

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.



AGENDA
OXNARD CITY COUNCIL
OXNARD COMMUNITY DEVELOPMENT COMMISSION SUCCESSOR AGENCY
OXNARD FINANCING AUTHORITY
OXNARD HOUSING AUTHORITY
Council Chambers, 305 West Third Street
July 29, 2021
Closed Session - 4:30 PM
Appointment Items - 5:00 PM
Regular Meeting - 6:00 PM

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 3:00 p.m. on the day of the meeting. Please identify the meeting date and agenda item in the Subject line.

A telephone option for public comments is also available at this time. Requests to speak must be submitted no later than 3:00 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

THE FOLLOWING LEGISLATIVE BODIES ARE MEETING: City Council and Housing Authority.

B. PUBLIC COMMENTS ON CLOSED SESSION ITEMS

At this time, a person may address the legislative body only on matters appearing on the closed session agenda. The presiding officer shall limit public comments to three minutes.

C. CLOSED SESSION (4:30 PM)

1. CONFERENCE WITH LEGAL COUNSEL — EXISTING LITIGATION (Government Code Section 54956.9(d)(1))

Name of case: Moving Oxnard Forward, Inc. v. Michelle Ascencion, in her official Capacity as City Clerk, et al.

United States District Court Case No. 2:20-cv-04122

Legislative Body: City Council

In compliance with the Americans with Disabilities Act, if you require special assistance to participate in a meeting, please contact the City Clerk's Office at 385-7803. Notice at least 72 hours prior to the meeting will enable the City to reasonably arrange for your accessibility to the meeting.

Agenda Item time estimates: (Presentation / Council Discussion / Public Comment)

2. PUBLIC EMPLOYEE ANNUAL PERFORMANCE EVALUATION (Government Code section 54957)
Title: City Manager
Legislative Body: City Council
3. PUBLIC EMPLOYEE ANNUAL PERFORMANCE EVALUATION (Government Code section 54957)
Title: City Attorney
Legislative Body: City Council

D. APPOINTMENT ITEMS (5:00 PM)

1. City Manager Department

SUBJECT: Preliminary American Rescue Plan Act Investment Ideas. (5/30/25)

RECOMMENDATION: That the City Council begins the discussion about American Rescue Plan Act (ARPA) preliminary investment ideas.

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

Legislative Body: City Council

Contact: Alexander Nguyen, (805) 385-7430

E. OPENING CEREMONIES (6:00 PM)

Pledge of allegiance to the flag of the United States.

F. 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.

G. REPORT OF CITY MANAGER/EXECUTIVE DIRECTOR/SECRETARY

The City Manager/Executive Director/Secretary shall report on items of interest to the legislative body occurring since the last meeting. The legislative body cannot enter into detailed discussion or take action on any item presented during this report. Such items may only be referred to the City Manager/Executive Director/Secretary for administrative action or scheduled on a subsequent agenda for discussion.

1. City Manager Department

SUBJECT: COVID-19 Update from Director of Emergency Services. (10/5/5)

RECOMMENDATION: That the City Council receive and file an update from the Director of Emergency Services on the COVID-19 Local Emergency.

Legislative Body: City Council

Contact: Alexander Nguyen, (805) 385-7430

2. City Manager Department

SUBJECT: Verbal Update on Illegal Use of Fireworks in the Community. (5/10/10)

RECOMMENDATION: That the City Council receive a verbal update by the Chief of Police on the 4th of July illegal fireworks.

Legislative Body: City Council

Contact: Jason Benites, (805) 385-7624

H. CITY COUNCIL/HOUSING AUTHORITY/SUCCESSOR AGENCY/FINANCING AUTHORITY
BUSINESS/COMMITTEE REPORTS

At this time, a member of the legislative body may make a brief announcement, or make a brief report on his or her activities. Further, members of the legislative body may request to schedule consideration of whether to place an item on a future agenda. The legislative body cannot enter into detailed discussion or take action on any item presented during this report. The member's report shall not exceed three minutes, unless additional time is granted by the presiding officer.

I. REVIEW OF INFORMATION/CONSENT AGENDA

The members of the legislative body will consider whether to remove Information/Consent Agenda items for discussion later during the meeting.

J. PUBLIC COMMENTS ON INFORMATION/CONSENT AGENDA

At this time, a person may address the legislative body only on matters appearing on the information/consent agenda. The presiding officer shall limit public comments to three minutes.

K. INFORMATION/CONSENT AGENDA

1. City Clerk Department

SUBJECT: Approval of Minutes.

RECOMMENDATION: That the City Council approve the minutes of the March 2, 2021; March 16, 2021, and March 30, 2021 regular meetings as presented.

Legislative Body: City Council

Contact: Rose Chaparro, (805) 385-7805

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2. Public Works Department

SUBJECT: Environmental Protection Agency Grant Award and Budget Appropriation for the Food Waste and Anaerobic Digestion Feasibility Study Project.

