Written materials relating to an item on this agenda that are distributed to the legislative bodies within 72 hours before the item is to be considered at its regularly scheduled meeting will be made available for public inspection at the City Clerk's Office, 300 West Third Street 4th Floor during customary business hours. Agenda reports are also on the City of Oxnard web site at www.oxnard.org.

CITY OF OXNARD CALIFORNIA

AGENDA
OXNARD CITY COUNCIL
PUBLIC WORKS AND TRANSPORTATION COMMITTEE

Council Chambers, 305 West Third Street

July 13, 2021

Regular Meeting - 8:30 to 10:00 PM

(TEMPORARY TIME CHANGE)

This meeting is held pursuant to the State Emergency Services Act, the Governor's Emergency Declaration, and Governor's Executive Order N-29-20 to allow members of the City Council or staff to participate via teleconference.

As a precautionary measure to help slow the spread of COVID-19, the City Council facilities are temporarily closed to the public. The public is encouraged to view the meeting from home on the City's website at Oxnard.org/city-meetings, Spectrum channel 10, Frontier channel 35, or YouTube at Youtube.com/oxnardnews. Video recordings are typically available online immediately following the meeting. *Please see the link for the Measure M pre-recorded presentation video for each agenda item below.

The public may provide comments to the City Council via email at cityclerk@oxnard.org no later than 2:00 p.m. on the day of the meeting. Please identify the committee name, meeting date, and agenda item in the email Subject line.

A telephone option for public comments is also available at this time. Requests to speak must be submitted no later than 2:00 p.m. on the day of the meeting. Use the form on the city's website to submit your request: Oxnard.org/city-meetings, or call the City Clerk's Office at (805) 385-7803, or email your request to cityclerk@oxnard.org.

*The City has filed pre-election and post-election lawsuits regarding the validity of Measure M. The judge has not yet ruled on the legal sufficiency of Measure M.

A. ROLL CALL, POSTING OF AGENDA, FLAG SALUTE

B. PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

At this time, the legislative body will consider public comments for a maximum of thirty minutes. A person may address the legislative body only on matters not appearing on the agenda and within the subject matter jurisdiction of the legislative body. Speaker requests shall be submitted as set forth on the first page of this agenda. Speakers are limited to three minutes. If the allotted 30 minute time period expires before all speakers have had the opportunity to speak, the remaining speakers will be given an opportunity to speak prior to adjournment of the meeting. The legislative body cannot enter into a detailed discussion or take action on any items presented during public comments at this time. Such items may only be referred to the City Manager/Executive Director/Secretary for administrative action or scheduled on a subsequent agenda for discussion. Persons wishing to speak on public hearing items should do so at the time of the hearing.

C. CONSENT AGENDA

1. City Clerk Department

SUBJECT: Approval of Minutes.

RECOMMENDATION: That the Public Works & Transportation Committee approve the minutes of February 23, 2021; March 9, 2021; March 23, 2021; and April 13, 2021 regular meetings as presented.

Contact: Rose Chaparro, (805) 385-7805

D. REPORTS

1. City Manager Department

SUBJECT: Sale of the Oxnard Historic Farm Park (0/10/10)

RECOMMENDATION: That the Public Works and Transportation Committee recommends that the City Council:

1. Conduct a public hearing and consider the Summary Report prepared pursuant to California Government Code section 52201;
2. Adopt a resolution and approve Purchase and Sale Agreement No. A-8295 between the City of Oxnard (City) and the Oxnard Historic Farm Park Foundation (Foundation) for the sale of the Gottfried Maulhardt/Albert Pfeiler Farm Site (Farm Park); and
3. Approve the attached Budget Appropriation recognizing the revenue from the sale of the Farm Park.

Please click the following link to view the required Measure M pre-recorded presentation video: https://youtu.be/zcgN_rKaVdo

Contact: Alexander Nguyen, (805) 385-7430

2. Public Works Department

SUBJECT: Approval of Purchase Order #8164 with VAC-CON, Inc., for a New Sewer Cleaning Vehicle. (0/5/5)

RECOMMENDATION: That the Public Works and Transportation Committee recommend that the City Council approve and authorize the Mayor to execute Purchase Order #8164 with VAC-CON, Inc. for the purchase of a new VAC-CON sewer cleaning combination truck, model VPD4211HE/1300, mounted on a Freightliner 114SD truck chassis in the amount of $558,637.71.

Please click the following link to view the required Measure M pre-recorded presentation video: https://youtu.be/-5V86_mS2wQ

Contact: Brian Yanez, (805) 200-5412

3. Public Works Department

SUBJECT: Approval of an LS-1 Option E Agreement A-8356 with Southern California Edison to Replace High Pressure Sodium Vapor Street Lights with Light Emitting Diode Street Lights Citywide. (0/5/5)

RECOMMENDATION: That the Public Works and Transportation Committee recommend that the City Council approve and authorize the Mayor to execute the LS-1 Option E Agreement A-8356 with Southern California Edison (SCE), for a term of 20 years, to replace SCE owned street lights from High Pressure Sodium Vapor (HPSV) to Light Emitting Diode (LED) with no out-of-pocket cost to the City.

Please click the following link to view the required Measure M pre-recorded presentation video: https://youtu.be/puQ4iqQ-hXU

Contact: Brian Yanez, (805) 200-5412

4. City Manager Department

SUBJECT: Preliminary American Rescue Plan Act Investment Ideas (0/15/15)

RECOMMENDATION: That the Public Works and Transportation Committee begins the discussion about American Rescue Plan Act (ARPA) preliminary investment ideas and forward discussion outcomes to the City Council for further deliberations.

Please click the following link to view the required Measure M pre-recorded presentation video: https://youtu.be/2iUpVV2J4kE

Contact: Alexander Nguyen, (805) 385-7430

E. ITEMS FOR FUTURE AGENDAS

F. ADJOURNMENT

PUBLIC WORKS AND TRANSPORTATION COMMITTEE AGENDA REPORT

CONSENT AGENDA
AGENDA ITEM NO. C.1

DATE: July 13, 2021

TO: Public Works and Transportation Committee

FROM: Rose Chaparro, City Clerk, (805) 385-7805, rose.chaparro@oxnard.org

SUBJECT: Approval of Minutes.

RECOMMENDATION

That the Public Works & Transportation Committee approve the minutes of February 23, 2021; March 9, 2021; March 23, 2021; and April 13, 2021 regular meetings as presented.

BACKGROUND

STRATEGIC PRIORITIES

FINANCIAL IMPACT

Prepared by: Rose Chaparro, City Clerk

ATTACHMENTS

1. MINUTES 02 23 2021 Public Works & Transportation Committee
2. MINUTES 03 09 2021 Public Works & Transportation Committee
3. MINUTES 03 23 2021 Public Works & Transportation Committee
4. MINUTES 04 13 2021 Public Works & Transportation Committee

M I N U T E S
OXNARD CITY COUNCIL
PUBLIC WORKS & TRANSPORTATION COMMITTEE
Regular Meeting
FEBRUARY 23, 2021

A. ROLL CALL, POSTING OF AGENDA, FLAG SALUTE

At 8:31 p.m., Chair Bert Perello called to order the regular meeting of the Oxnard City Council Public Works Committee in the City Hall Council Chambers at 305 W. Third Street, Oxnard, California. The City Clerk called the roll and announced the posting of the agenda. Chair Bert Perello and Member Vianey Lopez were present via videoconference. Member John C. Zaragoza was present in person.

Staff members present were Alexander Nguyen, City Manager and Rose Chaparro, City Clerk.

Staff members that participated via videoconference were Paul Early, Assistant City Attorney; Craig Beck, Interim Public Works Director; Steve Howlett, Assistant Public Works Director; Brian Yanez, Assistant Public Works Director; Tatiana Arnaout, City Engineer; Jeri Cooper, Public Works Project Manager; Todd Vasquez-Housley, Environmental Resources Division Manager; Omar Castro, Water Division Manager; Victor Zambrano, Utilities Finance Officer; Juanita Guzman, Administrative Services Manager; and Kevin Riper, Chief Financial Officer.

B. PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

1. Public comment was received from Pat Brown regarding trucks and trailers traveling on Oxnard Boulevard and concerned about damage to the roads, lights, and signage.

C. CONSENT AGENDA (None.)

D. REPORTS

1. Public Works Department

SUBJECT: First Amendment to Purchase Order #7634 with Badger Meter, Inc. for Water Meters and Parts.

RECOMMENDATION: That the Public Works and Transportation Committee recommend that the City Council authorize the Mayor to execute a First Amendment to Purchase Order #7634 with Badger Meter, Inc. in the amount of $200,000 for a new total not to exceed value of $450,000 for water meters and parts.

Omar Castro, Water Division Manager answered the Committee's questions. Discussion ensued among the Committee and staff. Chair Perello asked staff for a report that identifies the location of failed meters and an inventory of the recycled meters. Report to be presented at a future committee meeting. No public comment received.

It was moved by Member Zaragoza, seconded by Member Lopez, to approve the recommended action as presented. VOTE: Lopez, Zaragoza, and Perello voted in favor; the motion carried 3-0.

2. Public Works Department

SUBJECT: Award Agreement to Alltech Industries, Inc. for Armed Security Services at the Water Campus.

RECOMMENDATION: That the Public Works and Transportation Committee recommend that the City Council approve and authorize the Mayor to execute Agreement A-8293 with Alltech Industries, Inc. in the amount not to exceed $334,466 for a two-year term ending March 15, 2023 for armed security services at the Water Campus.

Omar Castro, Water Division Manager answered the Committee's questions. Public comment was received from Ray Blattel. Discussion ensued among the Committee and staff.

It was moved by Chair Perello, seconded by Member Lopez, to approve the recommended action as presented. VOTE: Lopez, Zaragoza, and Perello voted in favor; the motion carried 3-0.

3. Public Works Department

SUBJECT: Agreement for On-Call Channel Maintenance and Repair Services for Waterways Assessment Districts Specification SD 21-43.

RECOMMENDATION: That the Public Works and Transportation Committee recommend that the City Council award and authorize the Mayor to execute Agreement A-8298 with Harbor Offshore, Inc. for an amount not to exceed $600,000 for a three-year term ending April 30, 2024 for on-call channel maintenance and repair services for Waterways Assessment Districts Zone 1 Mandalay Bay, Waterways Assessment District Zone 2 Harbour Island, Westport CFD 2 and Seabridge CFD 4.

Jeri Cooper, Public Works Project Manager answered the Committee's questions. No public comment received. Discussion ensued among the Committee and staff.

It was moved by Member Lopez, seconded by Member Zaragoza, to approve the recommended action as presented. VOTE: Perello, Zaragoza, and Lopez voted in favor; the motion carried 3-0.

4. Public Works Department

SUBJECT: Water Infrastructure Finance and Innovation Act (WIFIA) Loan Application.

RECOMMENDATION: That the Public Works and Transportation Committee recommend that the City Council approve and authorize the Mayor to adopt a resolution authorizing the City Manager to submit an application for an amount not to exceed $27,600,000 from the Water Infrastructure Finance and Innovation Act Loan program administered by the U.S. Environmental Protection Agency; designating the amount of project expenditures to be reimbursed by proceeds from the Water Infrastructure Finance and Innovation Act loan; and dedicating and pledging revenues and funds for the repayment of the Water Infrastructure Finance and Innovation Act loan from the U.S. Environmental Protection Agency.

Tatiana Arnaout, City Engineer answered the Committee's questions. No public comment received. Discussion ensued among the Committee and staff.

It was moved by Member Zaragoza, seconded by Member Lopez, to approve the recommended action as presented. VOTE: Lopez, Zaragoza, and Perello voted in favor; the motion carried 3-0.

E. ITEMS FOR FUTURE AGENDAS (No requests made.)

F. ADJOURNMENT

There being no further business on the agenda, and without objection, Chair Perello adjourned the meeting at 9:15 p.m.

ROSE CHAPARRO
City Clerk

BERT E. PERELLO
Chair

M I N U T E S
OXNARD CITY COUNCIL
PUBLIC WORKS & TRANSPORTATION COMMITTEE
Regular Meeting
MARCH 9, 2021

A. ROLL CALL, POSTING OF AGENDA, FLAG SALUTE

At 8:30 p.m., Chair Bert Perello called to order the regular meeting of the Oxnard City Council Public Works Committee in the City Hall Council Chambers at 305 W. Third Street, Oxnard, California. The City Clerk called the roll and announced the posting of the agenda. Chair Bert Perello and Member Vianey Lopez were present via videoconference. Member John Zaragoza was present in person.

Staff members present were Alexander Nguyen, City Manager; Paul Early, Assistant City Attorney; and Rose Chaparro, City Clerk.

Staff members that participated via videoconference were Shiri Klima, Deputy City Manager; Craig Beck, Interim Public Works Director; Steve Howlett, Assistant Public Works Director; Brian Yanez, Assistant Public Works Director; Tatiana Arnaout, City Engineer; Jeri Cooper, Public Works Project Manager; Todd Vasquez-Housley, Environmental Resources Division Manager; Timothy Bochum, City Traffic Engineer; and Juanita Guzman, Administrative Services Manager.

B. PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

1. Public comments were received from Pat Brown and Lawrence Stein.

C. CONSENT AGENDA (None.)

D. REPORTS

1. Public Works Department

SUBJECT: Update of the ReNew Oxnard Community Outreach Program and Collaborative Governance Guide for the City's Landscape Maintenance Districts.

RECOMMENDATION: That the Public Works and Transportation Committee recommend that the City Council receive and file the staff report and update regarding the ReNew Oxnard Community Outreach Program and Collaborative Governance Guide for the City's Landscape Maintenance Districts.

Steve Howlett, Assistant Public Works Director and Jeri Cooper, Public Works Project Manager were available to answer the Committee's questions. Public comments were received from Douglas D. Partello, Alicia Percell, and Charles Hamm. Discussion ensued among the Committee and staff.

It was moved by Member Lopez, seconded by Member Zaragoza, to approve the recommended action as presented. VOTE: Lopez, Zaragoza, and Perello voted in favor; the motion carried 3-0.

2. Public Works Department

SUBJECT: Agreements for Professional Services for the Etting Road Bicycle & Pedestrian Facilities Installation PW 21-34 and the Oxnard Boulevard Bikeway Gap Closure Class I Bike Path PW 21-36 Projects.

RECOMMENDATION: That the Public Works and Transportation Committee recommend that the City Council:

1. Approve and authorize the Mayor to execute Agreement A-8300 with Huitt-Zollars, Inc. in the amount of $189,565 for Plans, Specifications and Estimates for the Etting Road Bicycle & Pedestrian Facilities Installation Project 203104; and
2. Approve and authorize the Mayor to execute Agreement A-8301 with Huitt-Zollars, Inc. in the amount of $139,873 for Plans, Specifications and Estimates for the Oxnard Boulevard Bikeway Gap Closure Class I Bike Path Project 213104; and
3. Approve a budget appropriation of $108,522 from Transportation Development Act Article 8a Fund 212 to Etting Road Bicycle & Pedestrian Facilities Installation Project 203104; recognize and appropriate $98,000 from State Active Transportation Program grant funds (Fund 210) and $55,861 from Transportation Development Act Article 8a Fund 212 to Oxnard Boulevard Bikeway Gap Closure Class I Bike Path Project 213104.

Tatiana Arnaout, City Engineer answered the Committee's questions. Public comments were received from Barbara Macri-Ortiz, Chris Hernandez, and Pat Brown. Discussion ensued among the Committee and staff.

It was moved by Member Lopez, seconded by Member Zaragoza, to approve the recommended action as presented. VOTE: Perello, Zaragoza, and Lopez voted in favor; the motion carried 3-0.

3. Public Works Department

SUBJECT: Community Facilities Districts (CFDs) Reserve Studies.

RECOMMENDATION: That the Public Works and Transportation Committee recommend that the City Council receive and file the reserve studies for Westport CFD 2, Seabridge CFD 4 and Riverpark CFD 5.

Steve Howlett, Assistant Public Works Director and Jeri Cooper, Public Works Project Manager answered the Committee's questions. No public comment was received. Discussion ensued among the Committee and staff.

It was moved by Member Zaragoza, seconded by Member Lopez, to approve the recommended action as presented. VOTE: Lopez, Zaragoza, and Perello voted in favor; the motion carried 3-0.

4. Public Works Department

   SUBJECT: Agreement for Supplemental Waste Transfer Hauling Services for the Del Norte Regional Recycling and Transfer Station.

   RECOMMENDATION: That the Public Works and Transportation Committee recommend that the City Council approve and authorize the Mayor to execute Agreement A-8291 with Eco Transport, LLC for an amount not to exceed $4,000,000 for a three-year term ending March 1, 2024 to provide supplemental waste transfer hauling services for the Del Norte Regional Recycling and Transfer Station.

   Brian Yanez, Assistant Public Works Director and Todd Vasquez-Housley, Environmental Resources Division Manager answered the Committee's questions. Public comment was received from Pat Brown. Discussion ensued among the Committee and staff.

It was moved by Member Zaragoza, seconded by Member Lopez, to approve the recommended action as presented. VOTE: Lopez, Perello, and Zaragoza voted in favor; the motion carried 3-0.

5. Public Works Department

   SUBJECT: Channel Islands Water Quality and Quality Assurance Project Plan (QAPP) Report.

   RECOMMENDATION: That the Public Works and Transportation Committee recommend that the City Council receive and file a report on water quality monitoring efforts in the Channel Islands Harbor and provide staff with comments.

   Steve Howlett, Assistant Public Works Director and Jeri Cooper, Public Works Project Manager answered the Committee's questions. No public comment was received. Discussion ensued among the Committee and staff.

It was moved by Member Zaragoza, seconded by Member Lopez, to approve the recommended action as presented. VOTE: Lopez, Perello, and Zaragoza voted in favor; the motion carried 3-0.

E. ITEMS FOR FUTURE AGENDAS (No requests made.)

F. ADJOURNMENT

There being no further business on the agenda, and without objection, Chair Perello adjourned the meeting at 9:58 p.m.

ROSE CHAPARRO City Clerk	BERT E. PERELLO Chair

MINUTES
OXNARD CITY COUNCIL
PUBLIC WORKS & TRANSPORTATION COMMITTEE
Regular Meeting
MARCH 23, 2021

A. ROLL CALL, POSTING OF AGENDA, FLAG SALUTE

At 8:30 p.m., Chair Bert Perello called to order the regular meeting of the Oxnard City Council Public Works Committee in the City Hall Council Chambers at 305 W. Third Street, Oxnard, California. The City Clerk called the roll and announced the posting of the agenda. Chair Bert Perello and Councilmember Vianey Lopez were present via videoconference. Mayor John C. Zaragoza was present in person.

Staff members present were Alexander Nguyen, City Manager, Paul Early, Assistant City Attorney; and Rose Chaparro, City Clerk.

Staff members that participated via videoconference were Ashley Golden, Assistant City Manager; Shiri Klima, Deputy City Manager; Craig Beck, Interim Public Works Director; Steve Howlett, Assistant Public Works Director; Tatiana Arnaout, City Engineer; Timothy Bochum, City Traffic Engineer; Vyto Adomaitis, Community Development Director; Scott Kolwitz, Planning & Environmental Services Manager; and Isidro Figueroa, Principal Planner.

B. PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

1. Public comment was received from Lawrence Stein regarding water credits.

C. CONSENT AGENDA

1. City Clerk Department

   SUBJECT: Approval of Minutes

   RECOMMENDATION: That the Public Works and Transportation Committee approve the minutes of the January 12, 2021 regular meeting as presented.

The minutes are incorrect with respect to item #2 for the Agreement with Waste Management. The motion that was voted on and approved was to continue this item to a future date. The minutes were pulled from the agenda to be corrected and will be brought back at the next Committee meeting.

D. REPORTS

1. Public Works Department

SUBJECT: Senate Bill 1 (SB1) Local Streets and Road Maintenance and Rehabilitation Account (RMRA) Funding and Project List for Fiscal Year 2021-22.

RECOMMENDATION: That the Public Works and Transportation Committee recommend that the City Council adopt a resolution to:
1. Adopt the Fiscal Year 2021-22 project list of Senate Bill 1 (SB1) proposed projects which will be funded in part or solely with Road Maintenance and Rehabilitation Account revenues; and
2. Authorize the City Manager to take whatever actions are necessary and appropriate to carry out the purpose and intent of the resolution.

Tatiana Arnaout, City Engineer answered the Committee's questions. Public comments were received from Pat Brown. Discussion ensued among the Committee and staff.

It was moved by Member Zaragoza, seconded by Member Lopez, to approve the recommended action as presented. VOTE: Zaragoza, Lopez, and Perello voted in favor; the motion carried 3-0.

2. Public Works Department

SUBJECT: Railroad Quiet Zone Establishment.

RECOMMENDATION: That the Public Works and Transportation Committee recommend that the City Council receive and file a report on the Federal Railroad Administration's Railroad Quiet Zone process and potential application within the City of Oxnard.

Timothy Bochum, City Traffic Engineer answered the Committee's questions. Public comment was received from Pat Brown. Discussion ensued among the Committee and staff.

It was moved by Member Zaragoza, seconded by Member Lopez, to approve the recommended action as presented. VOTE: Lopez, Zaragoza, and Perello voted in favor; the motion carried 3-0.

3. Community Development Department

SUBJECT: Master License Agreement For Wireless Installation on Municipal Facilities.

RECOMMENDATION: That the Public Works and Transportation Committee:
1. Receive a summary report on a draft Master License Agreement (MLA) for Wireless Installation on Municipal Facilities; and

2. Provide input on the draft MLA for Wireless Installation on Municipal Facilities.

Scott Kolwitz, Planning & Environmental Services Manager answered the Committee's questions. Public comments were received from Diana Rojas, Daisy M. Uy Kimpang, and Pat Brown. Discussion ensued among the Committee and staff.

It was moved by Member Zaragoza, seconded by Member Lopez, to approve the recommended action as presented. VOTE: Perello, Zaragoza, and Lopez voted in favor; the motion carried 3-

0.

E. ITEMS FOR FUTURE AGENDAS (No requests made.)

F. ADJOURNMENT

There being no further business on the agenda, and without objection, Chair Perello adjourned the meeting at 9:54 p.m.

ROSE CHAPARRO City Clerk	BERT E. PERELLO Chair

M I N U T E S
OXNARD CITY COUNCIL
PUBLIC WORKS & TRANSPORTATION COMMITTEE
Regular Meeting
APRIL 13, 2021

A. ROLL CALL, POSTING OF AGENDA, FLAG SALUTE

At 8:31 p.m., Chair Bert Perello called to order the regular meeting of the Oxnard City Council Public Works & Transportation Committee in the City Hall Council Chambers at 305 W. Third Street, Oxnard, California. The City Clerk called the roll and announced the posting of the agenda. Chair Bert Perello and Member Vianey Lopez were present via videoconference. Member John C. Zaragoza was present in person.

Staff members present were Alexander Nguyen, City Manager; Paul Early, Assistant City Attorney; and Rose Chaparro, City Clerk.

Staff members that participated via videoconference were Craig Beck, Interim Public Works Director; Brian Yanez, Assistant Public Works Director; Steve Howlett, Assistant Public Works Director; Todd Vasquez-Housley, Environmental Resources Division Manager; Jan Hauser, Wastewater Division Manager; and Omar Castro, Water Division Manager.

Scott Tignac from WM Disposal Operations also participated via videoconference.

B. PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA (None received.)

C. CONSENT AGENDA

1. City Clerk Department

SUBJECT: Approval of Minutes

RECOMMENDATION: That the Public Works and Transportation Committee approve the minutes of the January 12, 2021 regular meeting as presented.

Chair Perello asked for a correction to the meeting minutes, item #D.2 there was one public speaker, Mr. Chris Theisen for this item. City Manager asked for a correction on the agenda items to list the staff that presented the items.

It was moved by Member Lopez, seconded by Chair Perello, to approve the Information/Consent item with the corrections requested. VOTE: Lopez, Zaragoza, and Perello voted in favor; the motion carried 3-0.

D. REPORTS

1. Public Works Department

SUBJECT: First Amendment to Solenis LLC Agreement 8172-17-PW for Supply and

Delivery of Polymer.

RECOMMENDATION: That the Public Works and Transportation Committee recommend that the City Council approve and authorize the Mayor to execute a First Amendment to Agreement 8172-17-PW with Solenis, LLC, in the amount of $450,000 for a new not to exceed amount of $1,462,000 and to extend the term to June 30, 2023 for supply and delivery of cationic polymer to the Oxnard Wastewater Treatment Plant.

Jan Hauser, Wastewater Division Manager answered the Committee's questions. No public comments were received. Discussion ensued among the Committee and staff.

It was moved by Member Zaragoza, seconded by Member Lopez, to approve the recommended action as presented. VOTE: Zaragoza, Lopez, and Perello voted in favor; the motion carried 3-0.

2. Public Works Department

SUBJECT: Sixth Amendment to Agreement 7167-15-CM with Ventura Regional Sanitation District.

RECOMMENDATION: That the Public Works and Transportation Committee recommend that the City Council approve and authorize the Mayor to execute a Sixth Amendment to Agreement 7167-15-CM with Ventura Regional Sanitation District in the amount of $105,124.00 for a total not-to-exceed amount of $723,867.91 and to extend the term to June 30, 2022 for monitoring and reporting of the closed Santa Clara Landfill.

Brian Yanez, Assistant Public Works Director answered the Committee's questions. No public comment was received. Discussion ensued among the Committee and staff.

It was moved by Member Zaragoza, seconded by Member Lopez, to approve the recommended action as presented. VOTE: Perello, Zaragoza, and Lopez voted in favor; the motion carried 3-0.

3. Public Works Department

SUBJECT: Agreement A-8305 with California Wood Recycling, Inc. dba Agromin, for Organic Waste Recycling Services at Agromin Facilities.

RECOMMENDATION: That the Public Works and Transportation Committee recommend that the City Council approve and authorize the Mayor to execute Agreement A-8305 with California Wood Recycling, Inc. dba Agromin (Agromin) in the amount not to exceed $4,200,000 for a three year term through June 24, 2024 to provide organic waste recycling services for the City of Oxnard at permitted Agromin facilities.

Brian Yanez, Assistant Public Works Director and Todd Vasquez-Housley, Environmental Resources Division Manager answered the Committee's questions. Public comments were received from Pat Brown. Discussion ensued among the Committee and staff.

It was moved by Member Lopez, seconded by Member Zaragoza, to approve the recommended action as presented. VOTE: Zaragoza, Lopez, and Perello voted in favor; the motion carried 3-0.

4. Public Works Department

SUBJECT: Agreement A-8320 with Good Guard Security Services for Unarmed Security Patrol Services at the Del Norte Regional Recycling and Transfer Station, the Oxnard Wastewater Treatment Plant and the Advanced Water Purification Facility.

RECOMMENDATION: That the Public Works and Transportation Committee recommend that the City Council approve and authorize the Mayor to execute Agreement A-8320 with Good Guard Security Services in the amount not to exceed $777,600 for a three year term through June 30, 2024 for unarmed security patrol services at the Del Norte Regional Recycling and Transfer Station, the Oxnard Wastewater Treatment Plant, and the Advanced Water Purification Facility.

Todd Vasquez-Housley, Environmental Resources Division Manager; Jan Hauser, Wastewater Division Manager; and Omar Castro, Water Division Manager answered the Committee's questions. No public comments were received. Discussion ensued among the Committee and staff.

It was moved by Member Lopez, seconded by Member Zaragoza, to approve the recommended action as presented. VOTE: Zaragoza, Lopez, and Perello voted in favor; the motion carried 3-0.

5. Public Works Department

SUBJECT: Award Agreement A-8321 to Carollo Engineers, Inc. for Consulting Services for Water and Recycled Water Distribution Process Support.

RECOMMENDATION: That the Public Works and Transportation Committee recommend that the City Council approve and authorize the Mayor to execute Agreement A-8321 with Carollo Engineers, Inc. in the amount not to exceed $450,000 for a three-year term ending May 3, 2024 for consulting services for water and recycled water distribution process support.

Brian Yanez, Assistant Public Works Director answered the Committee's questions. No public comments were received. Discussion ensued among the Committee and staff.

It was moved by Member Zaragoza, seconded by Member Lopez, to approve the recommended action as presented. VOTE: Lopez, Zaragoza, and Perello voted in favor; the motion carried 3-0.

6. Public Works Department

SUBJECT: Agreement A-8280 with Waste Management of California, Inc. for Solid Waste Disposal.

RECOMMENDATION: That the Public Works and Transportation Committee recommend that the City Council:

1. Approve Addendum No. 6 to the Simi Valley Landfill and Recycling Center Expansion Project Final Environmental Impact Report: and
2. Approve and authorize the Mayor to execute Agreement A-8280 with Waste Management of California, Inc. for an estimated value of $53,210,723 for a five (5) year term from May 5, 2021 to May 4, 2026 for solid waste disposal at the Simi Valley Landfill.

Todd Vasquez-Housley, Environmental Resources Division Manager and Paul Early, Assistant City Attorney answered the Committee's questions. No public comments were received. Discussion ensued among the Committee and staff.

It was moved by Member Lopez, seconded by Member Zaragoza, to approve the recommended action as presented. VOTE: Perello, Lopez, and Zaragoza voted in favor; the motion carried 3-0.

E. ITEMS FOR FUTURE AGENDAS (No requests made.)

F. ADJOURNMENT

There being no further business on the agenda, and without objection, Chair Perello adjourned the meeting at 9:21 p.m.

ROSE CHAPARRO City Clerk	BERT E. PERELLO Chair

CITY OF OXNARD CALIFORNIA

PUBLIC WORKS AND TRANSPORTATION COMMITTEE
AGENDA REPORT

REPORTS
AGENDA ITEM NO. D.1

DATE: July 13, 2021

TO: Public Works and Transportation Committee

FROM: Alexander Nguyen, City Manager, (805) 385-7430, alexander.nguyen@oxnard.org

SUBJECT: Sale of the Oxnard Historic Farm Park (0/10/10)

RECOMMENDATION

That the Public Works and Transportation Committee recommends that the City Council:
1. Conduct a public hearing and consider the Summary Report prepared pursuant to California Government Code section 52201;
2. Adopt a resolution and approve Purchase and Sale Agreement No. A-8295 between the City of Oxnard (City) and the Oxnard Historic Farm Park Foundation (Foundation) for the sale of the Gottfried Maulhardt/Albert Pfeiler Farm Site (Farm Park); and
3. Approve the attached Budget Appropriation recognizing the revenue from the sale of the Farm Park.

Please click the following link to view the required Measure M pre-recorded presentation video: https://youtu.be/zcgN_rKaVdo

BACKGROUND

Once, many years ago, the greater Oxnard Plain was home to dozens of farms, ranches, and homesteads, which established the area's agricultural industry. Names like Borchard, Camarillo, Levy, and Maulhardt called the area home. Few of these historical relics, odes to the City's agricultural past, remain. Over time, many were demolished, making way for housing tracts and business parks, while others disappeared over the long years.

Properties like the Farm Park serve as witnesses to a city's aesthetic and cultural history, giving people a sense of place and connection to the past. These historical buildings and places often represent something important to the people who live in a city or those visiting. The Farm Park is an example of this and is a unique and important part of the City's culture and history.

Located at 1251 Gottfried Place, the Farm Park consists of the 1870's era Albert Pfeiler House, Carriage House, courtyard patio, bathhouse/outhouse, plants and gardens, BBQ pit, farm equipment, and public restrooms. The Farm Park offers space for informational tours, site rentals, special events, and photos and machinery from Oxnard's farming history.

Ventura County Landmark Status

On April 2, 1991, the City Council adopted Resolution No. 10,135, declaring that the Ventura County Cultural Heritage Board would serve as the City's Cultural Heritage Board (Board). The Board works to promote the economic and general welfare of Ventura County (County) by preserving and protecting the public and private historical, cultural, and natural resources of unique historical places of interest. The resolution stated that upon recommendation of the Board, the City Council may declare a County landmark.

On March 22, 2004, the Board held a public hearing to consider the Farm Park site in Oxnard being declared Ventura County Historical Landmark No. 165. After the hearing, it was determined that the Farm Park met the criteria established by the County, and the Board subsequently adopted a resolution dated March 31, 2004, recommending that the Farm Park be declared Ventura County Landmark No. 165. Finally, in July 2004, the City Council adopted Resolution No. 12,681, formally assigning the designation to the Farm Park.

Lease and Operating Agreement with the City

In June 2007, the City entered into Agreement No. A-6875 (Agreement) for the lease and operation of the Farm Park with the Foundation, a non-profit organization dedicated to restoring and improving the 0.86 acre Farm Park under the Master Plan. The Master Plan identified the work needed to preserve, restore, and open the Farm Park for use by the public and improve and enhance the property (Attachment 6).

Under the Agreement, the City was to lease the property to the Foundation for $1.00 a year, with the lease term renewing automatically. The Foundation was to raise funds for the restoration and improvement of the property in accordance with the Master Plan. These funds were to be transferred to the City to conduct the design and construction of improvements.

DISCUSSION

There has been little oversight from City staff regarding the Foundation and its operations during the term of the Agreement. As presented to the City Council on October 15, 2019, Public Works Department (Public Works) staff were not actively administering the Agreement. According to the Agreement, improvements and projects were to be pre-approved by Public Works and carried out by the City as public projects by Public Works; however, that has not been the case.

Funds raised by the Foundation were to be given to the City to be used for projects identified in the Master Plan. In practice, the Foundation has raised money and used that money to do these projects independent of City oversight. City staff have had discussions with the Foundation and have no reason to believe that the money was not spent on projects for the Farm Park; instead, the work was not performed according to the process spelled out in the Agreement.

The Foundation was to maintain the Farm Park property following a schedule and budget approved by Public Works. The Foundation has supported the property, but Public Works has not been provided with any schedules or budgets to review and approve, and there is no record of Public Works requesting a schedule or budget.

Additionally, the Foundation is to report income and expenses to Public Works each quarter and an income and expense audit to Public Works annually. In the fall of 2019, the City met with a Foundation representative and was provided annual revenue and expense reports from the Foundation dating back to 2014.

Due to the lack of oversight with the Agreement, staff presented the following options to Council in October 2019:

1) Continuing with the existing Agreement;
2) Drafting a new lease and operating agreement; or
3) Selling the Farm Park to the Foundation.

After the October 2019 staff presentation to Council, Council directed staff to sell the Farm Park.

Purchase and Sale Agreement

In March 2020, at the City Manager's direction, staff obtained an appraisal for the Farm Park, funded by the Foundation (Attachment 5). The appraisal concluded that the value of the Farm Park and surrounding land to be $550,000. However, the appraisal also concluded that the highest and best use of the property as improved is for the site's continued use as a cultural site, with the most likely buyer being a local municipality or non-profit public entity. The Foundation intends to restore and renovate the historic house to serve as a museum, library, and preservation site of local history in Oxnard.

City staff and the Foundation have worked out a Purchase and Sale Agreement with the following deal points:

- Farm Park sale price: $50,000 paid in $10,000 installments over five (5) years
- Title to include reversionary rights to City: property reverts to City if the property is sold to a 3rd party or is not used for intended purposes, i.e., historical landmark open to the public
- Foundation to present to the City a work plan for restoration, renovation, and improvements over ten (10) years, valued at approximately $500,000 (could include "sweat equity" working hours, permits, grants, fundraising).
- Annual report to City on status of the work plan
- Foundation to provide annual IRS Form-990's and nonprofit report to the City
- Foundation to obtain State of California landmark status

52201 Report

Pursuant to California Government Code Section 52201 (52201) any city or county may sell or lease a property to create an economic opportunity. Before this can be completed, however, the sale agreement or other instrument needs to first be approved by the legislative body by resolution after a public hearing. Additionally, 52201 requires staff to submit a summary report of the sale agreement (Attachment 4).

STRATEGIC PRIORITIES

This agenda item supports the Quality of Life strategy. The purpose of the Quality of Life strategy is to build relationships and create opportunities within the community for safe and vibrant neighborhoods, which will showcase the promising future of Oxnard. This item supports the following goals and objectives:

Goal 3. Strengthen neighborhood development, and connect City, community and culture.

This agenda item supports the Economic Development strategy. The purpose of the Economic Development strategy is to develop and enhance Oxnard's business climate, promote the City's fiscal health, and support economic growth in a manner consistent with the City's unique character. This item supports the following goals and objectives:

Objective 2c. Capitalize on historic, cultural and natural resources.

FINANCIAL IMPACT

Under the Purchase and Sale Agreement, the City will receive $10,000 per year for five (5) years, for a total purchase price of $50,000. These payments, along with annual status of the Foundation's work plan and non-profit reports, will be received by the City on the anniversary date of the Purchase and Sale Agreement.

Revenue deposits from the sale of the Farm Park will be deposited into General Fund Sales of Real Property (account no. 101-1001-581.75-24).

Prepared by: Adam Smith, Project Manager

ATTACHMENTS
1. Purchase and Sale Agreement No. A-8295
2. Budget Appropriation
3. Farm Park Resolution
4. Farm Park 52201 Report
5. Farm Park Appraisal
6. Farm Park Master Plan
7. Lease and Operating Agreement No. A-6875
8. Farm Park Presentation

REAL PROPERTY PURCHASE AND SALE AGREEMENT

THIS REAL PROPERTY PURCHASE AND SALE AGREEMENT (the "Agreement"), is made as of ______ 2021, by and between the City of Oxnard, a California municipal corporation ("Seller"), and the Oxnard Historic Farm Park Foundation ("Buyer").

W I T N E S S E T H:

In consideration of the covenants in this Agreement, Seller and Buyer agree as follows:

Section 1. The Property. Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, in accordance with this Agreement, the real property in the County of Ventura, State of California, described in Exhibit A which is attached hereto and incorporated herein by this reference (hereafter, the "Property").

Section 2. Amount and Payment. The total cost for the Property shall be Fifty Thousand Dollars ($50,000). At the Closing (as hereinafter defined) on the Closing Date (as hereinafter defined), Buyer shall pay make a down payment of Ten Thousand Dollars ($10,000) and sign a deed of trust for the balance of the cost of the Property payable over a four-year with annual payments of Ten Thousand Dollars ($10,000). Buyer will pay all closing costs associated with the sale.

Section 3. Completion of Sale. The sale of the Property shall be completed in accordance with Sections 7 through 10, inclusive, hereof (the "Closing"). The Closing shall occur through an escrow with an Ventura County-based escrow company selected by the Seller and shall occur on or before thirty (30) days from the date of this Agreement (the "Closing Date").

Section 4. Title to the Property. Seller shall convey to Buyer good and marketable fee title to the Property, by a duly executed and acknowledged Grant Deed with Right of Reentry (the "Grant Deed") in the form of Exhibit B, which is attached hereto.

Section 5. Representations of Seller. The representations and warranties of Seller in this Section 5 are a material inducement for Buyer to enter into this Agreement. Buyer would not purchase the Property from Seller without such representations and warranties of Seller. Such representations and warranties shall survive the Closing, to the extent applicable, for a one (1) year period after the Closing Date, at which time such representations and warranties shall terminate; provided, however, that the representation and warranty set forth in section 5(d) below shall terminate as of the Closing Date. Seller represents and warrants to Buyer as of the date of this Agreement as follows:

(a) Seller is a California municipal corporation, organized and validly existing and in good standing under the laws of the State of California. Seller has the full power and authority to enter into this Agreement and to perform this Agreement. The execution, delivery and performance of this Agreement by Seller have been duly and validly authorized by all necessary action on the part of Seller and all required consents or approvals have been duly obtained. This Agreement is a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, subject to the terms of binding laws relating to bankruptcy, insolvency and other similar binding laws affecting the rights of creditors generally.

(c) Seller has not dealt with any real estate broker or finder in connection with the transfer of the Property to Buyer or this Agreement.

(d) Seller is not aware of any encumbrances affecting the Property.

Section 6. Representations of Buyer. The representations and warranties of Buyer in this Section 6 are a material inducement for Seller to enter into this Agreement. Seller would not sell the Property to Buyer without such representations and warranties of Buyer. Such representations and warranties shall survive the Closing, to the extent applicable, for one (1) year after the Closing Date except for the representations in Section 6(c), which shall survive for fifty (50) years from the Closing Date. After the applicable time period have passed, such representations and warranties shall terminate although such termination shall in no way be interpreted to affect the language of the Grant Deed. Buyer represents and warrants to Seller as of the date of this Agreement as follows:

(a) Buyer is a nonprofit organization duly organized and validly existing and in good standing under the laws of the State of California. Buyer has full power and authority to enter into this Agreement and to perform this Agreement. The execution, delivery and performance of this Agreement by Buyer have been duly and validly authorized by all necessary action on the part of Buyer and all required consents or approvals have been duly obtained. This Agreement is a legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, subject to the terms of binding laws relating to bankruptcy, insolvency and other similar binding laws affecting the rights of creditors generally.

(b) Buyer has not dealt with any real estate broker or finder in connection with the sale of the Property from Seller or this Agreement.

(c) On behalf of itself and its successors and assigns, Buyer acknowledges and agrees that the Property is presently dedicated for use as the Oxnard Historic Farm Park (County Landmark No. 165 Gottfried Maulhardt/Albert Pfeiler Farm Site) and it is the intent of the parties that the Property continue to be dedicated and used as the Oxnard Historic Farm Park. Therefore, Buyer covenants and agrees that the Property shall only be used as the Oxnard Historic Farm Park and for no other purpose. Buyer acknowledges that the Seller would not have entered into this Agreement if the possibility existed that the Buyer and/or its successors and assigns could use the Property other than for its purpose as the Oxnard Historic Farm Park.

Section 7. Procedure for Closing. At Closing, Seller and Buyer shall cause the Grant Deed for the Property, duly executed and acknowledged by Seller, shall be recorded in the Official Records of the county in which the Property is located.

Section 8. Possession of Property. Seller shall transfer possession of the Property to Buyer on the Closing Date.

Section 9. Closing and Related Costs. Buyer shall pay all costs, including all closing costs, related to the transfer of the Property, including, without limitation, any County documentary transfer tax in respect of the Grant Deed, any City conveyance tax in respect of the Grant Deed, any premium for a title insurance policy, any escrow fee charged by the Title Company, and any recording fee for the Grant Deed; provided, however, that Seller and Buyer shall each be responsible for their respective attorney fees, staff costs and related expenses associated with the sale of the Property to Buyer.

Section 10. Terms Generally. The defined terms in this Agreement shall apply equally to both the singular and the plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The term "person" includes individuals, corporations, partnerships, trusts, other legal entities, organizations and associations, and any government or governmental agency or authority. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The words "approval," "consent" and "notice" shall be deemed to be preceded by the word "written."

Section 11. Notices. All notices and other communications under this Agreement shall be properly given only if made in writing and mailed by certified mail, return receipt requested, postage prepaid, or delivered by hand (including messenger or recognized delivery, courier or air express service) to the party at the address set forth in this Section 11 or such other address as such party may designate by notice to the other party. Such notices and other communications shall be effective on the date of receipt (evidenced by the certified mail receipt) if mailed or on the date of such hand delivery if hand delivered. If any such notice or other communication is not received or cannot be delivered due to a change in the address of the receiving party of which notice was not previously given to the sending party or due to a refusal to accept by the receiving party, such notice or other communication shall be effective on the date delivery is attempted. Any notice or other communication under this Agreement may be given on behalf of a party by the attorney for such party.

(a) The address of Seller is City of Oxnard, Attention City Clerk, 300 West Third Street, Oxnard California 93030.

(b). The address of Buyer is Oxnard Historic Farm Foundation, 300 Crestview Ave, Camarillo, California 93010

Section 13. Attorneys' Fees. If there is any legal action or proceeding between Seller and Buyer arising from or based on this Agreement, the unsuccessful party to such action or proceeding shall pay to the prevailing party all costs and expenses, including reasonable attorneys' fees, incurred by such prevailing party in such action or proceeding and in any appeal in connection therewith. If such prevailing party recovers a judgment in any such action, proceeding or appeal, such costs, expenses and attorneys' fees shall be included in and as a part of such judgment.

Section 14. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, and the venue of any action or proceeding under this Agreement shall be Ventura County, California.

Section 15. Construction of Agreement. Seller and Buyer acknowledge that each party and its counsel have reviewed and revised this Agreement and that the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any document executed and delivered by either party in connection with the transactions contemplated by this Agreement. The captions in this Agreement are for convenience of reference only and shall not be used to interpret this Agreement.

Section 16. Further Assurances. From and after the date of this Agreement, Seller and Buyer agree to do such things, perform such acts, and make, execute, acknowledge and deliver such documents as may be reasonably necessary or proper and usual to complete the transactions contemplated by this Agreement and to carry out the purpose of this Agreement in accordance with this Agreement.

Section 17. Partial Invalidity. If any word, phrase or provision of this Agreement is determined by a proper court to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement and this Agreement shall remain in full force and effect without such invalid, illegal or unenforceable provision.

Section 18. Waivers. No waiver of any provision of this Agreement or any breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving party and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other or subsequent breach of this Agreement.

Section 19. Miscellaneous. Subject to the foregoing, this Agreement shall benefit and bind Seller and Buyer and their respective heirs, successors, assigns and estate administrators or executors. Time is of the essence of this Agreement. This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same Agreement. This Agreement may not be amended or modified except by a written agreement signed by Seller and Buyer. This Agreement constitutes the entire and integrated agreement between Seller and Buyer relating to the transfer of the Property and supersedes all prior agreements, understandings, offers and negotiations, oral or written, with respect to the transfer of the Property.

