing high-density residential living options to create an energized environment to live, work and play". Given the mix of uses within the vicinity and along the downtown mall, the subject use as it exists today does not pose any compatibility concerns for the neighborhood. With the inclusion of cannabis however, compatibility concerns are raised in that the subject property's location is immediately adjacent to the existing New America School and that relatively new ordinance language has sought to buffer cannabis related businesses from qualifying schools.

COMPLIANCE WITH THOROUGHFARE PLANS:
S. Main Street is designated as a Minor Arterial. Church Street and Bowman Avenue are both Principal Arterials. The arterial roadways are intended to carry significant amounts of traffic. As such, there should be no concern as to whether the road network would suffer from allowing additional business activity on the subject property or elsewhere in the general vicinity.

CRITERIA FOR DECISIONS:
The Planning and Zoning Commission (P & Z) has the authority to grant variances to the numeric standards of the 2001 Zoning Code, as amended. Granting any variance shall not merely serve as a convenience to the applicant, but the variance shall be the minimum necessary for relief in order to accomplish the stated objective(s) of the applicant's request or demonstrable hardship. Hardships are not considered personal or monetary as a whole; however, monetary hardship may be taken into account when alternatives to meeting code requirements and strict application of code requirements create said hardship. The P&Z shall review each request in relation to the goals, objectives and policies of the comprehensive plan, plan elements, other applicable plans, and the purpose and intent of this Code, section 38-2 and 36-1 of the Sign Code, when appropriate, and determine whether the request is consistent or inconsistent with stated criteria. Additionally, decisions for granting a variance shall be based on:

1. A physical hardship relative to the property (i.e., topographic constraints or right-of-way takes resulting reduced development flexibility, etc.) in question; and

2. The potential for spurring economic development at a neighborhood or city-wide level if requested allowances are granted; and

3. Monetary considerations not as a whole, but relative to options available to meet the applicant's stated objectives when such options cause considerable monetary hardship under strict application of code provisions.

Staff, after reviewing the request, finds that there is no demonstrable physical hardship. The location of the business itself prevents compliance in context to the proposed cannabis related activity. The operation as it exists today is an allowed use. The applicant did however provide information speaking to the monetary hardship the business would realize if required to relocate for purposes of fulfilling its cannabis business mission. Additionally, the applicant argues that the expansion in business activity has the ability to further economic development at both the neighborhood and city-wide level primarily through GRT and job creation. Staff does not dispute these points.

In consideration of submitted documentation, staff concludes that the proposed variance if denied can be based on criteria #1 above and the following policy and action as per the Elevate Las Cruces Comprehensive Plan.

- Goal CE-1: Balance Growth. Encourage efficient land use development patterns that accommodate projected growth in a sustainable manner.

- Policy CE-1.1: Create consistency between the Elevate Las Cruces future development program recommendations and development regulations.
  - Action CE-1.1.5: Consider the appropriateness of future development proposals with place type designations and their relationship with surrounding land uses.

Based on the criteria and information listed above, staff recommends denial for the proposed variance. One needs to recognize that the criteria for decisions and comprehensive plan policy were well in place prior to the drafting and adoption of cannabis regulation. Based on the regulatory drafting and adoption process, staff feels that there was clear intent on protecting schools and the students that attend them from exposure to cannabis related business/product. Granted, measures are in place to provide flexibility in meeting the adopted standard, however, staff does not believe that a complete deviation to said standard was intended. Please note that the Las Cruces City Council will be reviewing/discussing cannabis regulation in the near future, but at this point in time, it is not clear what if anything will come of that effort.

DEVELOPMENT STANDARDS

SITE COMPLIANCE FOR CURRENT USE:
The subject property is currently occupied, is zoned DDC-MS, encompasses ± 0.381 acres and has access from E. Bowman Avenue. It appears that the site is in compliance with current code.

ADEQUACY OF PUBLIC FACILITIES AND SERVICES:
The site is currently served by CLC utility services. All roadways adjacent to the site and that provide access to the subject property are dedicated and improved rights-of-way.

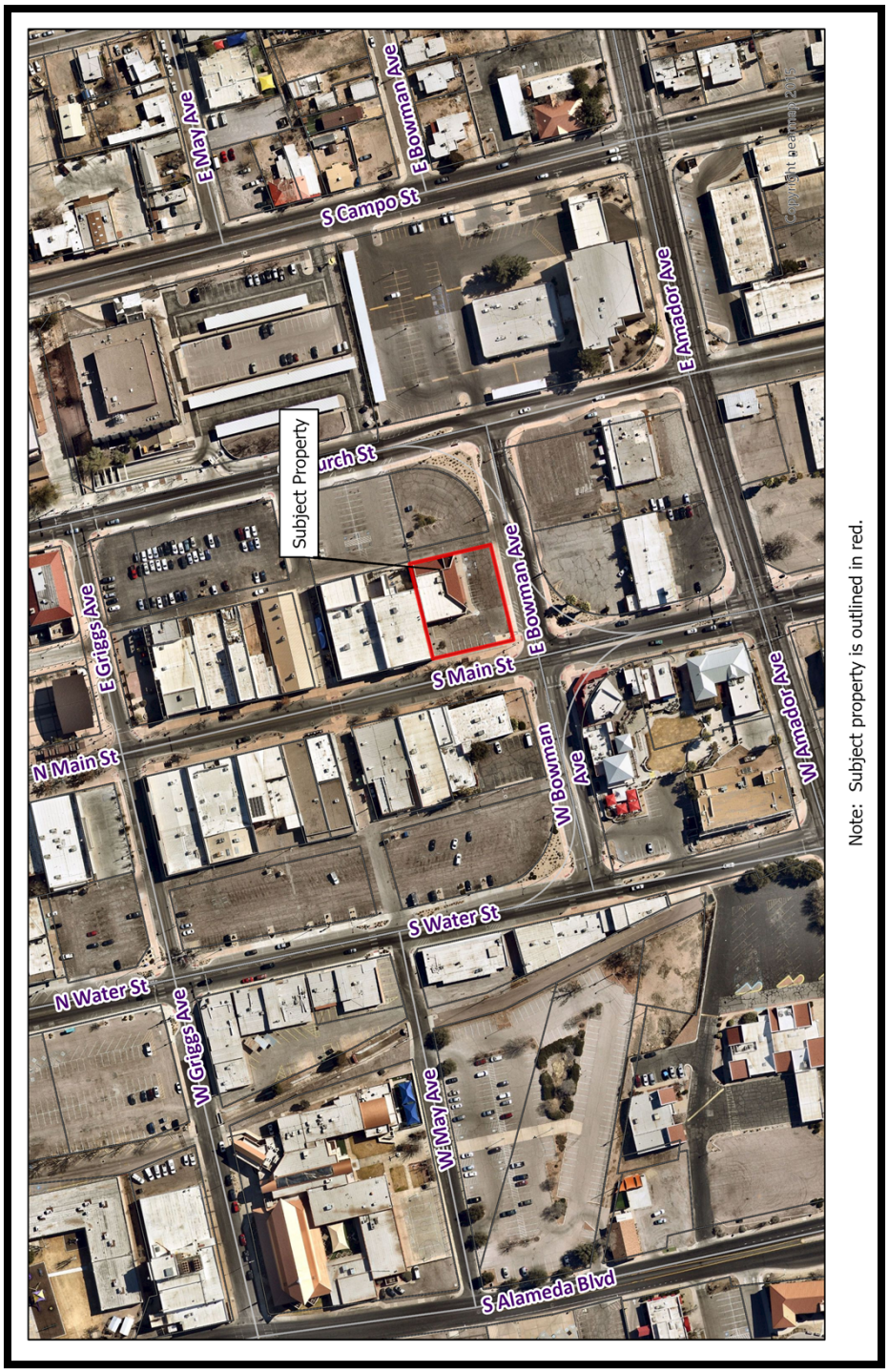
FLOOD PLAIN: The subject property is **not** located within the flood zone.

PUBLIC COMMENTS

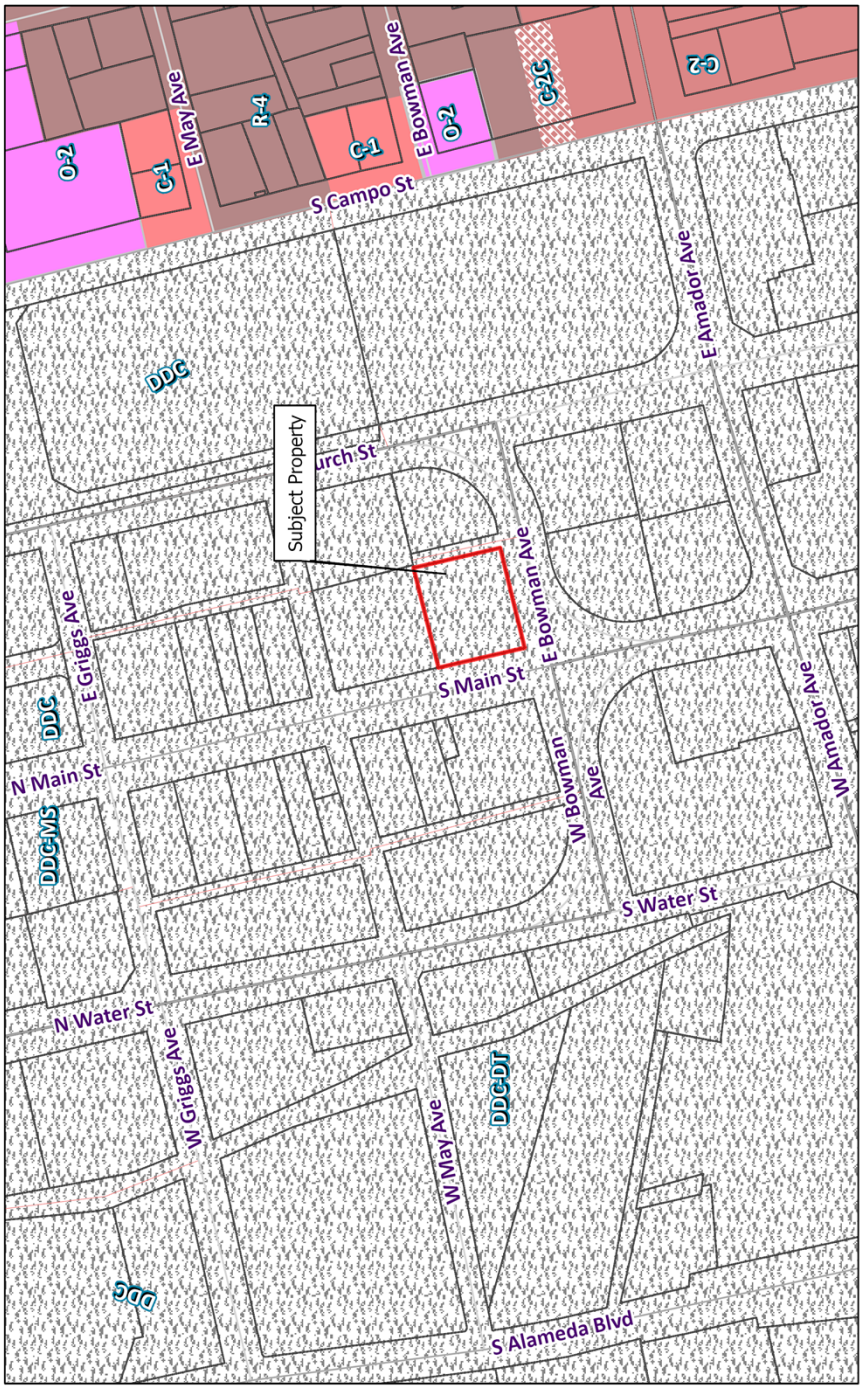
PUBLIC NOTIFICATION AND INPUT:
Notice of a Public Hearing was mailed to all property owners within 500 feet of the subject property. Staff has not received any comments as of this report's drafting.

ATTACHMENTS:
1. Aerial Map
2. Zoning Map
3. Variance Request Justification
4. Site Plan/Buffer Distance
5. Department Comments
6. Public Input

ATTACHMENT 1
Aerial Map



ATTACHMENT 2
Zoning Map



Note: Subject property is outlined in red.

ATTACHMENT 3
Statement of Hardship

Hardship- Potential for Spurring Economic Development

Phamtrue Statistics-

- Patients treated with our CBD downtown at 227 S Main: 601
- Distributing our CBD products in 5 New Mexico Pharmacies
- Developed a Continuing Education course for pharmacists and pharmacy technicians, which our co-founders presented at the New Mexico Pharmacy Association's Virtual Convention in June of 2021.
- Educated over 500 healthcare professionals on Cannabis use & drug drug interactions
- Sales to date: 30,374.06

Mesilla Valley Pharmacy Statistics-

Open date: August 30, 2021

Jobs created since opening-

- 4 Full Time Employees
- 2 Part Time Employees
- 4 Contractors

401k & Benefits established
Average Salary/total payroll to date: 44,295.04
Total Sales in that amount of time: 238,958.75

Number Patients Treated Downtown: **5,323 people**

Total Patient Encounters Downtown at 227 S Main > 6,000

Hardship- Potential for Spurring Economic Development

Potential for rapid job creation-

21 cannabis jobs between Manufacturing and Retail at 227 S. Main St.