RECOMMENDATION: That the City Council approve and authorize the Mayor to execute a budget appropriation recognizing grant revenue in the amount of \$182,630 of U.S. Environmental Protection Agency grant funds and \$37,126 of City matching funds to the Food Waste and Anaerobic Digestion Feasibility Study Project.

(This item did not originate in Committee. The grant application was approved by the City Council at the July 7, 2020, meeting.)

Legislative Body: City Council

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.

RECOMMENDATION: 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. (Public Works and Transportation Committee approved 3-0.)

Legislative Body: City Council

Contact: Brian Yanez, (805) 200-5412

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4. Public Works Department

SUBJECT: Hueneme Road Recycled Water Pipeline - Phase II Right of Way Agreements and Easement Deeds.

RECOMMENDATION: That the City Council approve and authorize the Mayor to execute:

1. Right of Way Agreement with Banjo Ranch, LLC, in the amount of \$18,800 as the entire consideration for the easement deed for the property identified by the County Assessor as APN 232-0-041-380, as particularly described in the Easement Deed;
2. Certificate of Acceptance for an Easement Deed with Banjo Ranch, LLC, for the property identified by the County Assessor as APN 232-0-041-380;
3. Right of Way Agreement with Dingaling Ranch, LLC, in the amount of \$19,200 as the entire consideration for the easement deed for the property identified by the County Assessor as APN 232-0-041-390, as particularly described in the Easement Deed;
4. Certificate of Acceptance for an Easement Deed with Dingaling Ranch, LLC, for the property identified by the County Assessor as APN 232-0-041-390;
5. Right of Way Agreement with GH Land Holdings, LLC, in the amount of \$47,200 as the entire consideration for the easement deed for the properties identified by the County Assessor as APN 223-0-031-190 and APN 223-0-031-210, as particularly described in the Easement Deed;
6. Certificate of Acceptance for an Easement Deed with GH Land Holdings, LLC, for the properties identified by the County Assessor as APN 223-0-031-190 and APN 223-0-031-210;
7. Right of Way Agreement with Marathon Land Inc., in the amount of \$40,500 as the entire consideration for the easement deed for the property identified by the County Assessor as APN 232-0-032-090, as particularly described in the Easement Deed;
8. Certificate of Acceptance for an Easement Deed with Marathon Land Inc., for the property identified by the County Assessor as APN 232-0-032-090;
9. Right of Way Agreement with P & R Properties, a California General Partnership, in the amount of \$70,000 as the entire consideration for the easement deed for the property identified by the County Assessor as APN 232-0-041-405, as particularly described in the Easement Deed; and
10. Certificate of Acceptance for an Easement Deed with P & R Properties, a California General Partnership, for the property identified by the County Assessor as APN 232-0-041-405.

(This item did not originate in Committee as this is associated with a capital improvement project specifically listed in the City's Capital Improvement Program, page 172.)

Legislative Body: City Council

Contact: Brian Yanez, (805) 200-5412

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5. Housing Department

SUBJECT: Award of Contract for the Residential Rehabilitation & Remodel Project at Pleasant Valley Village.

RECOMMENDATION: That the Board of Commissioners of the Housing Authority of the City of Oxnard approve and authorize the Chairman to execute a firm-fixed price contract in the amount of \$757,683.20 with Waisman Construction Inc. (Agreement Number A-8343 using funds previously appropriated from the 2019 Capital Fund grant for Section 504 compliance (Americans with Disabilities Act).

(Community Services, Public Safety, Housing & Development Committee approved 3-0 on July 13, 2021.)

Legislative Body: Housing Authority Board

Contact: Emilio Ramirez, (805) 385-8094

6. Housing Department

SUBJECT: Encampment Response Project and Related Agreement.

RECOMMENDATION: That the City Council:

1. Review Encampment Response Project Plan;
2. Approve a plan and updated timeline for encampment response to an existing encampment near Ormond Beach; and
3. Approve and authorize the Mayor to execute an agreement with the County of Ventura/Ventura County Health Care Agency to provide encampment outreach, case management and motel voucher administration services.

(As of the date of this City Council agenda being posted, there is not yet an outcome from the July 27, 2021, Community Services, Public Safety, Housing & Development Committee.)

Legislative Body: City Council

Contact: Emilio Ramirez, (805) 385-8094

7. Public Works Department

SUBJECT: Award Agreement A-8359 to Avidex Industries, LLC for Council Chambers Production System Improvement Project PW 21-97.

RECOMMENDATION: That the City Council:

1. Approve and authorize the Mayor to execute Agreement A-8359 with Avidex Industries, LLC in the amount of \$833,227.20 for the Council Chambers Production System Improvement Project, Specification No. PW 21-97 (Project No. 211401).
2. Approve \$83,322 for project contingency for the Council Chambers Production System Improvement Project (Project No. 211401); and
3. Approve \$83,322 for engineering, inspection, survey and project management for the Council Chambers Production System Improvement Project (Project No. 211401).