[*continued on next page*]

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the date first hereinabove written.

SELLER:

CITY OF OXNARD, a California municipal corporation

By:_________________________________
John C. Zaragoza, Mayor

ATTEST:

____
Rose Chaparro, City Clerk

APPROVED AS TO FORM:

____
Stephen Fischer, City Attorney

[*Signatures continued on next page*.]

BUYER:

OXNARD HISTORIC FARM PARK FOUNDATION

By:_________________________________
Its:_________________________________

By:_________________________________
Its:_________________________________

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

APN: 215-0-276-205

All that certain real property situated in the County of Ventura, State of California, described as follows:

Lot 92 of Tract 5389-1 in the City of Oxnard, County of Ventura, State of California, as per map filed in Book 150, Pages 93 to 95.

EXHIBIT B

GRANT DEED

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City Clerk
City of Oxnard
300 W. Third Street
Oxnard, California 93030

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

GRANT DEED WITH RIGHT OF REENTRY

For valuable consideration, receipt of which is acknowledged, the City of Oxnard, a California municipal corporation, grants to the Oxnard Historic Farm Park Foundation the following property in the City of Oxnard, County of Ventura, State of California described in Exhibit A attached hereto and made a part hereof

Subject to the following:

On the express condition that the property shall be forever held and used as the Oxnard Historic Farm Park (County Landmark No. 165 Gottfried Maulhardt/Albert Pfeiler Farm Site) with a museum in the historic home on the property that is open to the public no less than once a week for a minimum of two hours, and upon ceasing to be used as such, the estate granted by this deed shall be terminated and forfeited and shall revert to Grantor. Grantor reserves the power of termination and right of reentry upon cessation of the use of the property as the Oxnard Historic Farm Park with a museum on the property that is open to the public no less than once a week for a minimum of two hours.

[*continued on next page*]

The subject property is presently dedicated for use as the Oxnard Historic Farm Park and it is the intent of the parties that the subject property continue to be dedicated and used for the Oxnard Historic Farm Park and for no other purpose. Therefore, Grantee covenants and agrees that the subject property shall only be used for Oxnard Historic Farm Park and for no other purpose. This covenant and agreement shall run with the land and be binding upon the Grantee and its respective successors and assigns.

Dated: _____________, 2021.

CITY OF OXNARD, a California municipal corporation

By:___________________________________
John C. Zaragoza, Mayor

ATTEST:

____
Rose Chaparro, City Clerk

APPROVED AS TO FORM:

____
Stephen Fischer, City Attorney

EXHIBIT A TO GRANT DEED

APN: 215-0-276-205

All that certain real property situated in the County of Ventura, State of California, described as follows:

Lot 92 of Tract 5389-1 in the City of Oxnard, County of Ventura, State of California, as per map filed in Book 150, Pages 93 to 95.

STATE OF CALIFORNIA,)

) ss.

County of ______________________.)

On _____________, 2021, before me, ____, a Notary Public in and for the State of California, personally appeared _______________________ ____________________________, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged to me that he or she executed the within instrument in his or her authorized capacity and that, by his or her signature on the within instrument, the person or entity upon behalf of which he or she acted executed the within instrument.

WITNESS my hand and official seal.

Signature ___________________________ (Seal

REQUEST FOR BUDGET APPROPRIATION

Department: City Manager **Date:** July 13, 2021
Project/Program Manager: Adam Smith **Phone:** (805) 385-3918

Reason for Appropriation:

Recognize revenue from the sale of the Oxnard Farm Park over the next five fiscal years: FY 2021-22, FY 2022-23, FY 2023-24, FY 2024-25, and FY 2025-26.

Accounts and Descriptions	**AMOUNT**
Fund: GENERAL FUND (101) FY 2021-22	
Revenues/Transfers In	
General Fund-Non-Departmental	
101-1001-581.75-24 SALE OF REAL PROPERTY	10,000
Sub-total Revenues	10,000
Net Change to Fund Balance	**10,000**
Net Appropriation Change	**10,000**
Fund: GENERAL FUND (101) FY 2022-23	
Revenues/Transfers In	
General Fund-Non-Departmental	
101-1001-581.75-24 SALE OF REAL PROPERTY	10,000
Sub-total Revenues	10,000
Net Change to Fund Balance	**10,000**
Net Appropriation Change	**10,000**
Fund: GENERAL FUND (101) FY 2023-24	
Revenues/Transfers In	
General Fund-Non-Departmental	
101-1001-581.75-24 SALE OF REAL PROPERTY	10,000
Sub-total Revenues	10,000
Net Change to Fund Balance	**10,000**
Net Appropriation Change	**10,000**
Fund: GENERAL FUND (101) FY 2024-25	
Revenues/Transfers In	
General Fund-Non-Departmental	
101-1001-581.75-24 SALE OF REAL PROPERTY	10,000

BA# (Finance Use Only)____________
BA Doc# (Finance Use Only)____________

REQUIRES CITY COUNCIL AUTHORIZATION

Sub-total Revenues	10,000
Net Change to Fund Balance	**10,000**
Net Appropriation Change	**10,000**

Fund: GENERAL FUND (101) FY 2025-26

Revenues/Transfers In

General Fund-Non-Departmental

101-1001-581.75-24	SALE OF REAL PROPERTY	10,000
	Sub-total Revenues	10,000
	Net Change to Fund Balance	**10,000**
	Net Appropriation Change	**10,000**

Approvals

Department Director ______________________

Chief Financial Officer ______________________

City Manager ______________________

RESOLUTION NO. _________

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OXNARD (1) MAKING FINDINGS AND TAKING ACTION PURSUANT TO THE PROVISIONS OF CALIFORNIA GOVERNMENT CODE SECTION 52201; (2) APPROVING: (A) THE SALE AND TRANSFER OF CERTAIN REAL PROPERTY FROM THE CITY OF OXNARD TO THE OXNARD HISTORIC FARM PARK FOUNDATION; (B) ENTRY BY THE CITY OF OXNARD AND THE OXNARD HISTORIC FARM PARK FOUNDATION INTO A PROPOSED REAL PROPERTY PURCHASE AND SALE AGREEMENT; AND (C) A GRANT DEED TO EFFECTUATE SAID PURCHASE AND SALE OF REAL PROPERTY; AND (3) APPROVING RELATED ACTIONS

WHEREAS, the City of Oxnard (the “City”), and the Oxnard Historic Farm Park Foundation (the “Foundation”), have proposed entering into a Real Property Purchase and Sale Agreement (the “Agreement”), relating to, among other things, the conveyance to the Foundation by the City of certain real property now owned by the City at 1251 Gottfried Place (the “Property”), and the use of the Property as the Oxnard Historic Farm Park with a museum that is open to the public no less than once a week for a minimum of two hours (the “Restricted Use”); and

WHEREAS, pursuant to the terms and conditions of the Agreement, the City will convey the Property to the Foundation, and the Property will be developed, used and operated in accordance with covenants imposed on the Property to assure compliance with the terms and requirements of the Agreement; and

WHEREAS, pursuant to the terms and conditions of the Agreement, the Foundation will restore, renovate and improve the Property in accordance with the Restricted Use at the sole cost and expense of the Foundation; and

WHEREAS, the Agreement contains all the provisions, terms and obligations required by State and local law, and the Foundation represents that it possesses the qualifications and financial resources necessary to implement and maintain the Restricted Use at the Property, at the sole cost and expense of the Foundation; and

WHEREAS, pursuant to California Government Code Section 52201, the City is authorized, with the consent of the City Council, to sell property to create an economic opportunity; and

WHEREAS, a copy of the Agreement and a summary report (which by this reference is incorporated herein as if set forth in full at this point) setting forth all of those matters required by the provisions of Section 52201 of the California Government Code have been available for public inspection; and

WHEREAS, notice of the hearing to consider the Agreement was given in the manner required by law; and

WHEREAS, at said public hearing, the City Council received and considered a staff report (which by this reference is incorporated herein as if set forth in full at this point) and testimony; and

WHEREAS, the procedures of the Surplus Land Act apply to surplus land only if it is "not necessary for the agency's use" (see Cal. Gov. Code Sec. 54221(b)(1)); and

WHEREAS, California Government Code Section 54221(c)(1) states, in relevant part, that "'agency's use' shall include, but not be limited to, land that is being used, is planned to be used pursuant to a written plan adopted by the local agency's governing board for, or is disposed to support pursuant to subparagraph (B) of paragraph (2) agency work or operations, including, but not limited to, … land being used for conservation purposes, land for demonstration, exhibition, or educational purposes …"; and

WHEREAS, because of the current use of the Property, the City's Master Plan, the existing historical designation, the Foundation's limited purpose, the City's longstanding intent to sell the Property to the Foundation for such continued use, the Restricted Use to be imposed by deed restriction, and the City's reversionary interest, ownership of the Property by the Foundation constitutes "agency's use" as defined in the Surplus Land Act; and

WHEREAS, in accordance with the California Environmental Quality Act ("CEQA") set forth in California Public Resources Code Section 21000 *et seq*., the State CEQA Guidelines set forth in Title 14, California Code of Regulations Section 15000 *et seq*., and procedures adopted by the City relating to environmental evaluation of public and private projects, and pursuant to Sections 15162 and 15168 of the California Environmental Quality Act (CEQA) Guidelines, the City Council hereby finds and determines that approval of the Agreement, which provides for the conveyance of the Property, and the Restricted Use on the Property, are categorically exempt under Class 1 (Existing Facilities) of CEQA and, specifically, Section 15301 of the State CEQA Guidelines; and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, the City Council of the City of Oxnard, DOES HEREBY RESOLVE as follows:

SECTION 1. The foregoing recitals are true and correct and are a substantive part of this Resolution.

SECTION 2. The City Council has received and heard all oral and written objections to the City's proposed sale and transfer of the Property to the Foundation, in accordance with the terms and conditions set forth in the Agreement, and to other matters pertaining to this transaction, and that all such oral and written objections are hereby overruled.

SECTION 3. The City's proposed sale and transfer of the Property to the Foundation for the Restricted Use will assist in the creation of an economic opportunity, as defined by applicable law.

SECTION 4. The consideration from the Foundation for the Property is not less than the fair market value of the Property at its highest and best use.

SECTION 5. The City has provided all of the information in written form available to the public and through the City's Internet website as required by applicable law for the consideration by the City Council of the approval of the Agreement.

SECTION 6. The City Council hereby approves the City's entry into the Agreement, and the sale and transfer of the Property to the Foundation, all in accordance with the terms and conditions set forth in the Agreement.

SECTION 7. The City Council hereby approves the Agreement, in substantially the form as presented to the City Council, effectuating the City's disposition of the Property to the Foundation and the implementation and maintenance of the Restricted Use by the Foundation.

SECTION 8. The City Council hereby approves delivery of the grant deed that would effectuate the City's sale of the Property to the Foundation pursuant to the Agreement.

SECTION 9. The City Council hereby finds that the Restricted Use of the Property by the Foundation constitutes "agency's use" as defined in the Surplus Land Act, exempting the sale of the Property to the Foundation from the procedures of such act.

SECTION 10. The City Council hereby authorizes and directs the City Manager of the City, or designee, (i) to take all actions and to execute any and all documents, instruments and agreements necessary or desirable on behalf of the City, as approved by the City Manager of the City and the City Attorney or City Special Counsel, including, without limitation, the Agreement, and the grant deed transferring the Property to the Foundation, in order to effectuate the terms and conditions of the Agreement; (ii) to effectuate all other actions approved by this Resolution, including, without limitation, approving changes, implementations or revisions to documents, instruments and agreements as determined necessary by the City Manager, or designee; and (iii) to administer the City's obligations, responsibilities, and duties to be performed pursuant to this Resolution and all documents, instruments and agreements required by and for the sale and transfer of the Property to the Foundation.

SECTION 11. If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, then such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The City Council declares that it would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

SECTION 12. This Resolution shall take effect upon the date of its adoption.

APPROVED AND ADOPTED, this ______ day of ________________, 2021.

____
John C. Zaragoza, Mayor
City of Oxnard

ATTEST:

____
Rose Chaparro, City Clerk

APPROVED AS TO FORM:

By: ________________________
Stephen Fischer
City Attorney

SUMMARY REPORT PURSUANT TO SECTIONS 52200 – 52201
OF THE CALIFORNIA GOVERNMENT CODE ON
THE PURCHASE AND SALE AGREEMENT BY AND BETWEEN THE
CITY OF OXNARD AND
THE OXNARD HISTORIC FARM PARK FOUNDATION

The following Summary Report has been prepared pursuant to Sections 52200 – 52201 of the California Government Code. The report sets forth specific details of the proposed Purchase and Sale Agreement (Agreement) between the City of Oxnard (City) and the Oxnard Historic Farm Park Foundation (Foundation). The site is the Gottfried Maulhardt/Albert Pfeiler Farm Site, also known as the Oxnard Historic Farm Park, located at 1251 Gottfried Place in Oxnard, California (Site).

The Site is currently owned by the City, which has leased it to the Foundation, a non-profit group dedicated to the preservation of the Site.

BACKGROUND STATEMENT

The following Summary Report is based upon the information contained within the Agreement and is organized into the following seven sections:

I. **Salient Points of the Agreement**: This section includes a description of the Site and the major responsibilities imposed on the City and the Foundation by the Agreement.

II. **Cost of the Agreement to the City:** This section details the total cost to the City associated with implementing the Agreement.

III. **Estimated Value of the Interests to be Conveyed Determined at the Highest Use Permitted Under the General Plan:** This section estimates the value of the interests to be conveyed determined at the highest use permitted under the existing zoning and the requirements imposed by the General Plan.

IV. **Estimated Reuse Value of the Interests to be Conveyed:** This section summarizes the valuation estimate for the City Property based on the required use and with the conditions and covenants required by the Agreement.

V. **Consideration Received and Comparison with the Established Value of the Site:** This section describes the compensation to be received by the City and explains any difference between the compensation to be received and the established value of the City Property.

VI. **Creation of Economic Opportunity:** This section describes how the Project will assist in the creation of economic opportunity.

This Summary Report and the Agreement are to be made available for public inspection prior to the approval of the Agreement.

I. SALIENT POINTS OF THE AGREEMENT

A. Site Description

The Site is situated on 0.86 acres with a museum in the main house which is being restored to its original 1870s construction and design, a local library constructed in the 1890s, a carriage house, a courtyard of memories consisting of engraved bricks from sponsors, two small vineyards, lemon and avocado orchards, demonstration crops, antiques, and a display barn for tractors and thresher machine.

Since 2004, the Site has been designated Ventura County Historic Landmark No. 165 - The Gottfried Maulhardt/Albert Pfeiler Farm Site.

B. City Responsibilities

The Agreement requires the City to accept the following responsibilities:

1. The City must convey the Site to the Foundation for $50,000 payable in five (5) separate $10,000 payments over five (5) years.

2. Title to include reversionary rights to City: property reverts to City if the property is sold to a 3rd party or is not used for intended purposes, i.e., historic landmark open to the public.

C. Foundation Responsibilities

The Agreement imposes the following responsibilities on the Foundation:

1. Farm Park sale price: $50,000 paid in $10,000 installments over five (5) years.

2. Title to include reversionary rights to City: property reverts to City if the property is sold to a 3rd party or is not used for intended purposes, i.e., historic landmark open to the public.

3. Foundation to present to the City a work plan for restoration, renovation, and improvements over ten (10) years, valued at approximately $500,000 (could include “sweat equity” working hours, permits, grants, fundraising).

4. Foundation to provide annual IRS Form-990’s, nonprofit report to the City, and status of the work plan.

5. Foundation to obtain State of California landmark status.

II. COST OF THE AGREEMENT TO THE CITY

There is no tangible cost of the Agreement to the City other than the staffing costs associated with authoring this report and the Agreement.

III. ESTIMATED VALUE OF THE INTERESTS TO BE CONVEYED

Section 52201 of the California Government Code requires the City to identify the value of the interests being conveyed at the highest use allowed by the Site's zoning and the requirements imposed by the amended General Plan.

The City had an appraisal report (Report) conducted in March 2020 to determine the market value of the Site. The Report, prepared by CBRE, concluded that the Site had a market value of $550,000 based on comparative sales in the area. However, the highest and best use of the Site remains historic preservation and recreation use. Further, as noted in section I(A) of this report, the Site is zoned as C-R: Community Reserve making it restrictive to other uses. The purpose of the C-R: Community Reserve Zone is to provide a district of predominantly open land uses.

The outbreak of COVID-19 declared by the World Health Organization as a "Global Pandemic" on the 11th of March 2020 is causing heightened uncertainty in both local and global market conditions. Market activity is being impacted in most sectors. CBRE stated that less weight could be attached to previous market evidence for comparison purposes to inform opinions of value. Therefore, the appraisal amount is reported based on material valuation uncertainty and a higher degree of caution should be attached to the valuation than would typically be the case.

IV. ESTIMATED REUSE VALUE OF THE INTERESTS TO BE CONVEYED

As discussed above, the City is conveying the Site to the Foundation for $50,000, payable in five (5) payments of $10,000 over five (5) years.

The subject property is zoned C-R: Community Reserve and is designated as a Ventura County Landmark, which restricts the allowable uses of the property to predominantly open land uses, which in the public interest should retain this character and may limit the marketability and buyer pool.

The highest and best use of the Site remains the continuation of historic preservation and recreation use.

V. CONSIDERATION RECEIVED AND COMPARISON WITH THE ESTABLISHED VALUE OF THE SITE

Under the Agreement, the City is conveying the Site to the Foundation for $50,000, payable in five (5) payments of $10,000 over five (5) years. It is concluded that the City is receiving the fair market value of the Site through this transaction due to restrictive zoning and its highest and best use being the continuation of historic preservation and recreational use.

VI. CREATION OF ECONOMIC OPPORTUNITY

Since 2004, the site has been used as a museum and historic landmark open to the public, with the Foundation being the Site's operator since 2007. Historic preservation activities contribute to local and regional economies and attract new residents and businesses while improving the quality of life for current residents through the cultural benefits that landmarks like the Site provide. The Foundation currently hosts public water-wise events, fundraising events, classes on proper planting techniques, native plant demonstrations, and tours of the Site.

Further, communities consider many of their historic properties public treasures, whether or not they are tourist attractions. The community pride that preservation instills can result in both renewed prosperity and improved self-image.

Implementation of the Agreement helps ensure that this important part of Oxnard history remains open to the community and visitors. Through tourism, the Site will aid in spurring economic development and educational opportunities to the City.

CBRE VALUATION & ADVISORY SERVICES

Full appraisal report located at:
https://drive.google.com/file/d/1VKftyIffoIKh47TpZnvQx44Bp3aGlXPC/view?usp=sharing

APPRAISAL REPORT

OXNARD HISTORIC FARM PARK
1251 GOTTFRIED PLACE
OXNARD, CALIFORNIA 93030
CBRE GROUP, INC. FILE NO. 20-251PS-1375-1

CBRE, INC., PUBLIC INSTITUTIONS & EDUCATION SOLUTIONS

CBRE

The Oxnard Historic Farm Park Foundation

VENTURA COUNTY LANDMARK #169

THE GOTTFRIED MAULHARDT/ALBERT PFEILER FARM SITE

ATTACHMENT NO. 2
PAGE 1 OF 15

SUMMARY

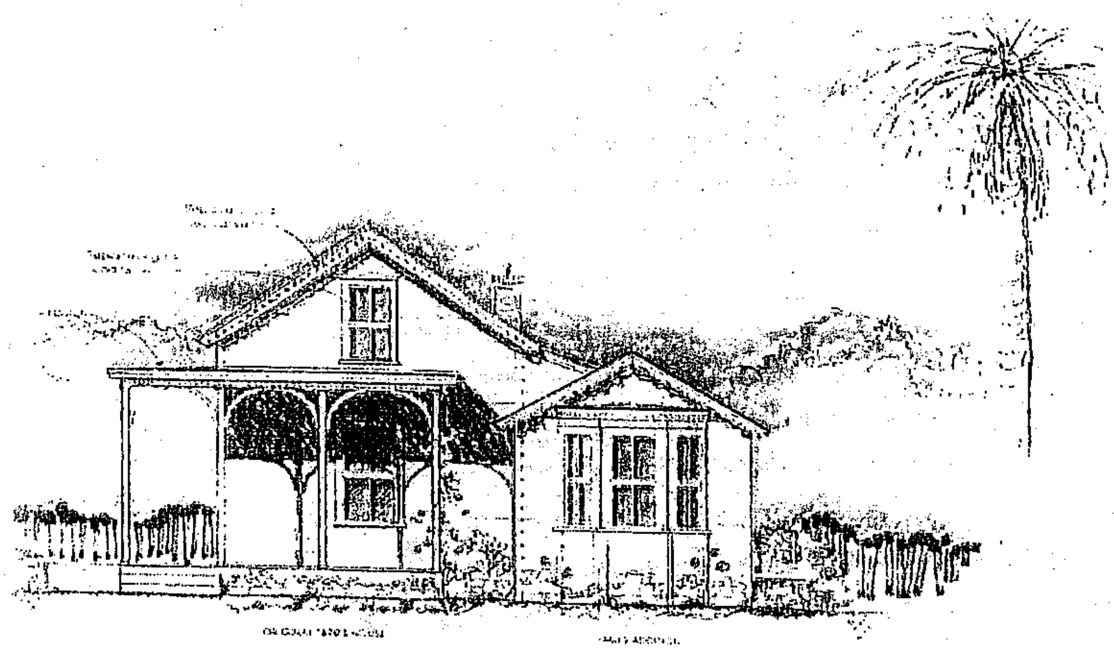
The Oxnard Historic Farm Park Foundation, is a 501(c)3 nonprofit organization that was formed in 2002 for the purpose of developing the .87 acres of land containing the original Gottfried Maulhardt/Albert Pfeiler cottage house, the Gottfried Maulhardt winery and the 1900 carriage house. Discussion for the project began as early as 1997 between property owner Robert Pfeiler and Foundation president, Jeffrey Maulhardt. Pfeiler fell ill and passed away in 2000 at which time negotiations switched to representatives for developer John Laing Homes. JLH agreed to work with the Foundation in pursuing the development of .86 acres and saving the 3 historic structures.

For the next seven years, the project has been delayed due to many factors, yet representatives from JLH made an earnest effort to continue dialog with the Foundation. Progress has been slow yet fruitful. In March 2003, the .86 acres was designated Ventura County Historical Landmark #165 – The Gottfried Maulhardt/Albert Pfeiler Farm Site. Soon after, a contract between JLH and the Foundation was signed in which Laing agreed to donate a lump sum of $75000 to the Foundation as seed money for the project, contingent on the Foundation working about an operating agreement with the City. The parties also agreed to have the site donated to the City of Oxnard. The Foundation next raised money to obtain architectural drawings for restoration of the buildings and set up a web site, www.oxnardfarmpark.org.

The Foundation held a successful open house in August 2004. Students from Robert J. Frank served as docents and the event raised several thousand dollars for the Foundation. The project was put on hold while residential houses were completed. After several attempts to reach a mutual operating agreement, the project now waits for final approval from the Council.

VISION

It is the Foundation's vision to develop a 1870's farm setting and to restore the existing buildings to their original state. Further plans include adding a replica of the 1880's Colonia Schoolhouse as well as several dozen 1 cubic yard plots to demonstrate the crops of the past. This project, while ambitious in its goal, is very attainable in the scope of preservation projects. This project represents a unique opportunity for the community of Oxnard to embrace the roots of a time in California history when a strong work ethic and community cooperation brought about success for the early immigrants as well as the many immigrant groups that have followed.



EAST ELEVATION

SCALE 1/4" 1'-0"

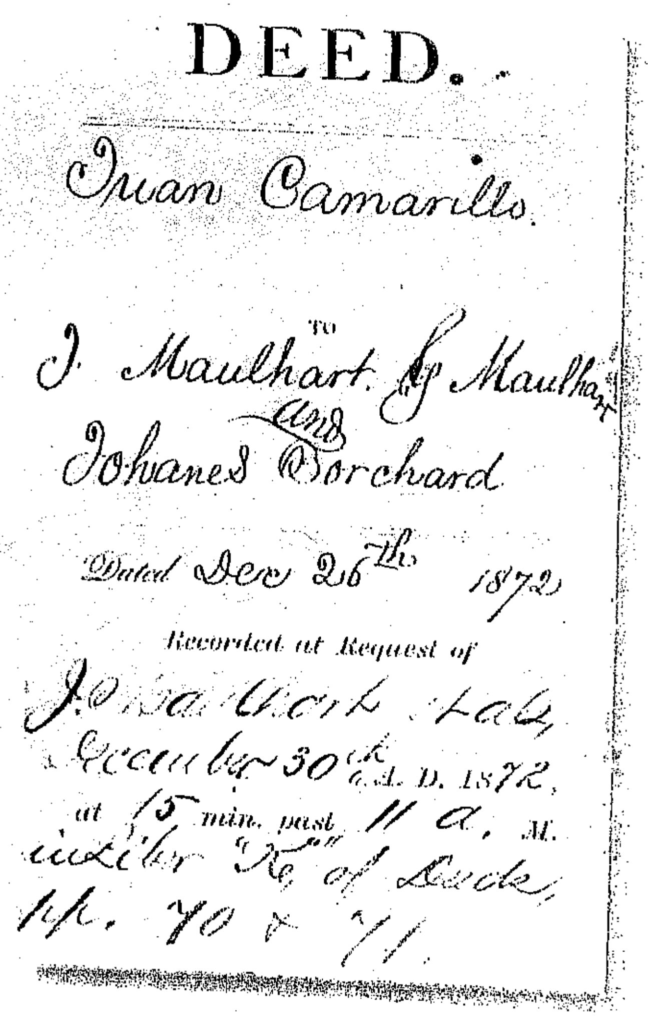
The history of the property dates back to the late 1860's. Originally part of the El Rio de Santa Clara o la Colonia, the land was granted to eight Mexican soldiers from the presidio in Santa Barbara, including Rafael Gonzalez. Gonzalez sold 4,000 acres of his La Colonia holdings to Juan Camarillo in 1865. By 1867, Camarillo leased the land to Gottfried Maulhardt and Caspar Borchard. These men, along with Christian Borchard and his son John Edward Borchard were among the first farmers to plant and cultivate the first crop on the Oxnard Plain. Gottfried leased the Colonia land for several years leading up to 1872, at which time Gottfried along with his partners Jacob Maulhardt and Johannes Borchard purchased 1,240 acres from Camarillo. The men farmed together as well as worked for other local farmers, growing barley and corn.

By 1876, the three Maulhardt brothers, Gottfried, Jacob and Anton, formed the building committee with Dominick McGrath, Thomas Cloyne and Christian Borchard for the construction of original Santa Clara Chapel near the present day Esplanade in the town of New Jerusalem, later renamed El Rio. To insure the chapel had wine for church services, Gottfried planted 250 grape vines and built a two story brick storehouse at his property.

By 1887, Gottfried sold 200 acres to Hiram Snow, yet he retained a sixteen foot right-away allowing Gottfried to transport the necessary wine and food goods to the Santa Clara Chapel.

Also during this time, Gottfried and his Sophie adopted a young Latina girl, Anna, from the St. Vincent's orphanage in Santa Barbara.

Gottfried Maulhardt passed away on December 20, 1898. His widow, Sophie, moved to a cottage house near the newly constructed Santa Clara Church on E Stree. She did her banking


DEED.

Juan Camarillo.

TO

J. Maulhart & G. Maulhart
and
Johanes Borchard

Dated Dec 26th 1872

Recorded at Request of

December 30th A. D. 1872,

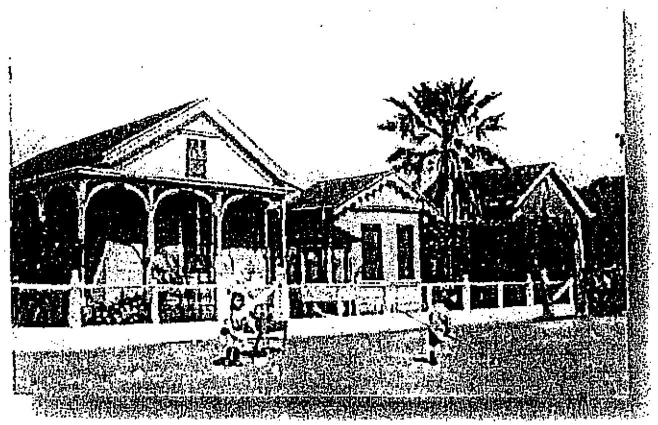
at 15 min. past 11 a. M.

pp. 70 & 71.

ATTACHMENT NO. 2
PAGE 4 OF 15

A who's who of the first families of the Oxnard Plain attended the home of Gottfried & Sophie Maulhardt for their Silver Wedding Anniversary, circa 1887. Standing in the back row, left to right are: Louis Pfeiler, Johannes Borchard, Caspar Borchard, Fridolyn Hartmann, J. Edward Borchard and Catherine Kaufmann. Performing at the ceremony were the Gonzalez Brothers.

at the Bank of Oxnard. Louis Pfeiler ran into Sophie in the bank and offered to purchase the farm from her. Louis and his wife, Caroline Kaufmann Pfeiler, owned a 75 acre ranch on the west side of the Maulhardt place. Sophie accepted Louis' offer and Louis gave the ranch to his oldest son, Albert Pfeiler, as a wedding present. Albert farmed the 30-acre ranch for the next three decades. He began expanding the living quarters of the original Gottfried Maulhardt home. Eventually the upstairs was expanded as were the kitchen, bathroom and dining room. By the mid 1930's, Albert turned the ranch over to his son Robert Pfeiler, who farmed the ranch for the next 70 years.



SITE DEVELOPMENT

PROPOSED RESTORATION AND DEVELOPMENT

- Restore the Gottfried Maulhardt / Albert Pfeiler House to be utilized a museum
- Create a courtyard with engraved bricks
- Carriage house – meeting center, office, kitchen and restroom facility
- Restore the 10x10 Bathhouse/outhouse
- Stabilize the Gottfried Maulhardt Winery / Storehouse – museum
- Set-up one-yard plots, at total of 216, used to plant crops of the past.
- Construct a replica of the 1880s Colonia Schoolhouse

GOALS

1. Create an understanding that our community was developed with the succession of crops, i.e., the more successful the crop, the employment opportunities and the larger the population.
2. Create an understanding that hard work and perseverance can lead to fulfillment.
3. Create an understanding that most people came to this area for a better opportunity.
4. Create a sense of pride in our past by working together today.

PROGRAMING COMPONENTS

AGRICULTURAL HERITAGE

By offering the community a chance to work their own one-cubic yard plot, the evolution of agriculture can be represented through planting the different crops grown in the area.

EDUCATION

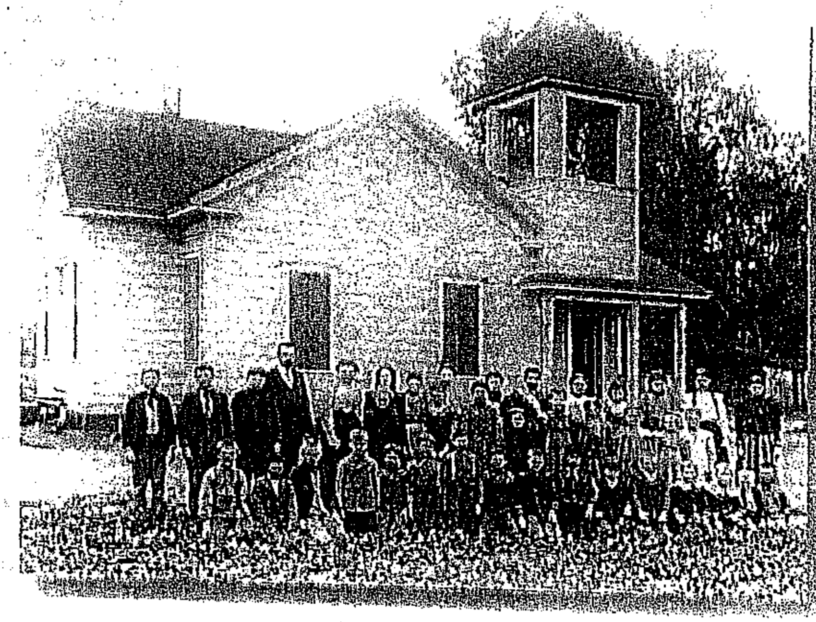
The Oxnard Historic Farm Park will serve as a window into the past. By restoring the original house to the cottage house beginning the community will recognize the humble beginnings these early families endured. The brick storehouse represents the early farmers' pious dedication and as well as a reverence for the community. This will be a place where farmers, students, seniors, volunteers and interested parties can learn what it was like to live as a farming family before the turn of the century. Lessons in dry farming, soil preparation, cultivation, and food storage can all be realized. Soap making, quilt making, cooking and all of the other essential daily requirements of the forgotten past can be brought back to life at the center.

RESEARCH

The Foundation would like to create a research center by encouraging the public to visit the site to share their family's, photos, stories and genealogy.

CULTURAL AND COMMUNITY EVENTS

The Foundation can provide a unique setting for community, cultural, and social events as a way to increase the public's exposure to our rich agricultural beginnings.



THE COLONIA SCHOOLHOUSE

The Colonia School was built in the 1880's and was attended by members of the Borchard, Cloyne, Connelly, Giesler, Gonzales, Haydock, McLoughlin, McGrath, Milligan and Olivas families. By constructing a school from the 19th century, the public will be able to appreciate the differences relative to their own experiences. Also, a deeper understanding of the Colonia name can be explored and clarified.

STRATEGIES

Agricultural Heritage Strategies
Principles / Objectives / Techniques

1. Instill in visitors an awareness and appreciation of Oxnard's agricultural heritage.
2. Provide a Bridge to the Past so visitors better understand the present and plan for the future.
3. Utilize a "Living history" way to make the past real.
4. Demonstrate the evolution of crops grown in Ventura County and the changes in tools, labor, etc. accompanying them.
5. Utilize rotating themes that are integrated with the other programs.
6. Develop Agricultural Heritage programs that tell a story, i.e., the complexities involved with planting, irrigation, cultivating and selling a crop.

Education Strategies

Schools

1. Tie into State Educational Framework
2. Activities/Programs should utilize resources on a farm that are not available at schools.
3. Develop an orientation video of the farm's purpose.
4. Offer and utilize hands on projects that include raising a crop.
5. Provide field trip opportunities schools; internship for high school students; tie into the University of Channel Islands.

Other Youth

1. Emphasize community service and citizenship; provide opportunities for leadership skills.
2. Potential after school programs.
3. Summer enrichment programs.

Special Interest Groups: Gardner Groups, Societies

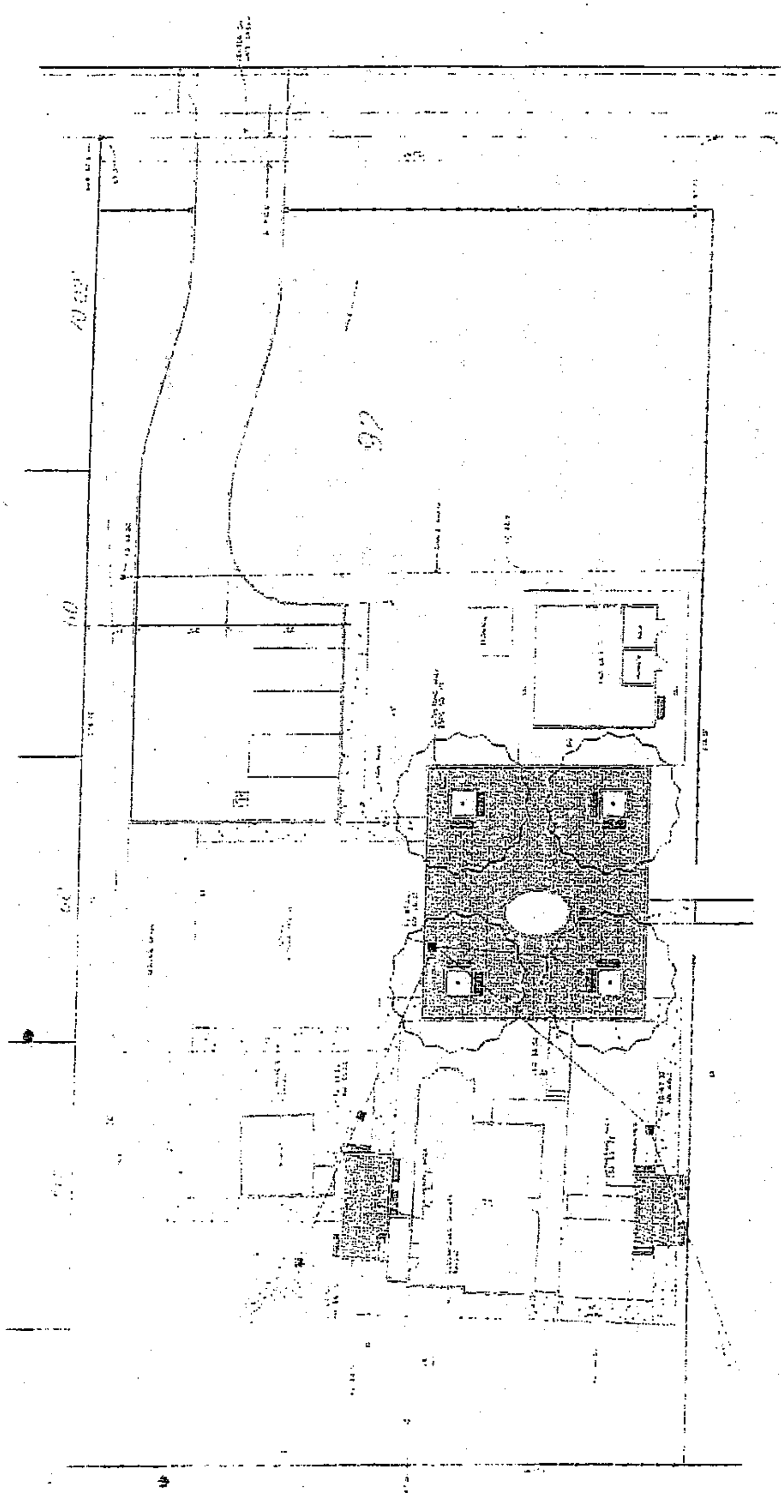
1. Site made available for agricultural and horticultural events.
2. Demonstration areas designed and maintained by groups.
3. Compost and recycling demonstrations.

Agricultural Community: Grower, Labor, and Businesses

1. Provide opportunities for businesses and the public together for a common goal of education and promoting our agricultural heritage.
2. Conduct workshops, field days, living history events.

Anticipated Users

- Students from Brekke, Guadalupe, Robert J. Frank, and Pacifica High Schools, and visiting schools
- Members for the neighboring community.
- County and city residents interested in local history.
- Out of town tourists looking to find out about a historical time period.
- Former residents looking to connect with their family's past.



LANDSCAPE

ATTACHMENT NO. 2
PAGE 9 OF 15

HOURS OF OPERATION

OPEN WEEKENDS TO THE PUBLIC 11 - 4

OPEN WEEKDAYS FOR SCHOOL FIELD TRIPS

School Crop Program (proposed schedule)

Tuesday - 3rd grade day from 10:00-12:00

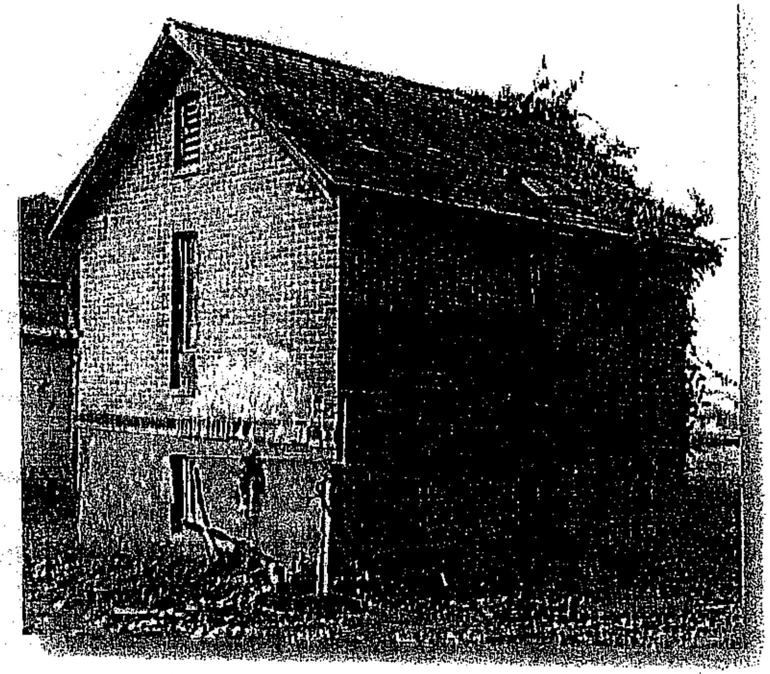
Wednesday - 7th grade day from 10:00-12:00

Thursday - High school day from 10:00-12:00

Friday - Senior group day from 10:00-12:00

Saturday & Sunday - Neighborhood day 11:00-1:00

After School Program - Weekdays from 3 to 5



ATTACHMENT NO. 2
PAGE 10 OF 15

PROPOSED BUDGET

INCOME

Laing Homes	$75,000
Fundraising-Brick Campaigning	$250,000
Foundation Memberships	$12,500
Annual BBQ Fundraiser	$10,000
Room Sponsors	$50,000
Grants	$$$$$$
Donations	$$$$$$
Total	$500,000+

EXPENSES

Building renovations	$265,000
Utilities	$125/mo.
Advertising	$500
Security	$25/mo
Insurance	$1500
Lease (Annual)	$1

ATTACHMENT NO. 2
PAGE 11 OF 15

PROJECT COST ESTIMATE

Historic Farm House Restoration

Compiled by Jake Coborn

I. FARM HOUSE

1. Plans, Permits, Fees:
2. Temporary Facilities:
   Fencing? Power? Sanitation, Misc. rentals.
3. Utilities:
   Permanent water, power, minimum outside plugs and security, including yard/roof drainage.
4. Demo:
   Remove and dispose of non-original additions. Remove plaster from walls and ceilings as decided, dispose of/remove window protection. Remove and dispose all flooring. Pressure wash.
5. Foundation:
6. Plumbing:
   Trench and pipe plus temporary water and fire protection.
7. HVAC: nic.
8. Insulation: nic.
9. Structural Repairs/Modifications: (including roof sheathing)
10. Siding Repairs and Exterior Trim:
11. Masonry Repairs:
12. Window Repairs and Exterior Door Tune-up/Repair/Replacement:
13. Roof: (including sheet metal)
14. Plaster:
15. Interior Finish Carpentry:
    Repair and/or replace doors, windows, base, casing and misc. trim/cabinetry.
16. Paint:
    Interior: strip/deal with existing lead
    Exterior: including prep all doors and windows.
17. Flooring:
    Appliances/Furniture/Fixtures:
18. Woodstove? Sink/wash basins? Lights/lanterns?
19. Clean Up:
20. Landscaping:
21. Supervision, Overhead:

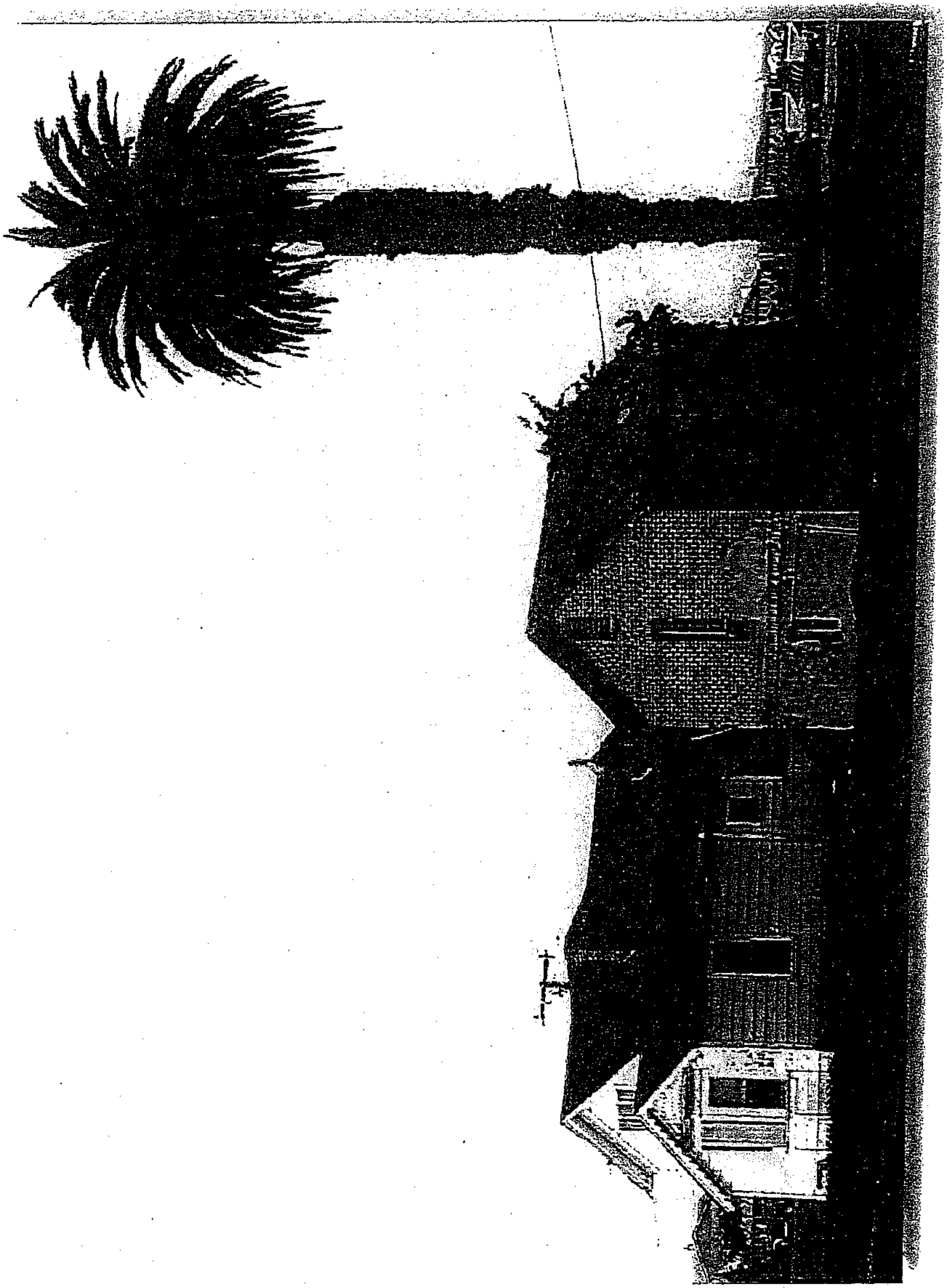
Total +/- **$265,000.00**

ATTACHMENT NO. 2
PAGE 12 OF 15

FUNDRAISING

The Foundation plans several fundraising strategies:

- Sale of engraved bricks used to create a courtyard and walkways at the site.
- Solicit an annual membership for the Foundation, $25.00.
- Adopt A Room Campaign. For a fee starting at $5,000, the public and businesses can sponsor the restoration of one of the rooms in the house, potentially raising an additional $50,000.
- Hold an annual fundraiser with a Pioneer ceremony to recognize the many families who have contributed to the community over the years.
- Business solicitations sponsors
- Grant solicitations



ATTACHMENT NO. 2
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In Closing...