Manufacturing-

- Bottling Line Operator (2) $38,000/year
- Lab Supervisor (2) $38,000/year
- Production Lab Tech (6) $32,000/year

Retail-

- Retail Cannabis Clerks (8) $26000/year
- Regional Sales (2) $34000/year
- Marketing Manager (1) $32,000/year

Hardship- Monetary considerations

Total Investment Renovating 227 S Main St-

$131,597

Pharmtrue 600 sq ft Lab renovation cost-

$12,479.05

Expensive Alternatives-

Cost to lease alternative retail and manufacturing space ~ 4000 sq ft	25$ sq/ft/year = **$6,250/monthly** *Key Assumptions - ▪ We find landlord willing to work with cannabis ▪ Space is already renovated with a food grade lab and pharmacy proper, which previously cost us $98,597 to create. ▪ No commercial zoning issues with City/County
Cost to purchase commercial lot	$183,000
Cost to develop new land	$100sqft x 4000 sq ft = $400,000

Hardship- Monetary considerations

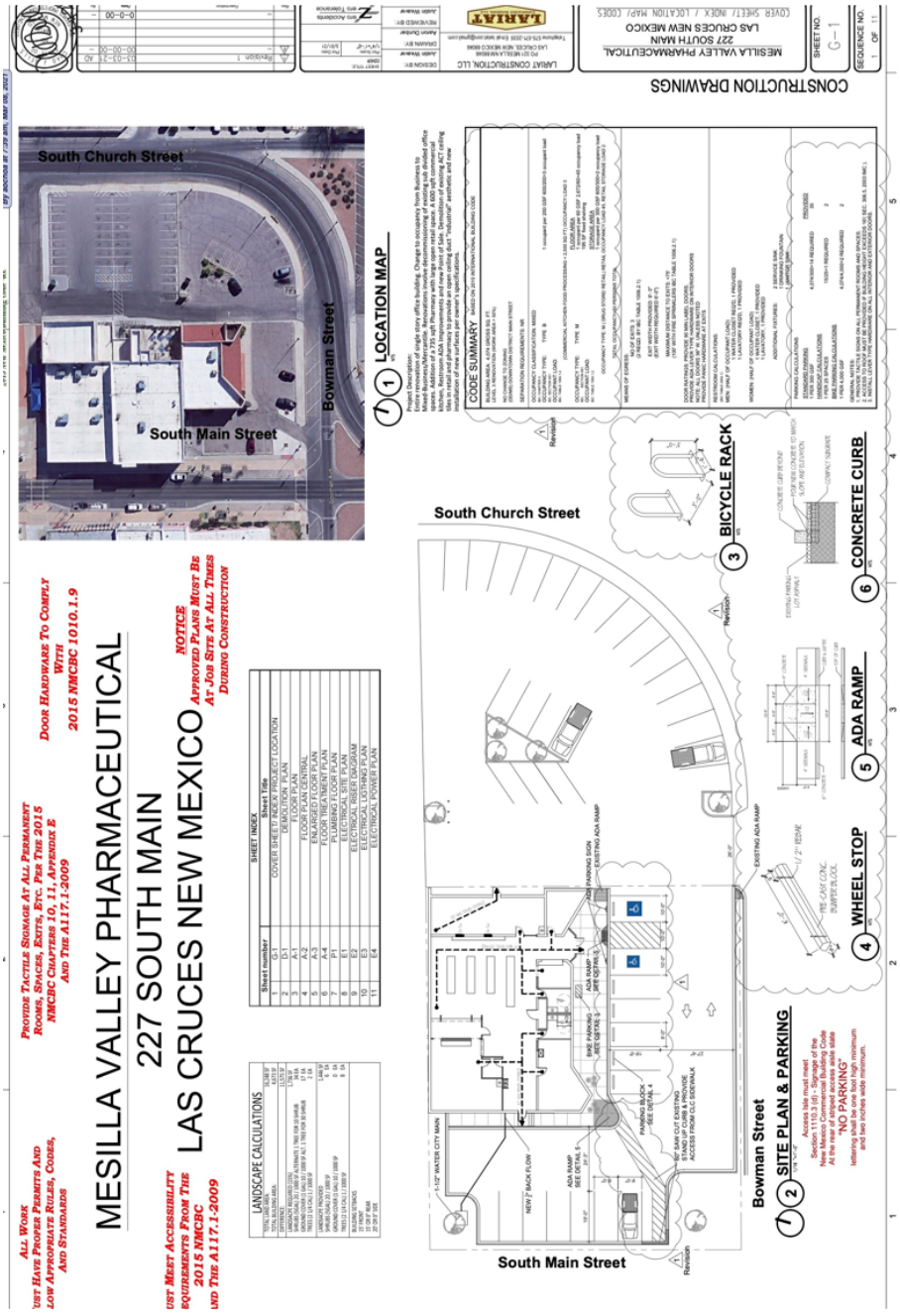
Pharmtrue Total Debt-

$61,525

Mesilla Valley Pharmacy Total Debt-

$195,022

ATTACHMENT 4
Site Plans, Elevation



ATTACHMENT 5
Department Comments

Department: Planning
Status: Denied

1. Buffer variance request is excessive. Represents 100% of requirement.

Department: Engineering
Status: Not Required

Department: Utility Engineering
Status: Approved

Department: MPO
Status: Approved

Department: FIRE
Status: Approved with Contingency

1. Knox Box required to be installed

ATTACHMENT 6
Public Input

ATTACHMENT "B"

PLANNING AND ZONING COMMISSION
FOR THE
CITY OF LAS CRUCES
City Council Chambers
APRIL 26, 2022 at 6:00 p.m.

BOARD MEMBERS PRESENT:

Harvey Gordon, Chair
Luis Armando Guerrero, Vice-Chair
Scott Kaiser, Secretary
James Bennett, Member
Enrico Smith, Member
Vanessa Vega, Member

BOARD MEMBERS ABSENT:

STAFF PRESENT:

Larry Nichols, Director Community Development Department, CLC
David Weir, Deputy Director Community Planning
Katherine Harrison-Rogers, Senior Planner
Vincent Banegas, Interim Planner
John Castillo, CLC Planner
Roberto Cabrillo, CLC Deputy City Attorney
Adrian Guzman, CLC Communications
Becky Baum, Recording Secretary, RC Creations, LLC

1. CALL TO ORDER (6:00)

Gordon: Good evening and welcome to the April 26, 2022 meeting of the Planning and Zoning Commission. I'd like to call this meeting to order

2. CONFLICT OF INTEREST

Gordon: Before we start, anybody on a Commission have any conflict of interest? If so. All right.

3. APPROVAL OF MINUTES - March 22, 2022

Gordon: I need a motion to approve the minutes.

Guerrero: I'll approve the minutes.

Smith: I'll second.

Gordon: Becky, please.

Baum: Board Member Kaiser.

Kaiser: Yes.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Bennett.

Bennett: Yes.

Bam Board Member Vega.

Vega: I wasn't here. Abstain.

Baum: Thank you. Board Member Guerrero..

Guerrero: Yes.

Baum: Chair Gordon.

Gordon: Yes. All right. Before we get to public participation, I would like to reorder the agenda for this evening. Item 9.1, which is the progress report on the land development code. I'd like to move that to now before public participation. Can I get a motion on that please?

Bennett: I make a motion to move 9.1 to now.

Vega: I second

Baum: Board Member Kaiser.

Kaiser: Yes.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Bennett.

Bennett: Yes.

Baum: Board Member Vega.

Vega: Yes.

Baum: Board Member Guerrero.

Guerrero: Yes.

Baum: Chair Gordon.

Gordon: Yes.

Baum: Thank you.

8.2 227 S. Main Street Variance Request: A variance request of ± 300 feet to the minimum 300-foot buffer distance required between a cannabis facility and a qualifying school (property line). The subject property is zoned DDC-MS (Downtown Development Code – Main Street), ± 0.381 acres in size and is generally located at the northeast corner of S. Main Street and E. Bowman Avenue. Council District 1 (22VO0500011)

Gordon: All right, we can move on to item 8.2. Mr. Banegas, you're on stage again.

Banegas: Yes sir. Let me get to that if I could. Okay here we go.

Gordon: Excuse me, just for a second. John, could you come here for a minute, please? Go ahead, I'm sorry.

Banegas: Mr. Chairman, Members of the Commission. Once again, Vincent Banegas, Interim Planner for the record. Presenting tonight's case involving 227 South Main Street. It is a variance request involving cannabis related use or proposed use. The property is currently located at the corner of Bowman Avenue and South Main Street. Again 227 South Main Street. Currently the facility is operated as the Mesilla Valley Pharmacy. Based on the information presented, among other things, not only are they a pharmacy, but they also compound and retail CBD related product presently. They're looking to expand and incorporate cannabis related compounds etc. for the benefit of their customers.

The property is 0.381 acres in size and it is zoned in our Downtown Development Code as Main Street. The area in question was developed as part of the Las Cruces Original Townsite. The structure was originally built in 1977. And in this case it is located immediately adjacent to the New America School, in fact they share a wall between them. They may have two separate walls, but nonetheless they're attached.

So this is the zoning map showing the property in question. Dry throat, it's not COVID. The property is outlined in red. Again Bowman Avenue along the southern boundary here, South Main Street in the middle, Church Street is off to the east. And you have the Main Street District on either side of Main Street. Each of these properties that I'm pointing to are Main Street. Elsewhere, primarily in this area and along several of the other surrounding properties you have the Downtown Development Code. There's a Downtown designation, and then you have some civic uses that are also within the general vicinity to serve as public related uses, the plaza is an example, parking, public parking, etc.

An aerial map showing the area. The subject property again outlined in red. You have the building that is currently the Mesilla Valley Pharmacy here. It is along this edge of the building where the attachment takes place to the New America School located here. You have a variety of uses in the area, everything from service, restaurant, retail, you have office, you have everything, I should say you have a good mix of uses, that is certainly promoted as part of the Downtown effort to date.
'

The request as it was submitted is for a variance of 300 feet to the required 300 foot minimum buffer distance between a cannabis facility, and by that we're talking about the building footprint, and a qualifying school property line. Qualifying school just to be clear is everything pre K through 12. No adult school, trade school, etc. are considered as part of that definition. And the school in question is the New America School as indicated.

The applicant is Pharmtrue Cannabis retail and manufacturing. And again they're looking to expand a little bit beyond the CBD aspect and incorporate cannabis or THC level product as part of their medications, and offering to their customer base. The company is obviously healthcare oriented. And as part of their package of information they submitted, there's three criteria Katherine touched on as part of her of her presentation regarding the cannabis case earlier. But there's three criteria that the Zoning Code stipulates. One is a physical hardship. And two is showing that there's some economic development justification to the request. And a third is to show economic hardship in complying with the requirements of the code. So this is one of the two items that they submitted to help justify the request. It is economic development driven, at least at this slide and talks to the issue of job creation. As part of the expansion they would need some additional employees and positions to facilitate that growth. There's also the issue of GRTs as retail sales expand as a result of the cannabis use in their medications, etc, they anticipate that retail sales will increase thus the GRT increase to the City.

Also, in terms of again the criteria for a decision, the applicant submitted some information about monetary hardships as it pertains to this particular request. There's the investment aspect that has already taken place with the property, getting it ready for not only what they have in place now, but for any potential increase in activity. They illustrate that some of the alternatives that would really affect them and you know put them in a bad position is the issue of leasing additional or another site to serve as their facility for this use as requested, is going to be costly. There's a possibility of purchasing commercial property for this proposed use. And there's the cost to develop the land for the building that would house their operation. So all that equates to a substantial monetary hardship which they illustrate through the slides.

The site plan that was submitted, again showing the property in its entirety, but the building footprint here, it is again along this wall that the connection to the New America School is at issue. Parking would take place along not only South Main Street but along Bowman Avenue. You could see some of the parking stalls identified as part of this graphic. Upper right you have the small but useful aerial showing again the connection point to the school.

A couple of more photos,. this is just more or less at the corner of Bowman and Main Street, again showing Mesilla Valley Pharmacy, the New America School. The one on the left is just a south facade of the subject business. And the one on the right is the east facade showing again connection to the school.

So public notice and input. Notice was sent to the surrounding properties in accordance with our Zoning Code rules and regulations. At first I must say that staff had not received a lot of input, but since Thursday last week, most of it come in this weekend and through today, there has been substantial interest in this case. Ten e-mails were submitted all protesting the request. And the concerns largely centered on the items, the bulleted items that are shown in the slide, and I'll just touch on a few. Again the distance issue was thought to be excessive based on current code. A large degree of concern with the impact to the student population of the school and to the children in the community. And they also felt the school felt that there could be some school operational concerns as well. But those were some of the consistent themes of the protest e-mails. Staff did receive a few additional calls, but some of them were just inquisitive type calls, and another was in opposition as well.

Recommendation, in reviewing this case, Mr. Chairman, Members of the Commission, this was a tough one. You had staff look at the issues that were brought forward in terms of this request. And we looked at both policy and ordinance, keeping in mind that policy was written a couple of

years back, and the ordinance written certainly more recently than that. And we considered some of the discussion that took place regarding the buffer distances and certainly thought that there was an intent to protect schools and to protect the students that go to those schools. So staff has what we would call a soft denial on this, but it is a denial. And the findings for the denial are as follows. Obviously, the site is 3.81 acres in size. And currently, and this is important, currently operates as a pharmacy compounding retailing CBD product. And the reason why I bring that up, Mr. Chairman, Commissioners is because there's a known quantity of what the rules required for a business that was already in operation, looking to entertain cannabis as an expansion. So the other findings are, the use of cannabis requires a 300 foot buffer. That has to be met and since it cannot, the variance to the tune of 100% is being requested. And staff felt that this was just too excessive. If you recall, we had a case a couple of months back on the north side of this very same school where the applicants couldn't meet the 300 feet, but they can meet two-thirds of that. So there was a little allowance there to mitigate some of the impact, and that's kind of how we viewed that case. This one it's 100% and a little bit tougher to contend with.