(This item did not originate in Committee as this is a capital improvement project specifically listed in the City's Capital Improvement Program.)

Legislative Body: City Council

Contact: Brian Yanez, (805) 200-5412

L. PUBLIC HEARINGS1. City Attorney Department

SUBJECT: Public Hearing regarding Redistricting of City Council Districts. (15/20/20) - **Time Certain 7:00 PM.**

RECOMMENDATION: That the City Council conduct a public hearing to:

1. Receive a report on the redistricting process for City Council Districts and the criteria to be considered to redraw City Council district boundaries; and
 2. Receive public input regarding the composition of one or more Council districts.
- (Presentation will be live upon consultant's request.)

Legislative Body: City Council

Contact: Stephen Fischer, (805) 385-7483

2. City Manager Department

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

RECOMMENDATION: 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.

(The Public Works and Transportation Committee approved 3-0).

Please click the following link to view the required Measure M pre-recorded presentation video: <https://youtu.be/kQpUGofhY5g>

Legislative Body: City Council

Contact: Alexander Nguyen, (805) 385-7430

3. Billing and Licensing Department

SUBJECT: Discontinuing the Approximately \$500,000 Subsidy for Convenience Fee Costs Associated with Accepting Credit Cards, Debit Cards and Electronic Checks as Payment Methods for Certain City Services and Fees. (0/10/10)

RECOMMENDATION: That the City Council:

1. Conduct a public hearing to consider the establishment of fees to cover the costs of banking convenience fees for the use of credit card, debit card and electronic check transactions for certain City services, and for certain fees, charges or taxes due to the City; and
2. Following the public hearing, adopt a resolution establishing fees to cover the costs of banking convenience fees for the use of credit card, debit card and electronic check transactions for certain City services, and for certain fees, charges or taxes due to the City. (Finance and Governance Committee approved 3-0).

Please click the following link to view the required Measure M pre-recorded presentation video: <https://youtu.be/kGy8FGueChc>

Legislative Body: City Council

Contact: Eden Alomeri, (805) 385-7811

M. REPORTS

1. Community Development Department

SUBJECT: Maulhardt Ranch South Temporary Water Connection Agreement. (0/10/10)

RECOMMENDATION: That the Oxnard City Council approve and authorize the City Manager to execute the attached Agreement to provide a single water connection to the Maulhardt Ranch South parcel, near the northeast corner of Rose Avenue and Camino Del Sol, for a limited duration of time.

(This item did not originate in Committee as it is supportive of the May 4, 2021 Council action to approve an Off-Site Improvement Agreement and thus facilitate the construction of Del Sol High School.)

Please click the following link to view the required Measure M pre-recorded presentation video: https://youtu.be/4kclhdlx0_s

Legislative Body: City Council

Contact: Vyto Adomaitis, (805) 385-7882

2. Community Development Department

SUBJECT: Teal Club Development Agreement Preliminary Authorization. (0/10/10)

RECOMMENDATION:

That the City Council:

1. Determine if entering into a Development Agreement with Borchard Family Interests (the "Developer") is warranted and desirable for the project in the Teal Club Specific Plan Area; and
2. Direct City staff to negotiate a Development Agreement with the Developer for recommendation by the Planning Commission and consideration by the City Council.

(This item did not originate in Committee.)

Please click the following link to view the required Measure M pre-recorded presentation video: https://youtu.be/1x_RwIJ3sjA

Legislative Body: City Council

Contact: Vyto Adomaitis, (805) 385-7882

N. ADJOURNMENT



CITY COUNCIL AGENDA REPORT
APPOINTMENT ITEMS (5:00 PM)
AGENDA ITEM NO. D.1

DATE: July 29, 2021
TO: City Council
FROM: Alexander Nguyen, City Manager, (805) 385-7430, alexander.nguyen@oxnard.org
SUBJECT: Preliminary American Rescue Plan Act Investment Ideas. (5/30/25)

RECOMMENDATION

That the City Council begins the discussion about American Rescue Plan Act (ARPA) preliminary investment ideas.

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

BACKGROUND

On July 13, 2021, all three City Council Committees -- Finance and Governance Committee, Community Services, Public Safety, Housing and Development Committee, and the Public Works and Transportation Committee -- began the discussion about the ARPA preliminary investment ideas. A few common themes emerged:

1. The Council wants to use the funds on one-time expenditures.
2. The Council wants to prioritize projects with no other committed/secured funding sources.
3. Projects should be focused on those that have immediate, as well as lasting impacts.
4. The Council wants staff to seek additional public input.

For a more detailed summary of the meetings, please see the Committee Outcome section of this report.