We feel the Oxnard Historic Farm Park can be a valuable asset to the community of Oxnard. The Oxnard Historic Farm Park plans combine with the efforts of Heritage Square to give both sites more opportunities to connect our past with the present. We feel the Oxnard Historic Farm Park can compliment not only Heritage Square, but the schools of Oxnard and many other organizations that could become part of the Park's future. Ventura has the Mission and the Olivas and Ortega Adobes; Camarillo has the Camarillo House; Newbury Park has the Stagecoach Inn; Simi Valley has the Strathearn Park; Calabasas has the Leonis Adobe. Oxnard can now add the Oxnard Historic Farm Park - a pre 1900 farm setting to fill out the list of places that represent the county's past. Each of these cities has a designated area that represents their city. What better representation than a Historic Park and museum represent the early beginnings of the Oxnard Plain.

RESPECTFULLY, JEFF MAULHARDT, GARY BLUM AND ERIC DAILY

ATTACHMENT NO. 2
PAGE 15 OF 15

Ventura County Cultural Heritage Board

Certificate of Appropriateness No. 2007-219
Landmark No. 165
Gottfried Maulhardt/Albert Pfeiler Farm Site, Northwest Corner of Cesar Chavez Drive and Pinata Drive, Oxnard

Action Date: June 11, 2007

Applicant: Oxnard Historic Farm Park Foundation

Project: Planning Document and Site Plan **(Exhibit 1)**

Finding: The proposed planning documents as described by the applicant was reviewed and it was found to be consistent with Section 1365-1, Cultural Heritage Ordinance and the Secretary of the Interior Guidelines with the following condition: That the detailed, engineering drawings must be returned to the Board for approval.

Approved as by order of the Ventura County Cultural Heritage Board

Kim Hocking

Kim Hocking
Staff

A:\lm165siteplanDisc

NOTICE OF EXEMPTION

Project Description:

Request to restore and rehabilitate buildings and other improvements to the Gottfried Maulhardt/Albert Pfeiler Farm site (Ventura County Historic Landmark No. 165) located at the corner of Cesar Chavez Drive and Pinata Drive, Oxnard. The R-1-PD (Single Family– Planned Development) zoned parcel is located at 1280 Opalo Drive (APN 215-0-276-195) and within the West Village Neighborhood. Filed by Joel Galaviz, Parks and Facilities Division of the City of Oxnard, CA 93030.

Finding:

The Planning Division of the Development Services Department of the City of Oxnard has reviewed the above-proposed project and found it to be exempt from the provisions of the California Environmental Quality Act (CEQA).

- ☐ Ministerial Project
- ☒ Categorical Exemption
- ☐ Statutory Exemption
- ☐ Emergency Project
- ☐ Quick Disapproval [CEQA Guidelines, 14 Cal. Code of Regs. 15270]
- ☐ No Possibility of Significant Effect [CEQA Guidelines, 14 Cal. Code of Regs. 15061(b)(3)]

Supporting Reasons: In accordance with the California Environmental Quality Act Guidelines and Section(s) 15301 of the California Code of Regulations, projects involving new construction or conversion of small structures may be found to be exempt from the requirements of CEQA. The proposed project qualifies as a Class 1 Categorical Exemption as the project consists of existing facilities to be restored and rehabilitated. Therefore, staff has determined that there is no substantial evidence that the project may have a significant effect on the environment.

6/20/07
(Date)

SMartin
Susan L. Martin, AICP
Planning Division Manager

Attachment No. 4
Page 1 of 1

Agreement No. A-6875

LEASE AND OPERATING AGREEMENT FOR HISTORICAL PROPERTY

This Lease and Operating Agreement for Historical Property ("this Agreement") is made and entered into this 17th day of July, 2007, by and between the City of Oxnard, California, a general law city ("City"), and the Oxnard Historic Farm Park Foundation, a California nonprofit public benefit corporation ("Foundation").

RECITALS

(A) City owns .86 acres of real property, including several structures thereon, designated as Ventura County Historical Landmark No. 165 (the Gottfried and Sophie Maulhardt/Albert Pfeiler Farm Site), as more particularly described in Exhibit A, attached hereto and incorporated herein by reference ("the Property"). The Property is surrounded by a chain link fence separating the Property from a public park also owned by City.

(B) Foundation was formed to restore and improve the Property and has presented a master plan to do so.

(C) The Ventura County Cultural Heritage Board has issued a Certificate of Appropriateness for the master plan to restore and improve the Property.

(D) The Planning Division and Environmental Services Manager of the City's Development Services Department has issued a Notice of Exemption from the California Environmental Quality Act for the master plan to restore and improve the Property.

(C) The City Council finds that entering into this Agreement is in the public interest and will confer a public benefit by encouraging restoration and improvement of the Property and public use and enjoyment of the Property.

WHEREFORE, City and Foundation agree:

1. <u>Lease Term and Termination</u>.

(A) For rent of $1.00 per year, receipt of which is acknowledged, City leases the Property to Foundation for the period beginning on July 1, 2007 and ending one year thereafter, on June 30, 2008. The lease term of one year shall renew automatically until either City or Foundation gives written notice to the other party, at least 60 days before the date that the lease term then in effect expires, that the lease term will not be renewed.

(B) This Agreement may be terminated prior to expiration of the lease term, as follows:

(1) By mutual written agreement; or

(2) By either party upon a material breach of this Agreement, after giving written notice and an opportunity to cure to the breaching party; or

(3) By either party for the convenience of that party, by giving the other party at least 30 days' written notice of termination.

(C) On expiration or termination of this Agreement, Foundation shall surrender possession of the Property to City and shall leave the Property in good, neat and clean condition. Foundation shall surrender to City all keys to the Property.

2. Master Plan for the Property.

(A) Foundation has presented to the City Council, and the City Council has approved, a master plan for restoration and improvement of the Property, identifying work that should be done to preserve, restore and open the Property for use by the public, and to improve and enhance the Property.

(B) At any time, after at least ten days' written notice to Foundation, the City Council may revise, replace or terminate the master plan.

(C) As Foundation obtains approvals for the work and provides sufficient funds to City, City shall perform the work identified in the master plan in any order determined by City, either with the City's own forces or by contract.

(D) Nothing in this Agreement shall require City to appropriate any City funds to perform the work identified in the master plan.

(E) All improvements made to the Property shall belong to City.

3. Raising Funds for Restoration.

(A) Foundation shall use its best efforts to raise funds to pay for the work identified in the master plan, including obtaining grants and receiving gifts for that purpose. Foundation shall donate the funds raised for that purpose to City, which shall place the money in an account to be used only to pay for the work identified in the master plan and for necessary repairs and administrative expenses.

(B) Foundation shall use its best efforts to obtain all approvals and permits necessary to perform the work identified in the master plan, including filing applications and paying fees.

(C) Foundation may promote and advertise the Property, but shall not use the name of City without the prior consent of City's Deputy Director of Public Works ("the Director").

4. Maintenance of Property; Utilities.

(A) At Foundation's expense, Foundation shall maintain the grounds and structures of the Property in good condition and keep the Property neat and clean. Foundation shall keep the Property free from any liens arising out of work performed, materials furnished or obligations incurred for on behalf of Foundation.

(B) Within 30 days of the execution of this Agreement, Foundation and the Director shall prepare a schedule of maintenance and an annual budget for maintenance. Foundation shall perform maintenance in accordance with the schedule and shall not exceed the budget for maintenance without the prior consent of the Director. Foundation and the Director shall update the schedule and the budget as necessary.

(C) Foundation shall not perform any work on the Property that is beyond ordinary maintenance. Foundation shall notify the Director of repairs that should be made. All repairs and work on the Property that is a public project shall be performed by others than Foundation, under City's direction and control.

(D) Foundation shall arrange and pay for the installation of utility service to the Property, including water, wastewater, solid waste collection, electricity and telephone service, and shall pay all charges for the use of such utilities.

5. Ownership of Personal Property. Foundation shall own any personal property placed on the Property by Foundation. City shall own any personal property placed on the Property by City.

6. Foundation's Use of Property.

(A) Foundation may use the Property as stated in this section 6. Foundation shall not use or allow others to use the Property during such time as City is performing work on the Property in accordance with the master plan or City is using the Property for City purposes and functions on reasonable notice to Foundation. Foundation shall not charge City for City's use of the Property. When Foundation uses the Property or allows others to use the Property, Foundation shall prevent persons from entering any structure on the Property for which Director has not issued approval for occupation.

(B) Before City has issued approval for occupation of any structure on the Property, Foundation may use the Property for Foundation's fund-raising events.

(C) After City has issued approval for occupation of the Maulhardt/Pfeiler cottage ("the cottage") on the Property, Foundation may use the Property and the cottage for Foundation's fund-raising events and may allow others to use the Property as stated in subsection (G) below.

(D) After City has issued approval for occupation of additional structures on the Property, Foundation may use the Property and such structures for Foundation's fund-raising events and may allow others to use the Property as stated in subsection (G) below.

(E) After City has issued approval for occupation of the cottage, Foundation shall allow the public to visit the Property (including the interior of the cottage) at least one afternoon each week, for at least four consecutive hours, and shall have one or more persons on the Property to explain the Property and its history to the public. Foundation shall adequately supervise the public and such persons to prevent damage to the Property and to maintain order. Foundation shall charge no entrance fee to members of the public who enter the Property at such time, but Foundation may ask the public for voluntary donations to defray Foundation's expenses for maintenance of the Property. As City issues approval for occupation of additional structures on the Property, Foundation shall allow the public to visit the interior of such structures as well.

(F) Every time Foundation intends to use the Property for a Foundation event (other than the use of the Property by the public referred to in subsection (E) above), Foundation shall first obtain from City a temporary use permit for the use. Foundation events shall not exceed two days in duration.

(G) Foundation may allow others to use the Property for private events, and shall charge a reasonable fee for such use, provided such persons obtain from City a temporary use permit for the use. A private event shall not exceed one day in duration.

(H) Foundation and others shall use the Property only in accordance with the conditions of the temporary use permit and other requirements of the City Code and other entities having jurisdiction, including any restrictions on the number of persons that may attend the event, requirements concerning parking for the event, and requirements pertaining to the sale or consumption of alcoholic beverages on the Property.

(I) Foundation acknowledges that this Agreement may create a possessory interest in the Property that will be subject to taxation. Foundation shall pay any such taxes in a timely manner.

(J) City reserves the right of access to the Property for reasonable cause and at reasonable times for all purposes.

7. Money Received from Gifts and from Use of the Property; Audits.

(A) Within ten days after the end of each calendar quarter (March 31, June 30, September 30 and December 31), Foundation shall prepare and deliver to the Deputy Public Works Director a statement for the quarter just ended of income received from the use of the Property by Foundation and others; of income received from gifts and grants; and of expenses paid for the maintenance of the Property, for the insurance required by section 11 of this Agreement, for utilities used on the Property, for preparation of the statements and the annual audit referred to in subsection (C) of this section 7, and for possessory interest taxes referred to in subsection (I) of section 6 of this Agreement.

(B) Foundation may deduct such expenses from such income. Foundation shall deliver any remaining income to the City Treasurer within ten days after the end of such quarter. Foundation shall not be entitled to deduct or to be reimbursed for expenses that exceed income; provided, however, that if at the end of a calendar year income from that year exceeds expenses for that year, City shall reimburse Foundation from such net income for any expenses that Foundation reported but did not deduct because they exceeded income in any quarter of that year. If such net income is insufficient to reimburse such expenses, City shall not reimburse Foundation for such expenses.

(C) Foundation shall keep records of such income and expenses in accordance with generally accepted accounting practices. Foundation shall keep such records in Ventura County and shall retain such records during the term of this Agreement and any extension thereof and for three years thereafter. Within 60 days after the end of each calendar year, Foundation shall have prepared an income and expense audit for the year just ended and shall deliver such audit to the Director. The audit shall be certified by an independent auditor and shall include a statement that the audit was prepared in accordance with generally accepted accounting practices.

(D) On reasonable notice to Foundation, City may inspect or audit Foundation's financial records pertaining to the Property.

8. Signs. After obtaining permits from City, Foundation may place signs on the Property.

9. Film Permits. The Property may be used for filming if a filming permit is obtained pursuant to section 11-200 et seq. of the City Code.

10. Indemnity.

(A) Foundation agrees to indemnify, hold harmless and defend City, its City Council, and each member thereof, and every officer, employee, representative or agent of City, from any and all liability, claims, demands, actions, damages (whether in contract or tort, including personal injury, death at any time, or property damage), costs and financial loss, including all costs and expenses and fees of litigation or arbitration, that arise directly or indirectly from any acts or omissions related to this Agreement performed by Foundation, or by persons that Foundation allows to use the Property, or by members of the public that visit the Property and that Foundation does not adequately supervise, or by Foundation's officers, agents, employees, contractors and other persons acting on Foundation's behalf; excepting therefrom persons referred to in subsection (B) of this section 10. This agreement to indemnify, hold harmless and defend shall apply whether such acts or omissions are willful or the product of active or passive negligence.

(B) City agrees to indemnify, hold harmless and defend Foundation, its officers, employees, representatives or agents, from any and all liability, claims, demands, actions, damages (whether in contract or tort, including personal injury, death at any time, or property damage), costs and financial loss, including all costs and expenses and fees of litigation or arbitration, that arise directly or indirectly from any acts or omissions related to this Agreement performed by City or by persons that attend events held by City on the Property or by City's officers, agents, employees, contractors and other persons acting on City's behalf. This agreement to indemnify, hold harmless and defend shall apply whether such acts or omissions are willful or the product of active or passive negligence.

11. Insurance.

(A) Foundation shall obtain and maintain during the term of this Agreement the insurance coverage specified in Exhibit INS-N, attached hereto and incorporated herein by this reference, issued by a company satisfactory to the Risk Manager, unless the Risk Manager waives, in writing, the requirement that Foundation obtain and maintain such insurance coverage.

(B) Foundation shall, prior to occupying the Property, file with the Risk Manager evidence of coverage specified in Exhibit INS-N. Evidence of insurance coverage shall be forwarded to the Risk Manager, addressed a specified in Exhibit INS-N.

(C) Foundation's maintenance of proper insurance coverage is a material element of this Agreement. Foundation's failure to maintain or renew insurance coverage or to provide evidence of renewal may be considered as a material breach of this Agreement.

12. Foundation Not Agent. Except as the City Manager may specify in writing, Foundation and its officers, agents, employees, contractors and other persons acting on Foundation's behalf, shall have no authority, express or implied, to act on behalf of City in any capacity, as agents or otherwise, or to bind City to any obligation.

13. Assignment; Binding Effect. Foundation may not assign this Agreement or any right or duty thereunder or sublet the Property or any portion thereof. This Agreement is binding upon and shall inure to the benefit of successors of all kinds of City and of Foundation.

14. Force Majeure. Neither City nor Foundation shall be responsible for delays or failure in performance resulting from acts beyond the control of either party. Such acts shall

include, but not be limited to, acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations imposed after this Agreement is executed, fire, communication line failure, earthquakes, or other disasters.

15. Time of Essence. Time is of the essence in regard to performance of any of the terms and conditions of this Agreement.

16. Governing Law. The construction and interpretation of this Agreement and the rights and duties of City and Foundation hereunder shall be governed by the laws of the State of California.

17. Compliance with Laws. Foundation shall comply with all City, State and federal laws, rules and regulations, now or hereafter in force, pertaining to Foundation's occupation, maintenance and use of the Property.

18. Severability. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision.

19. Waiver. No waiver of a breach of any provision of this Agreement by either City or Foundation shall constitute a waiver of any other breach of the same provision or any other provision of this Agreement. Failure of either City or Foundation to enforce at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver of such provision or breach.

20. Arbitration. In the event of any dispute with regard to the provisions of this Agreement, the dispute may be submitted to arbitration upon the mutual agreement of the parties, under such procedures as the parties may agree on, or if the parties cannot agree, then under the Rules of the American Arbitration Association.

21. Expenses of Enforcement. The prevailing party's reasonable costs, attorneys' fees (including the reasonable value of services rendered by the City Attorney's Office) and expenses, including investigation fees and expert witness fees, shall be paid by the non-prevailing party in any dispute involving the terms and conditions of this Agreement.

22. Authority to Execute.

(A) City acknowledges that the person executing this Agreement has been duly authorized by the City Council to do so on behalf of City.

(B) Foundation acknowledges that the person executing this Agreement has been duly authorized by Foundation to do so on behalf of Foundation.

23. Notices.

(A) Any notices to Foundation may be delivered personally to Jeff Maulhardt or by mail addressed to Oxnard Historic Farm Park Foundation, P. O. Box 583, Oxnard, CA 93032.

(B) Any notices to City may be delivered personally or by mail addressed to City Manager, 300 West Third Street, Oxnard, CA 93030.

24. Amendment. The terms and conditions of this Agreement may be modified at any time by a written amendment executed by both City and Foundation.

25. Entire Agreement. This Agreement constitutes the entire agreement of the parties regarding the subject matter described herein and supersedes all prior communications, agreements and promises, either oral or written, on the subject matter of this Agreement.

CITY OF OXNARD

Dr. Thomas E. Holden, Mayor

ATTEST:

Jen Biney for

Daniel Martinez, City Clerk

APPROVED AS TO FORM:

Gary Gillig 07-03-07

Gary L. Gillig, City Attorney

OXNARD HISTORIC FARM PARK FOUNDATION

JMaulhardt

Jeff Maulhardt, President

APPROVED AS TO INSURANCE:

Susan Winder

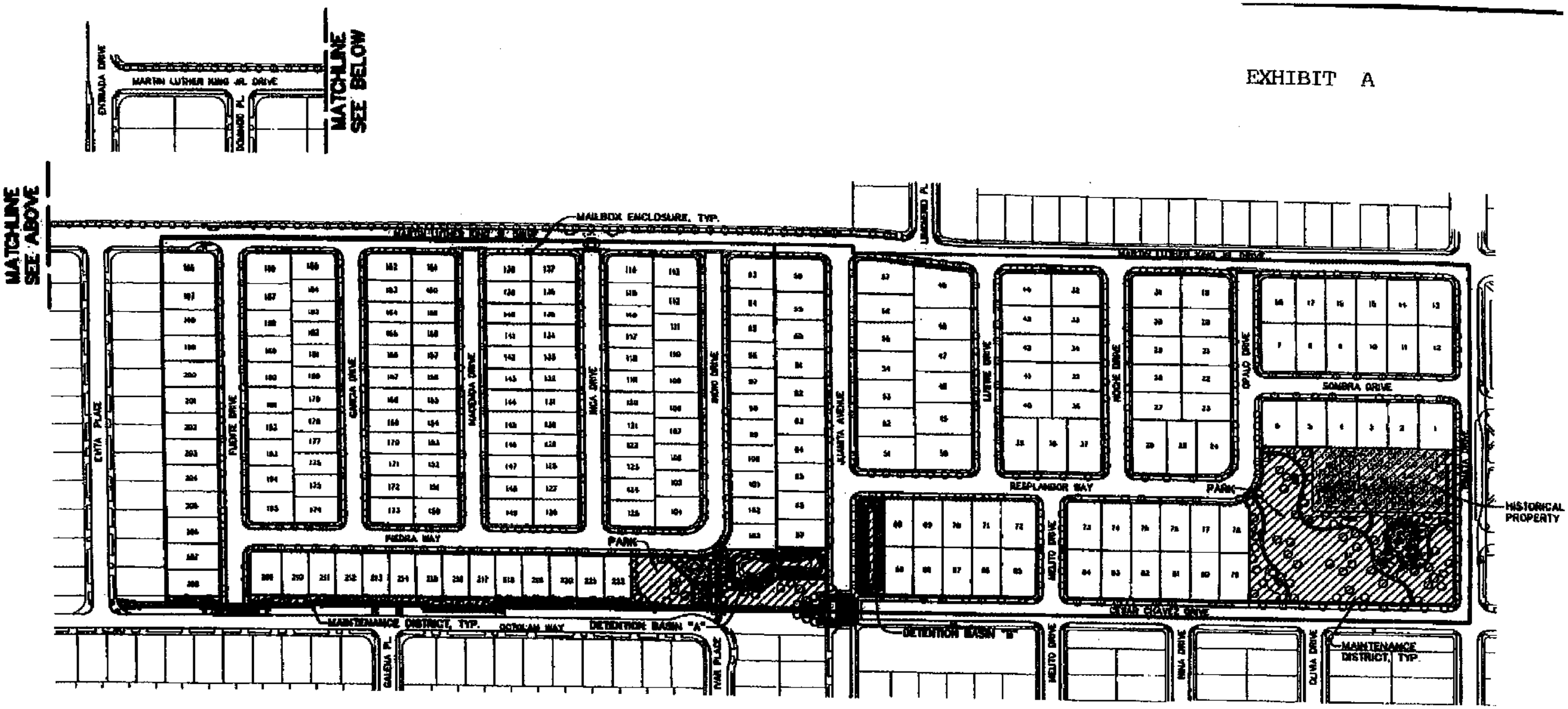
Susan Winder, Acting Risk Manager

APPROVED AS TO CONTENT:

Ken Ortega, Public Works Director

Michael Henderson, Deputy Public Works Director

EXHIBIT A



LEGEND:

- CITY MAINTAINED LANDSCAPE ASSESSMENT DISTRICT IMPROVEMENTS
- CITY MAINTAINED STREET TREE
- MAILBOX ENCLOSURE

ASSESSMENT DIAGRAM FOR CASA LOMA, CASA DULCE & CASA BONITA (TRACT 5389-1, -2 & -3) LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT #51

COUNTY OF VENTURA
STATE OF CALIFORNIA
FEBRUARY 2005

SHEET 1 OF 1

Penfield & Smith
ENGINEERS • SURVEYORS • PLANNERS

SCALE: 1" = 200'

ATTACHMENT NO. 1

PAGE 9 OF 13

Sale of the Oxnard Farm Park

Public Works & Transportation Committee
July 13, 2021

Adam Smith, Project Manager

CITY OF OXNARD CALIFORNIA

RECOMMENDATION

That the Public Works and Transportation Committee recommends that the City Council:

1. Conduct a public hearing and consider the Summary Report prepared pursuant to California Government Code section 52201;
2. Adopt a resolution and approve Purchase and Sale Agreement No. A-8295 between the City of Oxnard (City) and the Oxnard Historic Farm Park Foundation (Foundation) for the sale of the Gottfried Maulhardt/Albert Pfeiler Farm Site (Farm Park); and
3. Approve the attached Budget Appropriation recognizing revenue from the sale of the Farm Park.

BACKGROUND

- Many years ago, the greater Oxnard Plain was home to farms, ranches, and homesteads, establishing the area's agricultural industry
- Few of these historical relics, odes to the City's agricultural past, remain
- Over time, many were demolished, making way for housing tracts and business parks, while others disappeared over the long years
- Properties like the Oxnard Farm Park serve as witnesses to the City's past

- The 0.86 acre City-owned property consists of the 1870's era Albert Pfeiler House, Carriage House, courtyard patio, bathhouse/outhouse, plants and gardens, BBQ pit, farm equipment, and public restrooms

- The Farm Park offers space for informational tours, site rentals, special events, and photos and machinery from Oxnard's farming history

- In July 2004, the City Council adopted Resolution No. 12,681, which formalized the Farm Park's historical status as Ventura County Landmark No. 165

LEASE & OPERATING AGREEMENT

- In June 2007, the City entered into Agreement No. A-6875 (Agreement) for the lease and operation of the Farm Park with the Foundation

- The Foundation is a non-profit organization dedicated to preserving, restoring, and improving the property

- Under the current Agreement, the City leases the property to the Foundation for $1.00 / yr, with the term of the Agreement renewing automatically

LEASE & OPERATING AGREEMENT

- As presented to the City Council on October 15, 2019, Public Works Department (Public Works) staff were not actively administering the Agreement

- Improvements and projects, supposed to be approved by Public Works staff, were not

- Funds raised by the Foundation were to be given to the City to be used for projects, however, in practice, this was not the case

- City staff have no reason to believe that the money was not spent on projects for the Farm Park; instead, the work was not performed according to the process spelled out in the Agreement.

BACKGROUND

Due to the lack of oversight with the Agreement, staff presented the following options to Council in October 2019:

1. Continuing with the existing Agreement;
2. Drafting a new lease and operating agreement; or
3. Selling the Farm Park to the Foundation

- After the October 2019 staff presentation to Council, Council directed staff to sell the Farm Park

- In March 2020, staff obtained an appraisal for the Farm Park, funded by the Foundation

- The appraisal concluded that the value of the Farm Park and surrounding land to be $550,000

- However, the appraisal also concluded that the highest and best use as improved is for its continued use as a cultural site and recreational use with the most likely buyer being a local municipality or non-profit public entity

PURCHASE & SALE AGREEMENT DEAL POINTS

- Farm Park sale price: $50,000 paid in $10,000 installments over five (5) years
- Title to include reversionary rights to City
- Foundation to present to the City a work plan for restoration, renovation, and improvements over ten (10) years, valued at approximately $500,000 (could include "sweat equity" working hours, permits, grants, fundraising).
- Annual report to City on status of the work plan
- Foundation to provide annual IRS Form-990's and nonprofit report to the City
- Foundation to obtain State of California landmark status

- Pursuant to California Government Code Section 52201, any city or county may sell or lease a property to create an economic opportunity

- Before this can be completed, however, the sale agreement or other instrument must first be approved by the legislative body by resolution after a public hearing

- A 52201 report requires staff to submit a summary report of the sale agreement

FINANCIAL IMPACT

- Under the PSA, the City will receive $10,000 per year for five (5) years, for a total purchase price of $50,000
- Payments to be received by the City on the anniversary date of the sale agreement
- Revenue deposits from the sale of the Farm Park will be deposited into the General Fund

That the Public Works and Transportation Committee recommends that the City Council:

1. Conduct a public hearing and consider the Summary Report prepared pursuant to California Government Code section 52201;
2. Adopt a resolution and approve Purchase and Sale Agreement No. A-8295 between the City of Oxnard (City) and the Oxnard Historic Farm Park Foundation (Foundation) for the sale of the Gottfried Maulhardt/Albert Pfeiler Farm Site (Farm Park); and
3. Approve the attached Budget Appropriation recognizing revenue from the sale of the Farm Park.

CITY OF OXNARD CALIFORNIA

QUESTIONS

PUBLIC WORKS AND TRANSPORTATION COMMITTEE
AGENDA REPORT

REPORTS
AGENDA ITEM NO. D.2

DATE: July 13, 2021

TO: Public Works and Transportation Committee

FROM: Brian Yanez, Acting Public Works Director, (805) 200-5412, brian.yanez@oxnard.org

SUBJECT: Approval of Purchase Order #8164 with VAC-CON, Inc., for a New Sewer Cleaning Vehicle. (0/5/5)

RECOMMENDATION

That the Public Works and Transportation Committee recommend that the City Council approve and authorize the Mayor to execute Purchase Order #8164 with VAC-CON, Inc. for the purchase of a new VAC-CON sewer cleaning combination truck, model VPD4211HE/1300, mounted on a Freightliner 114SD truck chassis in the amount of $558,637.71.

Please click the following link to view the required Measure M pre-recorded presentation video: https://youtu.be/-5V86_mS2wQ

BACKGROUND

The Wastewater Division currently owns three (3) Sewer Cleaning Vehicles (SCVs) for the purpose of maintaining and cleaning over 415 miles of sewer pipeline and 7,600 sewer manholes throughout the City's sewer collection system. Routine maintenance allows the collection system to efficiently convey wastewater to the treatment plant. These vehicles use high pressure water to scour the inside of the sewer collection system and remove debris and materials, minimizing the potential for sanitary sewer overflow. This new SCV will have an increased capacity tank that will allow for more efficient operation. The Wastewater Division has a performance goal to clean a minimum of 200 miles of sewer pipe every year (nearly 4 miles every week). To meet this goal the Wastewater Division requires three (3) reliable and dependable SCVs.

DISCUSSION

On May 7, 2021, the Wastewater Division received a Sourcewell competitively solicited quote, for a new SCV. This new SCV will replace vehicle #3591 which was purchased in 2003, the oldest of the three (3) existing SCVs and has over 109,000 miles. The Fleet Division has determined that vehicle #3591 has exceeded its useful life and requires excessive maintenance due to mechanical failures. Furthermore, repair parts are obsolete and difficult to procure, thus extending the time the vehicle is unavailable. The new SCV will be purchased in the current FY 2021-22 and the lead time is approximately 60-120 days.

STRATEGIC PRIORITIES

This agenda item supports the Infrastructure and Natural Resources strategy. The purpose of the Infrastructure and Natural Resources strategy is to preserve and improve our roads, utilities, parks, trees, water supply and natural resources through effective planning, prioritization, and an equitable and efficient use of available funding.

FINANCIAL IMPACT

The cost for this Purchase Order with VAC-CON in the amount of $558,637.71 will be funded from the approved Fiscal Year 2021-22 Adopted Budget from the Wastewater Operating Fund 611 (account 611-6103-891-8606). There is no impact to the General Fund.

Prepared by: Jan Hauser, Wastewater Division Manager

ATTACHMENTS

1. PO 8164 VAC-CON, Inc
2. VAC-CON Quote
3. Presentation

PURCHASE ORDER

CITY OF OXNARD
300 WEST 3RD STREET
OXNARD, CA 93030

PURCHASE ORDER NO.
008164

DATE: 6/17/2021

VENDOR PHONE: (904)493-4969
VENDOR FAX: ( ) -
VENDOR #: 22750
VENDOR ADDRESS: VAC-CON, INC
969 HALL PARK ROAD
GREEN COVE SPRINGS, FL 32043

SHIP TO: WASTEWATER TREATMENT PLT
6001 S. PERKINS ROAD
OXNARD, CA 93033

Our P.O. # MUST Appear on ALL Invoices, Packages and Correspondence

DELIVER BY	REQUISITION #	REQUISITION DATE	CONFIRMED BY
06/03/2022	0000005486	06/03/2021	
FOB	**ACCOUNT NUMBER**		**AUTHORIZED BY**
	61161038918606		EDWIN RAMOS

ITEM #	QUANTITY/ UNIT	DESCRIPTION ARTICLE OR SERVICE	UNIT COST	EXTENDED COST
1	558,637.71 / DL	NEW REPLACEMENT VEHICLE	1.0000	558,637.71

PW transportation committee - 7/13/2021
Council - 9/7/2021

Utilizing the same Sourcewell contract
122017-AMI/VAC that was used to purchase the last
Sewer Cleaning Vehicle back in FY2019/20

The purchase was included in the FY 22 budget
proposal and the funds will be expended in FY 22
EMAILED LUIS RQSTING MORE INFO*AM
FY22 PROPOSED FUNDING $735K

TOTAL PURCHASE AMOUNT	**$558,637.71**

By acceptance of this purchase order, you agree to the attached terms and conditions of the City of Oxnard

PURCHASE ORDER

CITY OF OXNARD
300 WEST 3RD STREET
OXNARD, CA 93030

PURCHASE ORDER NO.
008164

DATE: 6/17/2021

VENDOR PHONE: (904)493-4969
VENDOR FAX: ( ) -
VENDOR #: 22750
VENDOR ADDRESS: VAC-CON, INC
969 HALL PARK ROAD
GREEN COVE SPRINGS, FL 32043

SHIP TO: WASTEWATER TREATMENT PLT
6001 S. PERKINS ROAD
OXNARD, CA 93033

Our P.O. # MUST Appear on ALL Invoices, Packages and Correspondence

DELIVER BY	REQUISITION #	REQUISITION DATE	CONFIRMED BY
06/03/2022	0000005486	06/03/2021	
FOB	**ACCOUNT NUMBER**		**AUTHORIZED BY**
	61161038918606		EDWIN RAMOS

ITEM #	QUANTITY/ UNIT	DESCRIPTION ARTICLE OR SERVICE	UNIT COST	EXTENDED COST

In order to receive payment, email all invoices to:
invoices@oxnard.org

In the subject line, reference the Purchase Order number above.

AUTHORIZED SIGNATURE. ______________________

By acceptance of this purchase order, you agree to the attached terms and conditions of the City of Oxnard

PURCHASE ORDERS
TERMS AND CONDITIONS

The City Purchasing Officer and the Vendor agree as follows:

1. Vendor shall furnish to City the labor, materials, equipment, supplies and/or services described in the Purchase Order preceding this page.
2. City shall pay to Vendor the price, or prices, specified in the Purchase Order upon delivery of the labor, materials, equipment, supplies and/or services, and acceptance thereof by the City Purchasing Officer, or upon the completion of the services to be performed and acceptance thereof.
3. If the Purchase Order is continuing in nature, City shall pay to Vendor the amount due Vendor for labor, materials, equipment or supplies furnished, or services completed and accepted.
4. Vendor shall deliver the labor, materials, equipment or supplies, or cause the services to be performed, within the time and in the manner specified in the Purchase Order. Vendor shall be excused in performance for delays resulting from causes beyond the control of Vendor.
5. If services are performed or labor furnished to City under the Purchase Order, Vendor agrees to indemnify, hold harmless and defend City, its City Council, and each member thereof, and every officer, employee, representative or agent of City, from any and all liability claims, demands, actions, damages (whether in contract or tort, including personal injury, death at any time, or property damage), costs and financial loss, including all costs and expenses and fees of litigation or arbitration, that arise directly or indirectly from any acts or omissions related to this Agreement performed by Vendor or its agents, employees, subcontractors, consultants and other persons acting on Vendor's behalf. This agreement to indemnify, hold harmless and defend shall apply whether such acts or omissions are the product of active negligence, passive negligence, willfulness or acts for which Vendor or its agents, employees, subcontractors, consultants and other persons acting on Vendor's behalf would be held strictly liable. Vendor's obligation to defend shall arise when a claim, demand or action is made or filed, whether or not such claim, demand or action results in a determination of liability or damages as to which Vendor is obligated to indemnify and hold harmless.
6. Insurance
   a) Vendor shall obtain and maintain during the performance of any services under this Agreement the following insurance coverage issued by a company satisfactory to the Risk Manager, unless the Risk Manager waives, in writing, the requirement that Vendor obtain and maintain such insurance coverage.
      i. Commercial general liability insurance, including a contractual liability endorsement, in an amount not less than $1,000,000 combined single limit for bodily injury and property damage for each claimant for general liability with coverage equivalent to Insurance Services Office Commercial General Liability coverage (Occurrence Form CG0001ED, November 1988);
      ii. Business automobile liability insurance in an amount not less than $1,000,000 combined single limit for bodily injury and property damage for each claimant for automobile liability with coverage equivalent to Auto Liability Insurance Services Office coverage (Occurrence Form CA000TED, June 1992) covering Code No. 1, "any auto";
      iii. Workers' compensation insurance in compliance with the laws of the State of California, including employer's liability insurance in an amount not less than $1,000,000 per claimant.
7. Vendor, in the performance of any services or the furnishing of any labor under this Purchase Order, shall be considered an independent contractor, and Vendor and Vendor's agents and employees shall not be considered officers or employees of the City.
8. Vendor, without the written consent of the City Purchasing Officer, shall not:
   a) Assign the Purchase Order, or any interest therein, or any money due thereunder; or
   b) Make any changes, alterations or variations in the terms of the Purchase Order.
9. The cost of inspection on deliveries, or offers to make deliveries that do not meet specifications, will be paid by Vendor or deducted by City from amounts due Vendor.
10. Vendor shall indemnify and hold harmless City, its officers and employees, from liability, claims, loss or expense of any kind or nature on account of any copyrighted or uncopyrighted composition, patented or unpatented process or invention, article or appliance furnished or used under this Purchase Order.
11. Vendor shall comply with all applicable federal, state and local ordinance, laws and regulations and shall obtain and pay for all required licenses and permits, including a City of Oxnard business license.
12. Return or exchange of materials, equipment or supplies will not be permitted without written approval by the City Purchasing Officer.
13. All materials, supplies and equipment furnished under the Purchase Order shall, where applicable, be in full compliance with the Safety Orders and Regulations of the Division of Industrial Safety of the State of California and the Williams-Steiger Federal Occupational Health and Safety Act of 1970.
14. City may terminate this Purchase Order at any time by giving written notice of termination to Vendor. If termination is for cause, termination shall become effective on the date of the notice or at a later date, specified in the notice. If termination is without cause, termination shall become effective five days after the date of the notice or at a later date specified in the notice.
15. Vendor shall comply with all applicable equal employment opportunity requirements of the California Department of Fair Employment and Housing in performing or contracting for any services under this Purchase Order.
16. For public projects, Vendor shall pay prevailing wages in accordance with Labor Code Sections 1720 et seq.

ADDITIONAL REQUIREMENTS FOR GRANT-FUNDED PROJECTS

17. The following requirements apply to any Purchase Order funded in whole or in part by federal grant funds.
   a) Upon expiration of the time specified on the reverse side, this Purchase Order shall terminate unless City and Vendor have mutually agreed in writing to an extension of time.
   b) If legal action is brought by either party because the other has failed to comply with terms or conditions of this Purchase Order, the prevailing party shall be awarded its attorney's fees and costs in addition to its damages and/or equitable relief.
   c) Vendor shall comply with all applicable requirements of Executive Order 11246 as amended by Executive Order 11375 and the regulations adopted pursuant thereto (41 CFR Chapter 60), which provide that no person shall be discriminated against on the basis of race, color, religion, sex or national origin.
   d) Vendor shall insure that the grantee (City), the Federal Grantor Agency, the Comptroller General of the United States, or any duly authorized representative, shall have access to any books, records, documents and papers, specifically relating to this Purchase Order, for the purpose of making audit, examination, excerpts and transcriptions for not less than three years after completion of the project and/or until the completion of the final project audit as required by the Federal Grants Agency.

MUNICIPAL MAINTENANCE EQUIPMENT
CSLB #980409
DIR 1000004282
www.source-mme.com
Toll Free 1-888-484-9968

May 13, 2021

City of Oxnard
6001 South Perkins Road
Oxnard, CA 93033

Tel: 805-488-3517
rodolfo.camacho@oxnard.org

Attention: Rudy Camacho

We are pleased to provide the enclosed contract pricing sheet off the Sourcewell Contract No. 122017-AMI/VAC for the Vac-Con VPD4211HE/1300 mounted on a new Freightliner 114SD truck chassis for your review.

Summary:	Complete Unit per attached Sourcewell price sheet	
	Price F.O.B. Oxnard, CA	$511,322.85
	9.25% Estimated Sales Tax	47,297.36
	CA Tire Fee (10 @ $1.75 Each)	17.50
	Total	$558,637.71

- **City's Purchase Order to be prepared and sent directly to Vac-con, Inc.**
  969 Hall Park Drive, Green Cove Springs, FL 32043
  M.J. Dubois (410) 924-1004 mjdubois@ducollc.com
- Pricing includes delivery and on-site training.
- Normal delivery 150-210 days A.R.O., depending on chassis availability.
- Sales tax applicable at time of delivery will be shown on invoice.
- Terms per Sourcewell Program.
- Quotation valid for 30 days.

Thank you for your interest in this fine product. Should you have any questions or need additional information, please let us know. We look forward to being of service.

Sincerely,

James Wheeler,
General Manager

Enclosure

VAC-CON
MORE POWER TO YOU

05/13/2021

COMBINATION JET/VACUUM SEWER CLEANER

Sourcewell Contract: 122017-AMI/VAC

Customer: CITY OF OXNARD | Shipping: CALIFORNIA

Requirement Specification	
Combination jet/vacuum sewer cleaner with all standard equipment VPD4211HE/1300	
Freightliner model 114SD 6 x 4 chassis with 370 HP diesel engine, 66,000 GVWR, Allison automatic transmission and A/C	
Body mounting on Chassis	
10' Aluminum Telescoping boom with joy stick and remote pendant control (telescopes hydraulically 10' forward from the stowed position) - 8" diameter intake hose and boom, travel tie down post with latch, 270 degree boom rotation	
Front mounted articulating to driver side hose reel, 800' (1") capacity	
1300 Gallon polyethylene water tank capacity with 10 year warranty	
11 cubic yard capacity debris tank 3/16" corten steel, (5 year warranty) with full opening rear door (minimum 50 degree debris tank dumping, power up and down	
Automatic vacuum breaker (prevents operation when full and contains debris when moving unit) and overfill protection	
800' of 1" Jet hose continuous	
Positive Displacement Blower Roots model 827 @ 18" HG	
Hydrostatic drive of vacuum system	
Giant water pump rated at 80 GPM @ 3000 PSI, with a GM 8.8 Gas 208 HP auxiliary engine with aux engine hydraulics	
6" Knife valve with center post and handle in lieu of 5" butterfly valve	
Gravity drain system, plumbing to gate valve at mid-passenger side of unit, allowing return of liquids to the manhole	
Hydraulic rear door opener, removes door grabber	
Two Rear door drain valve flush out connections	
Rear splash shield	

Requirement Specification	
Rear hydraulic pump off system, 400 gpm with 20' lay flat hose	
Rubber pad on standard deflector	
1/4 Turn ball valve water drain	
100' Capacity hand gun hose reel	
Debris body Power Flush-out system with 8 jets	
Hydro-excavation Package	
Variable flow valve	
Water pump remote oil drain	
Hose footage counter, curbside	
Auxiliary engine remote oil drain	
Three Cone storage rack	
Heavy reinforced elbow "Wear Back"	
Long handle storage - PVC	
Rear mounted tow hooks	
Remote boom grease zerk assembly	
Remote debris body grease zerk assembly	
LED 4 strobes, 2 front bumper, 2 rear bumper	
LED Arrow board	
Boom mounted LED flood lights	
LED Flood light - level wind guide area	
Mid-body LED flood lights with guards	
LED Rear mounted flood lights with limb guard	
Two LED rear mounted strobe with limb guard	
Mid-body LED strobe, frame mounted	
Two LED mirror mounted strobes with guards	

Requirement Specification	
Curbside camera placement	
Driver's side camera placement	
Front bumper camera placement	
Front hose reel camera placement	
Low water alarm with light	
Omnibus Precision Power System	
Rear camera placement	
Wireless remote control	
Traffic camera with color monitor	
Add rear lower water tanks for a total of 1300 gallon capacity	
Both low pressure and high pressure retractable reels to be behind cab	
Two Bucket holders on Driver's and Passenger side behind cab (Igloo 5 gallon style with no top)	
Four (4) Tool storage racks behind cab	
In-Cab switch pack to be mounted in cab headliner	
Mesh screen covering complete rear door with hinge for cleaning	
Replace front Drivers side lower water tank with tool box	
Standard analog water pressure gauge at front hose reel	
Two (2) tube PVC pole storage on each side of debris body	
Upgrade 6 light corner strobes to 500V series Whelen lights	
Upgrade arrow board to 16 light board Whelen TA165NF2	
Upgrade level wind light	
Upgrade mirror mount and rear strobes to Whelen MC16PA	
Vacuum drive switch	
1" Nozzle rack	
1" x 15' leader hose	

Requirement Specification	
Lazy Susan pipe rack (holds 5 pipes)	
Roll out shelves (2) for storage box behind cab	
Four 6' x 8" Aluminum pipe extension	
Four 8" Quick clamp, spares	
Chassis Dealer to Paint Cab	
Paint Module and Chassis Dupont Yellow 748720	
Standard Striping Package - White	
Remote chassis engine start switch	
Add knife valve to pump off flange and nipple with male/female cam to bypass debris body for pump off	
Two standard ENZ nozzles, one sanitary (egg) and one Chisel point penetrator	
ICC lighting	
Hose guide (tiger tail) for hose protection, hydrant wrench, 25' of fill hose	
20 gpm @ 600 PSI wash down system with hand gun and 25' of ½" hand gun hose	
Steel Surcharge	
Local dealer pre delivery inspection	
On site customer training	
Delivery to customer facility	
Additional Discount Offered by Local Dealer	
TOTAL PRICE OFFERED TO SOURCEWELL MEMBER	$511,322.85
SALES TAX - 9.25%	$47,297.36
California Tire Fee	$17.50
TOTAL PRICE OFFERED TO SOURCEWELL MEMBER INCLUDING TAX	$558,637.71

Sourcewell Contract NO 122017-AMI/VAC
VENDOR/CONTRACT HOLDER: VAC-CON, INC. 969 HALL PARK RD GREEN COVE SPRINGS, FL 32043

CONTACT: M.J. DUBOIS EMAIL MJDUBOIS@ducollc.com PHONE: 410-924-1004

PURCHASE OF A SEWER CLEANING VEHICLE FROM VAC-CON, INC.