Again, discussion in the drafting of the ordinance took place trying to determine best practices to limit exposure to school aged children. There's been no 100% buffer distance variance approved to date. And we did have the superintendent and the school oppose the request as they did in the other case, and again they were the ones that cited significant concerns to their student population and to operational issues.

I want to indicate that Elevate Las Cruces, our comprehensive plan, lends broad support to the request. It does so through economic development related policy and it does so through broad land use policy. But nowhere in the comp plan does it speak to specific issues related to cannabis locations and schools or anything along those, those lines. So even though there's broad support, staff feels that the recent ordinance overrides that broad support and was aimed at protecting a specific group, in this case schools and students.

If this is denied the action would not be contrary to Section 38-10 K, criteria for decisions. Again one of the first things that's listed there is demonstrating physical hardship, which staff did not find to be the case with this request. As per section 38-2 there's three provisions that further lend support to the denial decision. Staff didn't feel that the request fostered a rational relationship between different land uses for the mutual benefit of all. Again you have at least one property owner who's a significant player in this issue, very concerned with the request. And there's also the issue of sensitivity to the character of the existing neighborhood and trying to mitigate conflicts amongst neighbors.

So with this, you have options this evening Mr. Chair, Commissioners, vote "yes" and approve the case. Keep in mind that this is a little different, if you go that route you'll need to submit new findings of fact not identified during staff's presentation. You could certainly vote "no" and go with the staff recommendation of denial. You could vote "yes" with the conditions or vote to table. If you do have any conditions, please include them in your motion for approval. And that concludes staff's presentation. I know that we have the representative for Pharmtrue in attendance this evening, Mr. Chairman, so I'm sure he would like to speak to the issues at hand.

Gordon: All right. Thank you. Would the applicant like to speak first before I go to the Commission for questions? Would you please state your name for the record and let me swear you in please?

Buck: Daniel G. Buck.

Gordon: All right. Do you swear or affirm that the testimony you're about to give is the truth and nothing but the truth under penalty of law?

Buck: I do.

Gordon: Thank you.

Buck: Thank you Chairman and Members of the Commission. To keep items moving efficiently and effectively we can reference certain documentation I brought with me in regard to the docket in the case at hand. I will take a moment to distribute them and I will explain what the color coding at the header equates to.

Buck: While we continue to pass out the docket, I'm going to take a few seconds to describe my background as it pertains the State of New Mexico and cannabis. I'm currently the state appointed mediator for Chaparral's incorporation on behalf of State Representative Willie Madrid, as well as the case handler for items that arise with cannabis., and executive director of the Southwestern Cannabis Trade Association, which represents ancillary service providers as well as economic drivers of cannabis, and cannabis adjacent businesses.

This specific client before you tonight, Pharmtrue has invested a large sum of capital into the Downtown Main Street program, and has employed over 20 people since the dawn of this year in August of 2021. As we all know, at the beginning of 2020 Main Street saw a stall in its economic spur due to the COVID rise case and then the shutdown subsequently, and we're coming now out of the recession in 2022 in the first fiscal quarter. This client currently retails CBD adjacent products and

compounds and they're looking to expand into THC related products in a two-step safety protocol program. One of the most comprehensive I've seen year to date come before my staff and my office. Upon check-in on the green header of your docket you will see that this business will have a check-in encounter for cannabis before they enter the retail district at the furthest end of the store. They will then have an additional check-in when you enter the retail area through a Dutch style split in half doors. There'll be a counter upon first check in for an ID retrieval, then a subsequent ID check of the purchaser of the cannabis adjacent product. With the cannabis adjacent product, you will not be allowed to leave the cannabis retailing zone inside the pharmacy without checking out in the designated retail area for cannabis or have purchased the goods from the retail frontage as well as your prescription that you may be retrieving simultaneously upon checkout.

I'm going to remove my tennis bracelet to enter this as Exhibit A. Imagine this in a yellow highlighted or blue highlighted color coded manner. I'm sure we've all been to nightclubs where there's underage individuals by state statute who can enter and they're usually governed by a wristband or an X on the hand. Cannabis retailers will be mandated to wear a wristband upon the two-step checking protocol. And upon leaving the cannabis retail zone to enter back into the normal commerce zone of the pharmacy itself.

If we do not work as a trade group and as a commission to pass the variance that's before you, we will have killed a subsequent business that is benefiting the Main Street area and employing people and supplying food for their families. This is an extremely safe business. And cannabis is governed very harshly by the State of New Mexico. Upon discovery last Friday, the school has continued a dual relationship with this client which is actually illegal in a broad stroke of breach of moral conduct. Someone who receives a salary from DLCP has been continuously communicating with the client and failed to disclose her involvement with the school board. And at the same time has been giving verbal context that is relayed from this client back to the school board. Which is a prime example of what hurts e-commerce and economic incentive driven growth in Las Cruces, in Doña Ana County. We must work with our trade partners and our industries to ensure their future and collaborate with people who are investing on Main Street. And I would like to get for the record straight, New America School represents mostly an age, federally recognized 18 to 21 bracket. People who are on a secondary education track. They provide preschool related services for the attendees relative children. It is not a daycare, an underage federally recognized bracket that has being served continuously in the ed program. And I would like to see a continuation of economic spurt disperse in the downtown.

Gordon: Are you finished?

Buck: Yes.

Gordon: All right. Thank you. Is there anyone from the Commission who has any questions to the applicant?

Guerrero: I have a question.

Gordon: Commissioner Guerrero.

Guerrero: Yes, sorry. Can you clarify? So you were saying that, I'm just a little confused of like when you were talking about client and then talking about the person that has been working with New America School, is that like I guess a competitor to this company or what's the relationship there?

Buck: The relationship is she has paid a salary by DLCP as executive director, and then has failed to disclose her involvement with the school board. But the school board has harassed the client on more than one occasion. And this individual has also taken the relative economic information that the client has exchanged with DLCP back to the school board. Serving on multiple committees inside the City of Las Cruces and civic duties that I uphold morally, I have to disclose my involvement on other boards and I believe that other members should be upheld to that moral standard and should abstain from coming to hearings or having a voice in opposition due to duality.

Gordon: Is this is not a civil issue?

Buck: It is a civil issue. I mean it's not a civil issue. I'm sorry.

Gordon: Are you're saying it's a matter of conflict of interest?

Buck: Yes.

Gordon: Is there anyone else?

Smith: I just have a question. Is Pharmtrue in partnership with Mesilla Valley Pharmacy in this venture? Or are they two separate businesses that are in question? I mean I know that Mesilla Valley Pharmacy has already been established. And then now you're trying to have Pharmtrue be you know establish a cannabis business there. Are they both connected? Are they one in the same business?

Buck: Yes Commissioner. It's a board of founders. They're two separate LLCs. Pharmtrue has been in existence since the legalization of hemp in the

State of New Mexico. And they are transitioning into a broader branch of their hemp related products, which would of course entail cannabis, which is a THC based product, governed by the same board of directors, governed by the same founders in partnership, just two LLCs coming together into one facility.

Smith: All right. Thank you.

Gordon: I have a question to Vince, please. Could you go back to the slide that shows the site plan please? That's it. Did I understand we're looking at this information that we received, is there also a possibility that they're thinking of building a separate building or just renovating the interior of the present building?

Banegas: Mr. Chairman, Members of the Commission. My understanding is that the interior of the building would be modified to accommodate the expansion.

Gordon: So all right, if they were to put up a building let's say far enough away from the school would they qualify under the 300 foot exemption? Business at the same property?

Banegas: Mr. Chairman. I think that would be tough. The property line you know even if they located at its furthest distance, I think they'd still be shy of the 300 foot requirement.

Gordon: Okay. I wasn't sure what you had said and it's hard to read sometimes these slides, really couldn't be a little bit bigger would have been nicer. All right, anyone else on the Commission? Commissioner Kaiser.

Kaiser: Thank you. First question probably, well for staff or the applicants representative, the Mesilla. Valley Pharmacy as it stands now fills prescription drugs, is that true?

Buck: Commissioner. That is correct. They currently retail pharmaceutical drugs. And three of the founders on the board, to elaborate, are board certified pharmacists.

Kaiser: Thank you. So they're, just establish for the record, there's already controlled substances, if you will, being distributed out of this pharmacy. So from my perspective this is certainly a challenging case for sure. I think you know the location, the context of being downtown, is certainly challenging. The fact that we just a couple of months ago approved a similar variance. Precedent can be a slippery slope. If one-third variance is good, where do we draw the line? So I think that's what makes this really challenging. To staff, I asked a question earlier about the 300 foot

buffers applies to both New America and the other school facility near downtown. I'm hoping you have that map available. Thank you.

So this is the first time I've seen it. So I'm just sort of digesting here what's on the slide. But this is certainly informative, at least from my perspective. I think one of the concerns I had was how much of downtown would be ruled out of this potential opportunity based on this 300 foot buffer. It appears to me that the, it's I mean it's hard to tell without context here, but it seems to me that there's still a fair amount of downtown that would be available and remain outside of the buffer. Is that, am I reading that correctly?

Banegas: That's correct. Mr. Chairman, Commissioner Kaiser. Yes, the buffers, if I could just kind of orient folks, the New America School is located where my pointer is right now, Pharmtrue is looking to incorporate here in this building to the south. Healthnotics, the case that was previously dealt with a couple of months ago, here. And then there is a business, I believe it's Sugies, at least in our database, it was Diner LLC, here. So those are, and this one may be, the cannabis related centers if you will, or retail establishments. The items in blue are areas that are alcohol based. They have liquor license of some sort associated with them so we showed that. But this red or pink, orange, whichever color you want to call it, is showing the buffer distance 300 foot buffer, from the property line of Central Elementary out, and the property line from New America School out. And so all this shaded area would be within the 300 foot buffer distance. And you're going to have to consider a variance or an SUP depending on what we're dealing with, and then any area outside is free and clear, keeping in mind the other cannabis related businesses.

Kaiser: Yes, thank you. I think this is very helpful. I kind of wish we had had this a couple of months ago. And I think just broadly speaking from my perspective, I think there's a possibly a larger question here for the Commission about what should be downtown. I mean downtown by definition is the central business district. I mean you have a variety of uses, you have alcohol consumption, you have bars, you have pharmacies that are prescribing drugs under prescriptions, you know there's a lot of activity going on in it. I guess the question is, is if a school decides to locate downtown does that mean we push everybody else out? I don't know. I mean, that's just kind of where I'm coming from. I'm glad to see that this map that there's still plenty of opportunity it would appear. But you know we do have some facilities, there's at least one you know alcohol or liquor license located within 300 feet. So the question is when their license comes up for review or whatever are we going to have to exclude them? Are they going to have to relocate in downtown? You know I'm sympathetic to probably some of the folks in the room tonight that are going to speak out against this, but at the end of the day you

know it's downtown. I mean this is where we want to attract businesses. You know certainly we have to weigh the pros and cons, but you know I think that's certainly something that we have to seriously consider that there's some additional context here. Certainly, you know providing or setting precedent you know only a couple of months ago I think, makes this a little bit more difficult for me, but that's just my perspective.

Gordon: I do have a question also, Vince. Maybe you could just answer this for me. There are certain criteria that will enable us to grant a variance other than to approve the fact that there is not a 300 foot barrier between the school and in the building, plus hardship economic, what else is in there besides that?

Banegas: It's physical hardship, justification, citing economic development as a benefit, and consideration of monetary hardship in trying to meet the development code as written.

Gordon: So then, what you said should we consider is this one out of three, two out of three, three out of three?

Banegas: Mr. Chairman. Correct. As it's presented here this evening, the denial looks at one of three. But I do cite the other two criteria as having merit. I mean the applicant has shown merit for those.

Gordon: And it is possible in consideration of the applicant of this proposal that we could consider the hardships outweigh the distance restriction. And so you're requesting that they want a variance request at 300 feet. Let me just look at this for a second. It doesn't say anything about the summary of the request. They're just coming forward now just asking for the 300 feet and providing this other information as ancillary information.

Banegas: Mr. Chairman. The information that was provided citing some of the, they had submitted a PowerPoint that had several slides and the monetary hardship issue and the economic development benefit came up just after packets went out.

Gordon: So then we have something else to consider here.

Banegas: Correct.

Gordon: Okay. In that case is there any other questions from the Commission?

Vega: I have one question. I know this came up in March. What's the age range of the students at the New America School?

Banegas: Mr. Chairman, Commissioner Vega. That's a good question. We'll probably have to defer that question to either the superintendent of the school. If you recall on the other case there was quite a bit of confusion on that. But because it included some of the school aged children, the pre K through 12, we considered it a legitimate qualifying school.