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 American Rescue Plan Act (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.

OVERVIEW OF ARPA

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

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

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

1. August 2021 - Expected release of the U.S. Treasury's *final* final rules.
2. August and Fall: continue to gather public input.
3. 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.

COMMITTEE OUTCOME

On July 13, 2021, all three Committees (Finance and Governance, Community Services, Public Safety, Housing and Development and Public Works and Transportation), provided input on the use of the ARPA funds. Each Committee recommended their comments be forward to the full City Council.

Below summarizes each committee member's comments on the Draft Preliminary ARPA Investment Ideas:

Finance & Governance Committee

Chair Zaragoza -

Focused, and offered support for, the following ARPA categories: Support Public Health Response; Water and Sewer Infrastructure, specifically projects that are currently funded from the General Fund; Addressing Negative Economic Impacts; Premium Pay for Essential Workers; and Broadband Infrastructure, specifically for underserved areas.

Member Basua -

Prioritized the Replacing Public Sector Revenue Loss and Addressing Negative Economic Impacts ARPA categories, especially within South Oxnard.

Support for Water and Sewer Infrastructure projects, if there is no other funding available.

Suggested removing projects where alternative funding and application sources are secured.

Member Teran -

Prioritized projects within the Address Negative Economic Impacts ARPA category, specifically focusing on Cultural and Community Services and Economic Development projects

Rather than committed ARPA funds, suggested leveraging funds already available for broadband projects

Suggested new projects for Council consideration: a) "Safe Sleep" program and b) additional funding for a utility rate assistance program

Community Services, Public Safety, Housing & Development Committee

Chair MacDonald -

Prioritized the Water and Sewer Infrastructure ARPA category

Need for broadband infrastructure, but technology investments need to have lasting value

Important to keep in mind the timeline to spend down the ARPA funds

Focus on projects that benefit the community, not just one neighborhood

Member Madrigal -

Focus on "tranche 1" projects, regardless of the ARPA category, due to the need to deploy funds into the community to offset the negative impacts on residents caused by the pandemic

Has questions about specific projects, but understands the Final Rule, which will be issued in August, may affect the Preliminary Investment Ideas

Suggested additional investment in Project 62, "Contact Payment Kiosk for Utility Payments"

Suggested 2 specific projects (Nos 54 & 35) should be moved from "tranche 2" to "tranche 1"

No investments in PACC until a seismic study is completed and evaluated

Suggested new projects: a) seismic study for the Carnegie and b) Apprenticeship Programs

Member Zaragoza - same comments as Finance and Governance Committee

Public Works & Transportation Committee

Chair Perello -

Prioritized the Addressing Negative Economic Impacts, Premium Pay for Essential Workers, and Water and Sewer Infrastructure ARPA categories

ARPA funds should not be spent on only a few projects

Suggested new projects: a) Channel Islands Harbor water quality and b) Ormond Beach.

No investments in PACC until a seismic study is completed and evaluated

Member Lopez -

Prioritize those projects that align with the established Council Priorities, specifically projects within public safety, homelessness services, and small business support.

Importance of looking at projects with no alternative funding sources as a priority; projects that are also should be a focus; broadband projects may have an alternative, State-level funding available;

Member Zaragoza - same comments as Finance and Governance Committee

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

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	Saviors 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	Saviors 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	Saviors 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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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)

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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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/#data-tracker-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.CensusBureau,HouseholdPulseSurvey:MeasuringSocialandEconomicImpactsduringtheCoronavirusPandemic,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 Act¹⁷ (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

a lifetime (June 2020), https://webtest.childreainsstitute.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).

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[ing] 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

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*

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

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

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 E. 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).

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

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/doi/10.1377/hlbg20200319.757883/full/>.

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

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

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. Mort. 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

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

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

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).

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

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](https://www.ajemjournal.com/article/S0735-6757(20)30307-7/fulltext) (showing a spike in domestic violence).

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).

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 points⁵⁸ during the pandemic as compared to 1.0 percentage points for Black men⁵⁹ 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 scores⁶² and reduced familial and childhood wellbeing.⁶³

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).

⁵¹ Women have carried a larger share of childcare responsibilities than men during the COVID-19 crisis. See, e.g., Gema Zamarró & María J. Prados, Gender differences in couples' division of childcare, work and mental health during COVID-19, *Rev. Econ. Household* 19:11–40 (2021), available at <https://link.springer.com/article/10.1007/s11150-020-09534-7>; Titan Alon et al., The Impact of COVID-19 on Gender Equality, National Bureau of Economic Research Working Paper 26947 (April 2020), available at <https://www.nber.org/papers/w26947>.

⁵² 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).

⁵³ 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).

⁵⁴ 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).

⁵⁵ 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/>.

⁵⁶ 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.