Public Works and Transportation Committee
July 13, 2021

City Council
September 7, 2021

Ray Trevino
Wastewater Collections Manager

CITY OF OXNARD CALIFORNIA

RECOMMENDATION

FOR THE PUBLIC WORKS AND TRANSPORTATION COMMITTEE:

That the Public Works and Transportation Committee recommend that the City Council approve and authorize the Mayor to execute Purchase Order #8164 with VAC-CON, Inc. for the purchase of a new VAC-CON sewer cleaning combination truck, model VPD4211HE/1300, mounted on a Freightliner 114SD truck chassis in the amount of $558,637.71.

RECOMMENDATION

FOR THE CITY COUNCIL:

That the City Council approve and authorize the Mayor to execute Purchase Order #8164 with VAC-CON, Inc. for the purchase of a new VAC-CON sewer cleaning combination truck, model VPD4211HE/1300, mounted on a Freightliner 114SD truck chassis in the amount of $558,637.71.

BACKGROUND

- The Wastewater Division owns three (3) sewer cleaning vehicles (SCV) for the purpose of maintaining
  - over 415 miles of sewer pipeline
  - 7,600 sewer manholes
- SCVs use high pressure water to scour collection system pipeline
- Wastewater Division has set a sewer cleaning performance goal of 4 miles per week

BACKGROUND

- Wastewater staff utilize high pressure water to remove any buildup within the collection system
- Routine maintenance ensures proper flow of wastewater
- Minimizes potential for sanitary sewer overflow

DISCUSSION

- On May 7, 2021, the City of Oxnard obtained a Sourcewell competitively solicited quote for a new SCV
- The new SCV will replace vehicle #3591:
  - Over 18 years old
  - Oldest of 3 SCVs in the fleet
- Fleet Division has determined that vehicle #3591 has exceeded its useful life due to:
  - 109,000+ miles
  - Frequently out of service
  - Repair parts are obsolete and difficult to procure

DISCUSSION

Lead time for this purchase is 60-120 days upon order

FINANCIAL IMPACT

- Cost for this purchase with VAC-CON, Inc. is $558,637.71
- Funded from appropriations in the approved Fiscal Year 2021-22 budget from Wastewater Operating Fund 611
- There is no impact to the General Fund.

CITY OF OXNARD CALIFORNIA

QUESTIONS

PUBLIC WORKS AND TRANSPORTATION COMMITTEE
AGENDA REPORT

REPORTS
AGENDA ITEM NO. D.3

DATE: July 13, 2021

TO: Public Works and Transportation Committee

FROM: Brian Yanez, Acting Public Works Director, (805) 200-5412, brian.yanez@oxnard.org

SUBJECT: Approval of an LS-1 Option E Agreement A-8356 with Southern California Edison to Replace High Pressure Sodium Vapor Street Lights with Light Emitting Diode Street Lights Citywide. (0/5/5)

RECOMMENDATION

That the Public Works and Transportation Committee recommend that the City Council approve and authorize the Mayor to execute the LS-1 Option E Agreement A-8356 with Southern California Edison (SCE), for a term of 20 years, to replace SCE owned street lights from High Pressure Sodium Vapor (HPSV) to Light Emitting Diode (LED) with no out-of-pocket cost to the City.

Please click the following link to view the required Measure M pre-recorded presentation video: https://youtu.be/puQ4iqQ-hXU

BACKGROUND

Recently, for a second time, the LS-1 Option E tariff became available to cities for street light LED retrofits. This program allows SCE to replace HPSV street lights with more efficient LED street lights with no out-of-pocket capital costs. Instead, initial capital costs will be amortized through energy cost savings over a 20-year period per the agreement.

SCE owns and maintains 9,677 street lights throughout the City of Oxnard (City) along residential and arterial streets. The City pays SCE a monthly facility fee for each pole which includes the cost of electricity and required maintenance. The annual City's budget for street lighting is approximately $1,988,984. These types of street lights are referred to as LS-1 lights and fall under SCE's LS-1 cost tariff.

DISCUSSION

SCE has estimated the conversion of 9,677 street lights would cost $3,583,740 ($179,187 annually). Under this program, the City would finance the capital cost of installation over a 20-year term as part of its monthly billing received by SCE. The transition to the new, more energy efficient LED bulbs will reduce the amount of electricity needed to power the street lights citywide. This energy savings is greater than the capital costs recovery mechanism built into the bills, resulting in a net savings to the City, see below:

Current Annual Energy Costs (HPSV)	$1,771,890

Less New Estimated Annual Energy Costs (LED)	($1,475,850)
Estimated Annual Savings	**$296,040**
Less Annual Capital Costs (20-year Term)	($179,187)
Estimated Annual Savings During Initial 20-Year Repayment Term	**$116,853**
Estimated Annual Savings Post 20-Year Term	**$296,040**

Another benefit of the LED conversion project is a more reliable street light network and the LED lights will last longer resulting in less outages and reduced maintenance requirements. Ultimately, LED streetlights provide energy and cost savings and increase safety through better night visibility and color perception.

To initiate the conversion process, the City is required to enter into an agreement with SCE. Once the LS-1 Option E Agreement is executed, the City will be placed in the queue for the LED conversion. The conversion work is anticipated to be completed by the first quarter of 2022. This program does not impact the City's ability to make any other infrastructure improvements with SCE, such as undergrounding utilities or adding additional light poles within the City.

STRATEGIC PRIORITIES

This agenda item supports the Infrastructure and Natural Resources strategy. The purpose of the Infrastructure and Natural Resources strategy is to preserve and improve our roads, utilities, parks, trees, water supply and natural resources through effective planning, prioritization, and an equitable and efficient use of available funding.

FINANCIAL IMPACT

There is no out-of-pocket cost to the City for the replacement of the street lights. The cost is rolled into the LS - 1 Option E rate. Due to energy cost savings, the City is estimated to obtain overall savings of approximately $2,337,060 over the initial 20-year period, net $116,853 annually, in energy bills. The savings is then estimated to be $296,040 annually after the 20 years.

Prepared by: Brian Yanez, Acting Public Works Director

ATTACHMENTS

1. A-8356 Oxnard - AB719 LS-1 Option E Agreement
2. City of Oxnard LS-1 Option E Rate Analysis
3. SCE Presentation

Sheet 1

SCHEDULE LS-1 OPTION E,
ENERGY EFFICIENCY-LIGHT EMITTING DIODE (LED) FIXTURE REPLACEMENT
RATE AGREEMENT

Form 14-965

SOUTHERN CALIFORNIA EDISON COMPANY
SCHEDULE LS-1 OPTION E, ENERGY EFFICIENCY-LIGHT EMITTING DIODE (LED) FIXTURE REPLACEMENT RATE AGREEMENT

This Schedule LS-1 Option E, Energy Efficiency-Light Emitting Diode (LED) Fixture Replacement Rate Agreement (Agreement), effective this _______ day of __________________,

___________(Effective Date), is entered into between Southern California Edison Company (SCE) and ___________________________________, an SCE customer taking service on Schedule LS-1 (Applicant), referred to collectively as "Parties," and individually as "Party." This Agreement provides for SCE, at Applicant's request, to replace the existing street lighting fixtures serving Applicant's premises with Light Emitting Diode (LED) street lighting fixtures to achieve energy efficiency benefits for Applicant, as set forth in Special Condition 14, Option E, Energy Efficiency-Light Emitting Diode (LED) Fixture Replacement, of Schedule LS-1.

The Parties agree as follows:

1. LED FIXTURES

SCE shall install, own, operate, and maintain LED Fixtures for Applicant as set forth in Exhibit "A" attached hereto and incorporated herein by this reference. The LED Fixtures provided hereunder shall at all times remain the property of SCE.

2. LED FIXTURE REPLACEMENT COSTS

2.1 The replacement costs of the LED Fixtures provided hereunder shall be borne by Applicant.

2.2 Applicant shall pay the charge for the LED Fixtures Replacement rate, which includes an Energy Efficiency Premium Charge (EEPC) and a Base LED Charge, under Option E of Schedule LS-1. Applicant elects Option E in lieu of an upfront, one-time payment of the replacement costs.

2.3 SCE does not guarantee that any energy or bill savings will accrue to Applicant as a result of the LED Fixture replacements.

3. COMMENCEMENT OF SERVICE

The Parties agree that SCE has the right to charge Applicant, and Applicant has an obligation to pay SCE, for the charges set forth in Schedule LS-1, Option E, commencing on the date SCE begins serving the LED Fixtures installed pursuant to this Agreement.

4. TERM AND TERMINATION

4.1 This Agreement shall be effective as of the Effective Date and shall continue for a term of twenty (20) years from the commencement of service as specified in Section 3 above (Term).

4.2 Applicant may terminate this Agreement at any time during the Term upon a thirty (30) - day advance written notice, provided that Applicant, prior to or within the 30-day advance notice period, assigns the Agreement to any New Party In (NPI) that owns, rents or leases the premises served by the street lighting fixtures replaced under this Agreement and will take service under Option E of Schedule LS-1 effective as of the date of termination; *otherwise*, Applicant shall pay a one-time termination charge equal to the present value of the balance of the EEPC of Option E over the remaining Term. The present value is determined based on SCE's authorized rate of return on rate base, or discounted rate of 7.90%.

SOUTHERN CALIFORNIA EDISON COMPANY
SCHEDULE LS-1 OPTION E, ENERGY EFFICIENCY-LIGHT EMITTING DIODE (LED) FIXTURE REPLACEMENT RATE AGREEMENT

5. AMENDMENTS; ASSIGNMENTS

5.1 Any changes or amendments to this Agreement must be in writing and must be executed by the Applicant and SCE and, if required, be approved by the California Public Utilities Commission (Commission).

5.2 Applicant shall not assign this Agreement without the prior written consent of SCE; provided, however, that Applicant may assign the Agreement pursuant to the terms and conditions of Section 4.2 above, and the NPI must assume all rights and obligations under this Agreement for the remaining Term. Any assignment and assumption shall be in a form acceptable to SCE.

6. NOTICE

Any notice either Applicant or SCE may wish to provide the other regarding this Agreement must be in writing. Such notice must be either hand-delivered or sent by U.S. certified or registered mail, postage prepaid, to the person designated to receive notice for the other Party below, or to such other address as either may designate by written notice. Notices delivered by hand shall be deemed effective when delivered. Notices delivered by mail shall be deemed effective when received, as acknowledged by the receipt of the certified or registered mailing.

Applicant:

____
(Name)

____
(Title)

____
(Address)

____
(City, State, Zip)

SCE:

Business Customer Division
Southern California Edison Company
2244 Walnut Grove Avenue
Rosemead, CA 91770

7. NONWAIVER

The failure of either Party to enforce any of the terms and conditions or to exercise any right or privilege in this Agreement shall not be construed as a waiver of any such term and conditions or rights or privileges, and the same shall continue and remain enforce and effect as if no such failure to enforce or exercise had occurred.

8. SEVERABILITY

In the event that any of the provisions, or portions thereof, of this Agreement are held to be unenforceable or invalid by the Commission, or any court of competent jurisdiction, the validity and enforceability of the remaining provisions or any portion thereof shall not be affected.

9. APPLICABLE LAWS, RULES, AND REGULATIONS

This Agreement shall be subject to, and interpreted under the laws, rules, decisions and regulations of the State of California, without regard to its conflict of laws principles, the Commission, and SCE's Commission-approved tariffs.

SOUTHERN CALIFORNIA EDISON COMPANY
SCHEDULE LS-1 OPTION E, ENERGY EFFICIENCY-LIGHT EMITTING DIODE (LED) FIXTURE REPLACEMENT RATE AGREEMENT

10. CALIFORNIA PUBLIC UTILITIES COMMISSION JURISDICTION

10.1 This is a filed form tariff agreement authorized by the Commission for use by SCE. No officer, inspector, solicitor, agent or employee of SCE has any authority to waive, alter, or amend any part of this Agreement except as provided herein or authorized by the Commission. This Agreement is to be used in conjunction with Schedule LS-1 and supplements the terms and conditions of the Applicant's electric service under Schedule LS-1.

10.2 This Agreement shall at all times be subject to such changes or modifications by the Commission as said Commission may, from time to time, direct in the exercise of its jurisdiction.

10.3 Notwithstanding any other provisions of this Agreement, SCE has the right to unilaterally file with the Commission, pursuant to the Commission's rules and regulations, an application for change in rates, charges, classification, service, or rule or any agreement relating thereto.

11. ENTIRE AGREEMENT

This Agreement, including SCE’s Commission-approved tariffs, constitutes the complete agreement and understanding between the Applicant and SCE regarding the LED Fixtures replacement costs. Prior agreements, representations, understandings, whether expressed or implied, and communications, oral or written, between the Applicant and SCE shall not be construed to be a part of this Agreement.

12. AUTHORIZATION SIGNATURE

In witness whereof, the Parties hereto have caused this Agreement to be signed by their duly authorized representatives.

APPLICANT

BY: ______________________________

NAME: ______________________________

TITLE: ______________________________

DATE SIGNED: ______________________________

<u>SOUTHERN CALIFORNIA EDISON COMPANY</u>

BY: ______________________________

NAME: ______________________________

TITLE: ______________________________

DATE SIGNED: ______________________________

SOUTHERN CALIFORNIA EDISON COMPANY

EXHIBIT "A"

SCHEDULE LS-1 OPTION E,

ENERGY EFFICIENCY-LIGHT EMITTING DIODE (LED) FIXTURE REPLACEMENT

APPLICANT

City of Oxnard

CUSTOMER ACCOUNT NO.

1004482497

SERVICE ACCOUNT NO.

700593307416, 700047704038, 700110126972, 700523259066, 700615610241

(Additional account numbers/addresses may be attached hereto.)

SERVICE ADDRESS

____

APPLICANT REQUESTED READY TO SERVE DATE

____

SCE READY TO SERVE DATE ____

DESCRIPTION OF **LED** FIXTURES/SCOPE OF WORK: SPECIFY HOW MANY STREET LIGHTING FIXTURE REPLACEMENTS ARE BEING REQUESTED AND AGREED TO UNDER THIS AGREEMENT AND OTHER RELEVANT DETAILS.

W.O. No(s): ____

CUSTOMER NAME OXNARD, CITY OF
Customer Number: 0-002-0202

Lamp Wattage	Lamp Count	Estimated High Pressure Sodium Vapor (HPSV) Annual Costs	Estimated Light Emitting Diode (LED) Annual Costs	Estimated Annual Savings
50 Watt	3	$440	$420	$20
70 Watt	4,359	$710,870	$636,070	$74,800
100 Watt	4,323	$803,040	$652,080	$150,960
150 Watt	553	$133,520	$100,600	$32,920
200 Watt	425	$119,340	$83,280	$36,060
250 Watt	13	$4,240	$3,120	$1,120
310 Watt	0	$0	$0	$0
400 Watt	1	$440	$280	$160
Total	9,677	$1,771,890	$1,475,850	$296,040

This analysis is only a 12 month estimate and the results presented are based on HPSV Lamp Wattage and counts above as of March/April 2021, LED wattage conversion lamps available at this time, and February 1, 2021 rates. This analysis excludes the following when applicable: Tap Device Charge, State Tax, Utility Users Tax, and Generation Municipal Surcharge. The analysis does not include costs associated with Incandescent, Mercury Vapor, Low Pressure Sodium Vapor, Metal Halide, or already existing LED Lamps. Actual costs may vary due to factors including but not limited to, rate changes, factor changes, wattage conversion changes, excluded cost components.

LS-1 Option E Agreement A-8356 with Southern California Edison to Replace High Pressure Sodium Vapor Street Lights with Light Emitting Diode Street Lights Citywide

Public Works and Transportation Committee
July 13, 2021

Brian Yanez
Assistant Public Works Director

CITY OF OXNARD CALIFORNIA

RECOMMENDATION

That the Public Works and Transportation Committee recommend that the City Council approve and authorize the Mayor to execute the LS-1 Option E Agreement A-8356 with Southern California Edison (SCE), for a term of 20 years, to replace SCE owned street lights from High Pressure Sodium Vapor (HPSV) to Light Emitting Diode (LED) with no out-of-pocket cost to the City.

BACKGROUND

- SCE owns and maintains 9,677 street lights throughout the City of Oxnard (City) along residential and arterial streets
- LS-1 Option E tariff became available to cities for street light LED retrofits
- Program allows SCE to replace HPSV street lights with more efficient LED street lights with no out-of-pocket capital costs

DISCUSSION

- SCE estimated the conversion of the 9,677 to LED would cost $3,583,740 over 20 years ($179,187 annually)
- City does not pay any additional costs to participate in this program
- The conversion to LED bulbs will reduce the City's monthly electricity costs

Estimated cost savings for this program:

Current Annual Energy Costs (HPSV)	$1,771,890
Less New Estimated Annual Energy Costs (LED)	($1,475,850)
Estimated Annual Savings	**$296,040**
Less Annual Capital Costs (20-year Term)	($179,187)
Estimated Net Annual Savings During Initial 20-Year Repayment Term	**$116,853**
Estimated Annual Savings Post 20-Year Term	**$296,040**

DISCUSSION

- Benefits of the LED conversion project:
  - Energy and cost savings
  - More reliable street light
  - Better night visibility and color perception

- The conversion project is anticipated to be completed by the first quarter of 2022

- This program does not impact the City’s ability to make any other infrastructure improvements with SCE, such as undergrounding utilities or adding additional light poles

FINANCIAL IMPACT

- There is no out-of-pocket cost to the City for the replacement of the street lights
- City should obtain an annual savings of approximately $2,337,060 in energy bills over the 20-year period
- Estimated $296,040 per year after the 20 years

CITY OF OXNARD CALIFORNIA

QUESTIONS

CITY OF OXNARD CALIFORNIA

PUBLIC WORKS AND TRANSPORTATION COMMITTEE AGENDA REPORT

REPORTS
AGENDA ITEM NO. D.4

DATE: July 13, 2021

TO: Public Works and Transportation Committee

FROM: Alexander Nguyen, City Manager, (805) 385-7430, alexander.nguyen@oxnard.org

SUBJECT: Preliminary American Rescue Plan Act Investment Ideas (0/15/15)

RECOMMENDATION

That the Public Works and Transportation Committee begins the discussion about American Rescue Plan Act (ARPA) preliminary investment ideas and forward discussion outcomes to the City Council for further deliberations.

Please click the following link to view the required Measure M pre-recorded presentation video: https://youtu.be/2iUpVV2J4kE

BACKGROUND

EXECUTIVE SUMMARY

Direct relief funding to local government was greatly hoped for throughout the pandemic but was never a guaranteed outcome. Hence we are very grateful to our representatives in Washington, D.C., who worked tirelessly to deliver the much-needed ARPA.

In addition to the rules that accompany ARPA discussed below, staff offers some principles to consider as we formulate how Oxnard will invest our share of ARPA funding.

First and foremost, we hope this process will be positive throughout, recognizing that every dollar here is an unexpected, additive contribution to our efforts to recover from the pandemic.

Second, keep in mind the name of the bill includes the keyword “rescue” and that the local government share is meant to help local governments. There have been and continue to be other stimulus funding made available from the federal, State, and County governments to assist many sectors of the economy and community, such as business assistance grants, rent and mortgage assistance grants, tax deferrals, student loan deferrals, utility bill assistance, direct stimulus checks, and so on.

Third, this is one-time funding.

Fourth, we can approach this by making one or two large investments that can really accelerate a particular project, such as investing $40M to construct the aquatic center, investing $33M to construct the water distribution transmission main, or, we can selectively spread the funding across a very long list of other important needs.

Fifth, we should focus on making investments in items that not only aid in our local government's recovery from the pandemic but also contribute to future improvement and growth.

BACKGROUND

On March 11, 2021, President Biden signed the ARPA into law. As part of the federal stimulus package, the City of Oxnard is expected to receive a total of $59,540,662 payable in two equal tranches, twelve months apart. The City received its first payment totaling $29,770,331 in May 2021. The second tranche is expected in May 2022.

The **Interim** Final Rule issued by the U.S. Department of the Treasury lists eligible uses of ARPA funding:

1. **Support Public Health Response:** Fund COVID-19 mitigation efforts, medical expenses, behavioral healthcare, and certain public health and safety staff;
2. **Replace Public Sector Revenue Loss:** Use funds to provide government services to the extent of the reduction in revenue experienced due to the pandemic;
3. **Water and Sewer Infrastructure:** Make necessary investments to improve access to clean drinking water and invest in wastewater and stormwater infrastructure;
4. **Address Negative Economic Impacts:** Respond to the pandemic or its negative economic impacts, including assistance to households, small businesses and nonprofits, equity-focused services, or aid to impacted industries such as tourism, travel, and hospitality;
5. **Premium Pay for Essential Workers:** Offer additional support to those who have and will bear the greatest health risks because of their service in critical infrastructure sectors; and
6. **Broadband Infrastructure:** Make necessary investments to provide unserved or underserved locations with new or expanded broadband access

<u>The U.S. Treasury is expected to issue its final ARPA rule in August 2021.</u>

Within the eligible use categories outlined in the interim ARPA provisions, local governments have the flexibility to determine how best to use payments from the federal government to meet the needs of their communities and populations.

The Interim Final Rule contains a non-exclusive list of programs or services that may be funded as responding to COVID-19 or the negative economic impacts of the COVID-19 public health emergency, along with considerations for evaluating other potential uses of ARPA not explicitly listed. The Interim Final Rule provides flexibility for recipients to use ARPA funds for programs or services that are not identified on these non-exclusive lists but meet the objectives of responding to the COVID-19 public health emergency with respect to COVID-19 or its negative economic impacts.

In other words, if the prospective program or use of funds is not explicitly mentioned in the U.S. Treasury's Rule, that does not necessarily mean that it is ineligible. **Instead, a nexus has to be made** between the program and its application on responding to the negative impacts of COVID-19, emphasizing the program aiding in support of low to moderate-income residents of the City. Unlike with the CARES Act passed last year, ARPA money comes with fewer restrictions on how governments can spend it. Local governments can use the funds to help residents and businesses directly hurt by the pandemic, invest in long-term projects, or supplement budgets hit by the decline in tax revenue amid shutdown restrictions that curtailed economic activity over the past year.

Finally, it is important to keep in mind three additional pieces of information from the Interim Final Rule. First, regarding the timeline for the use of the funding, for public infrastructure projects in water, sewer, or broadband, costs need to be incurred or encumbered by December 31, 2024, and all projects must be completed by December 31, 2026. For all other programs, ARPA funds need to be expended to cover costs incurred by the City by December 31, 2024. Second, the U.S. Treasury encourages recipients to ensure that water, sewer, and broadband projects use 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. **Third, the U.S. Treasury identified several ineligible uses of ARPA funds, including funding debt service, legal settlements or judgments, or deposits to pension funds, rainy day funds, or financial reserves.**

DISCUSSION

The needs of the community far outweigh the $59,540,662 the City will receive; however, this funding is a unique opportunity to lay the foundation for our local government's Covid recovery. The City Manager's office, in consultation with the department directors and the Oxnard Chamber of Commerce, has produced a preliminary draft list of prospective projects that meet Interim Final Rule guidelines (Attachment 3). In addition to these guidelines, the projects and programs were developed with consideration to:

1. Council Priorities
2. Alternative, past, or expected funding to address the economic impact or implement the project
3. Meeting the unique needs of our communities and population
4. If the project can be implemented in the Rule timeframe
5. Return on investment of the project
6. One time cost

Most importantly, the City Council can add, delete, or change any of these recommendations.

The attached list provides staff's preliminary recommendations for investing the funds from tranche 1 or tranche 2. The suggested tranche is based on how quickly we can deliver the program or project and the priority within the community.

The list is organized by ARPA's six broad categories; the projects and their respective total amounts follows:

Category	# of Proposed Projects	$ Amount of Proposed Projects
Support Public Health Response	10	$8,181,200
Replace Public Sector Revenue Loss	7	$7,280,000
Water and Sewer Infrastructure	13	$4,700,000
Address Negative Economic Impacts	42	$53,101,000
Premium Pay for Essential Workers*	2	$4,500,000
Broadband Infrastructure	5	$11,057,000
	Total Proposed:	**$88,819,200**
	Total ARPA funds available:	**$59,540,662**
	Variance:	**($29,278,538)**

* Includes the gratitude program for grocery store workers that City Council previously approved on June 1, 2021, Resolution No. 15,443

Among the highlighted priority projects for the City Council to consider, in addition to the gratitude program for grocery store workers that City Council previously approved in June, is the possibility of providing premium pay for City employees working on the front-line during the pandemic ($2,000,000).

Attachment 2 provides additional projects that were considered but not recommended (Appendix). The list of Appendix projects totals approximately $169 million and includes projects that address the negative economic impacts of the pandemic and projects for water and sewer infrastructure, which have their own sources of funding.

NEXT STEPS

After the City Council Committees holds the initial discussions on July 13, staff will collect the outcomes of each Committee discussion and present the City Council with the updated ARPA list on July 29th for Council deliberation. As the U.S. Treasury is expected to issue its final ARPA rule in August 2021, staff will return to the City Council with any required changes or modifications to the preliminary project list for final consideration in the fall:

July 29, 2021 - City Council Meeting, discuss preliminary investment ideas.
August 2021 - Expected release of the U.S. Treasury's *final* final rules.
Fall 2021 - City Council begins making investment decisions.

STRATEGIC PRIORITIES

This agenda item supports the Quality of Life strategy. The purpose of the Quality of Life strategy is to restore and increase quality services and programs that enrich Oxnard's diverse community, promotes safe neighborhoods, encourages community engagement, and supports our residents in their efforts to improve their quality of life.

This agenda item supports the Organizational Effectiveness strategy. The purpose of the Organizational Effectiveness strategy is to reinforce, stabilize, improve, and strengthen the organizational foundation of the City in order to build a modern, high-functioning City government that effectively and efficiently supports the operating departments in providing high-quality services and programs for our residents and businesses.

This agenda item supports the Economic Development strategy. The purpose of the Economic Development strategy is to focus on the retention and expansion of Oxnard businesses by increasing the skills and employability of our local workforce, invite new business investments, and target site-based redevelopment opportunities.

This agenda item supports the Infrastructure and Natural Resources strategy. The purpose of the Infrastructure and Natural Resources strategy is to preserve and improve our roads, utilities, parks, trees, water supply and natural resources through effective planning, prioritization, and an equitable and efficient use of available funding.

This agenda item supports Public Safety strategy. The purpose of the Public Safety strategy is to restore and modernize the delivery of public safety services to provide for the safety of our neighborhoods and health of our community.

FINANCIAL IMPACT

There is no financial impact in receiving this report.

Prepared by: Alexander Nguyen, City Manager, Ashley Golden, Assistant City Manager, Adam Smith, Project Manager

ATTACHMENTS

1. Preliminary ARPA Investment List
2. Preliminary ARPA Investment List APPENDIX
3. ARPA Interim Final Rule
4. ARPA Quick Reference Guide

July 6, 2021

DRAFT Preliminary American Rescue Plan Act (ARPA) Investment Ideas
$59,540,662 Total
Tranche 1 = $29,770,331 - Tranche 2 = $29,770,331

- Tranche 1 was received May 2021. Tranche 2 expected in May 2022
- Non-infrastructure projects and programs are required to be completed by December 31, 2024
- Funds for Infrastructure projects are required to be encumbered by December 31, 2024, and projects completed by December 31, 2026

Item No.	Investment Idea	ARPA Category	ARPA Sub-Category, Federal Register page	Estimated Cost	Council Priority	Tranche 1 or 2	Alternative Funding & Application Sources
1	Gratitude program for grocery store workers *City Council approved June 1, 2021, Resolution No. 15,443	Premium Pay for Essential Workers	Premium Pay, pg 26797	$2,500,000	Y	1	
2	Premium pay for City employees working on the front-line during the pandemic	Premium Pay for Essential Workers	Premium Pay, pg 26797	$2,000,000	Y	1	
3	Refreshing school crosswalks and Safe Routes planning	Address Negative Economic Impacts	Promoting Healthy Childhood Environments, pg 26796	$600,000	Y	1	Active Transportation Program (ATP) Grant; Congestion Mitigation Air Quality (CMAQ) Grant
4	Oxnard festivals - "Comeback Year" grants	Address Negative Economic Impacts	Aid to Impacted Industries: Tourism, pg 26795	$200,000	N	1	
5	Community Assessment to determine transitions to adulthood among Oxnard Youth Post Covid-19	Address Negative Economic Impacts	Aid to Impacted Industries: Tourism, pg 26795	$300,000	N	1	
6	Community Assessment report on Oxnard's business attractions assets and gap analysis	Address Negative Economic Impacts	Small Business and Nonprofits, pg 26794	$100,000	Y	1	
7	Permanent Outdoor Patio Program Fund: provide grants for restaurants to create permanent attractive and safe outdoor dining spaces.	Address Negative Economic Impacts	Small Businesses & Nonprofits, pg 26794	$1,000,000	Y	1	Ventura County Business Assistance Grant Program; Economic Development Collaborative Grant and Loan Program
8	Homeless: Acquisition of land and permitting of a Homeless Solutions Center in South Oxnard	Address Negative Economic Impacts	Services to Address Homelessness, pg 26796	$3,000,000	Y	1	Homekey Family Housing Program *pending final State of California FY22 budget adoption
9	Homeless/Housing: Temporary staffing (over 2 years) to support the administration of Mainstream and Emergency Housing Vouchers	Address Negative Economic Impacts	Assistance to Households, pg 26794	$400,000	Y	1	
10	Relocate COVID-19 shelter from PAL to the Armory and costs to repair and clean PAL	Address Negative Economic Impacts	Assistance to Households, pg 26794	$15,000	Y	1	CDBG
11	Oxnard Employee Pipeline and Homeless Vocational programs	Address Negative Economic Impacts	Assistance to Unemployed Workers, Households, pg 26794; Services to address homelessness pg 26796	$200,000	Y	1	Expanded funding to the California Workforce Development Board *pending final State of California FY22 budget adoption
12	Revitalize Corridors: site-based development in downtown and Hueneme corridor, including land acquisition and plan development	Address Negative Economic Impacts	Building Stronger Communities through Investments in Housing & Neighborhoods, pg 26795	$3,000,000	Y	1	
13	Saviers Rd Corridor: conceptual plan for widening sidewalks, landscape, lighting, teaching of periodic urban studies class at Hueneme High on the revitalization of Saviers Rd, and fund New City America contract	Address Negative Economic Impacts	Small Businesses & Nonprofits, pg 26794	$140,000	Y	2	
14	Saviers Rd Corridor: acquisition of trash receptacles, marketing campaign	Address Negative Economic Impacts	Small Businesses & Nonprofits, pg 26794	$55,000	Y	2	
15	Oxnard Tennis Center: replace the foundation and resurface the tennis courts	Address Negative Economic Impacts	Promoting Healthy Childhood Environments, pg 26796	$500,000	Y	2	
16	Colonia Park: repair and resurface pool, renovation of locker rooms, construction of new public restrooms, basketball court resurfacing	Address Negative Economic Impacts	Promoting Healthy Childhood Environments, pg 26796	$1,200,000	Y	2	CDBG
17	Johnson Creek Park: renovation of snack bar, restrooms, and baseball fields	Address Negative Economic Impacts	Promoting Healthy Childhood Environments, pg 26796	$600,000	Y	2	CDBG
18	Durley Park (Parks Master Plan): repair baseball fields	Address Negative Economic Impacts	Promoting Healthy Childhood Environments, pg 26796	$75,000	Y	1	CDBG/Prop 68 park grants
19	River Ridge Playing Fields: parking improvements & permanent power	Address Negative Economic Impacts	Aid to Impacted Industries: Tourism, pg 26795	$325,000	N	1	
20	River Ridge Playing Fields: permanent bleachers & stage area; 50% of $200,000 total cost	Address Negative Economic Impacts	Aid to Impacted Industries: Tourism, pg 26795	$100,000	N	2	Pending public/private partnership with golf course for equal investment

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Item No.	Investment Idea	ARPA Category	ARPA Sub-Category, Federal Register page	Estimated Cost	Council Priority	Tranche 1 or 2	Alternative Funding & Application Sources
21	River Ridge Playing Fields: new grass / level playing fields, new irrigation; 50% of $1,000,000 total cost	Address Negative Economic Impacts	Aid to Impacted Industries: Tourism, pg 26795	$500,000	N	2	Pending public/private partnership with golf course for equal investment
22	River Ridge Golf Course: Event space for golf course to expand wedding business	Address Negative Economic Impacts	Aid to Impacted Industries: Tourism, pg 26795	$600,000	N	1	
23	PAL improvements: Bathrooms, lockers, showers	Address Negative Economic Impacts	Promoting Healthy Childhood Environments, pg 26796	$2,500,000	Y	2	
24	PAL CIP: Complete phase II of north wing. Begin phase I of south wing (demo, new roof, and new windows)	Address Negative Economic Impacts	Promoting Healthy Childhood Environments, pg 26796	$2,000,000	Y	2	
25	PACC - seismic study	Address Negative Economic Impacts	Aid to Impacted Industries: Tourism, pg 26795	$125,000	Y	1	
26	PACC - upgraded marquee with new digital sign	Address Negative Economic Impacts	Aid to Impacted Industries: Tourism, pg 26795	$85,000	N	1	
27	PACC CIP - remove and replace roofing material and metal flashing on the Ventura and Oxnard room roofs	Address Negative Economic Impacts	Aid to Impacted Industries: Tourism, pg 26795	$545,000	N	2	Measure O / HERO Bond proceeds
28	College Park: soccer fields, multi-purpose fields, pelota mixteca, inclusive playgrounds, walking trails	Address Negative Economic Impacts	Promoting Healthy Childhood Environments, pg 26796	$18,000,000	Y	2	CDBG
29	Oxnard Beach Park: repair basketball courts, rehabilitation and ADA improvements of playground equipment	Address Negative Economic Impacts	Aid to Impacted Industries: Tourism, pg 26795	$700,000	Y	2	Explore the Coast Overnight grant (SCC Prop 68)
30	Sports Park: Baseball and softball complex, lawns spaces w/ walking trails, inclusive playgrounds	Address Negative Economic Impacts	Aid to Impacted Industries: Tourism, pg 26795	$6,500,000	Y	2	
31	Olympic Skatepark in Colonia	Address Negative Economic Impacts	Aid to Impacted Industries: Tourism, pg 26795	$3,000,000	N	2	Prop 68
32	Youth Facilities (PAL): sports equipment, youth center supplies, vehicle	Address Negative Economic Impacts	Promoting Healthy Childhood Environments, pg 26796	$130,000	Y	1	CDBG
33	Youth Centers (Colonia Park, Durley Park, Southwinds Park, S. Oxnard Center): Sports equipment, youth center supplies, furniture, computer centers	Address Negative Economic Impacts	Promoting Healthy Childhood Environments, pg 26796	$190,000	Y	1	CDBG
34	Wilson Arts Building: reconstruct the ADA ramp at Wilson Art Building to serve youth classes and the Special Populations program	Address Negative Economic Impacts	Promoting Healthy Childhood Environments, pg 26796	$20,000	Y	1	
35	Bike / Pedestrian project: Wooley Rd Protected Bike Lanes	Address Negative Economic Impacts	Promoting Healthy Childhood Environments, pg 26796	$1,500,000	N	2	
36	Main and S. Oxnard branch libraries technology purchases, laptops, security systems, and upgrades; conversion of computer labs with up to 100 Chromebooks for City's three libraries (includes Colonia)	Address Negative Economic Impacts	Promoting Healthy Childhood Environments, pg 26796	$830,000	Y	1	Michael & Susan Dell Foundation grant
37	Oxnard Senior Centers (Wilson, South Oxnard, and Colonia): replacement of furniture in the social spaces	Address Negative Economic Impacts	Assistance to Households, pg 26794	$100,000	Y	1	CDBG
38	Oxnard Arts Academy: portable classrooms, instruments, tablets, music stands, chairs, tables	Address Negative Economic Impacts	Addressing Education Disparities, pg 26796	$450,000	Y	2	Youth Arts Action, Artists in Schools, California Arts Council grant programs *pending final State of California FY22 budget adoption
39	Downtown: 50 trash receptacles, acquisition of water trailer for DOIA, marketing funds, acquisition of movable/lockable tables and chairs, public art, removable bollards, & reader boards.	Address Negative Economic Impacts	Small Businesses & Nonprofits, pg 26794	$775,000	Y	1	Downtown Improvement Settlement Fund
40	Downtown: implement outdoor venues on City owned properties (A St and 5th St)	Address Negative Economic Impacts	Small Businesses & Nonprofits, pg 26794	$250,000	Y	1	Downtown Improvement Settlement Fund
41	Heritage Square building & site enhancements, repairs, and event support	Address Negative Economic Impacts	Aid to Impacted Industries: Tourism, pg 26795	$1,000,000	N	1	Downtown Improvement Settlement Fund
42	Saviers Rd Corridor: acquisition of trash receptacles, marketing campaign	Address Negative Economic Impacts	Small Businesses & Nonprofits, pg 26794	$55,000	Y	2	

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Item No.	Investment Idea	ARPA Category	ARPA Sub-Category, Federal Register page	Estimated Cost	Council Priority	Tranche 1 or 2	Alternative Funding & Application Sources
43	City-wide wayfinding program	Address Negative Economic Impacts	Aid to Impacted Industries: Hotels and Tourism, pg 26795	$1,000,000	N	1	
44	Visit Oxnard: Branding & publications, destination management, digital advertising	Address Negative Economic Impacts	Aid to Impacted Industries: Hotels and Tourism, pg 26795	$436,000	N	1	
45	Other	Address Negative Economic Impacts	Other				
46	Last-mile fiber builds at 512 FCC-designated unserved addresses throughout City to provide the infrastructure required to deliver high speed Internet; requires middle-mile fiber build-out to the unserved addresses	Broadband Infrastructure	Broadband Infrastructure, pg 26804	$5,120,000	N	2	
47	Youth Recreation Centers: Installation of Fiber Lines for South Oxnard Center, Southwinds Center, Colonia Center, Durley Park Center	Broadband Infrastructure	Promoting Healthy Childhood Environments, pg 26796; Broadband Infrastructure, pg 26804	$675,000	N	1	CDBG
48	Libraries (Main, S. Oxnard, and Colonia branch): upgrade of Wifi systems with Bluesocket Access Points with omnidirectional antennas	Broadband Infrastructure	Broadband Infrastructure, pg 26804	$17,000	N	1	FCC Emergency Connectivity Fund
49	Fiber Master Plan Fiber Network Hardware: Electronics required to open Oxnard's fiber network to broadband public-private partnerships	Broadband Infrastructure	Broadband Infrastructure, pg 26804	$245,000	N	2	
50	Placeholder project	Broadband Infrastructure	Broadband Infrastructure, pg 26804	$5,000,000	N	2	
51	Other	Broadband Infrastructure	Other				
52	Other	Premium Pay for Essential Workers	Other				
53	City Corps: vehicles (box truck, truck, and van) to support townkeeping and special events	Replace Public Sector Revenue Loss	Government Services, pg 26801	$200,000			
54	City-wide ADA tree and sidewalk improvements	Replace Public Sector Revenue Loss	Government Services pg 26801	$1,000,000	Y	2	
55	Fire station architectural design for Oxnard Fire Stations 2, 3, 5	Replace Public Sector Revenue Loss	Government Services, pg 26801	$1,000,000	Y	1	
56	Fire Department Vehicle for 2-person paramedic squad	Replace Public Sector Revenue Loss	Government Services, pg 26801	$80,000			
57	Intelligent Transportation Systems (ITS) Traffic Signal Retiming Safety Project – Phase 1	Replace Public Sector Revenue Loss	Government Services, pg 26801	$750,000	Y	2	Highway Safety Improvement Program (HSIP), Active Transportation Program (ATP), SB1
58	Police Department radio communications: upgrade City-wide radio infrastructure to a P25 system	Replace Public Sector Revenue Loss	Government Services, pg 26801	$4,000,000	Y	2	
59	Howell Rd lighting and safety improvements	Replace Public Sector Revenue Loss	Government Services, pg 26801	$250,000	Y	2	
60	Other	Replace Public Sector Revenue Loss	Other				
61	305 W 3rd St - West Wing repair and asbestos abatement, capital investment to meet pandemic operational needs	Support Public Health Response	COVID-19 Mitigation & Prevention, pg 26790	$3,000,000	N	2	
62	Contactless payment kiosk for utility payments, installed at the South Oxnard Center	Support Public Health Response	COVID-19 Mitigation & Prevention, pg 26790	$80,000	N	1	Utility Funds
63	Fire Department Supplied Air Respirators replacement and multi-band radios	Support Public Health Response	COVID-19 Mitigation & Prevention, pg 26790	$2,200,000	Y	1	
64	Police Department Covid Response: Polaris ATV for PD beach patrols, equipment decontamination software, additional car wash cleaning, social distancing COVID compliance materials	Support Public Health Response	COVID-19 Mitigation & Prevention, pg 26790	$40,000	Y	1	
65	Code Compliance: Tablet purchases for field reporting, access to information, inspections, and video	Support Public Health Response	COVID-19 Response & Prevention, pg 26821	$12,600	Y	1	
66	PPE Purchase - 1 year supply for City employees	Support Public Health Response	COVID-19 Response & Prevention, pg 26821	$85,000	Y	1	CDBG

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67	Zoom license bundles - 1 year	Support Public Health Response	COVID-19 Response & Prevention, pg 26821	$6,600	N	1	
68	Senior Nutrition Program: commercial freezers, cookware, thermal insulated bags, industrial pressure cookers, vehicle	Support Public Health Response	COVID-19 Response & Prevention, pg 26821	$350,000	Y	1	Older Americans Act Funding
69	Fire Catch-up Academy: cost of six recruits	Support Public Health Response	Public Health & Safety Staff, pg 26791	$580,000	Y	1	
70	Public Safety Payroll Costs	Support Public Health Response	Public Health & Safety Staff pg 26791	$1,827,000	Y	2	
71	Other	Support Public Health Response	Other				
72	Stormwater Catch Basins Full Capture Devices Installation for Edison Canal and Channel Islands Harbor	Water & Sewer Infrastructure	Stormwater, pg 26802	$400,000	N	2	
73	Harbor Area Water Quality Feasibility Study	Water & Sewer Infrastructure	Stormwater, pg 26802	$300,000	N	2	Ocean Protection Council Prop 1 Grant
74	Harbor Water Quality Mitigation Fund	Water & Sewer Infrastructure	Stormwater, pg 26802	$1,000,000	N	2	Ocean Protection Council Prop 1 Grant; *Contaminated Site Cleanup Program *pending final State of California FY22 budget adoption
75	Electrical Plant Water Quality Capture Project	Water & Sewer Infrastructure	Stormwater, pg 26802	$400,000	N	2	
76	AWPF-Oxnard Regional Stormwater Capture Project Wetland Storage & Sewer Diversion Pilot	Water & Sewer Infrastructure	Stormwater, pg 26802	$1,000,000	Y	2	
77	Phase 1 Design: East Village/Del Sol Park diversion and infiltration-Oxnard Regional Stormwater Capture Project	Water & Sewer Infrastructure	Stormwater, pg 26802	$100,000	Y	2	Prop 1 Round 2
78	Phase 1 Design: Ventura Road and 2nd St. diversion and infiltration-Oxnard Regional Stormwater Capture Project	Water & Sewer Infrastructure	Stormwater, pg 26802	$100,000	Y	2	Prop 1 Round 2
79	Phase 1 Design: College Park-Oxnard Regional Stormwater Capture Project	Water & Sewer Infrastructure	Stormwater, pg 26802	$100,000	Y	2	
80	Phase 1 Design: Driffill Elementary School-Oxnard Regional Stormwater Capture Project	Water & Sewer Infrastructure	Stormwater, pg 26802	$100,000	Y	2	
81	Phase 1 Design: Frank Intermediate School-Oxnard Regional Stormwater Capture Project	Water & Sewer Infrastructure	Stormwater, pg 26802	$100,000	Y	2	
82	Phase 1 Design: Riverpark basin - recycled water storage project	Water & Sewer Infrastructure	Water & Sewer Infrastructure pg 26802	$100,000	N	2	Recycled Water Fund
83	Stormwater Conveyance Improvements along Oxnard Boulevard	Water & Sewer Infrastructure	Stormwater, pg 26802	$400,000	N	2	
84	Stormdrain: Diamond Bar	Water & Sewer Infrastructure	Stormwater, pg 26802	$600,000	N	2	
85	Other	Water & Sewer Infrastructure	Other				