Nichols: Mr. Chairman. If I may. Before we leave the discussion of the Commission. Larry Nichols for the Community Development for the record. We had a lot of discussion on staff on this. And as Mr. Banegas mentioned the recommendation from the staff was a denial. The primary factor in that had to do with distance. We spent a lot of time before the cannabis ordinance was adopted, we first started with a distancing of 1,000 feet because we felt the necessary separation from schools, not churches, but schools. Churches were not a part of the formula here. Then we had said well, it was decided that was too great a distance, and it was reduced to 600 feet. And then we had a lot of discussion and public input on that, and it was reduced to 300 feet. And that's what was approved by the ordinance. This proposal is zero feet. And so I think as Commissioner Kaiser mentioned, it's a slippery slope. Once you begin to approve variances, what is the line that the Commission wants to work with as it complies with the ordinance, in particular the distancing? We had discussion tonight about the variance was based on, we have operational procedures that would overcome that, that would be a safeguard to having the distance reduced to zero. The staff determined that the overriding factor here would be complying with the ordinance that was adopted at the 300 feet. Thank you Mr. Chairman.

Gordon: I understand what you're saying, however we do have the option to give them this variance. We're not restricted from going with your request of denial. If we decide that we want to approve this, that's still a requirement. And school has its option. All right. If there were no other questions, I'd like to. we can go to the public.

Smith: Excuse me. I did have one comment to make.

Gordon: Sorry.

Smith: This has been as Commissioner Kaiser stated, a really challenging proposal that has come before us. And you know I have lived downtown for almost 24 years. And I remember a time when you know the downtown area was on life support. And you know there was you know a church there, still is, Calvary Chapel, and the New America School came in at some point over the last 15 years. And other than that there were various businesses down there, but it was pretty dead down there. And you know they had to you know the downtown revitalization committee that came into play. And I have seen downtown really grow. And as a

resident downtown, I've been really you know happy to see that. You know looking at this the school buffer zone that they, the slide that they put up, I realized that when this school was established downtown, like I said earlier, there was basically nothing there from a business standpoint. And as we now know there you know there is bars, restaurants, cafes, you know it is a business district for the most part.

And the difficulty for me in this proposal is that on one hand I want to see businesses thrive downtown, I want to see new businesses come in. And as Commissioner Kaiser said, it is a slippery slope when you start to issue variances where they're completely deviating from the standard that's been in place. So I just, I'm saying this because you know as we make a vote on this, a decision on this, it's not going to be easy. I know particularly for myself you know being a resident of downtown. So you know it's, yes this is a challenging one for me. So I just wanted to state that, that whatever decision is made it's not going to be an easy one to make. Thank you.

Buck: I'd like to thank the Chairman and Commission for their time tonight. And just urge you to consider the economic benefactor, the colloquium laid before you, and the modus operandi of the current economic environment downtown, and overall in the municipality. Thank you.

Gordon: All right then with that we now can go to the public. Just everybody who would like to speak please raise your hand. One, two, three, four, five, six, seven, eight. All right, I count eight people. I will allow each one of you to speak for three minutes. So when you come forward, please state your name for the record and let me swear you in and we'll start on this side. The gentleman here in the first row. Please state your name.

Wisner: Jay Wisner.

Gordon: Make sure you talk into the microphone.

Wisner: Okay.

Gordon: It think it can be raised if you want. There you go.

Wisner: My name is Jay Wisner.

Gordon: Thank you. Do you swear or affirm that the testimony you're about to give is the truth and nothing but the truth under penalty of law?

Wisner: Yes sir.

Gordon: Thank you. Go ahead.

Wisner: Yes. I would urge you to think of family, to think of education, to think of the families who have children in the school, and I do mean children. I've placed children in the school before. They do have children at that school. And I would ask you to think of the impact on their children. I have forwarded an article to each of you, I believe it's been distributed to each of you about the impact of cannabis ads and location and the influence on youth regarding marijuana use. I've forwarded a factsheet on cannabis from the DEA. And a study which talks about increased incidence of addiction for youth. And no they can't buy the cannabis there. If you were to pass it, that's true. But it's there right beside them. I want you to think each of you who have ever had children. Would you want your child in a school with a cannabis distribution point right next door with an adjoining wall to where your child receives education? Would you want that?

I would also ask you to think about your position as leaders in this community. The leaders in our community should be looking out for the most vulnerable in our community. And if children aren't the most vulnerable in and one of the poorest counties in our country, then I don't know who is. I'm asking you to think of these families. I'm asking you think that their impact. And I'm also, I would ask a question which I'm pretty sure I know the answer to, were the parents at this school, of the children at this school, notified? And if not, why not? I mean they certainly have a voice here I would think. They certainly have an interest if they have children in that school. I mean that would be my question, do they not have an interest? And that's what I would ask, you know the decision lies at your feet. And if approved we may very well have the dubious distinction of having the first City in our country with a THC distributor attached to a public school. Do you want that distinction? I would ask that. And I leave with that. I have some studies here if anybody's interested, they were e-mailed out to you. They're the same ones that were e-mailed out earlier.

Gordon: Okay. Thank you. Does anybody have any questions, comments? All right. Thank you sir.

Wisner: Thank you. Just one last statement. If it is approved, we will go on in the morning and challenge it. So I do appreciate your time. I do. Thank you.

Gordon: Anyone in the second row? The gentleman with the hat. I guess that's the third row. Will you please state your name?

Vieth: Mark Vieth.

Gordon: All right, I have to swear you in. Do you swear or affirm that the testimony you're about to give is the truth and nothing but the truth under penalty of law?

Vieth: I do.

Gordon: All right sir. Go ahead.

Vieth: I'd like to thank Mr. Smith for pointing out earlier about the greed of business over the welfare of somebody's house or the welfare of children. Thank you for pointing that out. There is currently a business in this location. And when I drive by there I don't see that business having any hardship. So they're just adding to how much money they can make. Or maybe they might create a few more jobs. But the bottom line is, they will be making more money. Mr. Kaiser, to you I point out, yes, you're correct, they are already selling controlled substance there, federally approved controlled substance. Not something that Santa Fe approved. Are we, 300 feet should be non-negotiable. Non-negotiable. This is our children. Are we going to sell our children out just so that somebody can make a little bit more money? We had testimony that it started out at 1,000, that was too great, 600, down, down, down, 300. 300 should be non-negotiable. Thank you.

Gordon: All right. Thank you. And I move to the next row. I guess that was three, four, or five. Lady in the corner back there. Will you please state your name?

Valdez: My name is Marcy Valdez.

Gordon: All right. I have to swear you in please. Do you swear or affirm that the testimony you're about to give is the truth and nothing but the truth under penalty of law?

Valdez: Yes I do.

Gordon: All right. Go ahead.

Valdez: My name is Marcy Valdez. And I would, I come in 100% support of Pharmtrue. Mesilla Valley Pharmacy. I met, sorry I'm a little nervous. I met these doctors several years back when my daughter became chronically ill. And I'm going to ask her to stand. And if you would please take a look at her. This is a walking miracle. Without the products that these pharmacists so graciously had a vision and a dream, several years ago, this, my daughter would not be here today. She lived in a dark room. She suffered chronic migraine. So if we want to talk about children, this is mine. And I thank the pharmacist for creating the product that they have

today. And it's not about money. It's not about finances. I'm sure they are very well educated to do something else. It's not about that. It's about the community. It's about the welfare of our community. And we're talking about the feet and all that, but I'm talking about a life. There's a different aspect as well. There's life, and there's use of medical cannabis. There's a lot of information as well regarding the good use of it. We're not talking about recreational you know kind of stuff like that, we're talking about the medical use of cannabis.

Now my daughter has been using Pharmtrue products for the last three years. And like I said, she is a walking miracle. And her doctors can testify regarding that. It is in her medical file. No other pharmaceutical narcotic that is created synthetically anywhere on this earth worked for her. The only thing that ever worked for her was the CBD product that Pharmtrue provided and it is documented by her doctor. And I can provide that if anybody would like it. I don't have it today, but if you would like it I can provide it. And so I'm coming today to you, Chairman and Commissioners, to consider the fact that there is a community of disabled people that are thankful for these pharmacists for the business that they created. And if we're talking about a wall that separates the two, the school and the business, children cannot walk through a wall. And I'm sure if you look at their map of what they did, there are protocols provided for safety. Thank you.

Gordon: Before you leave, I have a question. I want to clarify what you just said. Did your daughter take CBD or THC?

Valdez: She took CBD but I am not opposed for her trying anything that they have, provided it that it would give my daughter a better quality of life.

Gordon: Well if CBD works and I know that you can buy CBD almost anywhere now, you don't even need to go into a pharmacy.

Valdez: That is correct.

Gordon: Go in any store, basically, all, everybody sells CBD.

Valdez: And that is correct. Although, in my daughter's case different CBDs did not work. The only one that worked was the product that they provided and the way they produced it, not really sure how that is, I'm not a scientist, I'm not a pharmacist. And I'm sure that they can provide that for you. All I know is that my daughter is now here. Where before, she was not.

Gordon: Okay. Thank you.

Valdez: Thank you. I appreciate your time. Thank you.

Gordon: The gentleman with the, raised his hand. Please state your name.

Martinez: Ramon Martinez.

Gordon: All right. Do you swear or affirm that the testimony you're about to give is the truth and nothing but the truth under penalty of law?

Martinez: Yes.

Gordon: All right. Go ahead sir.

Martinez: I'm just here. I wasn't going to talk but my wife takes medical marijuana. It helps her. I've had two back surgeries. I've tried everything. My doctor tried the THC that really expensive and it just made me loony. So I can't take it. I'm not against the marijuana use but I am against people selling drugs next to a school and a church down the street. There are kids that shouldn't be on that stuff. It leads to other drugs, we know that. But the thing that we're fighting here is the fact that they're trying to sell marijuana next door and I think that's wrong. My wife is against it. We should have brought her and she would have explained to you, yes there is medical use for marijuana but not next to a kids school. Thank you.

Gordon: All right. Thank you. And going up any, all the way in the back. The lady in the blue.

Catanach: Dawn Catanach.

Gordon: Okay. I have to swear you in please. Do you swear or affirm that the testimony you're about to give is the truth and nothing but the truth under penalty of law?

Catanach: Yes.

Gordon: All right. Go ahead. Thank you.

Catanach: My name again is Dawn Catanach. I am a teacher at New America School and have been a teacher there since 2012. Our students range in ages from 14 to 22. Pre- pandemic, we would take students up to any age if they had not yet gotten their high school diploma. Our target population is at risk students. They come to New America because for some reason or other, they did not or were unable to be successful in a regular high school. We have 12 teachers there. We work with them. We try to convince them of the importance of education, of the importance of getting their high school diploma. There we're pretty successful. Sometimes we

have kids that drop out. We have kids that hit a stumbling block. One of our problems is drugs. Maybe they get taken away by the police, because of drugs, not necessarily taken away at our school. But drugs are a problem, because our oldest students can be up to 23 years old, maybe they can find a retailer who sells drugs and they can get the drugs from them. That is our big concern at our school. Thank you.

Gordon: Thank you. Anyone else on this side? Wait a minute. I'll come back to you.

Kimball: Susie Kimball. I'm the president of the governing council at New America School.

Gordon: Okay, let me swear you in then please. Do you swear or affirm that the testimony you're about to give is the truth and nothing but the truth under penalty of law?

Kimball: Yes.

Gordon: All right. Go ahead.

Kimball: First, I want to clarify that Mr. Buck is wrong. The DLCP employee who sits on our board has not supplied us with any economic numbers.

Gordon: Excuse me, but just make sure you talk into the microphone so the recorder can get your information.

Kimball: The DLCP employee who sits on our school board has not provided us with any economic indicators, any numbers, any insight information from Pharmtrue or from Mesilla Valley pharmacy. That's an outright lie. And I just want you to know. When we have talked about Pharmtrue and the Mesilla. Valley Pharmacy, we talked in the very beginning of the year, they came and visited with us and talked to us about building their pharmacy and then said we're considering going into the further realm, what would you all think about that. And we told them, as a school we would be opposed. We didn't want that so close to our school. And they said, we understand, we will probably still pursue it. We said, we understand, we will probably still oppose it. It's been cordial all along. There's been no conflict. We haven't been mean to them. Our staff, our students go into that pharmacy on a regular basis, half of us have gotten our vaccinations at that pharmacy. We enjoy that pharmacy. We appreciate that pharmacy. We just believe that the variance rule was put into place for safety. So for you all to just disregard it and say, that doesn't mean anything we'll go ahead and do with a zero variance, zero distance. That's wrong. And you're setting a precedent, you really are, and it is a slippery slope. Because the next time the next person comes and says

we're only at 87 feet apart, they're going to say, you gave it to them and they were zero feet apart. And that's what you're starting. And that's what's not good.

We're not opposed to marijuana. We're not opposed to it being sold. We just don't want it sold at our back door. That's the problem we see. As Ms. Catanach said, many of our students are high risk, which means they have a history of not making good decisions. So if they see someone in the parking lot that's likely to help them get marijuana drugs, marijuana products, they're going to try it. It's going to increase security requirements at our school. It's going to encourage increased monitoring by our teachers. We already have to monitor our students. And if a student walks in and we know they have drugs on them, we call the police. We don't fiddle around. We call the police. We can't have that on our campus. So to be so close to us puts us in a bad way. And they knew when they came that we were going to protest it. And I just want you to know that we're still friendly with them. We still like that pharmacy. We still appreciate it. And we want them to stay in the area. And as you talked about Las Cruces being kind of rundown, when we built New America School, we bought the old Las Cruces furniture building that had been empty for 40 years. It had molds, it had dirt, it had crap. We built it and turned it into a beautiful building. So for you all not to respect us as an anchor on the downtown area, is really detrimental to what we do. We brightened up that end of the street. Other businesses came because of us. We weren't the only driver but we really were a driver. And that building was an eyesore. So I just want you to keep that in mind that we are an important part. And I think if you had children that went to that school, you wouldn't want pot being sold next door either.