⁵⁷ Irwin Garfinkel, Sara McLanahan, Christopher Wimer, eds., *Children of the Great Recession*,

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 employment⁶⁴ 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

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>.

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

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

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.

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

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](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 Rebound? (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.

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/>.

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/upt-front/2020/11/16/tackling-the-legacy-of->

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

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/>.

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

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

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.

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/oesrcst.htm> (last visited May 1, 2021); U.S. Bureau

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

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 & Sobrepna, *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],

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

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.

¹⁰⁸ ARPA, *supra* note 16.

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* * $[(1 + \text{growth adjustment})^{\wedge} (n/12)]$, where *n* is the number of months elapsed since the end of the base year to the calculation date, and *growth adjustment* is the greater of 4.1 percent and the recipient's average annual revenue growth in the three full fiscal

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>.

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.

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*

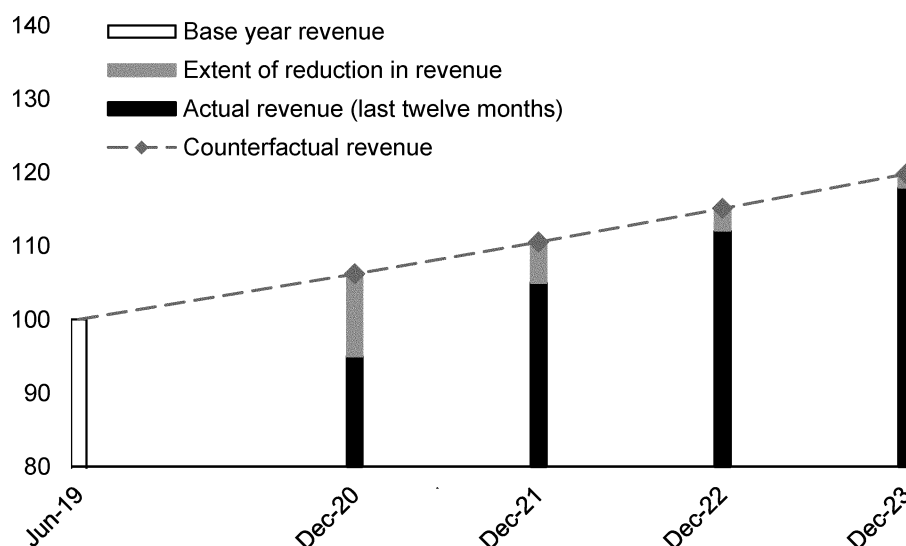
revenue less actual revenue. If actual revenue exceeds counterfactual revenue, the extent of the reduction in revenue is set to zero for that calculation date.

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
<i>n</i> (months elapsed)	18	30	42	54
<i>Counterfactual revenue:</i>	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 building¹²³ 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 do to 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

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).

Established by the 1987 amendments¹²⁷ 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,

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*

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."

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 be 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, underserved, or rural communities? How do these projects differ from DWSRF 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 2017¹⁴⁶ 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/BroadbandUpdateReport2017\(1\).pdf](https://www.nysac.org/files/BroadbandUpdateReport2017(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%20Ex%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

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-15-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, 2020), 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-statistics](https://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 BBIP 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.

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).

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 predetermined 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 governments¹⁶⁰), 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 interpretation¹⁶¹ 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

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).

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).

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

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

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-

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>.

¹⁷⁵ The interim final rule also provides that Treasury may extend any deadlines.

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 2021¹⁷⁹) 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 subawards) 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 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.
- 35.2 Applicability.
- 35.3 Definitions.
- 35.4 Reservation of authority, reporting.
- 35.5 Use of funds.
- 35.6 Eligible uses.
- 35.7 Pensions.
- 35.8 Tax.
- 35.9 Compliance with applicable laws.
- 35.10 Recoupment.
- 35.11 Payments to States.
- 35.12 Distributions to nonentitlement units of local government and units of general local government.

§ 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:

$$\text{Max} \{ [\text{Base Year Revenue} * (1 + \text{Growth Adjustment})^{\left(\frac{n_t}{12}\right)}] - \text{Actual General Revenue}_t; 0 \}$$

Where:

Base Year Revenue is the recipient's general revenue for the most recent full fiscal year prior to the COVID-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.

[FR Doc. 2021-10283 Filed 5-13-21; 11:15 am]

BILLING CODE 4810-AK-P



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



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



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



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



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



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



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



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

The examples listed in this document are non-exhaustive, do not describe all terms and conditions associated with the use of this funding, and do not describe all the restrictions on use that may apply. The U.S. Department of the Treasury provides this document, the State and Local contact channels, and other resources for informational purposes. Although efforts have been made to ensure the accuracy of the information provided, the information is subject to change or correction. Any Coronavirus State and Local Fiscal Recovery Funds received will be subject to the terms and conditions of the agreement entered into by Treasury and the respective jurisdiction, which shall incorporate the provisions of the Interim Final Rule and/or Final Rule that implements this program.