SUBTOTAL:	$86,319,200
GRATITUDE PROGRAM:	$2,500,000
GRAND TOTAL:	$88,819,200
ARPA FUNDS:	$59,540,662
VARIANCE:	$29,278,538

TRANCHE 1 TOTAL:	$24,302,200
TRANCHE 2 TOTAL:	$64,517,000
TRANCHE 1 VARIANCE:	$5,468,131
TRANCHE 2 VARIANCE:	($34,746,669)

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DRAFT Preliminary American Rescue Plan Act (ARPA) Investment Ideas - APPENDIX

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Item No.	Investment Idea	ARPA Category	ARPA Sub-Category, Federal Register page	Estimated Cost	Council Priority	Alternative Funding & Application Sources
1	PACC - auditorium improvements, connection between park and outside amphitheater, repave parking lots, landscape improvements, external paint	Address Negative Economic Impacts	Aid to Impacted Industries: Tourism, pg 26795	$2,500,000	N	
2	Embassy Suites/Beach Improvements: public/private partnership, parking meters and parking lot improvements	Address Negative Economic Impacts	Aid to Impacted Industries: Tourism, pg 26795	$250,000	N	
3	Forgive delinquent utility debt	Address Negative Economic Impacts	Assistance to Households, pg 26794	$4,200,000	N	CA COVID-19 Rent Relief Program
4	Increase funding to Utility Rate Assistance Program	Address Negative Economic Impacts	Assistance to Households, pg 26794	$150,000	N	CA COVID-19 Rent Relief Program
5	River Ridge Golf Course: Lights for driving range	Address Negative Economic Impacts	Aid to Impacted Industries: Tourism, pg 26795	$950,000	N	
6	River Ridge Golf Course: Clubhouse improvements/modernization: • Restaurant • Retail area • Banquet Room	Address Negative Economic Impacts	Aid to Impacted Industries: Tourism, pg 26795	$1,000,000	N	
7	River Ridge Golf Course: Repave parking lot & add additional parking (remove turf area)	Address Negative Economic Impacts	Aid to Impacted Industries: Tourism, pg 26795	$1,900,000	N	
8	Water/Wastewater SCADA Fiber Network: buildout of "SCADA Phase III" ITS network as designed in 2017, connecting Waste Water lift stations and Water blending stations to respective head ends. Enables cameras and other security systems, plus a more reliable and secure SCADA system.	Broadband Infrastructure / Water, Sewer, Stormwater Infrastructure	Broadband Infrastructure, pg 26804; Water & Sewer Infrastructure pg 26802	$2,400,000	N	Water/Wastewater Operating Funds
9	NIH wastewater and data analysis	Support Public Health Response	COVID-19 Mitigation & Prevention, pg 26790	$1,500,000	N	
10	Recycled Water: AWPF Total Organic Carbon (TOC) Analyzer	Water & Sewer Infrastructure	Water & Sewer Infrastructure pg 26802	$400,000	Y	
11	Wastewater Collection: Central Trunk Sewer Manhole Replacement - Phase I	Water & Sewer Infrastructure	Water & Sewer Infrastructure pg 26802	$2,600,000	N	Wastewater Collection Operating Fund
12	Wastewater Collection: UPRR Central Trunk Sewer Pipe Replacement	Water & Sewer Infrastructure	Water and Sewer Infrastructure pg 26802	$2,945,000	N	Wastewater Collection Operating Fund
13	Wastewater OWTP: Electrical Improvements	Water & Sewer Infrastructure	Water & Sewer Infrastructure pg 26802	$15,341,000	N	Wastewater Treatment Operating Fund
14	Wastewater OWTP: Electrical Vault & Conduit Rehabilitation	Water & Sewer Infrastructure	Water & Sewer Infrastructure pg 26802	$2,175,000	N	Wastewater Treatment Operating Fund
15	Wastewater Collection: Sewer Manhole Rehabilitation and Replacement	Water & Sewer Infrastructure	Water & Sewer Infrastructure pg 26802	$810,000	N	Wastewater Collection Operating Fund
16	Wastewater Collection: Lift Station No. 20 Improvements	Water & Sewer Infrastructure	Water & Sewer Infrastructure pg 26802	$400,000	N	Wastewater Collection Operating Fund
17	Wastewater Collection: Lift Station No. 4 Improvements	Water & Sewer Infrastructure	Water & Sewer Infrastructure pg 26802	$1,525,000	N	Wastewater Collection Operating Fund
18	Wastewater Collection: Lift Station No. 6 (Wooley & Canal) Improvements	Water & Sewer Infrastructure	Water & Sewer Infrastructure pg 26802	$1,250,000	N	Wastewater Collection Operating Fund
19	Wastewater OWTP: Motor Control Center (MCC) Construction	Water & Sewer Infrastructure	Water & Sewer Infrastructure pg 26802	$5,350,000	N	Wastewater Treatment Operating Fund
20	Wastewater OWTP: New Maintenance Storage Building	Water & Sewer Infrastructure	Water & Sewer Infrastructure pg 26802	$4,550,000	N	Wastewater Treatment Operating Fund
21	Wastewater OWTP: Primary Clarifiers and Activated Sludge Improvements	Water & Sewer Infrastructure	Water & Sewer Infrastructure pg 26802	$5,225,000	N	Wastewater Treatment Operating Fund

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Item No.	Investment Idea	ARPA Category	ARPA Sub-Category, Federal Register page	Estimated Cost	Council Priority	Alternative Funding & Application Sources
22	Wastewater OWTP: Reliability Improvements	Water & Sewer Infrastructure	Water & Sewer Infrastructure pg 26802	$14,000,000	N	Wastewater Treatment Operating Fund
23	Wastewater Collection: Rice Avenue Sewer Pipeline Improvements	Water & Sewer Infrastructure	Water & Sewer Infrastructure pg 26802	$1,330,000	N	Wastewater Collection Operating Fund
24	Wastewater Collection: Odor Reduction Program	Water & Sewer Infrastructure	Water & Sewer Infrastructure pg 26802	$3,200,000	N	Wastewater Collection Operating Fund
25	Wastewater OWTP: Site Security Improvements	Water & Sewer Infrastructure	Water & Sewer Infrastructure pg 26802	$850,000	N	Wastewater Treatment Operating Fund
26	Wastewater Collection: Third & Navarro Streets Sewer Pipeline Improvements	Water & Sewer Infrastructure	Water & Sewer Infrastructure pg 26802	$364,869	N	Wastewater Collection Operating Fund
27	Wastewater Collection: Ventura Road Sewer Pipeline Improvements	Water & Sewer Infrastructure	Water & Sewer Infrastructure pg 26802	$1,755,197	N	Wastewater Collection Operating Fund
28	Wastewater OWTP: System SCADA Improvements	Water & Sewer Infrastructure	Water & Sewer Infrastructure pg 26802	$4,500,000	N	Wastewater Treatment Operating Fund
29	Wastewater OWTP: Effluent Pump Station Improvements	Water & Sewer Infrastructure	Water & Sewer Infrastructure pg 26802	$2,200,000	N	Wastewater Treatment Operating Fund
30	Water Distribution: CMWD Transmission Main	Water & Sewer Infrastructure	Water & Sewer Infrastructure pg 26802	$33,000,000	Y	FEMA Hazard Mitigation Grant Program/ FEMA BRIC grant program; Water Operating Fund
31	Water Distribution: Cast Iron Pipe Replacements FY 21-22	Water & Sewer Infrastructure	Water & Sewer Infrastructure pg 26802	$14,300,000	Y	Water Operating Fund
32	Water Distribution: Automated Metering Infrastructure (AMI)	Water & Sewer Infrastructure	Water & Sewer Infrastructure pg 26802	$30,000,000	Y	Water Operating Fund
33	Water Production: Well Construction/BS Upgrades	Water & Sewer Infrastructure	Water & Sewer Infrastructure pg 26802	$6,000,000	Y	Water Operating Fund
			TOTAL $:	$168.921.066		

DEPARTMENT OF THE TREASURY

31 CFR Part 35

RIN 1505–AC77

Coronavirus State and Local Fiscal Recovery Funds

AGENCY: Department of the Treasury.

ACTION: Interim final rule.

SUMMARY: The Secretary of the Treasury (Treasury) is issuing this interim final rule to implement 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 interim final rule are effective May 17, 2021.

Comment date: Comments must be received on or before July 16, 2021. ADDRESSES: Please submit comments electronically through the Federal eRulemaking Portal: *http://www.regulations.gov.* Comments can be mailed to the Office of the Undersecretary for Domestic Finance, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220. Because postal mail may be subject to processing delay, it is recommended that comments be submitted electronically. All comments should be captions with ''Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule Comments.'' Please include your name, organization affiliation, address, email address and telephone number in your comment. Where appropriate, a comment should include a short executive summary.

In general, comments received will be posted on *http://www.regulations.gov* without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Katharine Richards, Senior Advisor, Office of Recovery Programs, Department of the Treasury, (844) 529–9527.

SUPPLEMENTARY INFORMATION:

I. Background Information

A. Overview

Since the first case of coronavirus disease 2019 (COVID–19) was discovered in the United States in January 2020, the disease has infected over 32 million and killed over 575,000 Americans.[1] The disease has impacted every part of life: As social distancing became a necessity, businesses closed, schools transitioned to remote education, travel was sharply reduced, and millions of Americans lost their jobs. In April 2020, the national unemployment rate reached its highest level in over seventy years following the most severe month-over-month decline in employment on record.[2] As of April 2021, there were still 8.2 million fewer jobs than before the pandemic.[3] During this time, a significant share of households have faced food and housing insecurity.[4] Economic disruptions impaired the flow of credit to households, State and local governments, and businesses of all sizes.[5] As businesses weathered closures and sharp declines in revenue, many were forced to shut down, especially small businesses.[6]

Amid this once-in-a-century crisis, State, territorial, Tribal, and local governments (State, local, and Tribal governments) have been called on to respond at an immense scale. Governments have faced myriad needs to prevent and address the spread of COVID–19, including testing, contact tracing, isolation and quarantine, public communications, issuance and enforcement of health orders, expansions to health system capacity like alternative care facilities, and in recent months, a massive nationwide mobilization around vaccinations. Governments also have supported major efforts to prevent COVID–19 spread through safety measures in settings like nursing homes, schools, congregate living settings, dense worksites, incarceration settings, and public facilities. The pandemic's impacts on behavioral health, including the toll of pandemic-related stress, have increased the need for behavioral health resources.

At the same time, State, local and Tribal governments launched major efforts to address the economic impacts of the pandemic. These efforts have been tailored to the needs of their communities and have included expanded assistance to unemployed workers; food assistance; rent, mortgage, and utility support; cash assistance; internet access programs; expanded services to support individuals experiencing homelessness; support for individuals with disabilities and older adults; and assistance to small businesses facing closures or revenue loss or implementing new safety measures.

In responding to the public health emergency and its negative economic impacts, State, local, and Tribal governments have seen substantial increases in costs to provide these services, often amid substantial declines in revenue due to the economic downturn and changing economic patterns during the pandemic.[7] Facing these budget challenges, many State, local, and Tribal governments have been forced to make cuts to services or their workforces, or delay critical investments. From February to May of 2020, State, local, and Tribal governments reduced their workforces by more than 1.5 million jobs and, in April of 2021, State, local, and Tribal government employment remained nearly 1.3 million jobs below pre-pandemic levels.[8] These cuts to State, local, and Tribal government workforces

[1] Centers for Disease Control and Prevention, COVID Data Tracker, *http://www.covid.cdc.gov/covid-data-tracker/#datatracker-home* (last visited May 8, 2021).

[2] U.S. Bureau of Labor Statistics, Unemployment Rate [UNRATE], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/UNRATE,* May 3, 2021. U.S. Bureau of Labor Statistics, Employment Level [LNU02000000], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/LNU02000000,* May 3, 2021.

[3] 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,* May 7, 2021.

[4] Nirmita Panchal et al., The Implications of COVID–19 for Mental Health and Substance Abuse (Feb. 10, 2021), https://www.kff.org/coronavirus-covid-19/issue-brief/the-implications-of-covid-19-for-mental-health-and-substance-use/#:~:text=Older%20adults%20are%20also%20more,prior%20to%20the%20current%20crisis; U.S. Census Bureau, Household Pulse Survey: Measuring Social and Economic Impacts during the Coronavirus Pandemic, https://www.census.gov/programs-surveys/household-pulse-survey.html (last visited Apr. 26, 2021); 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.*

[5] Board of Governors of the Federal Reserve System, Monetary Policy Report (June 12, 2020), *https://www.federalreserve.gov/monetarypolicy/2020-06-mpr-summary.htm.*

[6] Joseph R. Biden, Remarks by President Biden on Helping Small Businesses (Feb. 22, 2021), *https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/02/22/remarks-by-president-biden-on-helping-small-businesses/.*

[7] Michael Leachman, House Budget Bill Provides Needed Fiscal Aid for States, Localities, Tribal Nations, and Territories (Feb. 10, 2021), *https://www.cbpp.org/research/state-budget-and-tax/house-budget-bill-provides-needed-fiscal-aid-for-states-localities.*

[8] 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 May 8, 2021).

come at a time when demand for government services is high, with State, local, and Tribal governments on the frontlines of fighting the pandemic. Furthermore, State, local, and Tribal government austerity measures can hamper overall economic growth, as occurred in the recovery from the Great Recession.[9]

Finally, although the pandemic's impacts have been widespread, both the public health and economic impacts of the pandemic have fallen most severely on communities and populations disadvantaged before it began. Low-income communities, people of color, and Tribal communities have faced higher rates of infection, hospitalization, and death,[10] as well as higher rates of unemployment and lack of basic necessities like food and housing.[11] Pre-existing social vulnerabilities magnified the pandemic in these communities, where a reduced ability to work from home and, frequently, denser housing amplified the risk of infection. Higher rates of pre-existing health conditions also may have contributed to more severe COVID–19 health outcomes.[12] Similarly, communities or households facing economic insecurity before the pandemic were less able to weather business closures, job losses, or declines in earnings and were less able to participate in remote work or education due to the inequities in access to reliable and affordable broadband infrastructure.[13] Finally, though schools in all areas faced challenges, those in high poverty areas had fewer resources to adapt to remote and hybrid learning models.[14] Unfortunately, the pandemic also has reversed many gains made by communities of color in the prior economic expansion.[15]

B. The Statute and Interim Final Rule

On March 11, 2021, the American Rescue Plan Act (ARPA) was signed into law by the President.[16] Section 9901 of ARPA amended Title VI of the Social Security Act[17] (the Act) to add section 602, which establishes the Coronavirus State Fiscal Recovery Fund, and section 603, which establishes the Coronavirus Local Fiscal Recovery Fund (together, the Fiscal Recovery Funds).[18] The Fiscal Recovery Funds are intended to provide support to State, local, and Tribal governments (together, recipients) in responding to the impact of COVID–19 and in their efforts to contain COVID–19 on their communities, residents, and businesses. The Fiscal Recovery Funds build on and expand the support provided to these governments over the last year, including through the Coronavirus Relief Fund (CRF).[19]

Through the Fiscal Recovery Funds, Congress provided State, local, and Tribal governments with significant resources to respond to the COVID–19 public health emergency and its economic impacts through four categories of eligible uses. Section 602 and section 603 contain the same 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. Sections 602(c)(1) and 603(c)(1) provide that funds may be used:

(a) To respond to the public health emergency or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;

(b) To respond to workers performing essential work during the COVID–19 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 clarified two types of uses which do not fall within these four categories. Sections 602(c)(2)(B) and 603(c)(2) provide that these eligible uses do not include, and thus funds may not be used for, depositing funds into any pension fund. Section 602(c)(2)(A) also provides, for States and territories, that the eligible uses do not include ''directly or indirectly offset[ting] a reduction in the net tax revenue of [the] State or territory resulting from a change in law, regulation, or administrative interpretation.''

The ARPA provides a substantial infusion of resources to meet pandemic response needs and rebuild a stronger, more equitable economy as the country recovers. First, payments from the Fiscal Recovery Funds help to ensure that State, local, and Tribal governments have the resources needed to continue to take actions to decrease the spread of COVID–19 and bring the pandemic under control. Payments from the Fiscal Recovery Funds may also be used by recipients to provide support for costs incurred in addressing public health and economic challenges resulting from the pandemic, including resources to offer premium pay to essential workers, in recognition of their sacrifices over the

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[9] 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.*

[10] 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.*

[11] 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-recessions-effects-on-housing-and* (last visited May 4, 2021).

[12] Lisa R. Fortuna et al., Inequity and the Disproportionate Impact of COVID–19 on Communities of Color in the United States: The Need for Trauma-Informed Social Justice Response, Psychological Trauma Vol. 12(5):443–45 (2020), *available at https://psycnet.apa.org/fulltext/2020-37320-001.pdf.*

[13] Emily Vogles et al., 53% of Americans Say the internet Has Been Essential During the COVID–19 Outbreak (Apr. 30, 2020), *https://www.pewresearch.org/internet/2020/04/30/53-of-americans-say-the-internet-has-been-essential-during-the-covid-19-outbreak/.*

[14] Emma Dorn et al., COVID–19 and student learning in the United States: The hurt could last a lifetime (June 2020), *https://webtest.childrensinstitute.net/sites/default/files/documents/COVID-19-and-student-learning-in-the-United-States_FINAL.pdf;* Andrew Bacher-Hicks et al., Inequality in Household Adaptation to Schooling Shocks: Covid-Induced Online Engagement in Real Time, J. of Public Econ. Vol. 193(C) (July 2020), *available at https://www.nber.org/papers/w27555.*

[15] *See, e.g.,* Tyler Atkinson & Alex Richter, Pandemic Disproportionately Affects Women, Minority Labor Force Participation, *https://www.dallasfed.org/research/economics/2020/1110* (last visited May 9, 2021); Jared Bernstein & Janelle Jones, The Impact of the COVID19 Recession on the Jobs and Incomes of Persons of Color, *https://www.cbpp.org/sites/default/files/atoms/files/6-2-20bud_0.pdf* (last visited May 9, 2021).

[16] American Rescue Plan Act of 2021 (ARPA), sec. 9901, Public Law 117–2, codified at 42 U.S.C. 802 *et seq.* The term ''state'' as used in this **SUPPLEMENTARY INFORMATION** and defined in section 602 of the Act means each of the 50 States and the District of Columbia. The term ''territory'' as used in this **SUPPLEMENTARY INFORMATION** and defined in section 602 of the Act means the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of Northern Mariana Islands, and American Samoa. Tribal government is defined in the Act and the interim final rule to mean ''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 most recently as of the date of enactment of the [American Rescue Plan Act] pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).'' See section 602(g)(7) of the Social Security Act, as added by the American Rescue Plan Act. On January 29, 2021, the Bureau of Indian Affairs published a current list of 574 Tribal entities. See 86 FR 7554, January 29, 2021. The term ''local governments'' as used in this **SUPPLEMENTARY INFORMATION** includes metropolitan cities, counties, and nonentitlement units of local government.

[17] 42 U.S.C. 801 *et seq.*

[18] Sections 602, 603 of the Act.

[19] The CRF was established by the section 601 of the Act as added by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116–136, 134 Stat. 281 (2020).

last year. Recipients may also use payments from the Fiscal Recovery Funds to replace State, local, and Tribal government revenue lost due to COVID–19, helping to ensure that governments can continue to provide needed services and avoid cuts or layoffs. Finally, these resources lay the foundation for a strong, equitable economic recovery, not only by providing immediate economic stabilization for households and businesses, but also by addressing the systemic public health and economic challenges that may have contributed to more severe impacts of the pandemic among low-income communities and people of color.

Within the eligible use categories outlined in the Fiscal Recovery Funds provisions of ARPA, State, local, and Tribal governments have flexibility to determine how best to use payments from the Fiscal Recovery Funds to meet the needs of their communities and populations. The interim final rule facilitates 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 uses that State, local, and Tribal governments may consider. These uses build on eligible expenditures under the CRF, including some expansions in eligible uses to respond to the public health emergency, such as vaccination campaigns. They also reflect changes in the needs of communities, as evidenced by, for example, nationwide data demonstrating disproportionate impacts of the COVID–19 public health emergency on certain populations, geographies, and economic sectors. The interim final rule takes into consideration these disproportionate impacts by recognizing a broad range of eligible uses to help States, local, and Tribal governments support the families, businesses, and communities hardest hit by the COVID–19 public health emergency.

Implementation of the Fiscal Recovery Funds also reflect the importance of public input, transparency, and accountability. Treasury seeks comment on all aspects of the interim final rule and, to better facilitate public comment, has included specific questions throughout this **SUPPLEMENTARY INFORMATION**. Treasury encourages State, local, and Tribal governments in particular to provide feedback and to engage with Treasury regarding issues that may arise regarding all aspects of this interim final rule and Treasury's work in administering the Fiscal Recovery Funds. In addition, the interim final rule establishes certain regular reporting requirements, including by requiring State, local, and Tribal governments to publish information regarding uses of Fiscal Recovery Funds payments in their local jurisdiction. These reporting requirements reflect the need for transparency and accountability, while recognizing and minimizing the burden, particularly for smaller local governments. Treasury urges State, territorial, Tribal, and local governments to engage their constituents and communities in developing plans to use these payments, given the scale of funding and its potential to catalyze broader economic recovery and rebuilding.

II. Eligible Uses

A. Public Health and Economic Impacts

Sections 602(c)(1)(A) and 603(c)(1)(A) provide significant resources for State, territorial, Tribal governments, and counties, metropolitan cities, and nonentitlement units of local governments (each referred to as a recipient) to meet the wide range of public health and economic impacts of the COVID–19 public health emergency.

These provisions authorize the use of payments from the Fiscal Recovery Funds to respond to the public health emergency with respect to COVID–19 or its negative economic impacts. Section 602 and section 603 also describe several types of uses that would be responsive to the impacts of the COVID–19 public health emergency, including assistance to households, small businesses, and nonprofits and aid to impacted industries, such as tourism, travel, and hospitality.[20]

Accordingly, to assess whether a program or service is included in this category of eligible uses, a recipient should consider whether and how the use would respond to the COVID–19 public health emergency. Assessing whether a program or service "responds to" the COVID–19 public health emergency requires the recipient 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. While the COVID–19 public health emergency affected many aspects of American life, eligible 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.

[20] Sections 602(c)(1)(A), 603(c)(1)(A) of the Act.

The interim final rule implements these provisions by identifying a non-exclusive list of programs or services that may be funded as responding to COVID–19 or the negative economic impacts of the COVID–19 public health emergency, along with considerations for evaluating other potential uses of the Fiscal Recovery Funds not explicitly listed. The interim final rule also provides flexibility for recipients to use payments from the Fiscal Recovery Funds for programs or services that are not identified on these non-exclusive lists but that fall under the terms of section 602(c)(1)(A) or 603(c)(1)(A) by responding to the COVID–19 public health emergency or its negative economic impacts. As an example, in determining whether a program or service responds to the negative economic impacts of the COVID–19 public health emergency, the interim final rule provides that payments from the Fiscal Recovery Funds should be designed to address an economic harm resulting from or exacerbated by the public health emergency. Recipients should assess the connection between the negative economic harm and the COVID–19 public health emergency, the nature and extent of that harm, and how the use of this funding would address such harm.

As discussed, the pandemic and the necessary actions taken to control the spread had a severe impact on households and small businesses, including in particular low-income workers and communities and people of color. While eligible uses under sections 602(c)(1)(A) and 603(c)(1)(A) provide flexibility to recipients to identify the most pressing local needs, Treasury encourages recipients to provide assistance to those households, businesses, and non-profits in communities most disproportionately impacted by the pandemic.

1. Responding to COVID–19

On January 21, 2020, the Centers for Disease Control and Prevention (CDC) identified the first case of novel coronavirus in the United States.[21] By late March, the virus had spread to many States and the first wave was growing rapidly, centered in the northeast.[22] This wave brought acute

[21] 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.*

[22] Anne Schuchat et al., Public Health Response to the Initiation and Spread of Pandemic COVID–19 in the United States, February 24–April 21, 2021, MMWR Morb Mortal Wkly Rep 2021, 69(18):551–56 (May 8, 2021), *https://www.cdc.gov/mmwr/volumes/69/wr/mm6918e2.htm.*

strain on health care and public health systems: Hospitals and emergency medical services struggled to manage a major influx of patients; response personnel faced shortages of personal protective equipment; testing for the virus was scarce; and congregate living facilities like nursing homes and prisons saw rapid spread. State, local, and Tribal governments mobilized to support the health care system, issue public health orders to mitigate virus spread, and communicate safety measures to the public. The United States has since faced at least two additional COVID–19 waves that brought many similar challenges: The second in the summer, centered in the south and southwest, and a wave throughout the fall and winter, in which the virus reached a point of uncontrolled spread across the country and over 3,000 people died per day.[23] By early May 2021, the United States has experienced over 32 million confirmed COVID–19 cases and over 575,000 deaths.[24]

Mitigating the impact of COVID–19, including taking actions to control its spread and support hospitals and health care workers caring for the sick, continues to require a major public health response from State, local and Tribal governments. New or heightened public health needs include COVID–19 testing, major expansions in contact tracing, support for individuals in isolation or quarantine, enforcement of public health orders, new public communication efforts, public health surveillance (*e.g.,* monitoring case trends and genomic sequencing for variants), enhancement to health care capacity through alternative care facilities, and enhancement of public health data systems to meet new demands or scaling needs. State, local, and Tribal governments have also supported major efforts to prevent COVID–19 spread through safety measures at key settings like nursing homes, schools, congregate living settings, dense worksites, incarceration settings, and in other public facilities. This has included implementing infection prevention measures or making ventilation improvements in congregate settings, health care settings, or other key locations.

Other response and adaptation costs include 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. In recent months, State, local, and Tribal governments across the country have mobilized to support the national vaccination campaign, resulting in over 250 million doses administered to date.[25]

The need for public health measures to respond to COVID–19 will continue in the months and potentially years to come. This includes the continuation of the vaccination campaign for the general public and, if vaccinations are approved for children in the future, eventually for youths. This also includes monitoring the spread of COVID–19 variants, understanding the impact of these variants (especially on vaccination efforts), developing approaches to respond to those variants, and monitoring global COVID–19 trends to understand continued risks to the United States. 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 millions of Americans who have been infected.

Other areas of public health have also been negatively impacted by the COVID–19 pandemic. For example, in one survey in January 2021, over 40 percent of American adults reported symptoms of depression or anxiety, up from 11 percent in the first half of 2019.[26]. The proportion of children's emergency department visits related to mental health has also risen noticeably.[27] Similarly, rates of substance misuse and overdose deaths have spiked: Preliminary data from the CDC show a nearly 30 percent increase in drug overdose mortality from September 2019 to September 2020.[28] Stay-at-home orders and other pandemic responses may have also reduced the ability of individuals affected by domestic violence to access services.[29] Finally, some preventative public health measures like childhood vaccinations have been deferred and potentially forgone.[30]

While the pandemic affected communities across the country, it disproportionately impacted some demographic groups and exacerbated health inequities along racial, ethnic, and socioeconomic lines.[31] 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.[32]

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 223 deaths per 100,000 compared to the U.S. average of 175 deaths per 100,000, as of May 2021.[33] 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 211 deaths per 100,000 as of May 2021.[34]

[23] 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 May 8, 2021).

[24] *Id.*

[25] 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 May 8, 2021).

[26] Panchal, *supra* note 4; 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.*

[27] Leeb, *supra* note 4.

[28] Centers for Disease Prevention and Control, National Center for Health Statistics, Provisional Drug Overdose Death Counts, *https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm* (last visited May 8, 2021).

[29] Megan L. Evans, et al., A Pandemic within a Pandemic—Intimate Partner Violence during Covid–19, N. Engl. J. Med. 383:2302–04 (Dec. 10, 2020), *available at https://www.nejm.org/doi/full/10.1056/NEJMp2024046.*

[30] Jeanne M. Santoli et al., Effects of the COVID–19 Pandemic on Routine Pediatric Vaccine Ordering and Administration—United States, Morb. Mortal. Wkly. Rep. 69(19):591–93 (May 8, 2020), *https://www.cdc.gov/mmwr/volumes/69/wr/mm6919e2.htm;* Marisa Langdon-Embry et al., Notes from the Field: Rebound in Routine Childhood Vaccine Administration Following Decline During the COVID–19 Pandemic—New York City, March 1–June 27, 2020, Morb. Mortal. Wkly. Rep. 69(30):999–1001 (Jul. 31 2020), *https://www.cdc.gov/mmwr/volumes/69/wr/mm6930a3.htm.*

[31] 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.*

[32] 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* Romano, *supra* note 10.

[33] 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 May 8, 2021).

[34] 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

Continued

Over the last year, 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.[35] Low-income and minority communities also exhibit higher rates of pre-existing conditions that may contribute to an increased risk of COVID–19 mortality.[36]

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 faced greater risk of exposure.[37] 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.[38] 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.[39]

Eligible Public Health Uses. The Fiscal Recovery Funds provide resources to meet and address these emergent public health needs, including through measures to counter the spread of COVID–19, through the provision of care for those impacted by the virus, and through programs or services that address disparities in public health that have been exacerbated by the pandemic. To facilitate implementation and use of payments from the Fiscal Recovery Funds, the interim final rule identifies a non-exclusive list of eligible uses of funding to respond to the COVID–19 public health emergency. Eligible uses listed under this section build and expand upon permissible expenditures under the CRF, while recognizing the differences between the ARPA and CARES Act, and recognizing that the response to the COVID–19 public health emergency has changed and will continue to change over time. To 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.

The interim final rule identifies a non-exclusive list of uses that address the effects of the COVID–19 public health emergency, including:

- *COVID–19 Mitigation and Prevention.* A broad range of services and programming are needed to contain COVID–19. Mitigation and prevention efforts for COVID–19 include 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;[40] ventilation improvements in congregate settings, health care settings, or other key locations; enhancement of public health data systems; and other public health responses.[41] They also include 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 COVID–19 prevention and mitigation programs and services, among others, were eligible expenditures under the CRF and are eligible uses under this category of eligible uses for the Fiscal Recovery Funds.[42]
- *Medical Expenses.* The COVID–19 public health emergency continues to have devastating effects on public health; the United States continues to average hundreds of deaths per day and the spread of new COVID–19 variants has raised new risks and genomic surveillance needs.[43] Moreover, our understanding of the potentially serious and long-term effects of the virus is growing, including the potential for symptoms like shortness of breath to continue for weeks or months, for multi-organ impacts from COVID–19, or for post-intensive care syndrome.[44] State and local governments may need to continue to provide care and services to address these near- and longer-term needs.[45]

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and Deaths in the United States, by Social Vulnerability Index, *https://covid.cdc.gov/covid-data-tracker/#pop-factors_totaldeaths* (last visited May 8, 2021).

[35] 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 Apr. 26, 2021).

[36] *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 Apr. 26, 2021).

[37] 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.*

[38] *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/.*

[39] *See, e.g.,* Centers for Disease Control and Prevention, *supra* note 34; Benfer & Wiley, *supra* note 38; 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.*

[40] This includes implementing mitigation strategies consistent with the Centers for Disease Control and Prevention's (CDC) Operational Strategy for K–12 Schools through Phased Prevention, *available at https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/operation-strategy.html.*

[41] Many of these expenses were also eligible in the CRF. 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 here (*e.g.,* telemedicine costs, costs to facilitate compliance with public health orders, disinfection of public areas, facilitating distance learning, increased solid waste disposal needs related to PPE, paid sick and paid family and medical leave to public employees to enable compliance with COVID–19 public health precautions), with the following two exceptions: (1) The standard for eligibility of public health and safety payrolls has been updated (see section II.A of this SUPPLEMENTARY INFORMATION) and (2) expenses related to the issuance of tax-anticipation notes are no longer an eligible funding use (see discussion of debt service in section II.B of this SUPPLEMENTARY INFORMATION).

[42] Coronavirus Relief Fund for States, Tribal Governments, and Certain Eligible Local Governments, 86 FR 4182 (Jan. 15, 2021), *available at https://home.treasury.gov/system/files/136/CRF-Guidance-Federal-Register_2021-00827.pdf.*

[43] Centers for Disease Control and Prevention, *supra* note 24.

[44] Centers for Disease Control and Prevention, Long-Term Effects (Apr. 8, 2021), *https://www.cdc.gov/coronavirus/2019-ncov/long-term-effects.html* (last visited Apr. 26, 2021).

[45] Pursuant to 42 CFR 433.51 and 45 CFR 75.306, Fiscal Recovery Funds may not serve as a State or locality's contribution of certain Federal funds.

• *Behavioral Health Care.* In addition, new or enhanced State, local, and Tribal government services may be needed to meet behavioral health needs exacerbated by the pandemic and respond to other public health impacts. These services include mental health treatment, substance misuse treatment, other behavioral health services, 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.

• *Public Health and Safety Staff.* Treasury recognizes that responding to the public health and negative economic impacts of the pandemic, including administering the services described above, requires a substantial commitment of State, local, and Tribal government human resources. As a result, the Fiscal Recovery Funds may be used for payroll and covered benefits expenses for public safety, public health, health care, human services, and similar employees, to the extent that their services are devoted to mitigating or responding to the COVID–19 public health emergency.[46] Accordingly, the Fiscal Recovery Funds may be used to support the payroll and covered benefits for the portion of the employee's time that is dedicated to responding to the COVID–19 public health emergency. For administrative convenience, the recipient may consider public health and safety employees to be entirely devoted to mitigating or responding to the COVID–19 public health emergency, and therefore fully covered, if the employee, or his or her operating unit or division, is primarily dedicated to responding to the COVID–19 public health emergency. Recipients may consider other presumptions for assessing the extent to which an employee, 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. Recipients need not routinely track staff hours.

• *Expenses to Improve the Design and Execution of Health and Public Health Programs.* State, local, and Tribal governments may use payments from the Fiscal Recovery Funds to engage in planning and analysis in order to improve programs addressing the COVID–19 pandemic, including through use of targeted consumer outreach, improvements to data or technology infrastructure, impact evaluations, and data analysis.

Eligible Uses to Address Disparities in Public Health Outcomes. In addition, in recognition of the disproportionate impacts of the COVID–19 pandemic on health outcomes in low-income and Native American communities and the importance of mitigating these effects, the interim final rule identifies a broader range of services and programs that will be presumed to be responding to the public health emergency when provided in these communities. Specifically, Treasury will presume that certain types of services, outlined below, are eligible uses when provided in a Qualified Census Tract (QCT),[47] to families living in QCTs, or when these services are provided by Tribal governments.[48] Recipients may also provide these services to other populations, households, or geographic areas that are disproportionately impacted by the pandemic. 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.

Given the exacerbation of health disparities during the pandemic and the role of pre-existing social vulnerabilities in driving these disparate outcomes, services to address health disparities are presumed to be responsive to the public health impacts of the pandemic. Specifically, recipients may use payments from the Fiscal Recovery Funds to facilitate access to resources that improve health outcomes, including services that connect residents with health care resources and public assistance programs and build healthier environments, such as:

• Funding community health workers to help community members access health services and services to address the social determinants of health;[49]

• Funding public benefits navigators to assist community members with navigating and applying for available Federal, State, and local public benefits or services;

• Housing services to support healthy living environments and neighborhoods conducive to mental and physical wellness;

• Remediation of lead paint or other lead hazards to reduce risk of elevated blood lead levels among children; and

• Evidence-based community violence intervention programs to prevent violence and mitigate the increase in violence during the pandemic.[50]

2. Responding to Negative Economic Impacts

Impacts on Households and Individuals. 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

[46] In general, if an employee's wages and salaries are an eligible use of Fiscal Recovery Funds, recipients may treat the employee's covered benefits as an eligible use of Fiscal Recovery Funds. For purposes of the Fiscal Recovery 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).

[47] Qualified Census Tracts are a common, readily-accessible, and geographically granular method of identifying communities with a large proportion of low-income residents. Using an existing measure may speed implementation and decrease administrative burden, while identifying areas of need at a highly-localized level.

While QCTs are an effective tool generally, many tribal communities have households with a wide range of income levels due in part to non-tribal member, high income residents living in the community. Mixed income communities, with a significant share of tribal members at the lowest levels of income, are often not included as eligible QCTs yet tribal residents are experiencing disproportionate impacts due to the pandemic. Therefore, including all services provided by Tribal governments is a more effective means of ensuring that disproportionately impacted Tribal members can receive services.

[48] U.S. Department of Housing and Urban Development (HUD), Qualified Census Tracts and Difficult Development Areas, *https://www.huduser.gov/portal/datasets/qct.html* (last visited Apr. 26, 2021); U.S. Department of the Interior, Bureau of Indian Affairs, Indian Lands of Federally Recognized Tribes of the United States (June 2016), *https://www.bia.gov/sites/bia.gov/files/assets/bia/ots/webteam/pdf/idc1-028635.pdf* (last visited Apr. 26, 2021).

[49] The social determinants of health are the social and environmental conditions that affect health outcomes, specifically economic stability, health care access, social context, neighborhoods and built environment, and education access. *See, e.g.,* U.S. Department of Health and Human Services, Office of Disease Prevention and Health Promotion, Healthy People 2030: Social Determinants of Health, *https://health.gov/healthypeople/objectives-and-data/social-determinants-health* (last visited Apr. 26, 2021).

[50] National Commission on COVID–19 and Criminal Justice, Impact Report: COVID–19 and Crime (Jan. 31, 2021), *https://covid19.counciloncj.org/2021/01/31/impact-report-covid-19-and-crime-3/* (showing a spike in homicide and assaults); Brad Boesrup et al., Alarming Trends in US domestic violence during the COVID–19 pandemic, Am. J. of Emerg. Med. 38(12): 2753–55 (Dec. 1, 2020), *available at https://www.ajemjournal.com/article/S0735-6757(20)30307-7/fulltext* (showing a spike in domestic violence).

education, and travel declined precipitously, over 20 million jobs were lost in March and April 2020.[51] Although many have returned to work, as of April 2021, the economy remains 8.2 million jobs below its pre-pandemic peak,[52] and more than 3 million workers have dropped out of the labor market altogether relative to February 2020.[53]

Rates of unemployment are 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 6.1 percent in April 2021, but certain groups saw much higher rates: 9.7 percent for Black workers, 7.9 percent for Hispanic or Latino workers, and 9.3 percent for workers without a high school diploma.[54] Job losses have also been particularly steep among low wage workers, with these workers remaining furthest from recovery as of the end of 2020.[55] A severe recession—and its concentrated impact among low-income workers—has amplified food and housing insecurity, with an estimated nearly 17 million adults living in households where there is sometimes or often not enough food to eat and an estimated 10.7 million adults living in households that were not current on rent.[56] Over the course of the pandemic, inequities also manifested along gender lines, as schools closed to in-person activities, leaving many working families without child care during the day.[57] Women of color have been hit especially hard: The labor force participation rate for Black women has fallen by 3.2 percentage points[58] during the pandemic as compared to 1.0 percentage points for Black men[59] and 2.0 percentage points for White women.[60]

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.[61] 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[62] and reduced familial and childhood wellbeing.[63] These potential long-term economic consequences underscore the continued need for robust policy support.

Impacts on Businesses. The pandemic has also severely impacted many businesses, with small businesses hit especially hard. Small businesses make up nearly half of U.S. private-sector employment[64] and play a key role in supporting the overall economic recovery as they are responsible for two-thirds of net new jobs.[65] Since the beginning of the pandemic, however, 400,000 small businesses have closed, with many more at risk.[66] Sectors with a large share of small business employment have been among those with the most drastic drops in employment.[67] The negative outlook for small businesses has continued: As of April 2021, approximately 70 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.[68]

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.[69] In general, small businesses can face greater hurdles in accessing credit,[70] and many small businesses were already financially fragile at the outset of the pandemic.[71] Non-profits, which provide vital services to communities, have similarly faced

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[51] 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 May 8, 2021).

[52] *Id.*

[53] 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 May 8, 2021).

[54] U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian population by sex and age (May 8 2021), *https://www.bls.gov/news.release/empsit.t01.htm* (last visited May 8, 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 (May 8, 2021), *https://www.bls.gov/web/empsit/cpseea04.htm* (last visited May 8, 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 (May 8, 2021), *https://www.bls.gov/web/empsit/cpseea05.htm* (last visited May 8, 2021).

[55] 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 (Feb. 2021), *https://www.bls.gov/osmr/research-papers/2021/pdf/ec210020.pdf.*

[56] 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-recessions-effects-on-food-housing-and* (last visited May 8, 2021).

[57] 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.*

[58] 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 May 8, 2021).

[59] 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 May 8, 2021).

[60] 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 May 8, 2021).

[61] *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, 2021), *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/.*

[62] Chi Chi Wu, Solving the Credit Conundrum: Helping Consumers' Credit Records Impaired by the Foreclosure Crisis and Great Recession (Dec. 2013), *https://www.nclc.org/images/pdf/credit_reports/report-credit-conundrum-2013.pdf.*

[63] 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.*

[64] Board of Governors of the Federal Reserve System, *supra* note 5.

[65] 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/.*

[66] Biden, *supra* note 6.

[67] 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.*

[68] U.S. Census Bureau, Small Business Pulse Survey, *https://portal.census.gov/pulse/data/* (last visited May 8, 2021).

[69] 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.*

[70] *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.*

[71] 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.*

economic and financial challenges due to the pandemic.[72]

Impacts to State, Local, and Tribal Governments. State, local, and Tribal governments have felt substantial fiscal pressures. As noted above, State, local, and Tribal governments have faced significant revenue shortfalls and remain over 1 million jobs below their pre-pandemic staffing levels.[73] These reductions in staffing may undermine the ability to deliver services effectively, as well as add to the number of unemployed individuals in their jurisdictions.

Exacerbation of Pre-existing Disparities. The COVID–19 public health emergency may have lasting negative effects on economic outcomes, particularly in exacerbating disparities that existed prior to the pandemic.

The negative economic impacts of the COVID–19 pandemic are particularly pronounced in certain communities and families. Low- and moderate-income jobs make up a substantial portion of both total pandemic job losses,[74] and jobs that require in-person frontline work, which are exposed to greater risk of contracting COVID–19.[75] Both factors compound pre-existing vulnerabilities and the likelihood of food, housing, or other financial insecurity in low- and moderate-income families and, given the concentration of low- and moderate-income families within certain communities,[76] raise a substantial risk that the effects of the COVID–19 public health emergency will be amplified within these communities.

These compounding effect of recessions on concentrated poverty and the long-lasting nature of this effect were observed after the 2007–2009 recession, including a large increase in concentrated poverty with the number of people living in extremely poor neighborhoods more than doubling by 2010–2014 relative to 2000.[77] Concentrated poverty has a range of deleterious impacts, including additional burdens on families and reduced economic potential and social cohesion.[78] Given the disproportionate impact of COVID–19 on low-income households discussed above, there is a risk that the current pandemic-induced recession could further increase concentrated poverty and cause long-term damage to economic prospects in neighborhoods of concentrated poverty.

The negative economic impacts of COVID–19 also include significant impacts to children in disproportionately affected families and include impacts to education, health, and welfare, all of which contribute to long-term economic outcomes.[79] Many low-income and minority students, who were disproportionately served by remote or hybrid education during the pandemic, lacked the resources to participate fully in remote schooling or live in households without adults available throughout the day to assist with online coursework.[80] Given these trends, the pandemic may widen educational disparities and worsen outcomes for low-income students,[81] an effect that would substantially impact their long-term economic outcomes. Increased economic strain or material hardship due to the pandemic could also have a long-term impact on health, educational, and economic outcomes of young children.[82] Evidence suggests that adverse conditions in early childhood, including exposure to poverty, food insecurity, housing insecurity, or other economic hardships, are particularly impactful.[83]

The pandemic's disproportionate economic impacts are also seen in Tribal communities across the country—for Tribal governments as well as families and businesses on and off Tribal lands. In the early months of the pandemic, Native American unemployment spiked to 26 percent and, while partially recovered, remains at nearly 11 percent.[84] Tribal enterprises are a significant source of revenue for Tribal governments to support the provision of government services. These enterprises, notably concentrated in gaming, tourism, and hospitality, frequently closed, significantly reducing both revenues to Tribal governments and employment. As a result, Tribal governments have reduced essential services to their citizens and communities.[85]

Eligible Uses. Sections 602(c)(1)(A) and 603(c)(1)(A) permit use of payments from the Fiscal Recovery Funds to respond to the negative economic impacts of the COVID–19 public health emergency. Eligible 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

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[72] 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-nonprofits-serving-western-united-states.pdf.*

[73] Bureau of Labor Statistics, *supra* note 8; Elijah Moreno & Heather Sobrepena, Tribal entities remain resilient as COVID–19 batters their finances, Federal Reserve Bank of Minneapolis (Nov. 10, 2021), *https://www.minneapolisfed.org/article/2020/tribal-entities-remain-resilient-as-covid-19-batters-their-finances.*

[74] Kim Parker et al., Economic Fallout from COVID–19 Continues to Hit Lower-Income Americans the Hardest, Pew Research Center (Sept. 24, 2020), *https://www.pewresearch.org/social-trends/2020/09/24/economic-fallout-from-covid-19-continues-to-hit-lower-income-americans-the-hardest/;* Gould, *supra* note 55.

[75] *See infra* Section II.B of this Supplementary Information.