Gordon: All right. Thank you. Before, ma'am, there's a gentleman.

Guerrero: Can I make a comment real quick? Super, super quick.

Gordon: All right.

Guerrero: Commissioner Gordon. Could I make a comment real quick? And I understand that you know there's a lot of emotions involved with this. But if we could please refer to this as cannabis or the appropriate term. Calling it marijuana or marijuana pot is not helpful. So again it's not an attack on anybody that has spoken, I just want to make that clear.

Gordon: All right. Thank you. This gentleman here, and then we'll go back up to you right after that.

Fox: So I can leave, just with the baby.

Gordon: Excuse me sir, let her go, she has that little child.

Fox: Thank you so much. Thank you so much.

Gordon: Would you please state your name?

Fox: Sure, my name is Nicole Fox.

Gordon: All right. Do you swear or affirm that the testimony you're about to give is the truth and nothing but the truth under the penalty of law? And the same for that person?

Fox: I do. My name is Nicole Fox. I'm a technical writer in the cannabis industry. I do licensing, standard operating procedures, business plans, and general consultation. Ironically, some of the people who stood up and opposed before me are my former colleagues as I worked in the behavioral health field for 13 years at Families and Youth Incorporated. I also was the board president of Las Montañas Charter High School who serves a similar population as New America's.

I just want to make a few comments. I'll try to be as pointed as I can, it's a little distracting holding a baby having to comment. I want to say first of all that discussing the fact that cannabis could potentially be addicting for youth is practically a null point in this situation where opioids are also sold right next door to the school. And the opioid problem that we have here in Doña Ana County and basically nationwide is much more unsettling than any discussion we could have about the negative effects of cannabis.

Secondly, I understand the school's concern. However, if they have a student who is in possession of marijuana, and they are 21 or older the police cannot be called on them because it is now legal here in the state of New Mexico. Thirdly, in order to receive a state license to be a retail establishment for cannabis, businesses have to go through some pretty strict compliance, including security systems with cameras that are monitored by cell phone and on site and can be monitored at any time by the Cannabis Control Division and Regulation and Licensing Division. Many cannabis businesses choose to also have human security, in addition to the really intense security systems they're required to have.

The other point that I want to speak on is the economic development point and the establishment of potentially skilled jobs in the field of cannabis. When they're talking about mixing compounds and retailing cannabis, this is not a line of work that is fulfilled by someone without special credentials, not just a pharmacist, but also people who are preparing compounds or infusions or extractions of cannabis very likely hold some kind of degree like a chemical engineering degree. So the positions that they talk about

that will be created are not minimum wage, retail positions, these are highly skilled positions that will contribute to the expansion of our economy. So those are just a few points I wanted to make. There's a lot of misinformation especially when we continue to reinforce the stigmatization of cannabis by calling it marijuana and/or comparing it to drugs. Thank you.

Gordon: All right. Thank you. Yes sir.

Thompson: That's a tough act to follow. May I borrow your beautiful baby. Be from a different perspective with the baby house.

Gordon: Please state your name

Thompson: Jerry Thompson.

Gordon: All right. Do you swear or affirm that the testimony you're about to give is the truth and nothing but the truth under penalty of law?

Thompson: Yes sir.

Gordon: Go ahead.

Thompson: I come to you from a little bit different perspective than the other folks in here about cannabis. Are there any Vietnam veterans up on this? You're a Vietnam veteran? I won't put you on the spot, sir. But I'm sure you remember the Vietnam War, especially the combat troops, the infantry men and all the problems we had with drugs in Vietnam. We had soldiers committing … yes sir. You were going to say some something?

Nichols: I remember very clearly sir.

Thompson: So we had fratricide going on, we have soldiers killing soldiers. We had some serious drug problems. I'm a former United States Army soldier. The United States Army went through some real growing pains after the Vietnam War. One of those growing pains was recognizing the dangers of drug abuse of these kinds of drugs, cannabis. Okay not medical marijuana, oops sorry, medical cannabis, the cannabis among the soldiers. As a commander in the United States Army, I chaptered out several soldiers for drug related offenses. And I will tell you, when soldiers went to the field or went on combat operations or got deployed, they did not have it. It was not there. Alcohol wasn't there. General order number one was the rule. Those soldiers did fine. I was with specialist Granberry. I was a scout platoon leader. I had specialist Granberry, he became a hero. Came back to Garrison, came back to the States. One month later specialist Granberry was chaptered out of the army for drugs.

I will tell you, it is a problem with drugs in the in the military. So I'm here talking about, you know we've had some people come up to talk about how great cannabis is. And I'm sure it's got some medical benefits. But I will tell you from firsthand experience, the United States Army is a much better fighting force now, because we got rid of the drug problem in the United States Army we had in Vietnam. Thank you for your service, sir. That's all I've got.

Gordon: All right. Thank you. Anyone else on this side? All right, then we'll go to the other side. Go towards the back. Lady right here. Yes. Will you please state your name?

Collins: Janet Collins.

Gordon: All right. Let me swear you in please. Do you swear or affirm that the testimony you're about to give is the truth and nothing but the truth under penalty of law?

Collins: I do.

Gordon: Go ahead. Thank you.

Collins: Okay. Good evening, ladies and gentlemen. I have things written down because I forget. My name is Janet Collins. I am not a parent at New America School. But I am a concerned citizen. I've never seen anything like this come up where either a bar or this type of business would be butted up to a school. When I heard of this variance request, I started looking into the regulations set forth in the New Mexico Cannabis Control Division, and saw there were a few operational requirements for cannabis establishments. It said that New Mexico State laws set the 300 foot rule, Article 2C cannabis regulation states, a local jurisdiction may adopt a time, place, and manner rules that do not conflict with the Cannabis Regulation Act, or the D. Johnson Clean Indoor Act.

Although the minimum distance can't be set or forced more than the 300 feet, if you start cutting it down, at some point you're not going to be able to say no. You have to go back to the 300 feet. Like you said, it is a slippery slope. Once you start cutting it down, cutting it down, there's no turning back. These children are our future. So what we're looking at is a business worried about monetary problems to our future. You know, I don't point fingers because I was there. You know I feel sorry for the lady back here whose daughter is having to be under all of that. I went through that. I just didn't do the cannabis. I found out aspartate it was causing me migrants. To this day I have migraines, regular headaches every day. Guess what? I've got sleep apnea. So now I'm having to use a mask every night and look like Darth Vader. But I'm waking up refreshed with

energy. I don't want kids to go through everything I did. And it does lead to that. Even if they say it's not addicting what used to be a good for me one joint, it wasn't enough. The high wasn't there. Then it was more and more. If it's medical use you have the card, that's different. I'm not saying don't have these businesses. Don't have them up against a school. Don't knock down that 300 foot lock that's there, set there for the safety of children, daycares, even churches. Take all this into consideration, please. Thank you.

Gordon: All right. Thank you. Anyone else on this side? Yes, young lady.

Tamez: Salma Tamez.

Gordon: All right. Do you swear or affirm that the testimony you're about to give is the truth and nothing but the truth under penalty of law?

Tamez: Yes.

Gordon: All right. Go ahead.

Tamez: So my name is Salma Tamez, and I have had the pleasure of working for Mesilla Valley Pharmacy and their owners for a little over half a year now. I can attest that what they're trying to do, they are not trying to go over any, break any laws or anything. I'm a little nervous so I'm sorry I'm looking at my phone. While there is concern from the parents here at the New American School, this concern wasn't raised for controlled substances, where we dispense opiates. And 92,000 people in 2020 died of opioid overdoses. This cannabis is another way for people to manage their pain and have a better quality of life. I've known of several people who have been able to get off of opioids that they weren't able to work, weren't able to do anything and medical cannabis saved their life. What better place, what better people to operate a dispensary than pharmacists. They go through four years of pharmacy school. They get educated on the pharmacodynamics and pharmacokinetics of medicine and how it interacts in your body. There is a stigma with cannabis. And people maybe aren't comfortable asking their doctor about the effects and their medications. Pharmacists like Joaquin and the other owners are there to be able to answer their questions, to be able to help their patients understand if the medications that they're currently taking are they going to be effective more with cannabis. This is a really safe option for people. No other dispensary in town can offer it. As well another concern as Commissioner Kaiser where it is a slippery slope, but are we going to prevent other, if we don't do it someone else more than 300 feet could do it. Are they going to say no because there's still a school involved? The kids here can walk. They do have access to cars. They can drive. What's to stop them to driving to another dispensary and getting cannabis

there. What is the difference? They're able, there is three bars in the vicinity or four, Rad Retrocade and Little Toad, there's alcohol there. There's a bunch a lot of things. We have the security measures here to prevent students accessing the cannabis. Thank you for your time

Gordon: All right. Is there anyone else? Yes ma'am.

Forbush: My name is Christina for Bush.

Gordon: All right. Let me swear you in. Do you swear or affirm that the testimony you're about to give it the truth and nothing but the truth under penalty of law?

Forbush: Yes.

Gordon: Thank you. Go ahead.

Forbush: So I've been sitting here listening to everybody and everybody has extremely valid points. However, what I would like to point out is it's all about the education of what we teach our children. I'm sorry, of what we need to teach our children and what a better place than at the school. Yes, they're high risk and it is, it could be potentially hazardous. However, it's all about educating and telling them, teaching them not to do this, not to do that, and this should be part of it I think. And that goes along the ways of most of this cannabis uses. The education is where we need to focus on and teaching our children and our communities what we need to do and what is correct. I think that needs to be a little bit more documented and I don't know, looked into. If we can have some sort of a community outreach, some sort of curriculum, addendum, something but we need to be able, education is where it starts. And I think that's where it needs to be. Thank you.

Gordon: All right. Thank you. Is there anyone else who cares to speak? Yes sir. All right. You've already spoken on behalf of the applicant, what is it that you'd like to add other than what you've already said?

Buck: I would like to invite a doctor down from the staff. But can I make a closing argument?

Gordon: All right, well let me just see if there's anyone else has something to say then they can raise your hand, we'll give them the same amount of time.

Buck: Okay.

Gordon: Yes sir.

Flores: Back again.

Gordon: All right.

Flores: With great intentions, I promise.

Gordon: Just for the record, please state your name.

Flores: Zachary Flores.

Gordon: All right. Since we've already sworn you in, I don't think it's necessary.

Flores: All right, cool. I just kind of wanted to start by saying that I grew up with Joaquin. He's the one of the owners of Pharmtrue and of Mesilla Valley Pharmacy. We grew up since sixth grade, middle school, together making all the same choices, hanging out, doing everything we could together, he went to school, he went to NMSU, he took advantage of the lottery scholarship, which we provide now to everybody, thank you for New Mexico, right. And he stayed. He stayed in New Mexico. He used his degree in New Mexico, not just New Mexico, he used his degree downtown. Right, this revitalization. So if you want to talk about kids you know with potentially troubled pasts, he didn't really get in trouble, you probably wouldn't be able to find something, mine, but not his. So someone like him, right. I'd like to point to his integrity. I know him personally very well, right. So as a person you probably won't find a better guy. And I've served as well. Thank you for your service. I've gone to Afghanistan twice. So I know how to judge the character of a person. And he has, from the moment we met and became our friendship, he was a very, very respectful, very high integrity type person, right. And then to come back to New Mexico and continue business, it is business, right. A school is business, right. So we're talking about this school as if it's not the full intention of this charter school is to get children or children, you keep using this word children, they're almost, they're adults, or adolescents. You know they're older than 14 years old. So we're getting these teenagers and pushing them into places that if you say, all of this cannabis user, everything that we're looking at right now is not good for this. It's in a new, we're in a new New Mexico. We're in a new US, right. So it's legalized. And that's not going anywhere.

And if you talk about a slippery slope well the variance as a real estate professional, I know that there is a variance, a variance means a variance right. You don't have to give it to everybody. But I implore you to give it to these gentlemen. Why? Because they have those protocols in place to prevent anyone from taking advantage of it, right. What is to stop one of these kids from going to one of the vagrants that stay on the downtown strip. We talk about, it's in our house. We have a lot of you know ne'er do

wells or whatever on this downtown strip. What's to stop those guys from getting it from somewhere else and giving it to these kids. There's nothing really stopping them, right. But these gentlemen have controls in place to prevent anything from their store, from them to a student at the school right. And so I'd like to close and say, these gentlemen are high integrity people. And I do implore you to look at their character in granting a variance, not to look at the struggles between marijuana or cannabis and students, right. Students being 14, 15, 16 year olds. We're looking at variance between this business and that 300 foot rule with all of these measures already put into place for their opiates, for Adderall, for Xanax it's already there. So I would implore you guys to grant the variance one time, because just as easily as they can move there's, New America, which if you look at that, New America covers quite a bit. And you can say, why don't they just move?

Nichols: Mr. Chairman. May I interrupt. Could you wrap up please, sir? We don't want to give you unfair advantage to the other speakers..