**CITY COUNCIL AGENDA REPORT
INFORMATION/CONSENT AGENDA
AGENDA ITEM NO. K.1**

DATE: July 29, 2021

TO: City Council

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

SUBJECT: Approval of Minutes.

RECOMMENDATION

That the City Council approve the minutes of the March 2, 2021; March 16, 2021, and March 30, 2021 regular meetings as presented.

BACKGROUND

STRATEGIC PRIORITIES

FINANCIAL IMPACT

COMMITTEE OUTCOME

Prepared by: Rose Chaparro, City Clerk

ATTACHMENTS

1. MINUTES 03 02 2021 CC Regular Meeting
2. MINUTES 03 16 2021 CC Regular Meeting
3. MINUTES 03 30 2021 CC Regular Meeting

MINUTES
OXNARD CITY COUNCIL
Regular Meeting
March 2, 2021

A. ROLL CALL, POSTING OF AGENDA

At 5:01 p.m., Mayor John C. Zaragoza called to order the regular meeting of the Oxnard City Council (concurrently with the Oxnard Housing Authority), 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. Councilmembers Gabriela Basua, Vianey Lopez, Oscar Madrigal, Bert E. Perello, Gabriel (Gabe) Teran, and Mayor Pro Tem Bryan A. MacDonald were present via videoconference. Mayor Zaragoza participated in person.

Housing Authority Commissioners Jose Andrade and Francisco Vega also participated, and joined the meeting at 6:00 p.m. via videoconference.

Staff members present in person were Alexander Nguyen, City Manager; Stephen M. Fischer, City Attorney; and Rose Chaparro, City Clerk.

Staff members Ashley Golden, Assistant City Manager; Shiri Klima, Deputy City Manager; Emilio Ramirez, Housing Director; Jason Benites, Police Chief; Alexander Hamilton, Fire Chief; Craig Beck, Interim Public Works Director; Brian Yanez, Assistant Public Works Director; Steve Howlett, Assistant Public Works Director; Omar Castro, Water Division Manager; Tatiana Arnaout, City Engineer; Jeri Cooper, Special Districts Project Manager; Jan Hauser, Wastewater Division Manager; Luis Ortega, Wastewater Management Analyst; Vyto Adomaitis, Community Development Director; Kevin Riper, Chief Financial Officer; Donna Ventura, Assistant Chief Financial Officer; Eden Alomeri, Billing & Licensing Director participated via videoconference.

B. PUBLIC COMMENTS ON CLOSED SESSION ITEMS (None received.)

C. CLOSED SESSION (5:00 PM)

1. CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION (Government Code Section 54956.9(d)(1))
Name of case: Aaron Starr v. City of Oxnard
Ventura County Superior Court, Case No. 56-2017-00494475-CU-WM-VTA
Legislative Body: City Council
2. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION (Government Code section 54956.9(d)(2))
Based on existing facts and circumstances, there is significant exposure to litigation against the City in one potential case.

Legislative Body: City Council

At 5:05 p.m. the City Council recessed to a closed session. Prior to the closed session for Item C.2., the City Attorney read the following statement: "The Council will discuss under Government Code section 54956.9(d)(2), based on existing facts and circumstances there is significant exposure to litigation in one potential case regarding an Americans With Disabilities Act compliance review of the Oxnard Transit Center by the U.S. Department of Justice."

At 5:45 p.m. the City Council reconvened in open session in the Council Chambers. The City Attorney read the following statement: "On Item C.1 on the closed session agenda, by unanimous vote, the City Council has given its legal counsel approval to seek appellate review or relief in the action entitled Starr vs. City of Oxnard which concerns the validity of the City's Infrastructure Use Fees. This authorization is restricted to appealing limitations potentially to be placed on the City's statutory options to repay the judgment in that matter."

D. OPENING CEREMONIES (6:00 PM)

The flag salute was followed by a moment of silence.

E. CEREMONIAL ITEMS

1. SUBJECT: Oath of Office for New Fire Chief Alexander Hamilton.

Fire Chief Hamilton was sworn in by the City Clerk. Chief Hamilton was congratulated by Council and staff. Public comments were received from Assembly member Jacqui Irwin, City of Pasadena Retired Chief Bryan Frieders, County of Ventura Fire Chief Mark Lorenzen, Mary Looby, Steven F. Froehlick, Ph.D., Ulises Castellanos, and Vanessa Beckhtel.

2. SUBJECT: Presentation of a Proclamation Designating the Month of March as "Women's History Month."

Mayor Zaragoza read the proclamation and presented it to Jeannette Sanchez from the Ventura County Women's Political Council (VCWPC) who made some remarks.

3. SUBJECT: Presentation of a Proclamation Designating March 6, 2021 as "Soroptimist STOP Human Trafficking and Sexual Slavery Awareness Day".