[76] Elizabeth Kneebone, The Changing geography of US poverty, Brookings Institution (Feb. 15, 2017), *https://www.brookings.edu/testimonies/the-changing-geography-of-us-poverty/.*

[77] Elizabeth Kneebone & Natalie Holmes, U.S. concentrated poverty in the wake of the Great Recession, Brookings Institution (Mar. 31, 2016), *https://www.brookings.edu/research/u-s-concentrated-poverty-in-the-wake-of-the-great-recession/.*

[78] David Erickson et al., The Enduring Challenge of Concentrated Poverty in America: Case Studies from Communities Across the U.S. (2008), *available at https://www.frbsf.org/community-development/files/cp_fullreport.pdf.*

[79] Educational quality, as early as Kindergarten, has a long-term impact on children's public health and economic outcomes. *See, e.g.,* Tyler W. Watts et al., The Chicago School Readiness Project: Examining the long-term impacts of an early childhood intervention, PLoS ONE 13(7) (2018), *available at https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0200144;* Opportunity Insights, How Can We Amplify Education as an Engine of Mobility? Using big data to help children get the most from school, *https://opportunityinsights.org/education/* (last visited Apr. 26, 2021); U.S. Department of Health and Human Services (HHS), Office of Disease Prevention and Health Promotion, Early Childhood Development and Education, *https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-health/interventions-resources/early-childhood-development-and-education* (last visited Apr. 26, 2021).

[80] *See, e.g.,* Bacher-Hicks, *supra* note 14.

[81] A Department of Education survey found that, as of February 2021, 42 percent of fourth grade students nationwide were offered only remote education, compared to 48 percent of economically disadvantaged students, 54 percent of Black students and 57 percent of Hispanic students. Large districts often disproportionately serve low-income students. *See* Institute of Education Sciences, Monthly School Survey Dashboard, *https://ies.ed.gov/schoolsurvey/* (last visited Apr. 26, 2021). In summer 2020, a review found that 74 percent of the largest 100 districts chose remote learning only. *See* Education Week, School Districts' Reopening Plans: A Snapshot (Jul. 15, 2020), *https://www.edweek.org/leadership/school-districts-reopening-plans-a-snapshot/2020/07* (last visited May 4, 2021).

[82] HHS, *supra* note 79.

[83] Hirokazu Yoshikawa, Effects of the Global Coronavirus Disease—2019 Pandemic on Early Childhood Development: Short- and Long-Term Risks and Mitigating Program and Policy Actions, J. of Pediatrics Vol. 223:188–93 (Aug. 1, 2020), *available at https://www.jpeds.com/article/S0022-3476(20)30606-5/abstract.*

[84] Based on calculations conducted by the Minneapolis Fed's Center for Indian Country Development using Flood et al. (2020)'s Current Population Survey.'' Sarah Flood, Miriam King, Renae Rodgers, Steven Ruggles and J. Robert Warren. Integrated Public Use Microdata Series, Current Population Survey: Version 8.0 [dataset]. Minneapolis, MN: IPUMS, 2020. *https://doi.org/10.18128/D030.V8.0; see also* Donna Feir & Charles Golding, Native Employment During COVID–19: Hard hit in April but Starting to Rebount? (Aug. 5, 2020), *https://www.minneapolisfed.org/article/2020/native-employment-during-covid-19-hit-hard-in-april-but-starting-to-rebound.*

[85] Moreno & Sobrepena, *supra* note 73.

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 or address this harm.[86] 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. While economic impacts may either be immediate or delayed, assistance or aid to individuals or businesses that did not experience a negative economic impact from the public health emergency would not be an eligible use under this category.

In addition, the eligible use must ''respond to'' the identified negative economic impact. Responses must be related and reasonably proportional to the extent and type of harm experienced; uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses. Where there has been a negative economic impact resulting from the public health emergency, States, local, and Tribal governments have broad latitude to choose whether and how to use the Fiscal Recovery Funds to respond to and address the negative economic impact. Sections 602(c)(1)(A) and 603(c)(1)(A) describe several types of uses that would be eligible under this category, including assistance to households, small businesses, and nonprofits and aid to impacted industries such as tourism, travel, and hospitality.

To facilitate implementation and use of payments from the Fiscal Recovery Funds, the interim final rule identifies a non-exclusive list of eligible uses of funding that respond to the negative economic impacts of the public health emergency. Consistent with the discussion above, the eligible uses listed below would respond directly to the economic or financial harms resulting from and or exacerbated by the public health emergency.

- *Assistance to Unemployed Workers.* This includes assistance to unemployed workers, including services like job training to accelerate rehiring of unemployed workers; these services may extend to workers unemployed due to the pandemic or the resulting recession, or who were already unemployed when the pandemic began and remain so due to the negative economic impacts of the pandemic.
- *State Unemployment Insurance Trust Funds.* Consistent with the approach taken in the CRF, recipients may make deposits into the state 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 balances 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, given the close nexus between Unemployment Trust Fund costs, solvency of Unemployment Trust Fund systems, and pandemic economic impacts. Further, Unemployment Trust Fund deposits can decrease fiscal strain on Unemployment Insurance systems impacted by the pandemic. States facing a sharp increase in Unemployment Insurance claims during the pandemic may have drawn down positive Unemployment Trust Fund balances and, after exhausting the balance, required advances to fund continuing obligations to claimants. Because both of these impacts were driven directly by the need for assistance to unemployed workers during the pandemic, replenishing Unemployment Trust Funds up to the pre-pandemic level responds to the pandemic's negative economic impacts on unemployed workers.
- *Assistance to Households.* Assistance to households or populations facing negative economic impacts due to COVID–19 is also an eligible use. This includes: Food assistance; rent, mortgage, or utility assistance; counseling and legal aid to prevent eviction or homelessness; cash assistance (discussed below); emergency assistance for burials, home repairs, weatherization, or other needs; internet access or digital literacy assistance; or job training to address negative economic or public health impacts experienced due to a worker's occupation or level of training. As discussed above, in considering whether a potential use is eligible under this category, a recipient must consider whether, and the extent to which, the household has experienced a negative economic impact from the pandemic. In assessing whether a household or population experienced economic harm as a result of the pandemic, a recipient may presume that a household or population that experienced unemployment or increased food or housing insecurity or is low- or moderate-income experienced negative economic impacts resulting from the pandemic. For example, a cash transfer program may focus on unemployed workers or low- and moderate-income families, which have faced disproportionate economic harms due to the pandemic. Cash transfers must be reasonably proportional to the negative economic impact they are intended to address. Cash transfers grossly in excess of the amount needed to address the negative economic impact identified by the recipient would not be considered to be a response to the COVID–19 public health emergency or its negative impacts. In particular, when considering the appropriate size of permissible cash transfers made in response to the COVID–19 public health emergency, State, local and Tribal governments may consider and take guidance from the per person amounts previously provided by the Federal Government in response to the COVID–19 crisis. Cash transfers that are grossly in excess of such amounts would be outside the scope of eligible uses under sections 602(c)(1)(A) and 603(c)(1)(A) and could be subject to recoupment. In addition, a recipient could provide survivor's benefits to surviving family members of COVID–19 victims, or cash assistance to widows, widowers, and dependents of eligible COVID–19 victims.
- *Expenses to Improve Efficacy of Economic Relief Programs.* State, local, and Tribal governments may use payments from the Fiscal Recovery Funds to improve efficacy of programs addressing negative economic impacts, including through use of data analysis, targeted consumer outreach, improvements to data or technology infrastructure, and impact evaluations.
- *Small Businesses and Non-profits.* As discussed above, small businesses and non-profits 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. State, local, and Tribal governments 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, 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, such as physical

[86] 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 the Act.

plant changes to enable social distancing, enhanced cleaning efforts, barriers or partitions, or COVID–19 vaccination, testing, or contact tracing programs; and

○ Technical assistance, counseling, or other services to assist with business planning needs.

As discussed above, these services should respond to the negative economic impacts of COVID–19. 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 disadvantaged communities. Recipients should consider local economic conditions and business data when establishing such criteria.[87]

• *Rehiring State, Local, and Tribal Government Staff.* State, local, and Tribal governments continue to see pandemic impacts in overall staffing levels: State, local, and Tribal government employment remains more than 1 million jobs lower in April 2021 than prior to the pandemic.[88] Employment losses decrease a state or local government's ability to effectively administer services. Thus, the interim final rule includes as an eligible use payroll, covered benefits, and other costs associated with rehiring public sector staff, up to the pre-pandemic staffing level of the government.

• *Aid to Impacted Industries.* Sections 602(c)(1)(A) and 603(c)(1)(A) recognize that certain industries, such as tourism, travel, and hospitality, were disproportionately and negatively impacted by the COVID–19 public health emergency. Aid provided to tourism, travel, and hospitality industries should respond to the negative economic impacts of the pandemic on those and similarly impacted industries. For example, aid may include assistance to implement COVID–19 mitigation and infection prevention measures to enable safe resumption of tourism, travel, and hospitality services, for example, 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.

Aid may be considered responsive to the negative economic impacts of the pandemic if it supports businesses, attractions, business districts, and Tribal development districts operating prior to the pandemic and affected by required closures and other efforts to contain the pandemic. For example, a recipient may provide aid to support safe reopening of businesses in the tourism, travel, and hospitality industries and to business districts that were closed during the COVID–19 public health emergency, as well as aid for a planned expansion or upgrade of tourism, travel, and hospitality facilities delayed due to the pandemic.

When considering providing aid to industries other than tourism, travel, and hospitality, recipients should consider the extent of the economic impact as compared to tourism, travel, and hospitality, the industries enumerated in the statute. For example, on net, the leisure and hospitality industry has experienced an approximately 24 percent decline in revenue and approximately 17 percent decline in employment nationwide due to the COVID–19 public health emergency.[89] Recipients should also consider whether impacts were due to the COVID–19 pandemic, as opposed to longer-term economic or industrial trends unrelated to the pandemic.

To facilitate transparency and accountability, the interim final rule requires that State, local, and Tribal governments 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 pandemic. Recipients also should maintain records to support their assessment of how businesses or business districts receiving assistance were affected by the negative economic impacts of the pandemic and how the aid provided responds to these impacts.

As discussed above, economic disparities that existed prior to the COVID–19 public health emergency amplified the impact of the pandemic among low-income and minority groups. These families were more likely to face housing, food, and financial insecurity; are over-represented among low-wage workers; and many have seen their livelihoods deteriorate further during the pandemic and economic contraction. In recognition of the disproportionate negative economic impacts on certain communities and populations, the interim final rule identifies services and programs that will be presumed to be responding to the negative economic impacts of the COVID–19 public health emergency when provided in these communities.

Specifically, Treasury will presume that certain types of services, outlined below, are eligible uses when provided in a QCT, to families and individuals living in QCTs, or when these services are provided by Tribal governments.[90] Recipients may also provide these services to other populations, households, or geographic areas disproportionately impacted by the pandemic. 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. The interim final rule identifies a non-exclusive list of uses that address the disproportionate negative economic effects of the COVID–19 public health emergency, including:

○ *Building Stronger Communities through Investments in Housing and Neighborhoods.* The economic impacts of COVID–19 have likely been most acute in lower-income neighborhoods, including concentrated areas of high unemployment, limited economic opportunity, and housing insecurity.[91]

[87] *See* Federal Reserve Bank of Cleveland, An Uphill Battle: COVID–19's Outsized Toll on Minority-Owned Firms (Oct. 8, 2020), *https://www.clevelandfed.org/newsroom-and-events/publications/community-development-briefs/db-20201008-misera-report.aspx* (discussing the impact of COVID–19 on minority owned businesses).

[88] 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 May 8, 2021).

[89] From February 2020 to April 2021, employment in ''Leisure and hospitality'' has fallen by approximately 17 percent. *See* U.S. Bureau of Labor Statistics, All Employees, Leisure and Hospitality, retrieved from FRED, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/USLAH* (last visited May 8, 2021). From 2019Q4 to 2020Q4, gross output (*e.g.* revenue) in arts, entertainment, recreation, accommodation, and food services has fallen by approximately 24 percent. *See* Bureau of Economic Analysis, News Release: Gross Domestic Product (Third Estimate), Corporate Profits, and GDP by Industry, Fourth Quarter and Year 2020 (Mar. 25, 2021), Table 17, *https://www.bea.gov/sites/default/files/2021-03/gdp4q20_3rd.pdf.*

[90] HUD, *supra* note 48.

[91] Stuart M. Butler & Jonathan Grabinsky, Tackling the legacy of persistent urban inequality and concentrated poverty, Brookings Institution (Nov. 16, 2020), *https://www.brookings.edu/blog/up-front/2020/11/16/tackling-the-legacy-of-*

Continued

Services in this category alleviate the immediate economic impacts of the COVID–19 pandemic on housing insecurity, while addressing conditions that contributed to poor public health and economic outcomes during the pandemic, namely concentrated areas with limited economic opportunity and inadequate or poor-quality housing.[92] Eligible services include:

▪ Services to address homelessness such as supportive housing, and to improve access to stable, affordable housing among unhoused individuals;

▪ Affordable housing development to increase supply of affordable and high-quality living units; and

▪ 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, to help residents increase their economic opportunity and reduce concentrated areas of low economic opportunity.[93]

○ *Addressing Educational Disparities.* As outlined above, school closures and the transition to remote education raised particular challenges for lower-income students, potentially exacerbating educational disparities, while increases in economic hardship among families could have long-lasting impacts on children's educational and economic prospects. Services under this prong would enhance educational supports to help mitigate impacts of the pandemic. Eligible services include:

▪ New, expanded, or enhanced early learning services, including pre-kindergarten, Head Start, or partnerships between pre-kindergarten programs and local education authorities, or administration of those services;

▪ Providing assistance to high-poverty school districts to advance equitable funding across districts and geographies;

▪ Evidence-based educational services and practices to address the academic needs of students, including tutoring, summer, afterschool, and other extended learning and enrichment programs; and

▪ Evidence-based practices to address the social, emotional, and mental health needs of students;

○ *Promoting Healthy Childhood Environments.* Children's economic and family circumstances have a long-term impact on their future economic outcomes.[94] Increases in economic hardship, material insecurity, and parental stress and behavioral health challenges all raise the risk of long-term harms to today's children due to the pandemic. Eligible services to address this challenge include:

▪ New or expanded high-quality childcare to provide safe and supportive care for children;

▪ Home visiting programs to provide structured visits from health, parent educators, and social service professionals to pregnant women or families with young children to offer education and assistance navigating resources for economic support, health needs, or child development; and

▪ Enhanced services for child welfare-involved families and foster youth to provide support and training on child development, positive parenting, coping skills, or recovery for mental health and substance use challenges.

State, local, and Tribal governments are encouraged to use payments from the Fiscal Recovery Funds to respond to the direct and immediate needs of the pandemic and its negative economic impacts and, in particular, the needs of households and businesses that were disproportionately and negatively impacted by the public health emergency. As highlighted above, low-income communities and workers and people of color have faced more severe health and economic outcomes during the pandemic, with pre-existing social vulnerabilities like low-wage or insecure employment, concentrated neighborhoods with less economic opportunity, and pre-existing health disparities likely contributing to the magnified impact of the pandemic. The Fiscal Recovery Funds provide resources to not only respond to the immediate harms of the pandemic but also to mitigate its longer-term impact in compounding the systemic public health and economic challenges of disproportionately impacted populations. Treasury encourages recipients to consider funding uses that foster a strong, inclusive, and equitable recovery, especially uses with long-term benefits for health and economic outcomes.

Uses Outside the Scope of this Category. Certain uses would not be within the scope of this eligible use category, although may be eligible under other eligible use categories. A general infrastructure project, for example, typically would not be included unless the project responded to a specific pandemic public health need (*e.g.,* investments in facilities for the delivery of vaccines) or a specific negative economic impact like those described above (*e.g.,* affordable housing in a QCT). The ARPA explicitly includes infrastructure if it is ''necessary'' and in water, sewer, or broadband. *See* Section II.D of this **SUPPLEMENTARY INFORMATION**. State, local, and Tribal governments also may use the Fiscal Recovery Funds under sections 602(c)(1)(C) or 603(c)(1)(C) to provide ''government services'' broadly to the extent of their reduction in revenue. *See* Section II.C of this **SUPPLEMENTARY INFORMATION.**

This category of eligible uses also would not include contributions to rainy day funds, financial reserves, or similar funds. Resources made available under this eligible use category are intended to help meet pandemic response needs and provide relief for households and businesses facing near- and long-term negative economic impacts. Contributions to rainy day funds and similar financial reserves would not address these needs or respond to the COVID–19 public health emergency but would rather constitute savings for future spending needs. Similarly, this eligible use category would not include payment of interest or principal on outstanding debt instruments, including, for example, short-term revenue or tax anticipation notes, or other debt service costs. As discussed below, payments from the Fiscal Recovery Funds are intended to be used prospectively and the interim final rule precludes use of these funds to cover the costs of debt incurred prior to March 3, 2021. Fees or issuance costs associated with the issuance of new debt would also not be covered using payments from the Fiscal Recovery Funds because such costs would not themselves have been incurred to address the needs of pandemic response or its negative economic impacts. The purpose of the Fiscal Recovery Funds is to provide fiscal relief that will permit State, local, and Tribal governments to continue to respond to the COVID–19 public health emergency.

For the same reasons, this category of eligible uses would not include satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring

persistent-urban-inequality-and-concentrated-poverty/.

[92] U.S. Department of Health and Human Services (HHS), Office of Disease Prevention and Health Promotion, Quality of Housing, *https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-health/interventions-resources/quality-of-housing#11* (last visited Apr. 26, 2021).

[93] The Opportunity Atlas, *https://www.opportunityatlas.org/* (last visited Apr. 26, 2021); Raj Chetty & Nathaniel Hendren, The Impacts of Neighborhoods on Intergenerational Mobility I: Childhood Exposure Effects, Quarterly J. of Econ. 133(3):1107–162 (2018), *available at https://opportunityinsights.org/paper/neighborhoodsi/.*

[94] *See* supra notes 52 and 84.

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. That is, satisfaction of a settlement or judgment would not itself respond to COVID–19 with respect to the public health emergency or its negative economic impacts, unless the settlement requires the provision of services or aid that did directly respond to these needs, as described above.

In addition, as described in Section V.III of this **SUPPLEMENTARY INFORMATION**, Treasury will establish reporting and record keeping requirements for uses within this category, including enhanced reporting requirements for certain types of uses.

Question 1: Are there other types of services or costs that Treasury should consider as eligible uses to respond to the public health impacts of COVID–19? Describe how these respond to the COVID–19 public health emergency.

Question 2: The interim final rule permits coverage of payroll and benefits costs of public health and safety staff primarily dedicated to COVID–19 response, as well as rehiring of public sector staff up to pre-pandemic levels. For how long should these measures remain in place? What other measures or presumptions might Treasury consider to assess the extent to which public sector staff are engaged in COVID–19 response, and therefore reimbursable, in an easily-administrable manner?

Question 3: The interim final rule permits rehiring of public sector staff up to the government's pre-pandemic staffing level, which is measured based on employment as of January 27, 2020. Does this approach adequately measure the pre-pandemic staffing level in a manner that is both accurate and easily administrable? Why or why not?

Question 4: The interim final rule permits deposits to Unemployment Insurance Trust Funds, or using funds to pay back advances, up to the pre-pandemic balance. What, if any, conditions should be considered to ensure that funds repair economic impacts of the pandemic and strengthen unemployment insurance systems?

Question 5: Are there other types of services or costs that Treasury should consider as eligible uses to respond to the negative economic impacts of COVID–19? Describe how these respond to the COVID–19 public health emergency.

Question 6: What other measures, presumptions, or considerations could be used to assess ''impacted industries'' affected by the COVID–19 public health emergency?

Question 7: What are the advantages and disadvantages of using Qualified Census Tracts and services provided by Tribal governments to delineate where a broader range of eligible uses are presumed to be responsive to the public health and economic impacts of COVID–19? What other measures might Treasury consider? Are there other populations or geographic areas that were disproportionately impacted by the pandemic that should be explicitly included?

Question 8: Are there 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? Describe how these respond to the COVID–19 public health emergency or its negative economic impacts, including its exacerbation of pre-existing challenges in these areas.

Question 9: The interim final rule includes eligible uses to support affordable housing and stronger neighborhoods in disproportionately-impacted communities. Discuss the advantages and disadvantages of explicitly including other uses to support affordable housing and stronger neighborhoods, including rehabilitation of blighted properties or demolition of abandoned or vacant properties. In what ways does, or does not, this potential use address public health or economic impacts of the pandemic? What considerations, if any, could support use of Fiscal Recovery Funds in ways that do not result in resident displacement or loss of affordable housing units?

B. Premium Pay

Fiscal Recovery Funds payments may be used by recipients to provide premium pay to eligible workers performing essential work during the COVID–19 public health emergency or to provide grants to third-party employers with eligible workers performing essential work.[95] These are workers who have been and continue to be relied on to maintain continuity of operations of essential critical infrastructure sectors, including those who are critical to protecting the health and wellbeing of their communities.

Since the start of the COVID–19 public health emergency in January 2020, essential workers have put their physical wellbeing at risk to meet the daily needs of their communities and to provide care for others. In the course of this work, many essential workers have contracted or died of COVID–19.[96] Several examples reflect the severity of the health impacts for essential workers. Meat processing plants became ''hotspots'' for transmission, with 700 new cases reported at a single plant on a single day in May 2020.[97] In New York City, 120 employees of the Metropolitan Transit Authority were estimated to have died due to COVID–19 by mid-May 2020, with nearly 4,000 testing positive for the virus.[98] Furthermore, many essential workers are people of color or low-wage workers.[99] These workers, in particular, have borne a disproportionate share of the health and economic impacts of the pandemic. Such workers include:

- Staff at nursing homes, hospitals, and home care settings;
- Workers at farms, food production facilities, grocery stores, and restaurants;
- Janitors and sanitation workers;
- Truck drivers, transit staff, and warehouse workers;
- Public health and safety staff;
- Childcare workers, educators, and other school staff; and
- Social service and human services staff.

During the public health emergency, employers' policies on COVID–19-related hazard pay have varied widely, with many essential workers not yet compensated for the heightened risks they have faced and continue to face.[100]

[95] Sections 602(c)(1)(B), 603(c)(1)(B) of the Act.

[96] *See, e.g.,* Centers for Disease Control and Prevention, COVID Data Tracker: Cases & Death among Healthcare Personnel, *https://covid.cdc.gov/covid-data-tracker/#health-care-personnel* (last visited May 4, 2021); Centers for Disease Control and Prevention, COVID Data Tracker: Confirmed COVID–19 Cases and Deaths among Staff and Rate per 1,000 Resident-Weeks in Nursing Homes, by Week—United States, *https://covid.cdc.gov/covid-data-tracker/#nursing-home-staff* (last visited May 4, 2021).

[97] *See, e.g.,* The Lancet, The plight of essential workers during the COVID–19 pandemic, Vol. 395, Issue 10237:1587 (May 23, 2020), *available at https://www.thelancet.com/journals/lancet/article/PIIS0140-6736%2820%2931200-9/fulltext.*

[98] *Id.*

[99] Joanna Gaitens et al., Covid–19 and essential workers: A narrative review of health outcomes and moral injury, Int'l J. of Envtl. Research and Pub. Health 18(4):1446 (Feb. 4, 2021), *available at https://pubmed.ncbi.nlm.nih.gov/33557075/;* Tiana N. Rogers et al., Racial Disparities in COVID–19 Mortality Among Essential Workers in the United States, World Med. & Health policy 12(3):311–27 (Aug. 5, 2020), *available at https://onlinelibrary.wiley.com/doi/full/10.1002/wmh3.358* (finding that vulnerability to coronavirus exposure was increased among non-Hispanic blacks, who disproportionately occupied the top nine essential occupations).

[100] 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/.*

Many of these workers earn lower wages on average and live in socioeconomically vulnerable communities as compared to the general population.[101] A recent study found that 25 percent of essential workers were estimated to have low household income, with 13 percent in high-risk households.[102] 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, including working hours lost due to sickness or disruptions to childcare and other daily routines, or the likelihood of COVID–19 spread in their households or communities. Thus, the threats and costs involved with maintaining the ongoing operation of vital facilities and services have been, and continue to be, borne by those that are often the most vulnerable to the pandemic. The added health risk to essential workers is one prominent way in which the pandemic has amplified pre-existing socioeconomic inequities.

The Fiscal Recovery Funds will help respond to the needs of essential workers by allowing recipients to remunerate essential workers for the elevated health risks they have faced and continue to face during the public health emergency. To ensure that premium pay is targeted to workers that faced or face heightened risks due to the character of their work, the interim final rule defines essential work as work involving regular in-person interactions or regular physical handling of items that were also handled by others. A worker would not be engaged in essential work and, accordingly may not receive premium pay, for telework performed from a residence.

Sections 602(g)(2) and 603(g)(2) define eligible worker to mean ''those workers needed to maintain continuity of operations of essential critical infrastructure sectors and additional 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.'' [103] The rule incorporates this definition and provides a list of industries recognized as essential critical infrastructure sectors.[104] These sectors include healthcare, public health and safety, childcare, education, sanitation, transportation, and food production and services, among others as noted above. As provided under sections 602(g)(2) and 603(g)(2), the chief executive of each recipient has discretion to add additional sectors to this list, so long as additional sectors are deemed critical to protect the health and well-being of residents.

In providing premium pay to essential workers or grants to eligible employers, a recipient must consider whether the pay or grant would ''respond to'' to the worker or workers performing essential work. Premium pay or grants provided under this section respond to workers performing essential work if it addresses the heightened risk to workers who must be physically present at a jobsite and, for many of whom, the costs associated with illness were hardest to bear financially. Many of the workers performing critical essential services are low- or moderate-income workers, such as those described above. The ARPA recognizes this by defining premium pay to mean an amount up to $13 per hour in addition to wages or remuneration the worker otherwise receives and in an aggregate amount not to exceed $25,000 per eligible worker. To ensure the provision is implemented in a manner that compensates these workers, the interim final rule provides that any premium pay or grants provided using the Fiscal Recovery Funds should prioritize compensation of those lower income eligible workers that perform essential work.

As such, providing premium pay to eligible workers responds to such workers by helping address the disparity between the critical services and risks taken by essential workers and the relatively low compensation they tend to receive in exchange. If premium pay would increase a worker's total pay above 150 percent of their residing state's average annual wage for all occupations, as defined by the Bureau of Labor Statistics' Occupational Employment and Wage Statistics, or their residing county's average annual wage, as defined by the Bureau of Labor Statistics' Occupational Employment and Wage Statistics, whichever is higher, on an annual basis, the State, local, or Tribal government must provide Treasury and make publicly available, whether for themselves or on behalf of a grantee, a written justification of how the premium pay or grant is responsive to workers performing essential worker during the public health emergency.[105]

The threshold of 150 percent for requiring additional written justification is based on an analysis of the distribution of labor income for a sample of 20 occupations that generally correspond to the essential workers as defined in the interim final rule.[106] For these occupations, labor income for the vast majority of workers was under 150 percent of average annual labor income across all occupations. Treasury anticipates that the threshold of 150 percent of the annual average wage will be greater than the annual average wage of the vast majority of eligible workers performing essential work. These enhanced reporting requirements help to ensure grants are directed to essential workers in critical infrastructure sectors and responsive to the impacts of the pandemic observed among essential workers, namely the mis-alignment between health risks and compensation. Enhanced reporting also provides transparency to the public. Finally, using a localized measure reflects differences in wages and cost of living across the country, making this standard administrable and reflective of essential worker incomes across a diverse range of geographic areas.

Furthermore, because premium pay is intended to compensate essential workers for heightened risk due to COVID–19, it must be entirely additive to a worker's regular rate of wages and other remuneration and may not be used to reduce or substitute for a worker's normal earnings. The definition of premium pay also clarifies that premium pay may be provided retrospectively for work performed at any time since the start of the COVID–19 public health emergency, where those workers have yet to be compensated adequately for work previously performed.[107] Treasury encourages recipients to prioritize providing retrospective premium pay where possible, recognizing that many essential workers have not yet received additional compensation for work conducted over the course of many

[101] McCormack, *supra* note 37.

[102] *Id.*

[103] Sections 602(g)(2), 603(g)(2) of the Act.

[104] The list of critical infrastructure sectors provided in the interim final rule is based on the list of essential workers under The Heroes Act, H.R. 6800, 116th Cong. (2020).

[105] County median annual wage is taken to be that of the metropolitan or nonmetropolitan area that includes the county. *See* U.S. Bureau of Labor Statistics, State Occupational Employment and Wage Estimates, *https://www.bls.gov/oes/current/oessrcst.htm* (last visited May 1, 2021); U.S. Bureau of Labor Statistics, May 2020 Metropolitan and Nonmetropolitan Area Estimates listed by county or town, *https://www.bls.gov/oes/current/county_links.htm* (last visited May 1, 2021).

[106] Treasury performed this analysis with data from the U.S. Census Bureau's 2019 Annual Social and Economic Supplement. In determining which occupations to include in this analysis, Treasury excluded management and supervisory positions, as such positions may not necessarily involve regular in-person interactions or physical handling of items to the same extent as non-managerial positions.

[107] However, such compensation must be ''in addition to'' remuneration or wages already received. That is, employers may not reduce such workers' current pay and use Fiscal Recovery Funds to compensate themselves for premium pay previously provided to the worker.

months. Essential workers who have already earned premium pay for essential work performed during the COVID–19 public health emergency remain eligible for additional payments, and an essential worker may receive both retrospective premium pay for prior work as well as prospective premium pay for current or ongoing work.

To ensure any grants respond to the needs of essential workers and are made in a fair and transparent manner, the rule imposes some additional reporting requirements for grants to third-party employers, including the public disclosure of grants provided. *See* Section VIII of this **SUPPLEMENTARY INFORMATION**, discussing reporting requirements. In responding to the needs of essential workers, a grant to an employer may provide premium pay to eligible workers performing essential work, as these terms are defined in the interim final rule and discussed above. A grant provided to an employer may also be for essential work performed by eligible workers pursuant to a contract. For example, if a municipality contracts with a third party to perform sanitation work, the third-party contractor could be eligible to receive a grant to provide premium pay for these eligible workers.

Question 10: Are there additional sectors beyond those listed in the interim final rule that should be considered essential critical infrastructure sectors?

Question 11: What, if any, additional criteria should Treasury consider to ensure that premium pay responds to essential workers?

Question 12: What consideration, if any, should be given to the criteria on salary threshold, including measure and level, for requiring written justification?

C. Revenue Loss

Recipients may use payments from the Fiscal Recovery Funds for the provision of government services to the extent of the reduction in revenue experienced due to the COVID–19 public health emergency.[108] Pursuant to sections 602(c)(1)(C) and 603(c)(1)(C) of the Act, a recipient's reduction in revenue is measured relative to the revenue collected in the most recent full fiscal year prior to the emergency.

Many State, local, and Tribal governments are experiencing significant budget shortfalls, which can have a devastating impact on communities. State government tax revenue from major sources were down 4.3 percent in the six months ended September 2020, relative to the same period 2019.[109] At the local level, nearly 90 percent of cities have reported being less able to meet the fiscal needs of their communities and, on average, cities expect a double-digit decline in general fund revenues in their fiscal year 2021.[110] Similarly, surveys of Tribal governments and Tribal enterprises found majorities of respondents reporting substantial cost increases and revenue decreases, with Tribal governments reporting reductions in healthcare, housing, social services, and economic development activities as a result of reduced revenues.[111] These budget shortfalls are particularly problematic in the current environment, as State, local, and Tribal governments work to mitigate and contain the COVID–19 pandemic and help citizens weather the economic downturn.

Further, 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.[112] Inflation-adjusted State and local government revenue did not return to the previous peak until 2013,[113] while State, local, and Tribal government employment did not recover to its prior peak for over a decade, until August 2019—just a few months before the COVID–19 public health emergency began.[114]

Sections 602(c)(1)(C) and 603(c)(1)(C) of the Act allow recipients facing budget shortfalls to use payments from the Fiscal Recovery Funds to avoid cuts to government services and, thus, enable State, local, and Tribal governments to continue to provide valuable services and ensure that fiscal austerity measures do not hamper the broader economic recovery. The interim final rule implements these provisions by establishing a definition of ''general revenue'' for purposes of calculating a loss in revenue and by providing a methodology for calculating revenue lost due to the COVID–19 public health emergency.

General Revenue. The interim final rule adopts 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, and for purposes of this interim final rule, helps to ensure that the components of general revenue would be calculated in a consistent manner.[115] By relying on a methodology that is both familiar and comprehensive, this approach minimizes burden to recipients and provides consistency in the measurement of general revenue across a diverse set of recipients.

The interim final rule defines the term ''general revenue'' to include revenues collected by a recipient and generated from its underlying economy and would capture a range of different types of tax revenues, as well as other types of revenue that are available to support government services.[116] In calculating revenue, recipients should sum across all revenue streams covered as general revenue. This approach minimizes the administrative burden for recipients, provides for greater consistency across recipients, and presents a more accurate representation of the overall impact of

[108] ARPA, *supra* note 16.

[109] Major sources include personal income tax, corporate income tax, sales tax, and property tax. *See* Lucy Dadayan., States Reported Revenue Growth in July–September Quarter, Reflecting Revenue Shifts from the Prior Quarter, State Tax and Econ. Rev. (Q. 3, 2020), *available at https://www.urban.org/sites/default/files/publication/103938/state-tax-and-economic-review-2020-q3_0.pdf.*

[110] 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.*

[111] Surveys conducted by the Center for Indian Country Development at the Federal Reserve Bank of Minneapolis in March, April, and September 2020. *See* Moreno & Sobrepena, *supra* note 73.

[112] *See, e.g.,* Fitzpatrick, Haughwout & Setren, Fiscal Drag from the State and Local Sector?, Liberty Street Economics Blog, Federal Reserve Bank of New York (June 27, 2012), *https://www.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 9.

[113] State and local government general revenue from own sources, adjusted for inflation using the GDP price index. U.S. Census Bureau, Annual Survey of State Government Finances and U.S. Bureau of Economic Analysis, National Income and Product Accounts.

[114] 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 Apr. 27, 2021).

[115] U.S. Census Bureau, Annual Survey of State and Local Government Finances, *https://www.census.gov/programs-surveys/gov-finances.html* (last visited Apr. 30, 2021).

[116] The interim final rule would define tax revenue in a manner consistent with the Census Bureau's definition of tax revenue, with certain changes (*i.e.,* inclusion of revenue from liquor stores and certain intergovernmental transfers). 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 liquor store, utility, and insurance trust revenue), including rents, royalties, lottery proceeds, and fines.

the COVID–19 public health emergency on a recipient's revenue, rather than relying on financial reporting prepared by each recipient, which vary in methodology used and which generally aggregates revenue by purpose rather than by source.[117]

Consistent with the Census Bureau's definition of ''general revenue from own sources,'' the definition of general revenue in the interim final rule would exclude refunds and other correcting transactions, proceeds from issuance of debt or the sale of investments, and agency or private trust transactions. The definition of general revenue also would exclude revenue generated by utilities and insurance trusts. In this way, the definition of general revenue focuses on sources that are generated from economic activity and are available to fund government services, rather than a fund or administrative unit established to account for and control a particular activity.[118] For example, public utilities typically require financial support from the State, local, or Tribal government, rather than providing revenue to such government, and any revenue that is generated by public utilities typically is used to support the public utility's continued operation, rather than being used as a source of revenue to support government services generally.

The definition of general revenue would include all revenue from Tribal enterprises, as this revenue is generated from economic activity and is available to fund government services. Tribes are not able to generate revenue through taxes in the same manner as State and local governments and, as a result, Tribal enterprises are critical sources of revenue for Tribal governments that enable Tribal governments to provide a range of services, including elder care, health clinics, wastewater management, and forestry.

Finally, the term ''general revenue'' includes intergovernmental transfers between State and local governments, but excludes intergovernmental transfers from the Federal Government, including Federal transfers made via a State to a local government pursuant to the CRF or as part of the Fiscal Recovery Funds. States and local governments often share or collect revenue on behalf of one another, which results in intergovernmental transfers. When attributing revenue to a unit of government, the Census Bureau's methodology considers which unit of government imposes, collects, and retains the revenue and assigns the revenue to the unit of government that meets at least two of those three factors.[119] For purposes of measuring loss in general revenue due to the COVID–19 public health emergency and to better allow continued provision of government services, the retention and ability to use the revenue is a more critical factor. Accordingly, and to better measure the funds available for the provision of government services, the definition of general revenue would include intergovernmental transfers from States or local governments other than funds transferred pursuant to ARPA, CRF, or another Federal program. This formulation recognizes the importance of State transfers for local government revenue.[120]

Calculation of Loss. In general, recipients will compute the extent of the reduction in revenue by comparing actual revenue to a counterfactual trend representing what could have been expected to occur in the absence of the pandemic. This approach measures losses in revenue relative to the most recent fiscal year prior to the COVID–19 public health emergency by using the most recent pre-pandemic fiscal year as the starting point for estimates of revenue growth absent the pandemic. In other words, the counterfactual trend starts with the last full fiscal year prior to the COVID–19 public health emergency and then assumes growth at a constant rate in the subsequent years. Because recipients can estimate the revenue shortfall at multiple points in time throughout the covered period as revenue is collected, this approach accounts for variation across recipients in the timing of pandemic impacts.[121] Although revenue may decline for reasons unrelated to the COVID–19 public health emergency, to minimize the administrative burden on recipients and taking into consideration the devastating effects of the COVID–19 public health emergency, any diminution in actual revenues relative to the counterfactual pre-pandemic trend would be presumed to have been due to the COVID–19 public health emergency.

For purposes of measuring revenue growth in the counterfactual trend, recipients may use a *growth adjustment* of either 4.1 percent per year or the recipient's average annual revenue growth over the three full fiscal years prior to the COVID–19 public health emergency, whichever is higher. The option of 4.1 percent represents the average annual growth across all State and local government ''General Revenue from Own Sources'' in the most recent three years of available data.[122] This approach provides recipients with 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.

Recipients should calculate the extent of the reduction in revenue as of four points in time: December 31, 2020; December 31, 2021; December 31, 2022; and December 31, 2023. To calculate the extent of the reduction in revenue at each of these dates, recipients should follow 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 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 4.1 percent and the recipient's average annual revenue growth in the three full fiscal

[117] Fund-oriented reporting, such as what is used under the Governmental Accounting Standards Board (GASB), focuses on the types of uses and activities funded by the revenue, as opposed to the economic activity from which the revenue is sourced. *See* Governmental Accounting Standards Series, Statement No. 54 of the Governmental Accounting Standards Board: Fund Balance Reporting and Governmental Fund Type Definitions, No. 287–B (Feb. 2009).

[118] *Supra* note 116.

[119] U.S. Census Bureau, Government Finance and Employment Classification Manual (Dec. 2000), *https://www2.census.gov/govs/class/classfull.pdf.*

[120] For example, in 2018, state transfers to localities accounted for approximately 27 percent of local revenues. U.S. Census Bureau, Annual Survey of State and Local Government Finances, Table 1 (2018), *https://www.census.gov/data/datasets/2018/econ/local/public-use-datasets.html.*

[121] For example, following the 2007–09 recession, local government property tax collections did not begin to decline until 2011, suggesting that property tax collection declines can lag downturns. *See* U.S. Bureau of Economic Analysis, Personal current taxes: State and local: Property taxes [S210401A027NBEA], retrieved from Federal Reserve Economic Data, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/graph/?g=r3YI* (last visited Apr. 22, 2021). Estimating the reduction in revenue at points throughout the covered period will allow for this type of lagged effect to be taken into account during the covered period.

[122] Together with revenue from liquor stores from 2015 to 2018. This estimate does not include any intergovernmental transfers. A recipient using the three-year average to calculate their growth adjustment must be based on the definition of general revenue, including treatment of intergovernmental transfers. 2015–2018 represents the most recent available data. *See* U.S. Census Bureau, State & Local Government Finance Historical Datasets and Tables (2018), *https://www.census.gov/programs-surveys/gov-finances/data/datasets.html.*

years prior to the COVID–19 public health emergency.

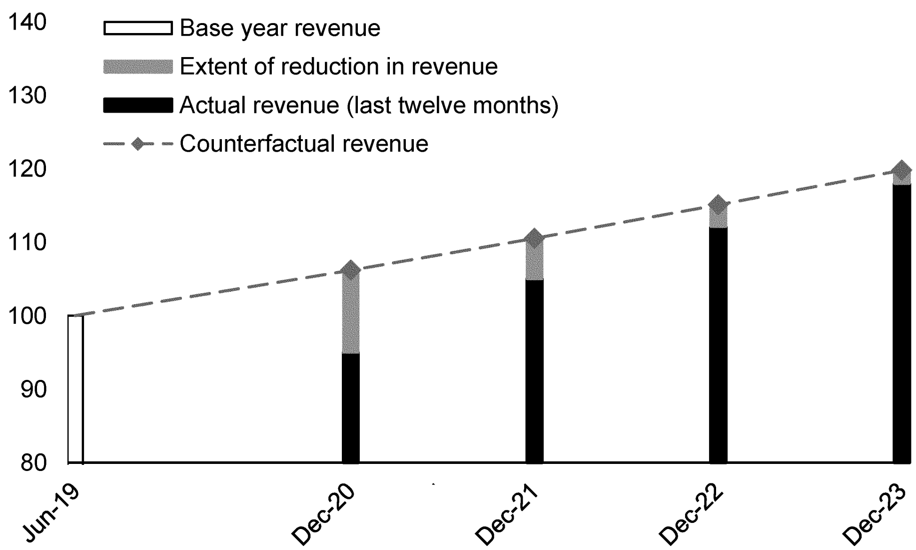
• *Step 3:* Identify *actual revenue,* which equals revenues collected over the past twelve months as of the calculation date.

• *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. In Step 2, the hypothetical recipient finds that 4.1 percent is greater than the recipient's average annual revenue growth in the three full fiscal years prior to the public health emergency. Furthermore, this recipient's base year ends June 30. 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:	106.2	110.6	115.1	119.8

The overall methodology for calculating the reduction in revenue is illustrated in the figure below:



Upon receiving Fiscal Recovery Fund payments, recipients may immediately calculate revenue loss for the period ending December 31, 2020.

Sections 602(c)(1)(C) and 603(c)(1)(C) of the Act provide recipients with broad latitude to use the Fiscal Recovery Funds for the provision of government services. Government services can include, but are not limited to, maintenance or pay-go funded building[123] 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. However, expenses associated with obligations under instruments evidencing financial indebtedness for borrowed money would not be considered the provision of government services, as these financing expenses do not directly provide services or aid to citizens. Specifically, government 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. That is, satisfaction of a settlement or judgment itself is not a government service, unless the settlement required the provision of government services. 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.

Question 13: Are there sources of revenue that either should or should not be included in the interim final rule's measure of ''general revenue'' for recipients? If so, discuss why these sources either should or should not be included.

Question 14: In the interim final rule, recipients are expected to calculate the reduction in revenue on an aggregate basis. 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.

Question 15: Treasury is considering 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–

[123] 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.

19 public health emergency. Discuss the advantages and disadvantages of this presumption, including when, if ever, during the covered period it would be appropriate to reevaluate the presumption that all losses are attributable to the COVID–19 public health emergency.

Question 16: Do recipients anticipate lagged revenue effects of the public health emergency? If so, when would these lagged effects be expected to occur, and what can Treasury to do support these recipients through its implementation of the program?

Question 17: In the interim final rule, paying interest or principal on government debt is not considered provision of a government service. Discuss the advantages and disadvantages of this approach, including circumstances in which paying interest or principal on government debt could be considered provision of a government service.

D. Investments in Infrastructure

To assist in meeting the critical need for investments and improvements to existing infrastructure in water, sewer, and broadband, the Fiscal Recovery Funds provide funds to State, local, and Tribal governments to make necessary investments in these sectors. The interim final rule outlines eligible uses within each category, allowing for a broad range of necessary investments in projects that improve access to clean drinking water, improve wastewater and stormwater infrastructure systems, and provide access to high-quality broadband service. Necessary investments are designed to provide an adequate minimum level of service and are unlikely to be made using private sources of funds. Necessary investments include projects that are required to maintain a level of service that, at least, meets applicable health-based standards, taking into account resilience to climate change, or establishes or improves broadband service to unserved or 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.[124]

It is important that necessary investments in water, sewer, or broadband infrastructure be carried out in ways that produce high-quality infrastructure, avert disruptive and costly delays, and promote efficiency. Treasury encourages recipients to ensure that water, sewer, and broadband projects use 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, not only to promote effective and efficient delivery of high-quality infrastructure projects but also to support the economic recovery through strong employment opportunities for workers. Using these practices in construction projects may help to ensure a reliable supply of skilled labor that would minimize disruptions, such as those associated with labor disputes or workplace injuries.

To provide public transparency on whether projects are using practices that promote on-time and on-budget delivery, Treasury will seek information from recipients on their workforce plans and practices related to water, sewer, and broadband projects undertaken with Fiscal Recovery Funds. Treasury will provide additional guidance and instructions on the reporting requirements at a later date.