Flores: I understand. I, you know, there was a lot to be said about emotions. And I wanted to bring it back to the business aspect. This variance should be granted because these businessmen have it in place. They're not going to sell to minors. There's no way that these guys are going to sell to minors. So I just want you to know, high integrity individuals.

Gordon: Your request of having someone speak now, are they the applicant?

Buck: Yes, one of the business partners.

Gordon: All right. It is just one of them that wishes to speak.

Buck: Just one.

Gordon: How many are going to talk? Just the one?

Buck: Just him and I'd like to make a closing argument.

Nichols: Mr. Chairman. If I may. We have heard from a number of the audience and the public on this issue. We're, it's about a distancing variance. It's not really about business operations. It's not about other issues. And so if your comments are about the distance variation, then we'd be pleased to hear them, but otherwise, I think we've probably have had a fair of presentation for the other.

Howard: Trey Howard.

Gordon: All right then I'll allow you the same three minutes. Let me swear you in. Do you swear and affirm that the testimony you're about to give is the truth and nothing but the truth under penalty of law?

Howard: Yes sir.

Gordon: Go ahead..

Howard: Ladies and gentlemen of the Council and the audience. We appreciate everyone in attendance, even those opposing said ruling. Now I will take this back to the 300 foot variance, as you said sir, but I will focus on the fact that it is a distance variance. And there's been a lot of talk this evening about a slippery slope. Okay, everyone loves that word. It's a slippery slope. And I understand the precarious predicament that you ladies and gentlemen are in here trying to make this call. But what you all need to realize is that we are not your run of the mill dispensary, fly by night, California and people that come in and throw up a dispensary because we're April 1st now. We are local doctors of pharmacy and drug use. We went to college here in New Mexico for nearly eight years studying drug safety and controlled substance use to try to better our state. This is not your typical variance in the sense that you know, sorry if I'm at a loss for words. We're not just anybody. We are drug professionals. We are doctors of pharmacy here to protect our community. We are the ones that take care of your parents, grandparents, children. We are not here to put anyone in danger or at risk. We are only here to provide a higher level of service for a new industry in our state. We do not intend to do anything but uplift the cannabis industry by applying the same standards of controlled substance use, monitoring, and reconciliation that we already do every day for hundreds of patients in our community, to cannabis. This is not a typical dispensary to walk in, grab your pot and get out. This is an opportunity for higher level health care. Sorry about that by the way. This is an opportunity for higher level health care, better monitoring of a brand new industry within our state, and the ability to allow trained drug professionals to take on something that is potentially one of the best things to happen for New Mexico in a long time. So I thank you guys so much for the opportunity to talk. I'm sorry that I got off a little bit from the 300 foot variance. I hope you can forgive me. And you ladies and gentlemen have a good evening.

Gordon: Thank you. With that I think I'd like to come back to the Commission. Anybody has any comments or questions or things they'd like to say at this point? Commissioner Vega.

Vega: Just a quick question. So I think it's for staff. Can the school be established within, so we've said how you can't establish an alcohol or

THC dispensary within 300 feet of a school. Could a school be established if they decided to push the variance?

Banegas: Mr. Chairman, Commissioner Vega. The ordinance is, and Katherine correct me if I'm wrong, but the ordinance is very clear in that it's a one way street. However, in the past I can tell you that we've applied it in two ways. It didn't deal with cannabis. And it didn't deal with a school. But nonetheless there were some restrictions back in the day that were typically applied one sided and we made sure that they were applied in both directions. So both uses met with the same criteria. And I would assume, even though it's written in single direction, we'd have to take into consideration the alternative.

Gordon: Commissioner Guerrero.

Guerrero: Yes, I just wanted to make a couple quick comments, I'll try to be quick because it's getting late. But you know I just want to just reinforce that this is a tough choice for us to make, because it's true, whatever we decide may set precedents for other businesses in the future. And I just you know I just want to thank everybody for being here, giving your comments. I love public participation. I wish there was this much public participation when the pharmacy first opened, selling opiates and prescribe medications there.

So as it's been pointed, there's also three bars just up the street, four bars around the corner from here, all to which students, because it's not kids in the school, students could have access to. I also just want to say real quick, you know we know that this industry is here. It's legal in New Mexico. It's not going anywhere. I mean this is an extremely professional crew. And you know just want to thank them as well for coming. But you know just want to remind you all that I actually really was moved by the lady that gave the comment about education, because it's true a lot of education when it comes to alcohol and cannabis or other drugs starts at home. Society can definitely pitch in, but it starts at home as well. So you know this is a good opportunity for parents to get more involved in the life of their children as well if they're so concerned. So you know just wanted to just share those comments.

Smith: I'll make one more quick comment. Forgive me for sneaking again. You know as I've sat here and listened to both sides of this proposal, I've also been sitting here looking at this PowerPoint that's been sitting here for you know for over 45 minutes. And as I stated earlier, I've been living downtown for you know almost 24 years. And I keep focusing on Central Elementary School. My daughter attended Central Elementary School. I walked her to Central Elementary School. And I think about downtown and the growth that has occurred. But we also have to remember that this

is still part of a neighborhood, that there are homes and there are families there, there are kids that will be walked to school. Because there was a point, though you've been here a long time, remember they were going to close Central Elementary School and the parents and families of that community fought to keep Central Elementary School open.

And so as I look at the New America School and the location of the Pharmtrue proposal, it comes back to how difficult this decision is going to be based on the fact that there is a buffer that is in place, it is part of the City code for the 300 feet. And looking at Central Elementary School, if we were to have a variance of zero beside the school, at what point where this no longer becomes a community of families along with businesses, it's just strictly becomes a downtown of businesses. I just think it's important that we keep that in perspective when we think about what's happening downtown, because there are families and people like me who still live downtown, it's part of our community. It's where we live. It's where we attend church. It's where we go to school, and where we shop. So I can say that it's a difficult decision that needs to be made. But also have to look at the fact that downtown is still about families too.

Gordon: All right. Commissioner Kaiser.

Kaiser: Just one question, point of clarification. So is this medicinal use only or is there a recreational component here? In other words, how would you get access to this as a customer? Do you have to have some sort of prescription?

Gordon: Can the applicant come answer that question I guess? I think apparently he's asking you whether or not you need a cannabis medicines certificate or card from the state.

Buck: With this particular business, no. With a proper ID of an age marker of over 21 by statute recognized by the State of New Mexico under cannabis and CCD, you will not be allowed to access cannabis without an earmark of 21 years or older or a medicinal card issued by a physician.

Kaiser: Okay, so you don't have to have a prescription from a doctor to buy,.

Buck: No. And that is the case for all retailers.

Kaiser: Thank you. Quick question for staff. Going back to just the pharmacy as it currently stands, is that an allowed use by right here? Are there any restrictions based on the fact that they are selling controlled substances, narcotics? I mean are there any regulations that would apply to them in this particular situation, without the cannabis component?

Banegas: Mr. Chairman, Commissioner Kaiser. Pharmacy is an allowed to use in this particular zoning district, even the component that they speak to as it relates to compounding CBD, that's an acceptable use.

Kaiser: And no setbacks are required from the school, assuming.

Banegas: That's correct. No criteria that would, similar to what we're hearing tonight anyway.

Kaiser: Thank you. I don't have any further questions other than this is hard.

Gordon: If there's no one else. All right, let me just advise everyone here, that before the commission votes if we vote to deny the applicant, then the applicant has the right to go before City Council and appeal our decision. So this is not the end of it as far as they're concerned. If we vote to approve, then the school or the general public or whoever wishes, can also go to City Council and appeal our decision. I would suggest that if whichever way this goes, whichever party wants to do what they're going to do is contact Community Development and get the proper protocol for doing this appeal if that is what you wish to do. So other than that, I think, are we ready for a vote? All right. Then I need a motion.

Guerrero: I'll make a motion. I'm not sure what we're, so I'm not sure what the motion is just for a vote to deny or what are we doing? Okay. Okay. Perfect. So I make the motion sorry, make the motion to approve the vote.

Kaiser: I will second.

Baum: Board Member Kaiser.

Kaiser: I vote no, based on staff's recommendation, and the fact that looking at this map presented tonight, I think there's plenty of opportunity within the downtown to establish such a business and come in fully compliant with the setback requirements.

Baum: Board Member Smith.

Smith: I vote no, based on staff recommendation, although there is flexibility built into this variance request for a buffer, I believe that a zero deviation actually just nearly abolishes you know the standard of a 300 foot buffer for the safety of you know just children, whether it's the New America School whether it's Central Elementary School.

Baum: Board Member Bennett.

Bennett: I vote no, based on staff recommendation. A 100% buffer variance is too excessive and sets a bad precedent.

Baum: Board Member Vega.

Vega: I also vote no, this is, it is challenging because you are a local business and you're awesome. But we, and I think there's still so much stigma tied to cannabis. But that being said, to share a wall with a school it's just too close we wouldn't even be having this discussion if it was an elementary school right, so that's my answer.

Baum: Board Member Guerrero.

Guerrero: That's a tough one. I will vote no, but I just want to say that you know we should be holding the same standard for other controlled substances as well not just cannabis. So moving forward, and I know that this is not you know legislation or anything, but I just., I really hope to see the public more engaged when it's other controlled substances not just cannabis.

Baum: Chair Gordon.

Gordon: If it wasn't for the 300 foot minimum requirement this would be a no brainer and the applicant wouldn't be here. But I am also in a position where I think I'm going to vote no, based on the discussion this evening and my vote is no.

Baum: Thank you. That's six for negative

Nichols: Mr. Chairman. If I may. I would like to suggest a recess for 10 minutes and reconvene at 9:10.

9. DISCUSSION - MOVED TO BEFORE PUBLIC PARTICIPATION

10. COMMISSION COMMENTARY

Gordon: Is there any discussion or commentary by Commission this evening? Any comments? No.

11. STAFF ANNOUNCEMENTS

Gordon: How about staff?

Nichols: Mr. Chairman and Commission. No comments this evening from staff. We've had a very active meeting and appreciate the hard work and due diligence that we heard tonight. We will keep you informed as the Realize

Las Cruces develops that you heard about earlier tonight. Thank you Mr. Chairman

12. ADJOURNMENT (9:45)

Gordon: All right then the time is 9:48. I'll entertain a motion to adjourn.

Guerrero: Seconding or are you making a motion? Did you make a motion?

Gordon: No I'm asking someone to make a motion.

Guerrero: Okay, I'll make a motion to adjourn.

Smith: I second the motion.

Gordon: All in favor.

MOTION PASSES UNANIMOUSLY.

_____
Chairperson

Vincent Banegas

From: Mark Vieth <quebec203@aol.com>
Sent: Tuesday, April 26, 2022 10:19 AM
To: Vincent Banegas
Subject: Case 22VO0500011

To whom it may concern,
I can't believe that this is being considered!!! It is not like your changing zoning.
The buffer is to protect our children!!! There should be no variance, ever!
Thank you,
Mark Vieth

Sent from my iPad

Vincent Banegas

From: Janice Vernon <ronjanvern@aol.com>
Sent: Tuesday, April 26, 2022 10:17 AM
To: Vincent Banegas
Subject: Variance request submitted by Pharmtrue Cannabis Retail and Manufacturing

Mr. Banegas,

My husband and I both strongly object to the granting of a variance to the business wishing to sell cannabis at 227 S. Main Street, which is next door to a school. Aside from the fact that the business and school will share an adjoining wall (which is definitely far less than the 300 foot minimum buffer required between a cannabis facility and a qualifying school), the sale of this substance is illegal to offer to minors, especially minors who are attending this school to better themselves and, in some cases, attempting to withdraw from the use of cannabis and other addictive drugs.

It is not right to expose innocent children to the availability of this substance. Even though it is illegal to sell to minors, as with alcohol, there is always someone who will assist in the purchase. By placing this facility practically within the school, you are allowing these children to be exposed to temptations that this school is endeavoring to protect them from.

The fact that we are opposed tothe selling of this or any addictive substance is not relevant at this time. We are genuinely concerned for the health and well-being of the children who attend the school. Please do not allow the variance to this business. I am sure there are other locations around the city that would not present a threat tothe welfare of our children.

God Bless You

Ron and Janice Vernon

Vincent Banegas

From: Jay Wisner <jay.wisner.nm@gmail.com>
Sent: Monday, April 25, 2022 11:04 PM
To: Vincent Banegas
Subject: Protest variance request
Attachments: A Marijuana-Cannabis-2020_0.pdf; B cannabis-marijuana-research-report.pdf; C Science Daily.pdf

Mr. Banaegas,

Please be advised I am writing this email to protest the variance request City by Mesilla Valley Pharmacy & Consulting – 227 South Main St. – https://mvprx.care regarding their request to sell THC products closer than three hundred feet from the New America School – 207 South Main St. – https://lcnas.org .

There are a few reasons I am protesting this variance request. THC does pose its risks when used, please see exhibit A attached Drug Enforcement Administration fact sheet on Merijuana. To consider selling THC products from a business with an adjoining wall to a public school with school age children attending is very concerning for reasons I will list below.
1. THC impairs cognitive ability please see exhibits A, and B
2. THC is addictive, please see exhibit B also, please note the higher likelihood of addiction for youth who use THC products.
3. Advertising and location of THC dispensary influence youth to use THC products, please see exhibit C.

There are numerous other alarming facts I could address, but for the sake of brevity, and the hope that this will be enough to convince you to be in agreement with my protest, I will leave it with the above listed three.