Mayor Zaragoza read the proclamation and presented it to local organizer Debbie Gohlke from Soroptimist International of Oxnard, who made some remarks.

F. PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

Public comments were received from Angel Garcia (Wendy Leung), Lawrence P. Stein (Parks Master Plan), Joey Juhasz-Lukomski (Bicycle Rider and Pedestrian Safety).

G. REPORT OF CITY MANAGER

1. City Manager Department

SUBJECT: COVID-19 Update from Director of Emergency Services.

RECOMMENDATION: That the City Council receive and file an update from the Director of Emergency Services on the COVID-19 Local Emergency.

The City Manager gave a report on the City's COVID-19 response. No formal action was required

H. CITY COUNCIL REPORTS

Councilmember Lopez thanked Councilmember Basua and staff for participating in the Ormond Beach Clean-up. Thanked Wendy Leung, Ventura County Star, for attending the Council meetings and representing the City well in her reporting.

Mayor Pro Tem MacDonald congratulated Wendy Leung on her new career and wished her well in her future endeavors.

Councilmember Basua thanked Wendy Leung for her work in covering the City Council meetings and wished her the best. Thanked Councilmember Lopez, Mayor Zaragoza, City Manager Nguyen, and staff in particular Todd Vasquez-Housley, Environmental Resources Division Manager and Isidro Figueroa, for organizing the Ormond Beach Clean-up event. Also, is looking forward to participating in the "Read Across America" event at the Oxnard School District.

Councilmember Madrigal thanked the County of Ventura and City staff working at the vaccination sites. Thanked the local business for staying strong during the pandemic. Francisco Barajas for his support in Housing at the City of Oxnard. He congratulated and thanked Rose Bañuelos, who retired from the City Oxnard Housing Authority. He thanked her for her hard work in the community and putting people first for the past twenty years.

Councilmember Teran reported that the Medical Examiner's Office released a report regarding an increase in deaths due to opioids. He is also concerned about the safety of cyclists and pedestrians, and the loss of life increase in the City of Oxnard. He attended the District 2 Town Hall meeting and encouraged residents to sign up to participate for the upcoming meetings. Attended the Fremont South and the Fremont North Neighborhood Council meetings. Thanked Councilmember Perello for bringing up the topic of Violence Against the Asian Community. Also, thanked Wendy Leung.

Councilmember Perello thanked Councilmember Teran for his comments about the Violence Against the Asian Community. He met with Ana Carrillo with the Colonia

Community Center and thanked her for sharing her concerns with Council. He also expressed his concerns about bicyclists and pedestrians safety. Wished Wendy Leung and her husband all the best.

Mayor also expressed his concerns for the safety of cyclists and pedestrians in the City of Oxnard.

H. CITY COUNCIL REPORTS

1. City Manager Department

SUBJECT: Appointment of Members to Serve on the City's Commissions and Committees.

RECOMMENDATION: That the Mayor, with the approval of the City Council, make the following appointments:

1. To Community Relations Commission: Andres Paniagua (D4);
2. To Parks and Recreation and Community Services Commission: Dr. Carlo Aaron Purther (D3) and Paul Lemos (D6);
3. To Cultural Arts Commission: Javier Gomez (D4);
4. To Planning Commission: Ronald Arruejo (D3); and
5. To Measure O Citizen Oversight Committee: Deirdre Frank (City at large), Christopher Taccone (D2), Dan Pinedo (D3), Ruby Durias (D4), Angel Garcia (D5), Joe Munoz (D6), Nancy Lindholm (business organization), and Leonard Shulman (Neighborhood Council).

It was moved by Councilmember Madrigal, seconded by Councilmember Teran, to approve the recommended action as presented. VOTE: Lopez, Basua, Teran, Zaragoza, MacDonald, Perello, and Madrigal voted in favor; the motion carried 7-0.

2. City Manager Department

SUBJECT: Appointment of Voting Delegate and Alternate for Southern California Association of Governments General Assembly.

RECOMMENDATION: That the City Council appoint a delegate and an alternate representative to the 2021 Southern California Association of Governments (SCAG) General Assembly scheduled for May 6, 2021 virtual conference.

It was moved by Councilmember Lopez, seconded by Mayor Zaragoza, to appoint Mayor Pro Tem MacDonald as delegate, and Councilmember Perello as alternate representative. VOTE: Perello, MacDonald, Madrigal, Basua, Zaragoza, Lopez, and Teran voted in favor; the motion carried 7-0.

I. REVIEW OF INFORMATION/CONSENT AGENDA

Items K-1 through K-9 were discussed among the Council and staff.

J. PUBLIC COMMENTS ON INFORMATION/CONSENT AGENDA

Public comments were received from Angel Garcia, Joey Juhasz-Lukomski, and Lawrence Stein.