1. Water and Sewer Infrastructure

The ARPA provides funds to State, local, and Tribal governments to make necessary investments in water and sewer infrastructure.[125] By permitting funds to be used for water and sewer infrastructure needs, Congress recognized the critical role that clean drinking water and services for the collection and treatment of wastewater and stormwater play in protecting public health. Understanding that State, local, and Tribal governments have a broad range of water and sewer infrastructure needs, the interim final rule provides these governments with wide latitude to identify investments in water and sewer infrastructure that are of the highest priority for their own communities, which may include projects on privately-owned infrastructure. The interim final rule does this by aligning eligible uses of the Fiscal Recovery Funds with the wide range of types or categories of projects that would be eligible to receive financial assistance through the Environmental Protection Agency's (EPA) Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF).[126]

Established by the 1987 amendments[127] to the Clean Water Act (CWA),[128] the CWSRF provides financial assistance for a wide range of water infrastructure projects to improve water quality and address water pollution in a way that enables each State to address and prioritize the needs of their populations. The types of projects eligible for CWSRF assistance include projects to construct, improve, and repair wastewater treatment plants, control non-point sources of pollution, improve resilience of infrastructure to severe weather events, create green infrastructure, and protect waterbodies from pollution.[129] Each of the 51 State programs established under the CWSRF have the flexibility to direct funding to their particular environmental needs, and each State may also have its own statutes, rules, and regulations that guide project eligibility.[130]

The DWSRF was modeled on the CWSRF and created as part of the 1996 amendments to the Safe Drinking Water Act (SDWA),[131] with the principal objective of helping public water systems obtain financing for improvements necessary to protect public health and comply with drinking water regulations.[132] Like the CWSRF,

[124] Treasury notes that using funds to support or oppose collective bargaining would not be included as part of ''necessary investments in water, sewer, or broadband infrastructure.''

[125] Sections 602(c)(1)(D), 603(c)(1)(D) of the Act.

[126] Environmental Protection Agency, Drinking Water State Revolving fund, *https://www.epa.gov/dwsrf* (last visited Apr. 30, 2021); Environmental Protection Agency, Clean Water State Revolving Fund, *https://www.epa.gov/cwsrf* (last visited Apr. 30, 2021).

[127] Water Quality Act of 1987, Public Law 100–4.

[128] Federal Water Pollution Control Act as amended, codified at 33 U.S.C. 1251 *et seq.*, common name (Clean Water Act). In 2009, the American Recovery and Reinvestment Act created the Green Project Reserve, which increased the focus on green infrastructure, water and energy efficient, and environmentally innovative projects. Public Law 111–5. The CWA was amended by the Water Resources Reform and Development Act of 2014 to further expand the CWSRF's eligibilities. Public Law 113–121. *The CWSRF's eligibilities were further expanded in 2018 by the America's Water Infrastructure Act of 2018, Public Law 115–270.*

[129] *See* Environmental Protection Agency, The Drinking Water State Revolving Funds: Financing America's Drinking Water, EPA–816–R–00–023 (Nov. 2000), *https://nepis.epa.gov/Exe/ZyPDF.cgi/200024WB.PDF?Dockey=200024WB.PDF; See also* Environmental Protection Agency, *Learn About the Clean Water State Revolving Fund, https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf (last visited Apr. 30, 2021).*

[130] 33 U.S.C. 1383(c). *See also Environmental Protection Agency, Overview of Clean Water State Revolving Fund Eligibilities (May 2016), https://www.epa.gov/sites/production/files/2016-07/documents/overview_of_cwsrf_eligibilities_may_2016.pdf; Claudia Copeland, Clean Water Act: A Summary of the Law, Congressional Research Service (Oct. 18, 2016), https://fas.org/sgp/crs/misc/RL30030.pdf; Jonathan L Ramseur, Wastewater Infrastructure: Overview, Funding, and Legislative Developments, Congressional Research Service (May 22, 2018), https://fas.org/sgp/crs/misc/R44963.pdf.*

[131] 42 U.S.C. 300j–12.

[132] Environmental Protection Agency, Drinking Water State Revolving Fund Eligibility Handbook, (June 2017), *https://www.epa.gov/sites/production/files/2017-06/documents/dwsrf_eligibility_handbook_june_13_2017_updated_508_version.pdf;* Environmental Protection Agency, Drinking Water

the DWSRF provides States with the flexibility to meet the needs of their populations.[133] The primary use of DWSRF funds is to assist communities in making water infrastructure capital improvements, including the installation and replacement of failing treatment and distribution systems.[134] In administering these programs, States must give priority to projects that ensure compliance with applicable health and environmental safety requirements; address the most serious risks to human health; and assist systems most in need on a per household basis according to State affordability criteria.[135]

By aligning use of Fiscal Recovery Funds with the categories or types of eligible projects under the existing EPA state revolving fund programs, the interim final rule provides recipients with the flexibility to respond to the needs of their communities while ensuring that investments in water and sewer infrastructure made using Fiscal Recovery Funds are necessary. As discussed above, the CWSRF and DWSRF were designed to provide funding for projects that protect public health and safety by ensuring compliance with wastewater and drinking water health standards.[136] The need to provide funding through the state revolving funds suggests that these projects are less likely to be addressed with private sources of funding; for example, by remediating failing or inadequate infrastructure, much of which is publicly owned, and by addressing non-point sources of pollution. This approach of aligning with the EPA state revolving fund programs also supports expedited project identification and investment so that needed relief for the people and communities most affected by the pandemic can deployed expeditiously and have a positive impact on their health and wellbeing as soon as possible. Further, the interim final rule is intended to preserve flexibility for award recipients to direct funding to their own particular needs and priorities and would not preclude recipients from applying their own additional project eligibility criteria.

In addition, responding to the immediate needs of the COVID–19 public health emergency may have diverted both personnel and financial resources from other State, local, and Tribal priorities, including projects to ensure compliance with applicable water health and quality standards and provide safe drinking and usable water.[137] Through sections 602(c)(1)(D) and 603(c)(1)(D), the ARPA provides resources to address these needs. Moreover, using Fiscal Recovery Funds in accordance with the priorities of the CWA and SWDA to ''assist systems most in need on a per household basis according to state affordability criteria'' would also have the benefit of providing vulnerable populations with safe drinking water that is critical to their health and, thus, their ability to work and learn.[138]

Recipients may use Fiscal Recovery Funds to invest in 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. Given the lifelong impacts of lead exposure for children, and the widespread nature of lead service lines, Treasury encourages recipients to consider projects to replace lead service lines.

Fiscal Recovery Funds may also be used to support the consolidation or establishment of drinking water systems. With respect to wastewater infrastructure, recipients may use Fiscal Recovery Funds to construct publicly owned treatment infrastructure, manage and treat stormwater or subsurface drainage water, facilitate water reuse, and secure publicly owned treatment works, among other uses. Finally, consistent with the CWSRF and DWSRF, Fiscal Recovery 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.

Many of the types of projects eligible under either the CWSRF or DWSRF 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 the ARPA may reduce energy required to treat drinking water. Similarly, projects eligible under the CWSRF include measures to conserve and reuse water or reduce the energy consumption of public water treatment facilities. 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 rain gardens 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 Fiscal Recovery Funds to provide relief, such as interconnecting water systems or rehabilitating existing wells during an extended drought.

Question 18: What are the advantages and disadvantages of aligning eligible uses with the eligible project type requirements of the DWSRF and CWSRF? What other water or sewer project categories, if any, should Treasury consider in addition to DWSRF and CWSRF eligible projects? Should Treasury consider a broader general category of water and sewer projects?

Question 19: What additional water and sewer infrastructure categories, if any, should Treasury consider to address and respond to the needs of unserved, undeserved, or rural communities? How do these projects differ from DWSFR and CWSRF eligible projects?

Question 20: What new categories of water and sewer infrastructure, if any, should Treasury consider to support State, local, and Tribal governments in mitigating the negative impacts of climate change? Discuss emerging technologies and processes that support resiliency of water and sewer infrastructure. Discuss any challenges faced by States and local governments when pursuing or implementing climate resilient infrastructure projects.

Question 21: Infrastructure projects related to dams and reservoirs are generally not eligible under the CWSRF and DWSRF categories. Should Treasury consider expanding eligible

Infrastructure Needs Survey and Assessment: Sixth Report to Congress (March 2018), *https://www.epa.gov/sites/production/files/2018-10/documents/corrected_sixth_drinking_water_infrastructure_needs_survey_and_assessment.pdf.*

[133] *Id.*

[134] *Id.*

[135] 42 U.S.C. 300j–12(b)(3)(A).

[136] Environmental Protection Agency, Learn About the Clean Water State Revolving Fund, *https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf* (last visited Apr. 30, 2021); 42 U.S.C. 300j–12.

[137] House Committee on the Budget, State and Local Governments are in Dire Need of Federal Relief (Aug. 19, 2020), *https://budget.house.gov/publications/report/state-and-local-governments-are-dire-need-federal-relief.*

[138] Environmental Protection Agency, Drinking Water State Revolving Fund (Nov. 2019), *https://www.epa.gov/sites/production/files/2019-11/documents/fact_sheet_-_dwsrf_overview_final_0.pdf;* Environmental Protection Agency, National Benefits Analysis for Drinking Water Regulations, *https://www.epa.gov/sdwa/national-benefits-analysis-drinking-water-regulations* (last visited Apr. 30, 2020).

infrastructure under the interim final rule to include dam and reservoir projects? Discuss public health, environmental, climate, or equity benefits and costs in expanding the eligibility to include these types of projects.

2. Broadband Infrastructure

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 critical activities, remote school, healthcare, and work. Recognizing the need for such connectivity, the ARPA provides funds to State, territorial, local, and Tribal governments to make necessary investments in broadband infrastructure.

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 access service for every facet of daily life including work, study, and healthcare.[139] With increased use of technology for daily activities and the movement by many businesses and schools to operating remotely during the pandemic, broadband has become even more critical for people across the country to carry out their daily lives.

By at least one measure, however, tens of millions of Americans live in areas where there is no broadband infrastructure that provides download speeds greater than 25 Mbps and upload speeds of 3 Mbps.[140] By contrast, as noted below, many households use upload and download speeds of 100 Mbps to meet their daily needs. 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).[141] There are disparities in availability as well; historically, Americans living in territories and Tribal lands as well as rural areas have disproportionately lacked sufficient broadband infrastructure.[142] Moreover, rapidly growing demand has, and will likely continue to, quickly outpace infrastructure capacity, a phenomenon acknowledged by various states around the country that have set scalability requirements to account for this anticipated growth in demand.[143]

The interim final rule provides that eligible investments in broadband are those that are designed to provide services meeting adequate speeds and are provided to unserved and underserved households and businesses. Understanding that States, territories, localities, and Tribal governments have a wide range of varied broadband infrastructure needs, the interim final rule provides award recipients with flexibility to identify the specific locations within their communities to be served and to otherwise design the project.

Under the interim final rule, eligible projects are expected to be designed to deliver, upon project completion, service that reliably meets or exceeds symmetrical upload and download speeds of 100 Mbps. There may be instances in which 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. In these instances, the affected project would be expected to be designed to deliver, upon project completion, service that reliably meets or exceeds 100 Mbps download 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.[144] In setting these standards, Treasury identified speeds necessary to ensure that broadband infrastructure is sufficient to enable users to generally meet household needs, including the ability to support the simultaneous use of work, education, and health applications, and also sufficiently robust to meet increasing household demands for bandwidth. Treasury also recognizes that different communities and their members may have a broad range of internet needs and that those needs may change over time.

In considering the appropriate speed requirements for eligible projects, Treasury considered estimates of typical households demands during the pandemic. Using the Federal Communication Commission's (FCC) Broadband Speed Guide, for example, a household with two telecommuters and two to three remote learners today are estimated to need 100 Mbps download to work simultaneously.[145] In households with more members, the demands may be greater, and in households with fewer members, the demands may be less.

In considering the appropriate speed requirements for eligible projects, Treasury also considered data usage patterns and how bandwidth needs have changed over time for U.S. households and businesses as people's use of technology in their daily lives has evolved. In the few years preceding the pandemic, market research data showed that average upload speeds in the United States surpassed over 10 Mbps in 2017 [146] and continued to increase significantly, with the average upload speed as of November, 2019 increasing to 48.41 Mbps,[147] attributable, in part to a shift to using broadband and the internet by individuals and businesses

[139] *See, e.g., https://www.ntia.gov/blog/2020/more-half-american-households-used-internet-health-related-activities-2019-ntia-data-show; https://www.ntia.gov/blog/2020/nearly-third-american-employees-worked-remotely-2019-ntia-data-show;* and generally, *https://www.ntia.gov/data/digital-nation-data-explorer.*

[140] As an example, 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. Availability was significantly less for rural versus urban populations, with 35.57 percent of the rural population lacking such access, compared with 2.57 percent of the urban population. Availability was also significantly less for tribal versus non-tribal populations, with 35.93 percent of the tribal population lacking such access, compared with 8.74 of the non-tribal population. Federal Communications Commission, Fixed Broadband Deployment, *https://broadbandmap.fcc.gov/#/* (last visited May 9, 2021).

[141] How Do U.S. Internet Costs Compare To The Rest Of The World?, BroadbandSearch Blog Post, *available at https://www.broadbandsearch.net/blog/internet-costs-compared-worldwide.*

[142] *See, e.g.,* Federal Communications Commission, Fourteenth Broadband Deployment Report, *available at https://docs.fcc.gov/public/attachments/FCC-21-18A1.pdf.*

[143] *See, e.g.,* Illinois Department of Commerce & Economic Opportunity, Broadband Grants, h (last visited May 9, 2021), *https://www2.illinois.gov/dceo/ConnectIllinois/Pages/BroadbandGrants.aspx;* Kansas Office of Broadband Development, Broadband Acceleration Grant, *https://www.kansascommerce.gov/wp-content/uploads/2020/11/Broadband-Acceleration-Grant.pdf* (last visited May 9, 2021); New York State Association of Counties, Universal Broadband: Deploying High Speed Internet Access in NYS (Jul. 2017), *https://www.nysac.org/files/BroadbandUpdate Report2017(1).pdf.*

[144] This scalability threshold is consistent with scalability requirements used in other jurisdictions. *Id.*

[145] Federal Communications Commission, Broadband Speed Guide, *https://www.fcc.gov/consumers/guides/broadband-speed-guide* (last visited Apr. 30, 2021).

[146] Letter from Lisa R. Youngers, President and CEO of Fiber Broadband Association to FCC, WC Docket No. 19–126 (filed Jan. 3, 2020), including an Appendix with research from RVA LLC, *Data Review Of The Importance of Upload Speeds* (Jan. 2020), and Ookla speed test data, *available at https://ecfsapi.fcc.gov/file/101030085118517/FCC%20RDOF%20Jan%203%20 Ex%20Parte.pdf.*Additional information on historic growth in data usage is provided in Schools, Health & Libraries Broadband Coalition, *Common Sense Solutions for Closing the Digital Divide,* Apr. 29, 2021.

[147] *Id. See also* United States's Mobile and Broadband internet Speeds—Speedtest Global Index, *available at https://www.speedtest.net/global-index/united-states#fixed.*

to create and share content using video sharing, video conferencing, and other applications.[148]

The increasing use of data accelerated markedly during the pandemic as households across the country became increasingly reliant on tools and applications that require greater internet capacity, both to download data but also to upload data. Sending information became as important as receiving it. A video consultation with a healthcare provider or participation by a child in a live classroom with a teacher and fellow students requires video to be sent and received simultaneously.[149] As an example, some video conferencing technology platforms indicate that download and upload speeds should be roughly equal to support two-way, interactive video meetings.[150] For both work and school, client materials or completed school assignments, which may be in the form of PDF files, videos, or graphic files, also need to be shared with others. This is often done by uploading materials to a collaboration site, and the upload speed available to a user can have a significant impact on the time it takes for the content to be shared with others. [151] These activities require significant capacity from home internet connections to both download and upload data, especially when there are multiple individuals in one household engaging in these activities simultaneously.

This need for increased broadband capacity during the pandemic was reflected in increased usage patterns seen over the last year. As OpenVault noted in recent advisories, the pandemic significantly increased the amount of data users consume. Among data users observed by OpenVault, per-subscriber average data usage for the fourth quarter of 2020 was 482.6 gigabytes per month, representing a 40 percent increase over the 344 gigabytes consumed in the fourth quarter of 2019 and a 26 percent increase over the third quarter 2020 average of 383.8 gigabytes.[152] OpenVault also noted significant increases in upstream usage among the data users it observed, with upstream data usage growing 63 percent—from 19 gigabytes to 31 gigabytes—between December, 2019 and December, 2020.[153] According to an OECD Broadband statistic from June 2020, the largest percentage of U.S. broadband subscribers have services providing speeds between 100 Mbps and 1 Gbps.[154]

Jurisdictions and Federal programs are increasingly responding to the growing demands of their communities for both heightened download and upload speeds. For example, Illinois now requires 100 Mbps symmetrical service as the construction standard for its state broadband grant programs. This standard is also consistent with speed levels, particularly download speed levels, prioritized by other Federal programs supporting broadband projects. Bids submitted as part of the FCC in its Rural Digital Opportunity Fund (RDOF), established to support the construction of broadband networks in rural communities across the country, are given priority if they offer faster service, with the service offerings of 100 Mbps download and 20 Mbps upload being included in the ''above baseline'' performance tier set by the FCC.[155] The Broadband Infrastructure Program (BBIP) [156] of the Department of Commerce, which provides Federal funding to deploy broadband infrastructure to eligible service areas of the country also prioritizes projects designed to provide broadband service with a download speed of not less than 100 Mbps and an upload speed of not less than 20 Mbps.[157]

The 100 Mbps upload and download speeds will support the increased and growing needs of households and businesses. Recognizing that, in some instances, 100 Mbps upload speed may be impracticable due to geographical, topographical, or financial constraints, the interim final rule permits upload speeds of between at least 20 Mbps and 100 Mbps in such instances. To provide for investments that will accommodate technologies requiring symmetry in download and upload speeds, as noted above, eligible projects that are not designed to deliver, upon project completion, service that reliably meets or exceeds symmetrical speeds of 100 Mbps because it would be impracticable to do so should be designed so that they can be scalable to such speeds. Recipients are also encouraged to prioritize investments in fiber optic infrastructure where feasible, as such advanced technology enables the next generation of application solutions for all communities.

Under the interim final rule, eligible projects are expected to focus on locations that are unserved or underserved. The interim final rule treats users as being unserved or underserved if they lack access to a wireline connection capable of reliably delivering at least minimum speeds of 25 Mbps download and 3 Mbps upload as households and businesses lacking this level of access are generally not viewed as being able to originate and receive high-quality voice, data, graphics, and video telecommunications. This threshold is consistent with the FCC's benchmark for an ''advanced telecommunications capability.'' [158] This threshold is also consistent with thresholds used in other Federal programs to identify eligible areas to be served by programs to improve broadband services. For example, in the FCC's RDOF program, eligible areas include those without current (or already funded) access to terrestrial broadband service providing 25 Mbps download and 3 Mbps upload speeds.[159] The Department of Commerce's BBIP also considers households to be ''unserved'' generally if they lack access to broadband service

[148] *Id.*

[149] One high definition Zoom meeting or class requires approximately 3.8 Mbps/3.0 Mbps (up/down).

[150] *See, e.g.,* Zoom, System Requirements for Windows, macOS, and Linux, *https://support.zoom.us/hc/en-us/articles/201362023-System-requirements-for-Windows-macOS-and-Linux#h_d278c327-e03d-4896-b19a-96a8f3c0c69c* (last visited May 8, 2021).

[151] By one estimate, to upload a one gigabit video file to YouTube would take 15 minutes at an upload speed of 10 Mbps compared with 1 minute, 30 seconds at an upload speed of 100 Mbps, and 30 seconds at an upload speed of 300 Mbps. *Reviews.org:* What is Symmetrical internet? (March 2020).

[152] OVBI: Covid-19 Drove 15 percent Increase in Broadband Traffic in 2020, OpenVault, Quarterly Advisory, (Feb. 10, 2021), *available at https://openvault.com/ovbi-covid-19-drove-51-increase-in-broadband-traffic-in-2020; See* OpenVault's data set incorporates information on usage by subscribers across multiple continents, including North America and Europe. Additional data and detail on increases in the amount of data users consume and the broadband speeds they are using is provided in *OpenVault Broadband Insights Report Q4,* Quarterly Advisory (Feb. 10, 2021), *available at https://openvault.com/complimentary-report-4q20/.*

[153] OVBI Special Report: 202 Upstream Growth Nearly 4X of Pre-Pandemic Years, OpenVault, Quarterly Advisory, (April 1, 20201), *available at https://openvault.com/ovbi-special-report-2020-upstream-growth-rate-nearly-4x-of-pre-pandemic-years/;* Additional data is provided in *OpenVault Broadband Insights Pandemic Impact on Upstream Broadband Usage and Network Capacity, available at https://openvault.com/upstream-whitepaper/.*

[154] Organisation for Economic Co-operation and Development, Fixed broadband subscriptions per 100 inhabitants, per speed tiers (June 2020), *https://www.oecd.org/sti/broadband/5.1-FixedBB-SpeedTiers-2020-06.xls www.oecd.org/sti/broadband/broadband-statistics.*

[155] *Rural Digital Opportunity Fund,* Report and Order, 35 FCC Rcd 686, 690, para. 9 (2020), *available at https://www.fcc.gov/document/fcc-launches-20-billion-rural-digital-opportunity-fund-0.*

[156] The BIPP was authorized by the Consolidated Appropriations Act, 2021, Section 905, Public Law 116–260, 134 Stat. 1182 (Dec. 27, 2020).

[157] Section 905(d)(4) of the Consolidated Appropriations Act, 2021.

[158] *Deployment Report, supra* note 142.

[159] *Rural Digital Opportunity Fund, supra* note 156.

with a download speed of not less than 25 Mbps download and 3 Mbps upload, among other conditions. In selecting an area to be served by a project, recipients are encouraged to avoid investing in locations that have 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.

Recipients are also encouraged to consider ways to integrate affordability options into their program design. To meet the immediate needs of unserved and underserved households and businesses, recipients are encouraged to focus on projects that deliver a physical broadband connection by prioritizing projects that achieve last mile-connections. Treasury also encourages recipients to prioritize support for broadband networks owned, operated by, or affiliated with local governments, non-profits, and co-operatives—providers with less pressure to turn profits and with a commitment to serving entire communities.

Under sections 602(c)(1)(A) and 603(c)(1)(A), assistance to households facing negative economic impacts due to COVID–19 is also an eligible use, including internet access or digital literacy assistance. As discussed above, in considering whether a potential use is eligible under this category, a recipient must consider whether, and the extent to which, the household has experienced a negative economic impact from the pandemic.

Question 22: What are the advantages and disadvantages of setting minimum symmetrical download and upload speeds of 100 Mbps? What other minimum standards would be appropriate and why?

Question 23: Would setting such a minimum be impractical for particular types of projects? If so, where and on what basis should those projects be identified? How could such a standard be set while also taking into account the practicality of using this standard in particular types of projects? In addition to topography, geography, and financial factors, what other constraints, if any, are relevant to considering whether an investment is impracticable?

Question 24: What are the advantages and disadvantages of setting a minimum level of service at 100 Mbps download and 20 Mbps upload in projects where it is impracticable to set minimum symmetrical download and upload speeds of 100 Mbps? What are the advantages and disadvantages of setting a scalability requirement in these cases? What other minimum standards would be appropriate and why?

Question 25: What are the advantages and disadvantages of focusing these investments on those without access to a wireline connection that reliably delivers 25 Mbps download by 3 Mbps upload? Would another threshold be appropriate and why?

Question 26: What are the advantages and disadvantages of setting any particular threshold for identifying unserved or underserved areas, minimum speed standards or scalability minimum? Are there other standards that should be set (e.g., latency)? If so, why and how? How can such threshold, standards, or minimum be set in a way that balances the public's interest in making sure that reliable broadband services meeting the daily needs of all Americans are available throughout the country with the providing recipients flexibility to meet the varied needs of their communities?

III. Restrictions on Use

As discussed above, recipients have considerable flexibility to use Fiscal Recovery Funds to address the diverse needs of their communities. To ensure that payments from the Fiscal Recovery Funds are used for these congressionally permitted purposes, the ARPA includes two provisions that further define the boundaries of the statute's eligible uses. Section 602(c)(2)(A) of the 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.'' In addition, sections 602(c)(2)(B) and 603(c)(2) prohibit any recipient, including cities, nonentitlement units of government, and counties, from using Fiscal Recovery Funds for deposit into any pension fund. These restrictions support the use of funds for the congressionally permitted purposes described in Section II of this Supplementary Information by providing a backstop against the use of funds for purposes outside of the eligible use categories.

These provisions give force to Congress's clear intent that Fiscal Recovery Funds be spent within the four eligible uses identified in the statute—(1) to respond to the public health emergency and its negative economic impacts, (2) to provide premium pay to essential workers, (3) to provide government services to the extent of eligible governments' revenue losses, and (4) to make necessary water, sewer, and broadband infrastructure investments—and not otherwise. These four eligible uses reflect Congress's judgment that the Fiscal Recovery Funds should be expended in particular ways that support recovery from the COVID–19 public health emergency. The further restrictions reflect Congress's judgment that tax cuts and pension deposits do not fall within these eligible uses. The interim final rule describes how Treasury will identify when such uses have occurred and how it will recoup funds put toward these impermissible uses and, as discussed in Section VIII of this **SUPPLEMENTARY INFORMATION**, establishes a reporting framework for monitoring the use of Fiscal Recovery Funds for eligible uses.

A. Deposit Into Pension Funds

The statute provides that recipients may not use Fiscal Recovery Funds for ''deposit into any pension fund.'' For the reasons discussed below, Treasury interprets ''deposit'' in this context to refer to an extraordinary payment into a pension fund for the purpose of reducing an accrued, unfunded liability. More specifically, the interim final rule does not permit this assistance to be used to make a payment into a pension fund if both:

1. The payment reduces a liability incurred prior to the start of the COVID–19 public health emergency, and
2. the payment occurs outside the recipient's regular timing for making such payments.

Under this interpretation, a ''deposit'' is distinct from a ''payroll contribution,'' which occurs when employers make payments into pension funds on regular intervals, with contribution amounts based on a pre-determined percentage of employees' wages and salaries.

As discussed above, eligible uses for premium pay and responding to the negative economic impacts of the COVID–19 public health emergency include hiring and compensating public sector employees. Interpreting the scope of ''deposit'' to exclude contributions that are part of payroll contributions is more consistent with these eligible uses and would reduce administrative burden for recipients. Accordingly, if an employee's wages and salaries are an eligible use of Fiscal Recovery Funds, recipients may treat the employee's covered benefits as an eligible use of Fiscal Recovery Funds. For purposes of the Fiscal Recovery 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 taxes (which includes Social Security and Medicare taxes).

Treasury anticipates that this approach to employees' covered benefits will be comprehensive and, for employees whose wage and salary costs are eligible expenses, will allow all covered benefits listed in the previous paragraph to be eligible under the Fiscal Recovery Funds. Treasury expects that this will minimize the administrative burden on recipients by treating all the specified covered benefit types as eligible expenses, for employees whose wage and salary costs are eligible expenses.

Question 27: Beyond a ''deposit'' and a ''payroll contribution,'' are there other types of payments into a pension fund that Treasury should consider?

B. Offset a Reduction in Net Tax Revenue

For States and territories (recipient governments [160]), section 602(c)(2)(A)—the offset provision—prohibits the use of Fiscal Recovery Funds to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or administrative interpretation [161] during the covered period. If a State or territory uses Fiscal Recovery Funds to offset a reduction in net tax revenue, the ARPA provides that the State or territory must repay to the Treasury an amount equal to the lesser of (i) the amount of the applicable reduction attributable to the impermissible offset and (ii) the amount received by the State or territory under the ARPA. *See* Section IV of this **SUPPLEMENTARY INFORMATION**. As discussed below Section IV of this **SUPPLEMENTARY INFORMATION**, a State or territory that chooses to use Fiscal Recovery Funds to offset a reduction in net tax revenue does not forfeit its entire allocation of Fiscal Recovery Funds (unless it misused the full allocation to offset a reduction in net tax revenue) or any non-ARPA funding received.

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. A recipient government would only be considered to have used Fiscal Recovery 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 the Fiscal Recovery Funds to offset the reduction in net tax revenue. 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, the remaining amount not covered by these sources will be considered to have been offset by Fiscal Recovery Funds, in contravention of the offset provision. The interim final rule recognizes three sources of funds that may offset a reduction in net tax revenue other than Fiscal Recovery Funds—organic growth, increases in revenue (*e.g.,* an increase in a tax rate), and certain cuts in spending.

In order to reduce burden, the interim final rule's approach also 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 the Fiscal Recovery Funds based on information they likely have or can obtain. This approach ensures that recipient governments have the information they need to understand the implications of their decisions regarding the use of the Fiscal Recovery Funds—and, in particular, whether they are using the funds to directly or indirectly offset a reduction in net tax revenue, making them potentially subject to recoupment.

Reporting on both the eligible uses and on a State's or territory's covered tax changes that would reduce tax revenue will enable identification of, and recoupment for, use of Fiscal Recovery Funds to directly offset reductions in tax revenue resulting from tax relief. Moreover, this approach recognizes that, because money is fungible, even if Fiscal Recovery 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. By focusing on the cost of changes that reduce net tax revenue—and how a recipient government is offsetting those reductions in constructing its budget over the covered period—the framework prevents efforts to use Fiscal Recovery Funds to indirectly offset reductions in net tax revenue for which the recipient government has not identified other offsetting sources of funding.

As discussed in greater detail below in this preamble, the framework set forth in the interim final rule establishes a step-by-step process for determining whether, and the extent to which, Fiscal Recovery Funds have been used to offset a reduction in net tax revenue. Based on information reported annually 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 Fiscal Recovery 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 they are 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 Fiscal Recovery Funds. These are:
    - ◦ State or territory tax changes that would increase any source of general

[160] 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 Fiscal Recovery Funds.

[161] For brevity, referred to as ''changes in law, regulation, or interpretation'' for the remainder of this preamble.

fund revenue, such as a change that would increase a tax rate; and

○ Spending cuts in areas not being replaced by Fiscal Recovery 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 the 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. This process is discussed in greater detail in Section IV 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 Fiscal Recovery Funds. This process ensures Fiscal Recovery Funds are used in a manner consistent with the statute's defined eligible uses and the offset provision's limitation on these eligible uses, while avoiding undue interference with State and territory decisions regarding tax and spending policies.

The interim final rule also implements a process for recouping Fiscal Recovery Funds that were used to offset reductions in net tax revenue, including the calculation of any amounts that may be subject to recoupment, a process for a recipient government to respond to a notice of recoupment, and clarification regarding amounts excluded from recoupment. *See* Section IV of this **SUPPLEMENTARY INFORMATION.**

The interim final rule includes several definitions that are applicable to the implementation of the offset provision.

Covered change. The offset provision is triggered by a reduction in net tax revenue resulting from ''a change in law, regulation, or administrative interpretation.'' A covered change 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 where the phase-in or taking effect was not prescribed prior to the start of the covered period. 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 the changes within the control of the State or territory are considered covered changes. 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. 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.[162] This would not be considered a covered change. In addition, 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. Finally, Treasury has determined and previously announced that income tax changes—even those made during the covered period—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) are permissible under the offset provision.

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 will be calculated as fiscal year 2019 (FY 2019) tax revenue indexed for inflation in each year of the covered period, with inflation calculated using the Bureau of Economic Analysis's Implicit Price Deflator.[163]

FY 2019 was chosen as the starting year for the baseline because it is the last full fiscal year prior to the COVID–19 public health emergency.[164] This baseline year is consistent with the approach directed by the ARPA in sections 602(c)(1)(C) and 603(c)(1)(C), which identify the ''most recent full fiscal year of the [State, territory, or Tribal government] prior to the emergency'' as the comparator for measuring revenue loss. U.S. gross domestic product is projected to rebound to pre-pandemic levels in 2021,[165] suggesting that an FY 2019 pre-pandemic baseline is a reasonable comparator for future revenue levels. The FY 2019 baseline revenue will be 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.

Reporting year. The interim final rule defines ''reporting year'' as a single year within the covered period, aligned to the current fiscal year of the recipient government during the covered period, for which a recipient government reports the value of covered changes and any sources of offsetting revenue increases (''in-year'' value), regardless of when those changes were enacted. For the fiscal years ending in 2021 or 2025 (partial years), the term ''reporting year'' refers to the portion of the year falling within the covered period. For example, the reporting year for a fiscal year beginning July 2020 and ending June 2021 would be from March 3, 2021 to July 2021.

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.[166] It provides a consistent, well-established definition with which States and territories will be familiar and is consistent with the approach taken in Section II.C of this **SUPPLEMENTARY INFORMATION** describing the implementation of sections 602(c)(1)(C) and 603(c)(1)(C) of the Act, regarding revenue loss. Consistent with the approach described in Section II.C of this **SUPPLEMENTARY INFORMATION**, tax

[162] *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).

[163] U.S. Department of Commerce, Bureau of Economic Analysis, GDP Price Deflator, *https://www.bea.gov/data/prices-inflation/gdp-price-deflator* (last visited May 9, 2021).

[164] Using Fiscal Year 2019 is consistent with section 602 as Congress provided for using that baseline for determining the impact of revenue loss affecting the provision of government services. *See* section 602(c)(1)(C).

[165] Congressional Budget Office, An Overview of the Economic Outlook: 2021 to 2031 (February 1, 2021), *available at https://www.cbo.gov/publication/56965.*

[166] 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).

revenue does not include revenue taxed and collected by a different unit of government (*e.g.,* revenue from taxes levied by a local government and transferred to a recipient government).

Framework. The interim final rule provides a step-by-step framework, to be used in each reporting year, to calculate whether the offset provision applies to a State's or territory's use of Fiscal Recovery Funds:

(1) *Covered changes that reduce tax revenue.* For each reporting year, a recipient government will identify and value 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 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 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). Further, estimation approaches should not use dynamic methodologies that incorporate the projected effects of macroeconomic growth because macroeconomic growth is accounted for separately in the framework. Relative to these dynamic scoring methodologies, scoring methodologies that do not incorporate projected effects of macroeconomic growth rely on fewer assumptions and thus provide greater consistency among States and territories. Dynamic scoring that incorporates macroeconomic growth may also increase the likelihood of underestimation of the cost of a reduction in tax revenue.

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, the approach of using the projected value of changes in law that enact fiscal policies to estimate the net effect of such policies is consistent with the way many States and territories already consider tax changes.[167]

(2) *In excess of the de minimis.* The recipient government will next calculate 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 will be 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.

The de minimis level is calculated as 1 percent of the reporting year's baseline. Treasury recognizes that, pursuant to their taxing authority, 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. The de minimis level recognizes the inherent challenges and uncertainties that recipient governments face, and thus allows relatively small reductions in tax revenue without consequence. Treasury determined the 1 percent level 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.[168] The 1 percent de minimis level reflects the historical reductions in revenue due to minor changes in state fiscal policies.

(3) *Safe harbor.* The recipient government will then compare 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 Fiscal Recovery 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, this 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 the covered changes.

(4) *Consideration of other sources of funding.* Next, the recipient government will 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. As when identifying and valuing covered changes that reduce tax revenue, the value of revenue-raising changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, aligned with the recipient government's existing approach for measuring the effects of fiscal policies, and measured relative to a current law baseline, or based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s). Further, and as discussed above, estimation approaches should not use dynamic scoring methodologies that incorporate the effects of macroeconomic growth because growth is accounted for separately under the interim final rule. 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.

(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 not in an area where the recipient government has spent Fiscal Recovery Funds. To better align with existing reporting and accounting, the interim final rule considers the department, agency, or

[167] *See, e.g.,* Megan Randall & Kim Rueben, Tax Policy Center, Sustainable Budgeting in the States: Evidence on State Budget Institutions and Practices (Nov. 2017), *available at https://www.taxpolicycenter.org/sites/default/files/publication/149186/sustainable-budgeting-in-the-states_1.pdf.*

[168] Data provided by the Urban-Brookings Tax Policy Center for state-level EITC changes for 2004–2017.

authority from which spending has been cut and whether the recipient government has spent Fiscal Recovery Funds on that same department, agency, or authority. This approach was selected to allow recipient governments to report how Fiscal Recovery Funds have been spent using reporting units already incorporated into their budgeting process. If they have not spent Fiscal Recovery 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, the Fiscal Recovery Funds generally would be deemed to have replaced the amount of spending cut and only reductions in spending above the amount of Fiscal Recovery Funds spent on the department, agency, or authority would count.

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 Fiscal Recovery Funds (net reduction in total spending). This approach ensures that reported spending cuts actually create fiscal space, rather than simply offsetting other spending increases. A net reduction in total spending is measured as the difference between total spending in each reporting year, excluding Fiscal Recovery 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. 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. 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. Treasury chose this approach because while many recipient governments may score budget legislation using projections, spending cuts are readily observable using actual values.

This approach—allowing only spending reductions in areas where the recipient government has not spent Fiscal Recovery Funds to be used as an offset for a reduction in net tax revenue—aims to prevent recipient governments from using Fiscal Recovery Funds to supplant State or territory funding in the eligible use areas, and then use those State or territory funds to offset tax cuts. Such an approach helps ensure that Fiscal Recovery Funds are not used to ''indirectly'' offset revenue reductions due to covered changes.

In order to help ensure recipient governments use Fiscal Recovery Funds in a manner consistent with the prescribed eligible uses and do not use Fiscal Recovery Funds to indirectly offset a reduction in net tax revenue resulting from a covered change, Treasury will monitor changes in spending throughout the covered period. If, over the course of the covered period, a spending cut is subsequently replaced with Fiscal Recovery Funds and used to indirectly offset a reduction in net tax revenue resulting from a covered change, Treasury may consider such change to be an evasion of the restrictions of the offset provision and seek recoupment of such amounts.

(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 Fiscal Recovery Funds to offset a reduction in net tax revenue, up to the amount that revenue has actually declined. That is, the maximum value of reduction in revenue due to covered changes which a recipient government must cover is capped at the difference between the baseline and actual tax revenue.[169] In the event that the baseline is above actual tax revenue and 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. For example, if a recipient government reduces tax revenue by $1 billion, makes no other changes, and experiences revenue growth driven by organic economic growth worth $500 million, it need only pay for the remaining $500 million with sources other than Fiscal Recovery Funds. The revenue reduction cap implements this approach for permitting organic revenue growth to cover the cost of tax cuts.

Finally, as discussed further in Section IV of this **SUPPLEMENTARY INFORMATION**, a recipient government may request reconsideration of any amounts identified as subject to recoupment under this framework. This process ensures that all relevant facts and circumstances, including information regarding planned spending cuts and budgeting assumptions, are considered prior to a determination that an amount must be repaid. Amounts subject to recoupment are calculated on an annual basis; amounts recouped in one year cannot be returned if the State or territory subsequently reports an increase in net tax revenue.

To facilitate the implementation of the framework above, and in addition to reporting required on eligible uses, in each year of the reporting period, each State and territory will report to Treasury the following items:

- 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;
- 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;

Treasury will provide additional guidance and instructions the reporting requirements at a later date.

Question 28: Does the interim final rule's definition of tax revenue accord with existing State and territorial practice and, if not, are there other definitions or elements Treasury should consider? Discuss why or why not.

Question 29: The interim final rule permits certain spending cuts to cover the costs of reductions in tax revenue, including cuts in a department, agency, or authority in which the recipient government is not using Fiscal Recovery Funds. How should Treasury and recipient governments consider the scope of a department, agency, or authority for the use of funds to ensure spending cuts are not being substituted with Fiscal Recovery Funds while also avoiding an overbroad definition of that captures spending that is, in fact, distinct?

Question 30: Discuss the budget scoring methodologies currently used by States and territories. How should the interim final rule take into consideration differences in approaches? Please discuss the use of

[169] This cap is applied in § 35.8(c) of the interim final rule, calculating the amount of funds used in violation of the tax offset provision.

practices including but not limited to macrodynamic scoring, microdynamic scoring, and length of budget windows.

Question 31: If a recipient government has a balanced budget requirement, how will that requirement impact its use of Fiscal Recovery Funds and ability to implement this framework?

Question 32: To implement the framework described above, the interim final rule establishes certain reporting requirements. To what extent do recipient governments already produce this information and on what timeline? Discuss ways that Treasury and recipient governments may better rely on information already produced, while ensuring a consistent application of the framework.

Question 33: Discuss States' and territories' ability to produce the figures and numbers required for reporting under the interim final rule. What additional reporting tools, such as a standardized template, would facilitate States' and territories' ability to complete the reporting required under the interim final rule?

C. Other Restrictions on Use

Payments from the Fiscal Recovery Funds are also subject to pre-existing limitations provided in other Federal statutes and regulations and may not be used as non-Federal match for other Federal programs whose statute or regulations bar the use of Federal funds to meet matching requirements. For example, payments from the Fiscal Recovery Funds may not be used to satisfy the State share of Medicaid.[170]

As provided for in the award terms, payments from the Fiscal Recovery Funds as a general matter will be 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.

D. Timeline for Use of Fiscal Recovery Funds

Section 602(c)(1) and section 603(c)(1) require that payments from the Fiscal Recovery Funds be used only to cover costs incurred by the State, territory, Tribal government, or local government by December 31, 2024. Similarly, the CARES Act provided that payments from the CRF be used to cover costs incurred by December 31, 2021.[171] The definition of ''incurred'' does not have a clear meaning. With respect to the CARES Act, on the understanding that the CRF was intended to be used to meet relatively short-term needs, Treasury interpreted this requirement to mean that, for a cost to be considered to have been incurred, performance of the service or delivery of the goods acquired must occur by December 31, 2021. In contrast, the ARPA, passed at a different stage of the COVID–19 public health emergency, was intended to provide more general fiscal relief over a broader timeline. In addition, the ARPA expressly permits the use of Fiscal Recovery Funds for improvements to water, sewer, and broadband infrastructure, which entail a longer timeframe. In recognition of this, Treasury is interpreting the requirement in section 602 and section 603 that costs be incurred by December 31, 2024, to require only that recipients have obligated the Fiscal Recovery Funds by such date. The interim final rule adopts a definition of ''obligation'' that is based on the definition used for purposes of the Uniform Guidance, which will allow for uniform administration of this requirement and is a definition with which most recipients will be familiar.

Payments from the Fiscal Recovery Funds are grants provided to recipients to mitigate the fiscal effects of the COVID–19 public health emergency and to respond to the public health emergency, consistent with the eligible uses enumerated in sections 602(c)(1) and 603(c)(1).[172] As such, these funds are intended to provide economic stimulus in areas still recovering from the economic effects of the pandemic. In implementing and interpreting these provisions, including what it means to ''respond to'' the COVID–19 public health emergency, Treasury takes into consideration pre-pandemic facts and circumstances (*e.g.,* average revenue growth prior to the pandemic) as well as impact of the pandemic that predate the enactment of the ARPA (*e.g.,* replenishing Unemployment Trust balances drawn during the pandemic). While assessing the effects of the COVID–19 public health emergency necessarily takes into consideration the facts and circumstances that predate the ARPA, use of Fiscal Recovery Funds is forward looking.

As discussed above, recipients are permitted to use payments from the Fiscal Recovery Funds to respond to the public health emergency, to respond to workers performing essential work by providing premium pay or providing grants to eligible employers, and to make necessary investments in water, sewer, or broadband infrastructure, which all relate to prospective uses. In addition, sections 602(c)(1)(C) and 603(c)(1)(C) permit recipients to use Fiscal Recovery Funds for the provision of government services. This clause provides that the amount of funds that may be used for this purpose is measured by reference to the reduction in revenue due to the public health emergency relative to revenues collected in the most recent full fiscal year, but this reference does not relate to the period during which recipients may use the funds, which instead refers to prospective uses, consistent with the other eligible uses.

Although as discussed above the eligible uses of payments from the Fiscal Recovery Funds are all prospective in nature, Treasury considers the beginning of the covered period for purposes of determining compliance with section 602(c)(2)(A) to be the relevant reference point for this purpose. The interim final rule thus permits funds to be used to cover costs incurred beginning on March 3, 2021. This aligns the period for use of Fiscal Recovery Funds with the period during which these funds may not be used to offset reductions in net tax revenue. Permitting Fiscal Recovery Funds to be used to cover costs incurred beginning on this date will also mean that recipients that began incurring costs in the anticipation of enactment of the ARPA and in advance of the issuance of this rule and receipt of payment from the Fiscal Recovery Funds would be able to cover them using these payments.[173]

As set forth in the award terms, the period of performance will run until December 31, 2026, which will provide recipients a reasonable amount of time to complete projects funded with payments from the Fiscal Recovery Funds.

IV. Recoupment Process

Under the ARPA, failure to comply with the restrictions on use contained in sections 602(c) and 603(c) of the Act may result in recoupment of funds.[174] The interim final rule implements these provisions by establishing a process for recoupment.

Identification and Notice of Violations. Failure to comply with the restrictions on use will be identified based on reporting provided by the

[170] *See* 42 CFR 433.51 and 45 CFR 75.306.

[171] Section 1001 of Division N of the Consolidated Appropriations Act, 2021 amended section 601(d)(3) of the Act by extending the end of the covered period for CRF expenditures from December 30, 2020 to December 31, 2021.

[172] Sections 602(a), 603(a), 602(c)(1) and 603(c)(1) of the Act.

[173] Given the nature of this program, recipients will not be permitted to use funds to cover pre-award costs, *i.e.,* those incurred prior to March 3, 2021.

[174] Sections 602(e) and 603(e) of the Act.

recipient. As discussed further in Sections III.B and VIII of this **SUPPLEMENTARY INFORMATION**, Treasury will collect information regarding eligible uses on a quarterly basis and on the tax offset provision on an annual basis. Treasury also may consider other information in identifying a violation, such as information provided by members of the public. If Treasury identifies a violation, it will provide written notice to the recipient along with an explanation of such amounts.