The following are some questions and statements that I hope will serve as food for thought.

1. Do any of you who will vote on this issue have any children at the New American School?
3. If any of you are parents would you like to see your child or children attend a public school that had a THC distribution center with an adjoining wall attached to that school?
4. If the City where your children attend school were to consider a similar variance, as a parent would you want to be notified?
5. Have any of you notified the parents who have children at this school, of this variance hearing? If not, why? They do have an interest in knowing, and giving input.

You may be able to say, well my job here only allows me to consider the viability of the business, it;s legality, and the City's benefit. A leader in this and any City also has the responsibility to act in the best interest of its most vulnerable. Are not the children of our community among the most vulnerable in our community?

This school serves youth who are at risk for system involvement. In my former career I have placed youth in this school. This school does outstanding work with the youth they serve.

These youth and children who attend this school are worth your time.

I implore you, please consider my protest and vote against this variance request.

Concluding considerations: If passed, our City may very well have the dubious distinction of having the only public school in our country with a recreational merijuana distributor attached by an adjoining wall.

Each of you are leaders in our community, and it is at your feet this decision rests.

Thank you for your time and consideration regarding my protest to this variance request.

Respectfully submitted,

Jay Wisner
Chief Juvenile Probation Officer (Retired)
Sr. Pastor of Calvary Chapel of Las Cruces,
139 S. Main St. Las Cruces NM 88001

Vincent Banegas

From: Diane Duran <dianeeduran1@gmail.com>
Sent: Monday, April 25, 2022 2:34 PM
To: Vincent Banegas
Subject: Notice of Public Hearing - Case #22VO0500011

Dear Mr. Banegas,

It has come to my attention that a Cannabis shop is wanting to be established next door to a school and I am against this.

The children of our community deserve to be protected from such activities as "pot" being sold in the vicinity of their school.

Diane Duran

Vincent Banegas

From: Carl Duran <durchil2@gmail.com>
Sent: Monday, April 25, 2022 3:05 PM
To: Vincent Banegas
Subject: Notice of Public Hearing - Case 22VO0500011

Hello Mr. Banegas,

I believe that having a pot shop adjoining a school is unhealthy and I am against this.

Carl Duran

Vincent Banegas

From: TheBoxingGuru <video8count@gmail.com>
Sent: Monday, April 25, 2022 11:51 AM
To: Vincent Banegas
Subject: Case #: 22VO0500011 - Planning & Zoning Commission meeting

I am opposed to any variance being allowed for Cannabis Retail within 300 feet of a School.

I think this 300 foot minimum buffer is in place for a reason, and should be enforced.

Thank You,

Dan & Tammy Sisneros
Las Cruces, NM

Vincent Banegas

From: Henry Dimatteo <hdimatte@nmsu.edu>
Sent: Sunday, April 24, 2022 9:39 PM
To: Vincent Banegas
Cc: Henry Dimatteo
Subject: 227 Main - Variance denial

Mr. Banegas,
In the strongest of terms, I would request the P&Z Commission deny the variance for the Marijuana retail store. The proposed location is next to an educational facility, church, residences, and other professional businesses. This would increase the number of unstable persons and impose a risk to the children of the school. The risk is too great for persons already impaired to purchase the product. This creates a possible interaction between vulnerable children and the potential of an impaired driver.

The City of LC has an obligation to protect its residents from unhealthy environments and reduce the potential for tragedy. The variance will increase pedestrian traffic and burden the local first responders to disruptions. There have been considerable efforts to revitalize the area. This variance would not be a step in the right direction. There are plenty of suitable locations that would meet their needs and protect the area. The nature of product, the clientele, with a bit of marketing would not compromise locating the business elsewhere.

There has been a long history of restricting retail establishments where the average person, applying contemporary community standards, would find the activity does not appeal to a prurient interest. The proposed activity depicts or engages in a patently offensive way commerce not approved by the community. This is measured against community standards, where many forms of adult entertainment and questionable commerce is regulated. The activity taken lacks serious literary, artistic, or scientific value. There is a political component generally not accepted as an asset to the community. Like forms of activity (adult clubs, alcohol sale, parole residency, sexual offender conduct) has been restricted without incurring liability. **The City of LC should do the same.** Thank you. Hank DiMatteo
Cell contact 915-526-8112

Vincent Banegas

From: RAMON MARTINEZ <julioraygayle@comcast.net>
Sent: Tuesday, April 26, 2022 10:52 AM
To: Vincent Banegas
Subject: Case #: 22VOO500011 RE: CANNABIS FACILITY

I AM DEEPLY CONCERNED ABOUT THE PROPOSED CANNABIS FACILITY ON THE NORHEAST CORNER OF s. MAIN sTREET AND W. bOWMAN aVE. THIS WOULD BE A DIRECT VIOLATION OF A CANNABIS FACILITY, WHICH BE NEXT DOOR TO THE PRESENT SCHOOL. PLEASE VOTE AGAINST THIS ACTION. DO IT FOR THE KIDS!

THANK YOU,
AND GOD BLESS

Vincent Banegas

From: frsgonz@comcast.net
Sent: Tuesday, April 26, 2022 1:41 PM
To: Vincent Banegas
Subject: 22VO0500011

Vincent Banegas,

I will not be able to attend the meeting tonight, I am writing this to voice my concerns, in this matter. I find it interesting that no place that sells alcohol, cigarettes', or guns are granted a variance like this, right next to a school. I am asking that the laws, regulations, and ordnances be consistently applied.

Just because the place in question sells cannabis, should not be a reason to give them special treatment. If you have any questions for me please feel free to call (575) 635-5760 or email me at frsgonz@comcast.net.

Sincerely,
Reyes Gonzales

Vincent Banegas

From: Monica Sultana <monica_sultana@yahoo.com>
Sent: Tuesday, April 26, 2022 1:06 PM
To: Vincent Banegas
Subject: Against opening of Cannabis Retail

Re: Case #22VO0500011

To: Mr. Vincent Banegas

I, Monica Sultana, resident of Las Cruces, NM, do not approve that a cannabis store be allowed to open a location next to the qualifying school, at the northeast corner of South Main Street and W. Bowman Avenue.

Regards,
Monica Sultana

Sent from Yahoo Mail on Android

PARLATORE
LAW GROUP

David Gottlieb, Esq.
Counsel
david.gottlieb@parlatorelawgroup.com
Direct: 505-384-6653

Community Development Department
City of Las Cruces
700 North Main Street
Las Cruces, New Mexico 88001

RE: Request for appeal to denial of variance by Planning and Zoning Commission on April 26, 2022 in the matter of Pharm True LLC

Dear Las Cruces Community Development Department,

Please be advised that this firm represents Pharm True LLC. We are writing pursuant to section 38-13 of the Land Development Code ("Code") to appeal the Planning and Zoning Commission's decision of April 26, 2022, denying Pharm True LLC's request for variance to section 38-33G of the same Code, which mandates cannabis retail locations be at least 300 feet from a school or daycare. Below you will find our reasons for appealing this decision. We look forward to the opportunity to present evidence and answer any questions the Community Development Department has about this appeal and the ways in which Pharm True will bring economic development to Las Cruces while simultaneously setting the standard for compliant, secure operations.

Section 38-10k of the Las Cruces Land Development Code outlines the criteria for the City's granting of any variance request to zoning. Among those reasons specifically enumerated are spurring economic growth and the relative expense and resultant hardship on the applicant should they be forced to pursue an alternative course of action. We respectfully submit that both of these bases are applicable to Pharm True. We begin with hardship.

Cash is king to every new business, and for young entrepreneurs capital is not always readily available. This is even more true in the cannabis industry. With predatory lenders, no access to traditional credit vehicles, reluctant landlords, and state licensing fees, to list a few, there are plenty of barriers to entry for would-be cannabis startups. Here, Pharm True has already secured the real estate necessary for this business, has an approving landlord, and has proven the ability through the operation of its traditional pharmacy that ownership have the ability to successfully and compliantly operate the proposed cannabis dispensary business. In the event a variance is not granted to Pharm True, they would be forced to purchase or lease yet another location – something Pharm True simply cannot do. The business' hardship would be total. A variance is the only way for the owners to co-locate and the only affordable means by which to

provide total and wholistic healthcare options with the synergy of Pharm True's combined pharmaceutical and cannabis knowledge and expertise.

Indeed, Pharm True's expansion into cannabis would truly be a boon for the City. Pharm True has already generated hundreds of thousands of dollars in revenue (and resulting taxes for the City) through the operation of their traditional pharmacy alone, aiding the revitalization of Downtown Las Cruces. The medical and adult-use cannabis industries are poised to add $100 billion to the US economy in 2022. To be sure, in April alone, New Mexico businesses generated $22 million in revenue from medical and adult-use cannabis sales. Pharm True already has an excellent track record as value-creators to the local economy, and their contribution can only increase should they be allowed to enter this burgeoning market.

Pharm True is precisely the sort of cannabis establishment the City of Las Cruces should desire. It is managed by a troika of trained pharmacists with years of experience dispensing countless controlled substances infinitely more harmful than cannabis – something virtually unheard of in the industry. Our client contributes not only to the City's economy, environment, and community, but to the health and wellness of its citizens as well.

The citizenry of Las Cruces of course includes its children, and one cannot contribute to the health and wellness of the community without doing so for all its members. Allowing cannabis products to fall into the wrong hands, especially minors', is to no legitimate business owner's advantage, certainly not Pharm True. That's why they have gone to such great lengths to ensure that never happens.

First among them are the numerous physical barriers in place to prevent unauthorized access – by minors or others – to their cannabis stores. It is no accident that Pharm True chose to locate its cannabis retail department in a controlled-access room inside the main pharmacy. The entrance would also be totally inconspicuous, with no signage or labeling, and there would be no cannabis marking or advertising materials at all.

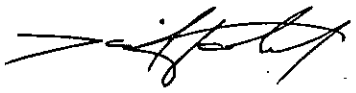
In designing their cannabis dispensing area, the owners took the concerns of the New American School and Las Cruces Planning and Zoning very much to heart. Only the traditional pharmacy portion of the building shares a wall with the school. The portion of the building that would serve as the dispensary is located on the southwest corner. This area of the pharmacy does not share any walls or structures with the school and does not include windows or other means by which to view what is inside. Indeed, unless a patient or customer visited the pharmacy specifically for the dispensary, it would be difficult for the customer to know that the dispensary was there at all. Similarly, neither does the proposed manufacturing area located on the northeast corner of the building share a common wall with the New American School. In keeping with the spirit of the City's zoning rules, the owners located the dispensary entrance in such a way that the distance from the nearest entrance to the New American school is roughly 300 feet away via path of travel. Further, the exterior of the pharmacy already includes signage for the pharmacy. Because the cannabis dispensary would be located within this structure, it would not have its own signage, branding or otherwise make known what was inside.

Finally, knowing that safety and security of are the utmost importance to the City and its citizens, Pharm True will go above and beyond the state-mandated security system requirements in the operation of its cannabis retail store. This will involve working directly with the City and the school to ensure all areas of the parking lot and exterior areas of the pharmacy building are covered by security cameras, which would address any concern of drug deals or similar nefarious behavior outside the store. Indeed, if it would ease concerns, Pharm True is willing to work with the City to establish a routine security patrol of the building and surrounding area to further bolster security.

However you decide today, the fate of this venture is in your hands. The owners are fully aware that, should you grant their appeal, any misstep puts at risk not just their potential legitimate cannabis business, but their pharmacy as well. They do not take such consequences lightly. Should you deny them, their idea remains just that – an idea. And, at the same time, the City of Las Cruces loses a representative member of the cannabis industry, one that would have offered professional healthcare guidance to the community and contributed significantly to revitalizing and elevating the City of Las Cruces.

We are asking you to compromise. Our clients are willing to limit recreational sales at the Main Street location. Putting an emphasis on medical patients is in line with both Pharm True's values as well as their business model. For example, recreational sales could be allowed only when school is not in session – later in the evening or weekends, for example. Limitations on recreational sales could be more stringent, or even total. There are many other options on this spectrum, and we are eager to discuss.

Kindest regards,



David Gottlieb

3010;COUNCIL BILL 23-004

City Council Action and Executive Summary

Type of Action:
☐ **Resolution**
☒ **Ordinance**
☐ **TIDD Resolution**

District:	☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☒ N/A		
1st Reading:	August 15, 2022	**Adopted:**	September 6, 2022
Drafter:	Sergio Ruiz	**Department:**	City Manager's Office
Program:	Council and Community Support	**Line of Business:**	Council and Community Support

Title: **AN ORDINANCE TO REPEAL AND REPLACE NOISE ORDINANCE OF THE LAS CRUCES MUNICIPAL CODE 1998, AS AMENDED, CHAPTER 19, ARTICLE III, DIVISION 2, SECTIONS 19-121 THROUGH 19-136.**

TYPE OF ACTION: ☐ **Administrative** ☒ **Legislative** ☐ **Quasi-Judicial**

PURPOSE(S) OF ACTION:

To repeal and replace Chapter 19 of the municipal code.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

To make changes to the existing noise ordinance by adding noise measurement guidelines lacking within the existing noise ordinance, therefore, proposing the following changes.

No noise shall be measured at a distance of at least twenty-five feet (25) feet from a noise source located within the public right-of-way, and if the noise source is located on private property other than the public right-of-way, the noise shall be measured at the property line of the noise source and sound level measurements shall be made with a sound level meter reader and enforced by the Las Cruces Police Department.

A noise measured or registered in the manner provided in Sec. 19-122(1) in excess of the dB(A) established as the baseline noise level for the time period and zoning districts listed in this section is hereby declared to be a noise disturbance and is unlawful and 67 dB(A) is designated for a residential zone, 72 dB(A) is designated for a commercial zone (Special use permits issued for special events), 67 dB(A) is designated for park zones, and 72 dB(A) is designated for an industrial zone. Decibel levels are established by Federal Highway Administration guidelines.

No person shall start, drive, turn or stop any motor vehicle, or accelerate the vehicle engine while the vehicle is stationary, in a manner which causes any loud and unnecessary noise in or from the engine, exhaust system or braking system, or from the contact of the tires with the roadway and such regulations shall include maximum permissible noise limits measured in decibels with any motor vehicle's noise level limit shall be at 80 dB(A), motorcycles at 90 dB(A), motor vehicles that exceed 8,000 pounds or more at 85 dB(A), and UTV/ATV/Off-Road Vehicles at 96 dB(A).

The Federal Aviation Administration has guidelines that address noise at airports. Any aircraft engine operating within an aircraft during a landing, takeoff, or while moving upon the ground surface of an airport shall be exempt from noise level regulations.

The City may grant a temporary permit that allows non-compliance with the limitations prescribed in this article for the purpose of amplified sound activities of short duration. The issuance of such permits will be only for a time period between 7:00 a.m. and 12:00 midnight and shall not exceed three consecutive days.

A violation of any of the provisions of this division shall be a petty misdemeanor. When an offender commits a violation of this division, the offender shall be sentenced to a fine of not less than $100.00 nor more than $500.00. In addition, the offender may be sentenced to up to 90 days in jail. The minimum fine of $100.00 may not be suspended, deferred, or taken under advisement. The court may, at its discretion, suspend the remainder of the fine as well as any jail time, and any commercial noise violation to exceed a third offense will be reviewed by the city administration with the possibility of the commercial license being revoked.

SUPPORT INFORMATION:

Exhibit A_Noise Ordinance Finalized Draft

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

None

ANNUAL BUDGET APPROVAL:

☐ Yes
☐ No
☒ N/A

Does this action amend the Capital Improvement Plan (CIP)?

☐ Yes
☐ No
☒ N/A

Does this action align with Elevate Las Cruces?

☐ Yes
☐ No
☒ N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Ordinance to repeal and replace the Las Cruces Municipal Code 1998, as amended, Chapter 19, Article III, Division 2, Sections 19-121 through 19-136.
2. Vote "No"; this will not approve the Ordinance to repeal and replace the Las Cruces Municipal Code 1998, as amended, Chapter 19, Article III, Division 2, Sections 19-121 through 19-136.
3. Vote to "Amend"; this allows the City Council to modify the Ordinance as deemed appropriate.
4. Vote to "Table"; this allows the council to table/postpone the Ordinance and direct staff accordingly.

ORDINANCE 3010;COUNCIL BILL 23-004

AN ORDINANCE TO REPEAL AND REPLACE NOISE ORDINANCE OF THE LAS CRUCES MUNICIPAL CODE 1998, AS AMENDED, CHAPTER 19, ARTICLE III, DIVISION 2, SECTIONS 19-121 THROUGH 19-136.

The City Council is informed that:

WHEREAS, no noise shall be measured at a distance of at least twenty-five feet (25) feet from a noise source located within the public right-of-way, and if the noise source is located on private property other than the public right-of-way, the noise shall be measured at the property line of the noise source; and

WHEREAS, sound level measurements shall be made with a sound level meter reader and enforced by the Las Cruces Police Department; and

WHEREAS, a noise measured or registered in the manner provided in Sec. 19-122(1) in excess of the dB(A) established as the baseline noise level for the time period and zoning districts listed in this section is hereby declared to be a noise disturbance and is unlawful; and

WHEREAS, 67 dB(A) is designated for a residential zone, 72 dB(A) is designated for a commercial zone (Special use permits issued for special events), 67 dB(A) is designated for a park zone' and 72 dB(A) is designated for an industrial zone; and

WHEREAS, decibel levels are established by Federal Highway Administration guidelines; and

WHEREAS, no person shall start, drive, turn or stop any motor vehicle, or accelerate the vehicle engine while the vehicle is stationary, in a manner which causes any loud and unnecessary noise in or from the engine, exhaust system or the braking system, or from the contact of the tires with the roadway; and

WHEREAS, such regulations shall include maximum permissible noise limits measured in decibels with any motor vehicle's noise level limit shall be at 80 dB(A), motorcycles at 90 dB(A), motor vehicles that exceed 8,000 pounds or more at 85 dB(A), and UTV/ATV/Off-Road Vehicles at 96 dB(A); and

WHEREAS, the Federal Aviation Administration has guidelines that address noise at airports. Any aircraft engine operating within an aircraft during a landing, takeoff or while moving upon the ground surface of an airport shall be exempt from noise level regulations; and

WHEREAS, the City may grant a temporary permit which allows noncompliance with the limitations prescribed in this article for the purpose of amplified sound activities of short duration. The issuance of such permits will be only for a time period between 7:00 a.m. and 12:00 midnight and shall not exceed three consecutive days; and

WHEREAS, a violation of any of the provisions of this division shall be a petty misdemeanor. When an offender commits a violation of this division, the offender shall be sentenced to a fine of not less than $100.00 nor more than $500.00. In addition, the offender may be sentenced up to 90 days in jail. The minimum fine of $100.00 may not be suspended, deferred, or taken under advisement. The court may, in its discretion, suspend the remainder of the fine as well as any jail time; and

WHEREAS, any commercial noise violation to exceed a third offense will reviewed by city administration with the possibility of the commercial license being revoked.

NOW, THEREFORE, Be it Ordained by the Governing Body of the City of Las Cruces:

(I)

THAT the Las Cruces Municipal Code 1978, as amended, Chapter 19, Noise Ordinance is hereby repealed and replaced as shown in "Exhibit A" and attached hereto.

(II)

THAT the City staff is hereby authorized to do all deeds as necessary in the accomplishment of the herein above.

DONE AND APPROVED this day of

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

DIVISION 2. – NOISE

Sec. 19-121. – Definitions.

A-weighted sound pressure level means the sound pressure level as measured on an approved sound-level meter using the A-weighting network. The unit of measurement is dB(A). Sounds measured with the "A" weighting network approximate the response of human hearing when measuring sounds of low to moderate intensity.

Baseline noise level means the actual ambient noise level measured during specific periods on various days of the week. The CLC Noise Study established baseline noise levels for land types during traffic peaks (AM/PM), mid-day, or night-time hours, with some measurements taken on weekends and/or weekdays.

Decibel (dB) means a logarithmic and dimensionless unit of measure often used in describing the amplitude of sound.

Equivalent sound level (leq.) means a level of steady sound which in a stated time period and stated location, has the same A-weighted sound energy as the time varying sound. Leq. shall be calculated using approved Federal Highway Administration noise projection models.

Noise means any sound which is unwanted, or which causes or tends to cause an adverse psychological or physiological effect on human beings.

Property line means the official boundary of a parcel, lot, or tract of land as designated by either a metes and bounds description or subdivision plat filed in the records and maps of the county clerk.

Public right-of-way means any land area deeded, reserved, or otherwise acquired by the city, the county, or the state for public use, e.g., roads, streets.

Residential, commercial, industrial, means terms that shall be used as used in Chapter 38 of the LCMC (aka Zoning Code), and when used to describe a receptor or source premises, the terms refer to the particular zoning classification of the receptor or source premises and not the actual use of such premises.

Sound level meter means an instrument, including microphone, amplifier, output meter and visual display and frequency weighting networks, that is sensitive to pressure fluctuations. The instrument reads sound pressure level when properly calibrated and is a Type II or better, as specified in American National Standards Institute publication, Specifications for Sound Level Meters, ANSI S1.4-1971.

Sec. 19-122. – Classification and measurement of noise.

For the purposes of classifying any noise disturbance and determining whether it is in a violation of this section, the following test measurements and requirements shall be applied:

1. No noise shall be measured at a distance of at least twenty-five feet (25) feet from a noise source located within the public right-of-way, and if the noise

source is located on private property other than the public right-of-way, the noise shall be measured at the property line of the noise source.

2. Sound level measurements shall be made with a sound level meter reader and enforced by the Las Cruces Police Department.

Sec. 19-123. – Prohibited.

Except as otherwise provided in this section, no person shall make or continue, cause to be made or continued, or allow to be made or continued, any sound that persistently or continuously results in an exceedance of the baseline noise level standards provided in Sec. 19-124, using an approved sound-level meter measuring decibels on the A-weight scale.

Sec. 19-124. – Baseline noise level standards.

A noise measured or registered in the manner provided in Sec. 19-122(1) in excess of the dB(A) established as the baseline noise level for the time period and zoning districts listed in this section is hereby declared to be a noise disturbance and is unlawful.

DECIBELS	ZONE
67 dB(A)	Residential
72 dB(A)	Commercial (Special use permits issued for special events)
67 dB(A)	Parks
72 dB(A)	Industrial

* Decibel levels established by Federal Highway Administration guidelines.

Motor-Driven Vehicle Noise Limits

No person shall start, drive, turn or stop any motor vehicle, or accelerate the vehicle engine while the vehicle is stationary, in a manner which causes any loud and unnecessary noise in or from the engine, exhaust system or the braking system, or from the contact of the tires with the roadway.

Such regulations shall include maximum permissible noise limits measured in decibels:

TYPE OF VEHICLE	NOISE LIMIT (IN dB(A)
Any motor vehicle	80
Motorcycles	90
Motor Vehicles that exceed 8,000 pounds or more	85
UTV/ATV/Off-Road Vehicles	96

Sec. 19-125. – Exemptions.

The following uses and activities shall be exempt from noise level regulations:

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1. Noise of safety signals, warning devices and emergency pressure relief valves;
2. Noise resulting from any authorized emergency vehicle when responding to an emergency call or acting in time of emergency;
3. Noise resulting from emergency work;
4. Noise resulting from lawful fireworks and noisemakers used for celebration of an official holiday, as stated in Chapter 11, Article III, of the Las Cruces Municipal Code;
5. Sounds and vibrations generated by any train traveling into or through Las Cruces; and
6. Noise resulting from activities of temporary duration permitted by law for which a license or permit has been approved by the City in accordance with Se. 19-126 of this code.
7. The Federal Aviation Administration has guidelines that address noise at airports. Any aircraft engine operating within an aircraft during a landing, takeoff or while moving upon the ground surface of an airport shall be exempt.

Sec. 19-126. – Temporary permits.

1. The City may grant a temporary permit which allows noncompliance with the limitations prescribed in this article for the purpose of amplified sound activities of short duration. The issuance of such permits will be only for a time period between 7:00 a.m. and 12:00 midnight and shall not exceed three consecutive days.
2. Permits shall be granted upon application, provided an initial investigation assures that the permit will not result in a condition unreasonably injurious to the comfort, repose, health, peace, and safety of others.
3. The following factors shall be considered, in the initial investigation, in order to determine whether granting the permit will result in a condition unreasonably injurious to the comfort, repose, health, peace or safety of others.
    a. Distance of proposed activities from a residential zone.
    b. Number of amplification devices to be used in the proposed activities.
    c. Anticipated direction of amplification devices.
    d. Anticipated length of proposed activities.
    e. Whether the activity will be held within or without a structure.
    f. Approval or disapproval of adjacent property owners.
    g. Any other factors reasonably related to the comfort, repose, health, peace, or safety of others.

1. Upon a determination that the granting of a permit will not result in a condition unreasonably injurious to the comfort, repose, health, peace or safety of others, the permit shall be issued specifying place, duration, and any restrictions appropriate to the proposed site of the activities.
2. Issued permits will be surrendered to any city police or codes enforcement officer upon request when it is determined that the restriction of the permit specifying duration has been violated.

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3. Reapplication for a permit may be denied upon evidence of a complaint(s) by a resident(s) in the locality of the permitted activity or if an applicant has in the past been required to surrender a permit as described in subsection (5) above.
4. Any person aggrieved by the disposition of an application for a temporary permit may appeal to the city manager such disposition by filing a written petition with the City Manager or designee within 30 days of the disposition. The decision by the City Manager shall be final.

Sec. 19-127. – Penalties

1. A violation of any of the provisions of this division shall be a petty misdemeanor. When an offender commits a violation of this division, the offender shall be sentenced to a fine of not less than $100.00 nor more than $500.00. In addition, the offender may be sentenced up to 90 days in jail. The minimum fine of $100.00 may not be suspended, deferred, or taken under advisement. The court may, in its discretion, suspend the remainder of the fine as well as any jail time.
2. Where the complaint alleges a violation of this division, any pleas of guilty or nolo contendere thereafter entered in satisfaction of the charges shall include at least a plea of guilty or nolo contendere to a violation of this division or no other disposition by please of guilty or nolo contendere to any other charge shall be authorized.
3. Any commercial noise violation to exceed a third offense will reviewed by city administration with the possibility of the commercial license being revoked.

Sec. 19-128. – Violations; additional remedies; injunctions.
As an additional remedy (to the penalty set forth in section 19-127), the violation of any provision of this division may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction.

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