Request for Reconsideration. Under the interim final rule, a recipient may submit a request for reconsideration of any amounts identified in the notice provided by Treasury. This reconsideration process provides a recipient the opportunity to submit additional information it believes supports its request in light of the notice of recoupment, including, for example, additional information regarding the recipient's use of Fiscal Recovery Funds or its tax revenues. The process also provides the Secretary with an opportunity to consider all information relevant to whether a violation has occurred, and if so, the appropriate amount for recoupment.

The interim final rule also establishes requirements for the timing of a request for reconsideration. Specifically, if a recipient wishes to request reconsideration of any amounts identified in the notice, the recipient must submit a written request for reconsideration to the Secretary within 60 calendar days of receipt of such notice. The request must include an explanation of why the recipient believes that the finding of a violation or recoupable amount identified in the notice of recoupment should be reconsidered. To facilitate the Secretary's review of a recipient's request for reconsideration, the request should identify all supporting reasons for the request. Within 60 calendar days of receipt of the recipient's request for reconsideration, 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.

The process and timeline established by the interim final rule are intended to provide the recipient with an adequate opportunity to fully present any issues or arguments in response to the notice of recoupment.[175] This process will allow the Secretary to respond to the issues and considerations raised in the request for reconsideration taking into account the information and arguments presented by the recipient along with any other relevant information.

Repayment. Finally, the interim final rule provides that any amounts subject to recoupment must be repaid within 120 calendar days of receipt of any final notice of recoupment or, if the recipient has not requested reconsideration, within 120 calendar days of the initial notice provided by the Secretary.

Question 34: Discuss the timeline for requesting reconsideration under the interim final rule. What, if any, challenges does this timeline present?

V. Payments in Tranches to Local Governments and Certain States

Section 603 of the Act provides that the Secretary will make payments to local governments in two tranches, with the second tranche being paid twelve months after the first payment. In addition, section 602(b)(6)(A)(ii) provides that the Secretary may withhold payment of up to 50 percent of the amount allocated to each State and territory for a period of up to twelve months from the date on which the State or territory provides its certification to the Secretary. Any such withholding for a State or territory is required to be based on the unemployment rate in the State or territory as of the date of the certification.

The Secretary has determined to provide in this interim final rule for withholding of 50 percent of the amount of Fiscal Recovery Funds allocated to all States (and the District of Columbia) other than those with an unemployment rate that is 2.0 percentage points or more above its pre-pandemic (*i.e.,* February 2020) level. The Secretary will refer to the latest available monthly data from the Bureau of Labor Statistics as of the date the certification is provided. Based on data available at the time of public release of this interim final rule, this threshold would result in a majority of States being paid in two tranches.

Splitting payments for the majority of States is consistent with the requirement in section 603 of the Act to make payments from the Coronavirus Local Fiscal Recovery Fund to local governments in two tranches.[176] Splitting payments to States into two tranches will help encourage recipients to adapt, as necessary, to new developments that could arise over the coming twelve months, including potential changes to the nature of the public health emergency and its negative economic impacts. While the U.S. economy has been recovering and adding jobs in aggregate, there is still considerable uncertainty in the economic outlook and the interaction between the pandemic and the economy.[177] For these reasons, Treasury believes it will be appropriate for a majority of recipients to adapt their plans as the recovery evolves. For example, a faster-than-expected economic recovery in 2021 could lead a recipient to dedicate more Fiscal Recovery Funds to longer-term investments starting in 2022. In contrast, a slower-than-expected economic recovery in 2021 could lead a recipient to use additional funds for near-term stimulus in 2022.

At the same time, the statute contemplates the possibility that elevated unemployment in certain States could justify a single payment. Elevated unemployment is indicative of a greater need to assist unemployed workers and stimulate a faster economic recovery. For this reason, the interim final rule provides that States and territories with an increase in their unemployment rate over a specified threshold may receive a single payment, with the expectation that a single tranche will better enable these States and territories to take additional immediate action to aid the unemployed and strengthen their economies.

Following the initial pandemic-related spike in unemployment in 2020, States' unemployment rates have been trending back towards pre-pandemic levels. However, some States' labor markets are healing more slowly than others. Moreover, States varied widely in their pre-pandemic levels of unemployment, and some States remain substantially further from their pre-

[175] The interim final rule also provides that Treasury may extend any deadlines.

[176] With respect to Federal financial assistance more generally, States are subject to the requirements of the Cash Management Improvement Act (CMIA), under which Federal funds are drawn upon only on an as needed basis and States are required to remit interest on unused balances to Treasury. Given the statutory requirement for Treasury to make payments to States within a certain period, these requirements of the CMIA and Treasury's implementing regulations at 31 CFR part 205 will not apply to payments from the Fiscal Recovery Funds. Providing funding in two tranches to the majority of States reflects, to the maximum extent permitted by section 602 of the Act, the general principles of Federal cash management and stewardship of Federal funding, yet will be much less restrictive than the usual requirements to which States are subject.

[177] The potential course of the virus, and its impact on the economy, has contributed to a heightened degree of uncertainty relative to prior periods. *See, e.g.,* Dave Altig et al., Economic uncertainty before and during the COVID–19 pandemic, J. of Public Econ. (Nov. 2020), *available at https://www.sciencedirect.com/science/article/abs/pii/S0047272720301389*.

pandemic starting point. Consequently, Treasury is delineating States with significant remaining elevation in the unemployment rate, based on the net difference to pre-pandemic levels.

Treasury has established that significant remaining elevation in the unemployment rate is a net change in the unemployment rate of 2.0 percentage points or more relative to pre-pandemic levels. In the four previous recessions going back to the early 1980s, the national unemployment rate rose by 3.6, 2.3, 2.0, and 5.0 percentage points, as measured from the start of the recession to the eventual peak during or immediately following the recession.[178] Each of these increases can therefore represent a recession's impact on unemployment. To identify States with significant remaining elevation in unemployment, Treasury took the lowest of these four increases, 2.0 percentage points, to indicate states where, despite improvement in the unemployment rate, current labor market conditions are consistent still with a historical benchmark for a recession.

No U.S. territory will be subject to withholding of its payment from the Fiscal Recovery Funds. For Puerto Rico, the Secretary has determined that the current level of the unemployment rate (8.8 percent, as of March 2021 [179]) is sufficiently high such that Treasury should not withhold any portion of its payment from the Fiscal Recovery Funds regardless of its change in unemployment rate relative to its pre-pandemic level. For U.S. territories that are not included in the Bureau of Labor Statistics' monthly unemployment rate data, the Secretary will not exercise the authority to withhold amounts from the Fiscal Recovery Funds.

VI. Transfer

The statute authorizes State, territorial, and Tribal governments; counties; metropolitan cities; and nonentitlement units of local government (counties, metropolitan cities, and nonentitlement units of local government are collectively referred to as ''local governments'') to transfer amounts paid from the Fiscal Recovery Funds to a number of specified entities. By permitting these transfers, Congress recognized the importance of providing flexibility to governments seeking to achieve the greatest impact with their funds, including by working with other levels or units of government or private entities to assist recipient governments in carrying out their programs. This includes special-purpose districts that perform specific functions in the community, such as fire, water, sewer, or mosquito abatement districts.

Specifically, under section 602(c)(3), a State, territory, or Tribal government may transfer 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.'' [180] Similarly, section 603(c)(3) authorizes a local government to transfer funds to the same entities (other than Tribal organizations).

The interim final rule clarifies that the lists of transferees in sections 602(c)(3) and 603(c)(3) are not exclusive. The interim final rule permits State, territorial, and Tribal governments to transfer Fiscal Recovery Funds to other constituent units of government or private entities beyond those specified in the statute. Similarly, local governments are authorized to transfer Fiscal Recovery Funds to other constituent units of government (*e.g.,* a county is able to transfer Fiscal Recovery Funds to a city, town, or school district within it) or to private entities. This approach is intended to help provide funding to local governments with needs that may exceed the allocation provided under the statutory formula.

State, local, territorial, and Tribal governments that receive a Federal award directly from a Federal awarding agency, such as Treasury, are ''recipients.'' 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. The recipient remains responsible for monitoring and overseeing the subrecipient's use of Fiscal Recovery 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 Fiscal Recovery Funds for the duration of the award.

Transfers under sections 602(c)(3) and 603(c)(3) must qualify as an eligible use of Fiscal Recovery Funds by the transferor. Once Fiscal Recovery Funds are received, the transferee must abide by the restrictions on use applicable to the transferor under the ARPA and other applicable law and program guidance. For example, if a county transferred Fiscal Recovery Funds to a town within its borders to respond to the COVID–19 public health emergency, the town would be bound by the eligible use requirements applicable to the county in carrying out the county's goal. This also means that county A may not transfer Fiscal Recovery Funds to county B for use in county B because such a transfer would not, from the perspective of the transferor (county A), be an eligible use in county A.

Section 603(c)(4) separately provides for transfers by a local government to its State or territory. A transfer under section 603(c)(4) will not make the State a subrecipient of the local government, and such Fiscal Recovery Funds may be used by the State for any purpose permitted under section 602(c). A transfer 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 or territory. The transferor must provide notice of the transfer to Treasury in a format specified by Treasury. If the local government does not provide such notice, it will remain legally obligated to Treasury under the award and remain responsible for ensuring that the awarded Fiscal Recovery Funds are being used in accordance with the statute and program guidance and for reporting on such uses to Treasury. A State that receives a transfer from a local government under section 603(c)(4) will be bound by all of the use restrictions set forth in section 602(c) with respect to the use of those Fiscal Recovery Funds, including the prohibitions on use of such Fiscal Recovery Funds to offset certain reductions in taxes or to make deposits into pension funds.

Question 35: What are the advantages and disadvantages of treating the list of transferees in sections 602(c)(3) and 603(c)(3) as nonexclusive, allowing States and localities to transfer funds to entities outside of the list?

Question 36: Are there alternative ways of defining ''special-purpose unit of State or local government'' and

[178] Includes the period during and immediately following recessions, as defined by the National Bureau of Economic Research. National Bureau of Economic Research, US Business Cycle Expansions and Contractions, *https://www.nber.org/research/data/us-business-cycle-expansions-and-contractions* (last visited Apr. 27, 2021). Based on data from 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 Apr. 27, 2021).

[179] U.S. Bureau of Labor Statistics, Economic News Release—Table 1. Civilian labor force and unemployment by state and selected area, seasonally adjusted, *https://www.bls.gov/news.release/laus.t01.htm* (last visited Apr. 30, 2021).

[180] Section 602(c)(3) of the Act.

"public benefit corporation" that would better further the aims of the Funds?

VII. Nonentitlement Units of Government

The Fiscal Recovery Funds provides for $19.53 billion in payments to be made to States and territories which will distribute the funds to nonentitlement units of local government (NEUs); local governments which generally have populations below 50,000. These local governments have not yet received direct fiscal relief from the Federal Government during the COVID–19 public health emergency, making Fiscal Recovery Funds payments an important source of support for their public health and economic responses. Section 603 requires Treasury to allocate and pay Fiscal Recovery Funds to the States and territories and requires the States and territories to distribute Fiscal Recovery Funds to NEUs based on population within 30 days of receipt unless an extension is granted by the Secretary. The interim final rule clarifies certain aspects regarding the distribution of Fiscal Recovery by States and territories to NEUs, as well as requirements around timely payments from the Fiscal Recovery Funds.

The ARPA requires that States and territories allocate funding to NEUs in an amount that bears the same proportion as the population of the NEU bears to the total population of all NEUs in the State or territory, subject to a cap (described below). Because the statute requires States and territories to make distributions based on population, States and territories may not place additional conditions or requirements on distributions to NEUs, beyond those required by the ARPA and Treasury's implementing regulations and guidance. For example, a State may not impose stricter limitations than permitted by statute or Treasury regulations or guidance on an NEU's use of Fiscal Recovery Funds based on the NEU's proposed spending plan or other policies. States and territories are also not permitted to offset any debt owed by the NEU against the NEU's distribution. Further, States and territories may not provide funding on a reimbursement basis—*e.g.,* requiring NEUs to pay for project costs up front before being reimbursed with Fiscal Recovery Funds payments—because this funding model would not comport with the statutory requirement that States and territories make distributions to NEUs within the statutory timeframe.

Similarly, States and territories distributing Fiscal Recovery Funds payments to NEUs are responsible for complying with the Fiscal Recovery Funds statutory requirement that distributions to NEUs not exceed 75 percent of the NEU's most recent budget. The most recent budget is defined as the NEU's most recent annual total operating budget, including its general fund and other funds, as of January 27, 2020. Amounts in excess of such cap and therefore not distributed to the NEU must be returned to Treasury by the State or territory. States and territories may rely for this determination on a certified top-line budget total from the NEU.

Under the interim final rule, the total allocation and distribution to an NEU, including the sum of both the first and second tranches of funding, cannot exceed the 75 percent cap. 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 cap. This approach will provide an administrable means to implement the cap for small local governments that do not adopt a formal budget.

Section 603(b)(3) of the Social Security Act provides for Treasury to make payments to counties but provides that, in the case of an amount to be paid to a county that is not a unit of general local government, the amount shall instead be paid to the State in which such county is located, and such State shall distribute such amount to each unit of general local government within such county in an amount that bears the same proportion to the amount to be paid to such county as the population of such units of general local government bears to the total population of such county. As with NEUs, States may not place additional conditions or requirements on distributions to such units of general local government, beyond those required by the ARPA and Treasury's implementing regulations and guidance.

In the case of consolidated governments, section 603(b)(4) allows consolidated governments (*e.g.,* a city-county consolidated government) to receive payments under each allocation based on the respective formulas. In the case of a consolidated government, Treasury interprets the budget cap to apply to the consolidated government's NEU allocation under section 603(b)(2) but not to the consolidated government's county allocation under section 603(b)(3).

If necessary, States and territories may use the Fiscal Recovery Funds under section 602(c)(1)(A) to fund expenses related to administering payments to NEUs and units of general local government, as disbursing these funds itself is a response to the public health emergency and its negative economic impacts. If a State or territory requires more time to disburse Fiscal Recovery Funds to NEUs than the allotted 30 days, Treasury will grant extensions of not more than 30 days for States and territories that submit a certification in writing in accordance with section 603(b)(2)(C)(ii)(I). Additional extensions may be granted at the discretion of the Secretary.

Question 37: What are alternative ways for States and territories to enforce the 75 percent cap while reducing the administrative burden on them?

Question 38: What criteria should Treasury consider in assessing requests for extensions for further time to distribute NEU payments?

VIII. Reporting

States (defined to include the District of Columbia), territories, metropolitan cities, counties, and Tribal governments will be required to submit one interim report and thereafter quarterly Project and Expenditure reports through the end of the award period on December 31, 2026. The interim report will include a recipient's expenditures by category at the summary level from the date of award to July 31, 2021 and, for States and territories, information related to distributions to nonentitlement units. Recipients must submit their interim report to Treasury by August 31, 2021. Nonentitlement units of local government are not required to submit an interim report.

The quarterly Project and Expenditure reports will include financial data, information on contracts and subawards over $50,000, types of projects funded, and other information regarding a recipient's utilization of the award funds. The reports will include the same general data (*e.g.,* on obligations, expenditures, contracts, grants, and sub-awards) as those submitted by recipients of the CRF, with some modifications. Modifications will include updates to the expenditure categories and the addition of data elements related to specific eligible uses, including some of the reporting elements described in sections above. The initial quarterly Project and Expenditure report will cover two calendar quarters from the date of award to September 30, 2021, and must be submitted to Treasury by October 31, 2021. The subsequent quarterly reports will cover one calendar quarter and must be submitted to Treasury within 30 days after the end of each calendar quarter.

Nonentitlement units of local government will be required to submit annual Project and Expenditure reports until the end of the award period on December 31, 2026. The initial annual Project and Expenditure report for nonentitlement units of local government will cover activity from the date of award to September 30, 2021 and must be submitted to Treasury by October 31, 2021. The subsequent annual reports must be submitted to Treasury by October 31 each year.

States, territories, metropolitan cities, and counties with a population that exceeds 250,000 residents will also be required to submit an annual Recovery Plan Performance report to Treasury. The Recovery Plan Performance report will provide the public and Treasury information on the projects that recipients are undertaking with program funding and how they are planning to ensure project outcomes are achieved in an effective, efficient, and equitable manner. Each jurisdiction will have some flexibility in terms of the form and content of the Recovery Plan Performance report, as long as it includes the minimum information required by Treasury. The Recovery Plan Performance report will include key performance indicators identified by the recipient and some mandatory indicators identified by Treasury, as well as programmatic data in specific eligible use categories and the specific reporting requirements described in the sections above. The initial Recovery Plan Performance report will cover the period from the date of award to July 31, 2021 and must be submitted to Treasury by August 31, 2021. Thereafter, Recovery Plan Performance reports 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. The second Recovery Plan Performance report will cover the period from July 1, 2021 to June 30, 2022, and must be submitted to Treasury by July 31, 2022. Each annual Recovery Plan Performance report must be posted on the public-facing website of the recipient. Local governments with fewer than 250,000 residents, Tribal governments, and nonentitlement units of local government are not required to develop a Recovery Plan Performance report.

Treasury will provide additional guidance and instructions on the reporting requirements outlined above for the Fiscal Recovery Funds at a later date.

IX. Comments and Effective Date

This interim final rule is being issued without advance notice and public comment to allow for immediate implementation of this program. As discussed below, the requirements of advance notice and public comment do not apply ''to the extent that there is involved . . . a matter relating to agency . . . grants.'' [181] The interim final rule implements statutory conditions on the eligible uses of the Fiscal Recovery Funds grants, and addresses the payment of those funds, the reporting on uses of funds, and potential consequences of ineligible uses. In addition and as discussed below, the Administrative Procedure Act 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.'' [182] This good cause justification also supports waiver of the 60-day delayed effective date for major rules under the Congressional Review Act at 5 U.S.C. 808(2). Although this interim final rule is effective immediately, comments are solicited from interested members of the public and from recipient governments on all aspects of the interim final rule.

These comments must be submitted on or before July 16, 2021.

X. Regulatory Analyses

Executive Orders 12866 and 13563

This interim final rule is economically significant for the purposes of Executive Orders 12866 and 13563. Treasury, however, is proceeding under the emergency provision at Executive Order 12866 section 6(a)(3)(D) based on the need to act expeditiously to mitigate the current economic conditions arising from the COVID–19 public health emergency. The rule has been reviewed by the Office of Management and Budget (OMB) in accordance with Executive Order 12866. This rule is necessary to implement the ARPA in order to provide economic relief to State, local, and Tribal governments adversely impacted by the COVID–19 public health emergency.

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:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or Tribal governments or communities in a material way (also referred to as ''economically significant'' regulations);

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This regulatory action is an economically significant regulatory action 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

[181] 5 U.S.C. 553(a)(2).

[182] 5 U.S.C. 553(b)(3)(B); *see also* 5 U.S.C. 553(d)(3) (creating an exception to the requirement of a 30-day delay before the effective date of a rule ''for good cause found and published with the rule'').

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.''

Treasury has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action, and is issuing this interim 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. Based on the analysis that follows and the reasons stated elsewhere in this document, Treasury believes that this interim final rule is consistent with the principles set forth in Executive Order 13563.

Treasury also has determined that this regulatory action does not unduly interfere with States, territories, Tribal governments, and localities in the exercise of their governmental functions.

This Regulatory Impact Analysis discusses the need for regulatory action, the potential benefits, and the potential costs.

Need for Regulatory Action. This interim final rule implements the $350 billion Fiscal Recovery Funds 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 interim final rule is needed to ensure that recipients of Fiscal Recovery 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 interim final rule is primarily a transfer rule: It transfers $350 billion in aid from the Federal Government to states, territories, Tribal governments, and localities, generating a significant macroeconomic effect on the U.S. economy. In making this transfer, 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 Fiscal Recovery 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.[183] 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 2007–09 recession.[184]

This interim final rule provides benefits across several areas by implementing the four eligible funding uses, as defined in statute: Strengthening the response to the COVID–19 public health emergency and its economic impacts; easing 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 certain types of infrastructure. In implementing the ARPA, Treasury also sought to support disadvantaged communities that have been disproportionately impacted by the pandemic. The Fiscal Recovery Funds as implemented by the interim final rule can be expected to channel resources toward these uses in order to achieve substantial near-term economic and public health benefits, as well as longer-term benefits arising from the allowable investments in water, sewer, and broadband infrastructure and aid to families.

[183] Gabriel Chodorow-Reich et al., Does State Fiscal Relief during Recessions Increase Employment? Evidence from the American Recovery and Reinvestment Act, American Econ. J.: Econ. Policy, 4:3 118–45 (Aug. 2012), *available at https://www.aeaweb.org/articles?id=10.1257/pol.4.3.118.*

[184] *See, e.g.,* Fitzpatrick, Haughwout & Setren, Fiscal Drag from the State and Local Sector?, Liberty Street Economics Blog, Federal Reserve Bank of New York (June 27, 2012), *https://www.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 9.

These benefits are achieved in the interim final rule through a broadly flexible approach that sets clear guidelines on eligible uses of Fiscal Recovery Funds and provides State, local, and Tribal government officials discretion within those eligible uses to direct Fiscal Recovery Funds to areas of greatest need within their jurisdiction. While preserving recipients' overall flexibility, the interim final rule includes several provisions that implement statutory requirements and will help support use of Fiscal Recovery Funds to achieve the intended benefits. The remainder of this section clarifies how Treasury's approach to key provisions in the interim final rule will contribute to greater realization of benefits from the program.

- *Revenue Loss:* Recipients will 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'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. Moreover, recipients will have the opportunity to re-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 should 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, Treasury's approach provides a more accurate representation of the effect of the pandemic on overall revenues.
- *Premium Pay:* Per the statute, recipients have broad latitude to designate critical infrastructure sectors and make grants to third-party employers for the purpose of providing premium pay or otherwise respond to essential workers. While the interim final rule generally preserves the flexibility in the statute, it does add a requirement that recipients give written justification in the case that premium pay would increase a worker's annual pay above a certain 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. Treasury believes the threshold in the interim final rule strikes the appropriate balance between preserving flexibility and helping encourage use of these resources to help those in greatest need. The interim final rule also requires that eligible workers have regular in-person interactions or regular physical handling of items that were also handled by others. This requirement will also help encourage use of financial resources for those who have endured the heightened risk of performing essential work.

• *Withholding of Payments to Recipients:* Treasury believes that for the vast majority of recipient entities, it will be appropriate to receive funds in two separate payments. As discussed above, withholding of 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 will not withhold any funds from the first payment. Treasury believes that this approach strikes the 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.

• *Hiring Public Sector Employees:* The interim final rule states explicitly that recipients may use funds to restore their workforces up to pre-pandemic levels. Treasury believes that this statement is beneficial because it eliminates any uncertainty that could cause delays or otherwise negatively impact restoring public sector workforces (which, at time of publication, remain significantly below pre-pandemic levels).

Finally, the interim final rule aims to promote and streamline the provision of assistance to individuals and communities in greatest need, particularly communities that have been historically disadvantaged 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.''[185] To this end, the interim final rule enumerates a list of services that may be provided using Fiscal Recovery Funds in low-income areas to address the disproportionate 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 Fiscal Recovery Funds to restore (to pre-pandemic levels) state and local workforces, where women and people of color are disproportionately represented;[186] and targets investments in broadband infrastructure to unserved and underserved areas. 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 Fiscal Recovery Funds, oversee subrecipients and beneficiaries, and file periodic reports with Treasury. It also requires States to allocate Fiscal Recovery 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 most 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 CRF and Treasury expects them to rely heavily on established processes developed last year or through prior grant funding, mitigating burden on these governments.

Treasury expects to provide technical assistance to defray the costs of administration of Fiscal Recovery Funds to further mitigate burden. In making implementation choices, Treasury has hosted numerous consultations with a diverse range of direct recipients—States, small cities, counties, and Tribal governments—along with various communities across the United States, including those that are underserved. Treasury lacks data to estimate the precise extent to which this interim final rule generates administrative burden for State, local, and Tribal governments, but seeks comment to better estimate and account for these costs, as well as on ways to lessen administrative burdens.

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 interim 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. 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

[185] Executive Order on Advancing Racial Equity and Support for Underserved Communities through the Federal Government (Jan. 20, 2021) (86 FR 7009, January 25, 2021), *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/* (last visited May 9, 2021).

[186] David Cooper, Mary Gable & Algernon Austin, Economic Policy Institute Briefing Paper, The Public-Sector Jobs Crisis: Women and African Americans hit hardest by job losses in state and local governments, *https://www.epi.org/publication/bp339-public-sector-jobs-crisis* (last visited May 9, 2021).

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 interim final rule implements statutory conditions on the eligible uses of the Fiscal Recovery Funds grants, and addresses the payment of those funds, the reporting on uses of funds, and potential consequences of ineligible uses. The rule is thus ''both clearly and directly related to a federal grant program.'' *National Wildlife Federation* v. *Snow,* 561 F.2d 227, 232 (D.C. Cir. 1976). The rule sets forth the ''process necessary to maintain state . . . eligibility for federal funds,'' *id.,* as well as the ''method[s] by which states can . . . qualify for federal aid,'' and other ''integral part[s] of the grant program,'' *Center for Auto Safety* v. *Tiemann,* 414 F. Supp. 215, 222 (D.D.C. 1976). As a result, the requirements of 5 U.S.C. 553 do not apply.

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)(3)(B); *see also* 5 U.S.C. 553(d)(3) (creating an exception to the requirement of a 30-day delay before the effective date of a rule ''for good cause found and published with the rule''). Assuming 5 U.S.C. 553 applied, Treasury would still have good cause under sections 553(b)(3)(B) and 553(d)(3) for not undertaking section 553's requirements. The ARPA is a law responding to a historic economic and public health emergency; it is ''extraordinary'' legislation about which ''both Congress and the President articulated a profound sense of 'urgency.''' *Petry* v. *Block,* 737 F.2d 1193, 1200 (D.C. Cir. 1984). Indeed, several provisions implemented by this interim final rule (sections 602(c)(1)(A) and 603(c)(1)(A)) explicitly provide funds to ''respond to the public health emergency,'' and the urgency is further exemplified by Congress's command (in sections 602(b)(6)(B) and 603(b)(7)(A)) that, ''[t]o the extent practicable,'' funds must be provided to Tribes and cities ''not later than 60 days after the date of enactment.'' *See Philadelphia Citizens in Action* v. *Schweiker,* 669 F.2d 877, 884 (3d Cir. 1982) (finding good cause under circumstances, including statutory time limits, where APA procedures would have been ''virtually impossible''). Finally, there is an urgent need for States to undertake the planning necessary for sound fiscal policymaking, which requires an understanding of how funds provided under the ARPA will augment and interact with existing budgetary resources and tax policies. Treasury understands that many states require immediate rules on which they can rely, especially in light of the fact that the ARPA ''covered period'' began on March 3, 2021. The statutory urgency and practical necessity are good cause to forego the ordinary requirements of notice-and-comment rulemaking.

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 takes effect 60 days after the rule is published in the **Federal Register**. 5 U.S.C. 801(a)(3). Notwithstanding this requirement, the CRA allows agencies to dispense with the requirements of section 801 when the agency for good cause finds that such procedure would be impracticable, unnecessary, or contrary to the public interest and the rule shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). Pursuant to section 808(2), for the reasons discussed above, Treasury for good cause finds that a 60-day delay to provide public notice is impracticable and contrary to the public interest.

Paperwork Reduction Act

The information collections associated with State, territory, local, and Tribal government applications materials necessary to receive Fiscal Recovery Funds (*e.g.,* payment information collection and acceptance of award terms) have been reviewed and approved by OMB pursuant to the Paperwork Reduction Act (44 U.S.C. chapter 35) (PRA) emergency processing procedures and assigned control number 1505–0271. The information collections related to ongoing reporting requirements, as discussed in this interim final rule, will be submitted to OMB for emergency processing in the near future. 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. Burden estimates below are preliminary.

Reporting	Number of respondents (estimated)	Number of responses per respondent	Total responses	Hours per response	Total burden in hours	Cost to respondent ($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
Quarterly Project and Expenditure Report.	5,050	4***	20,200	25	505,000	24,644,000
Annual Project and Expenditure Report from NEUs.	TBD	1 per year	† 20,000–40,000	15	300,000–600,000	14,640,000–29,280,000
Annual Recovery Plan Performance report.	418	1 per year	418	100	41,800	2,039,840
Total	(**)	N/A	55,768–75,768	141	851,850–1,151,850	41,570,280–56,210,280

*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.

**5,050–TBD.

***Per year after first year.

† (Estimate only).

Periodic reporting is required by section 602(c) of Section VI of the Social Security Act and under the interim final rule.

As discussed in Section VIII of this **SUPPLEMENTARY INFORMATION**, recipients of Fiscal Recovery Funds will be required to submit one interim report and thereafter quarterly Project and Expenditure reports until the end of the award period. Recipients must submit interim reports to Treasury by August

31, 2021. The quarterly Project and Expenditure reports will include financial data, information on contracts and subawards over $50,000, types of projects funded, and other information regarding a recipient's utilization of the award funds.

Nonentitlement unit recipients will be required to submit annual Project and Expenditure reports until the end of the award period. The initial annual Project and Expenditure report for Nonentitlement unit recipients must be submitted to Treasury by October 31, 2021. The subsequent annual reports must be submitted to Treasury by October 31 each year. States, territories, metropolitan cities, and counties with a population that exceeds 250,000 residents will also be required to submit an annual Recovery Plan Performance report to Treasury. The Recovery Plan Performance report will include descriptions of the projects funded and information on the performance indicators and objectives of the award. Each annual Recovery Plan Performance report must be posted on the public-facing website of the recipient. Treasury will provide additional guidance and instructions on the all the reporting requirements outlined above for the Fiscal Recovery Funds program at a later date.

These and related periodic reporting requirements are under consideration and will be submitted to OMB for approval under the PRA emergency provisions in the near future.

Treasury invites comments on all aspects of the reporting and recordkeeping requirements including: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Comments should be sent by the comment deadline to the *www.regulations.gov* docket with a copy to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, 725 17th Street NW, Washington, DC 20503; or email to *oira_submission@omb.eop.gov.*

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 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. Since this rule is exempt from the notice and comment requirements of the APA, Treasury is not required to conduct a regulatory flexibility analysis.

List of Subjects in 31 CFR Part 35

Executive compensation, Public health emergency, State and local governments, Tribal governments.

For the reasons stated in the preamble, the Department of the Treasury amends 31 CFR part 35 as follows:

PART 35—PANDEMIC RELIEF PROGRAMS

■ 1. The authority citation for part 35 is revised to read as follows:

Authority: 42 U.S.C. 802(f); 42 U.S.C. 803(f); 31 U.S.C. 321; Division N, Title V, Subtitle B, Pub. L. 116–260, 134 Stat. 1182; Section 104A, Pub. L. 103–325, 108 Stat. 2160, as amended (12 U.S.C. 4701 *et seq.*); Pub. L. 117–2, 135 Stat. 4 (42 U.S.C. 802 *et seq.*).

■ 2. Revise the part heading to read as set forth above.

■ 3. Add subpart A to read as follows:

Subpart A—Coronavirus State and Local Fiscal Recovery Funds

Sec.

§ 35.1 Purpose.

This subpart implements section 9901 of the American Rescue Plan Act (Subtitle M of Title IX of Pub. L. 117–2), which amends Title VI of the Social Security Act (42 U.S.C. 801 *et seq.*) by adding sections 602 and 603 to establish the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Fund.

§ 35.2 Applicability.

This subpart 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.

As used in this subpart:

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.

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. 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, Territory, or Tribal government, the period that:

(1) Begins on March 3, 2021; and

(2) Ends on the last day of the fiscal year of such State, Territory, or Tribal government in which all funds received by the State, Territory, or Tribal government 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 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 child care; 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; 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 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 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, 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 does not include revenues from utilities. Revenue from Tribal business enterprises must be included in general revenue.

Intergovernmental transfers means money received from other governments, including grants and shared taxes.

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.

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) 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.

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 with respect to any single eligible worker. 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 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 workers' 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.

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 by the Bureau of Indian Affairs 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)).

Unserved and underserved households or businesses means one or more households or businesses that are not currently served by a wireline connection that reliably delivers at least 25 Mbps download speed and 3 Mbps of upload speed.

§ 35.4 Reservation of authority, reporting.

(a) *Reservation of authority.* Nothing in this subpart 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 subpart, 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 covered period, recipients shall provide to the Secretary periodic reports providing detailed accounting of the uses of funds, all 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 section § 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, and any funds not expended to cover such obligations 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 (e) 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, including for one or more of the following purposes:

(1) *COVID–19 response and prevention.* Expenditures for the mitigation and prevention of COVID–19, including:

(i) Expenses related to COVID–19 vaccination programs and sites, including staffing, acquisition of equipment or supplies, facilities costs, and information technology or other administrative expenses;

(ii) COVID–19-related expenses of public hospitals, clinics, and similar facilities;

(iii) COVID–19 related expenses in congregate living facilities, including skilled nursing facilities, long-term care facilities, incarceration settings, homeless shelters, residential foster care facilities, residential behavioral health treatment, and other group living facilities;

(iv) Expenses of establishing temporary public medical facilities and other measures to increase COVID–19 treatment capacity, including related construction costs and other capital investments in public facilities to meet COVID–19-related operational needs;

(v) Expenses of establishing temporary public medical facilities and other measures to increase COVID–19 treatment capacity, including related construction costs and other capital investments in public facilities to meet COVID–19-related operational needs;

(vi) Costs of providing COVID–19 testing and monitoring, contact tracing, and monitoring of case trends and genomic sequencing for variants;

(vii) Emergency medical response expenses, including emergency medical transportation, related to COVID–19;

(viii) Expenses for establishing and operating public telemedicine capabilities for COVID–19-related treatment;

(ix) Expenses for communication related to COVID–19 vaccination programs and communication or enforcement by recipients of public health orders related to COVID–19;

(x) Expenses for acquisition and distribution of medical and protective supplies, including sanitizing products and personal protective equipment;

(xi) Expenses for disinfection of public areas and other facilities in response to the COVID–19 public health emergency;

(xii) Expenses for technical assistance to local authorities or other entities on mitigation of COVID–19-related threats to public health and safety;

(xiii) Expenses for quarantining or isolation of individuals;

(xiv) Expenses of providing paid sick and paid family and medical leave to public employees to enable compliance with COVID–19 public health precautions;

(xv) Expenses for treatment of the long-term symptoms or effects of COVID–19, including post-intensive care syndrome;

(xvi) Expenses for the improvement of ventilation systems in congregate settings, public health facilities, or other public facilities;

(xvii) Expenses related to establishing or enhancing public health data systems; and

(xviii) Mental health treatment, substance misuse treatment, and other behavioral health services.

(2) *Public health and safety staff.* 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.

(3) *Hiring State and local government staff.* Payroll, covered benefit, and other costs associated with the recipient increasing the number of its employees up to the number of employees that it employed on January 27, 2020.

(4) *Assistance to unemployed workers.* Assistance, including job training, for 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.

(5) *Contributions to State unemployment insurance trust funds.* Contributions to an unemployment trust fund up to the level required to restore the unemployment trust fund to its balance on 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.

(6) *Small businesses.* Assistance to small businesses, including loans, grants, in-kind assistance, technical assistance or other services, that responds to the negative economic impacts of the COVID–19 public health emergency.

(7) *Nonprofits.* Assistance to nonprofit organizations, including loans, grants, in-kind assistance, technical assistance or other services, that responds to the negative economic impacts of the COVID–19 public health emergency.

(8) *Assistance to households.* Assistance programs, including cash assistance programs, that respond to the COVID–19 public health emergency.

(9) *Aid to impacted industries.* Aid to tourism, travel, hospitality, and other impacted industries that responds to the negative economic impacts of the COVID–19 public health emergency.

(10) *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.

(11) *Survivor's benefits.* Benefits for the surviving family members of individuals who have died from COVID–19, including cash assistance to widows, widowers, or dependents of individuals who died of COVID–19.

(12) *Disproportionately impacted populations and communities.* A program, service, or other assistance that is provided in a qualified census tract, that is provided to households and populations living in a qualified census tract, that is provided by a Tribal government, or that is provided to other households, businesses, or populations disproportionately impacted by the COVID–19 public health emergency, such as:

(i) Programs or services that facilitate access to health and social services, including:

(A) Assistance accessing or applying for public benefits or services;

(B) Remediation of lead paint or other lead hazards; and

(C) Community violence intervention programs;

(ii) Programs or services that address housing insecurity, lack of affordable housing, or homelessness, including:

(A) Supportive housing or other programs or services to improve access to stable, affordable housing among individuals who are homeless;

(B) Development of affordable housing to increase supply of affordable and high-quality living units; and

(C) Housing vouchers and assistance relocating to neighborhoods with higher levels of economic opportunity and to reduce concentrated areas of low economic opportunity;

(iii) Programs or services that address or mitigate the impacts of the COVID–19 public health emergency on education, including:

(A) New or expanded early learning services;

(B) Assistance to high-poverty school districts to advance equitable funding across districts and geographies; and

(C) Educational and evidence-based services to address the academic, social, emotional, and mental health needs of students; and

(iv) Programs or services that address or mitigate the impacts of the COVID–19 public health emergency on childhood health or welfare, including:

(A) New or expanded childcare;

(B) 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

(C) 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.

(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, 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 it prioritizes low- and moderate-income persons. The recipient must provide, whether for themselves or on behalf of a grantee, a written justification to the Secretary of how the premium pay or grant provided under this paragraph (c) responds to eligible workers performing essential work if the premium pay or grant would increase an eligible worker's total wages and remuneration above 150 percent of such eligible worker's residing State's average annual wage for all occupations or their residing county's average annual wage, whichever is higher.

(d) *Providing government services.* For the provision of government services to the extent of a reduction in the recipient's general revenue, calculated according to paragraphs (d)(1) and (2) of this section.

(1) *Frequency.* A recipient must calculate the reduction in its general revenue using information as-of December 31, 2020, December 31, 2021, December 31, 2022, and December 31, 2023 (each, a calculation date) and following each calculation date.

(2) *Calculation.* A reduction in a recipient's general revenue equals:

$$Max\ \{[Base\ Year\ Revenue * \ (1 + Growth\ Adjustment)^{\left(\frac{n_t}{12}\right)}] - Actual\ General\ Revenue_t; 0\}$$

Where:

Base Year Revenue is the recipient's general revenue for the most recent full fiscal year prior to the COVD–19 public health emergency;

Growth Adjustment is equal to the greater of 4.1 percent (or 0.041) and the recipient's average annual revenue growth over the three full fiscal years prior to the COVID–19 public health emergency.

n equals the number of months elapsed from the end of the base year to the calculation date.

Actual General Revenue is a recipient's actual general revenue collected during 12-month period ending on each calculation date;

Subscript *t* denotes the specific calculation date.

(e) *To make necessary investments in infrastructure.* A recipient may use funds to make investments in:

(1) *Clean Water State Revolving Fund and Drinking Water State Revolving Fund investments.* Projects or activities of the type that would be eligible under section 603(c) of the Federal Water Pollution Control Act (33 U.S.C. 1383(c)) or section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12); or,

(2) *Broadband.* Broadband infrastructure that is designed to provide service to unserved or underserved households and businesses and that is designed to, upon completion:

(i) Reliably meet or exceed symmetrical 100 Mbps download speed and upload speeds; or

(ii) 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 meeting the standards set forth in paragraph (e)(2)(i) of this section:

(A) Reliably meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed; and

(B) Be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed.

§ 35.7 Pensions.

A recipient 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, Treasury 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.* Treasury 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) *Notice.* If Treasury calculates an amount subject to recoupment under paragraph (b) of this section, Treasury will provide the recipient a written notice of the amount subject to recoupment along with an explanation of such amounts.

(d) *Request for reconsideration.* Unless Treasury extends the time period, within 60 calendar days of receipt of a notice of recoupment provided under paragraph (c) of this section, a recipient may submit a written request to Treasury 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 Treasury 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 Treasury extends the time period, within 60 calendar days of receipt of the recipient's request for reconsideration provided pursuant to paragraph (d) of this section, 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.

(f) *Repayment of funds.* Unless Treasury extends the time period, a recipient shall repay to the Secretary any amounts subject to recoupment in accordance with instructions provided by Treasury:

(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.

§ 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 the date that is 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 at least 30 days prior to the date referenced in paragraph (a) 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 subpart 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 Treasury pursuant to section 603(b)(2)(B) of the Social Security Act shall distribute the amount of the payment to nonentitlement units of 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. 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 paragraph (b).

(c) *Units of general local government.* Each State or Territory that receives a payment from Treasury 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.

Laurie Schaffer,

Acting General Counsel.

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U.S. DEPARTMENT OF THE TREASURY

Coronavirus State and Local Fiscal Recovery Funds

The American Rescue Plan will deliver $350 billion for state, local, territorial, and Tribal governments to respond to the COVID-19 emergency and bring back jobs.

The Coronavirus State and Local Fiscal Recovery Funds provide a substantial infusion of resources to help turn the tide on the pandemic, address its economic fallout, and lay the foundation for a strong and equitable recovery.

Funding Objectives

- **Support urgent COVID-19 response efforts** to continue to decrease spread of the virus and bring the pandemic under control
- **Replace lost public sector revenue** to strengthen support for vital public services and help retain jobs
- **Support immediate economic stabilization** for households and businesses
- **Address systemic public health and economic challenges** that have contributed to the inequal impact of the pandemic

Eligible Jurisdictions & Allocations

Direct Recipients

- States and District of Columbia ($195.3 billion)
- Counties ($65.1 billion)
- Metropolitan cities ($45.6 billion)
- Tribal governments ($20.0 billion)
- Territories ($4.5 billion)

Indirect Recipients

- Non-entitlement units ($19.5 billion)

Support Public Health Response

Fund COVID-19 mitigation efforts, medical expenses, behavioral healthcare, and certain public health and safety staff

Address Negative Economic Impacts

Respond to economic harms to workers, families, small businesses, impacted industries, and the public sector

Replace Public Sector Revenue Loss

Use funds to provide government services to the extent of the reduction in revenue experienced due to the pandemic

Premium Pay for Essential Workers

Offer additional support to those who have and will bear the greatest health risks because of their service in critical infrastructure sectors

Water and Sewer Infrastructure

Make necessary investments to improve access to clean drinking water and invest in wastewater and stormwater infrastructure

Broadband Infrastructure

Make necessary investments to provide unserved or underserved locations with new or expanded broadband access

For More Information: Please visit www.treasury.gov/SLFRP

For Media Inquiries: Please contact the U.S. Treasury Press Office at (202) 622-2960

For General Inquiries: Please email SLFRP@treasury.gov for additional information

Example Uses of Funds

Support Public Health Response

- **Services to contain and mitigate the spread of COVID-19,** including vaccination, medical expenses, testing, contact tracing, quarantine costs, capacity enhancements, and many related activities
- **Behavioral healthcare services**, including mental health or substance misuse treatment, crisis intervention, and related services
- **Payroll and covered benefits** for public health, healthcare, human services, and public safety staff to the extent that they work on the COVID-19 response

Address Negative Economic Impacts

- **Deliver assistance to workers and families**, including support for unemployed workers, aid to households, and survivor's benefits for families of COVID-19 victims
- **Support small businesses** with loans, grants, in-kind assistance, and counseling programs
- **Speed the recovery of impacted industries**, including the tourism, travel, and hospitality sectors
- **Rebuild public sector capacity** by rehiring staff, replenishing state unemployment insurance funds, and implementing economic relief programs

Replace Public Sector Revenue Loss

- **Ensure continuity of vital government services** by filling budget shortfalls
- **Revenue loss is calculated** relative to the expected trend, beginning with the last full fiscal year pre-pandemic and adjusted annually for growth
- **Recipients may re-calculate revenue loss** at multiple points during the program, supporting those entities that experience revenue loss with a lag

Premium Pay for Essential Workers

- **Provide premium pay to essential workers**, both directly and through grants to third-party employers
- **Prioritize low- and moderate-income workers**, who face the greatest mismatch between employment-related health risks and compensation
- **Key sectors include** healthcare, grocery and food services, education, childcare, sanitation, and transit
- **Must be fully additive** to a worker's wages

Water & Sewer Infrastructure

- **Includes improvements to infrastructure**, such as building or upgrading facilities and transmission, distribution, and storage systems
- **Eligible uses aligned to Environmental Protection Agency project categories** for the Clean Water State Revolving Fund and Drinking Water State Revolving Fund

Broadband Infrastructure

- **Focus on households and businesses** without access to broadband and those with connections that do not provide minimally acceptable speeds
- **Fund projects that deliver reliable service** with minimum 100 Mbps download / 100 Mbps upload speeds unless impracticable
- **Complement broadband investments** made through the Capital Projects Fund

Equity-Focused Services

- **Additional flexibility for the hardest-hit communities and families** to address health disparities, invest in housing, address educational disparities, and promote healthy childhood environments
- **Broadly applicable** to Qualified Census Tracts, other disproportionately impacted areas, and when provided by Tribal governments

Ineligible Uses

- **Changes that reduce net tax revenue** must not be offset with American Rescue Plan funds
- **Extraordinary payments into a pension fund** are a prohibited use of this funding
- **Other restrictions apply** to eligible uses