K. INFORMATION/CONSENT AGENDA

1. Public Works Department

SUBJECT: Agreement for Water System SCADA Improvement Project PW 20-97.

RECOMMENDATION: That the City Council:

1. Approve and authorize the Mayor to execute Agreement A-8243 with Northern Digital, Inc. in the amount of \$266,200 for engineering design services for the Water System SCADA Improvement Project (206509); and
2. Approve the use of \$26,620 for Project contingency for the Water System SCADA Improvement Project (206509).

2. Housing Department

SUBJECT: Award of Contract for the Boiler Replacement at Plaza Vista

RECOMMENDATION: That the City of Oxnard Housing Authority Board of Commissioners approve and authorize the Chairman to execute a firm-fixed price contract in the amount of \$291,308 with HPS Mechanical, Inc. (Agreement number A-8297), using funds previously appropriated from the 2020 Capital Fund grant, for the Boiler Replacement project at Plaza Vista apartments located at 401 South C Street.

3. Fire Department

SUBJECT: Authorization to Submit a Grant Application to Federal Emergency Management Agency (FEMA) Fire Prevention and Safety (FP&S) for \$362,175 for the Purchase and Installation of Smoke and Carbon Monoxide Detectors.

RECOMMENDATION: That the City Council adopt **Resolution No. 15,424** that:

1. Ratifies the submission of an application to the Federal Emergency Management Agency (FEMA) Fire Prevention and Safety (FP&S) for \$362,175 for the purchase and installation of smoke and carbon monoxide detectors with no matching fund requirement;
2. Authorizes the City Manager or designee to execute the grant agreements if grant funds are awarded to the City;
3. Authorizes the Chief Financial Officer or designee to submit financial reports and grant claims, approve budget appropriations for the use of grant funds and perform all other required financial actions; and
4. Authorizes the Fire Chief or designee to submit non-financial reports.

4. Public Works Department

SUBJECT: Statewide Park Development and Community Revitalization Program Grant Application **Resolution No.15,425** and **Resolution No. 15,426**.

RECOMMENDATION: That the City Council adopt **Resolution No. 15,425** and **Resolution No. 15,426**.

1. Authorizing the City Manager to submit an application for an amount not to exceed \$8,500,000 in Statewide Park Development and Community Revitalization Program grant funds for the Durley Park Expansion and Improvement Project; and
2. Authorizing the City Manager or designee to execute grant agreements.

5. **Public Works Department**

SUBJECT: Award Agreement for Southbank Park Walking Path Improvement Project Specification No. PW 21-22.

RECOMMENDATION: That the City Council:

1. Award and authorize the Mayor to execute Agreement A-8304 with FS Contractors, Inc. for \$216,500 for the Southbank Park Walking Path Improvement Project PW 21-22 (Project No. 135710);
2. Approve a Project contingency amount of \$21,650 for the Southbank Park Walking Path Improvement Project PW 21-22 (Project No. 135710); and
3. Approve a Project allocation of \$21,650 for engineering, inspection, survey and project management for the Southbank Park Walking Path Improvement Project PW 21-22 (Project No. 135710).

6. **Public Works Department**

SUBJECT: Agreement for Storm Vault Scheduled Maintenance and On-Call Services (Rebid) PW 20-65R for Special Districts.

RECOMMENDATION: That the City Council:

1. Approve and authorize the Mayor to execute Agreement A-8282 with Downstream Services, Inc. for an amount not to exceed \$1,500,000 for a three-year term ending March 1, 2024 for storm vault scheduled maintenance and on-call services for Community Facilities Districts (CFD) including Westport CFD 2, Seabridge CFD 4, and Riverpark CFD 5;
2. Authorize the City Manager to approve a budget appropriation of \$85,000 for Westport CFD 2 Fund 175 from available fund balance; and
3. Authorize the City Manager to approve a budget appropriation of \$185,000 for Seabridge CFD 4 Fund 173 from available fund balance. (Public Works and Transportation Committee approved 3-0.)

7. **Public Works Department**

SUBJECT: Purchase of Heavy Equipment for Wastewater Division.

RECOMMENDATION: That the City Council approve and authorize the Mayor to

execute the following Purchase Orders:

1. Purchase Order #7989 with Nixon-Egli in the amount of \$232,001.13 for a new Crane Truck;
2. Purchase Order #7967 with Velocity Truck Centers in the amount of \$219,914.81 for a new Rolloff Truck;
3. Purchase Order #7988 with Quinn Company in the amount of \$266,274.81 for a new Excavator;
4. Purchase Order #7990 with Quinn Company in the amount of \$146,894.52 for a new Backhoe; and
5. Purchase Order #7987 with Quinn Company in the amount of \$35,910.92 for a new Forklift. (Public Works and Transportation Committee approved 3-0.)

8. Billing and Licensing Department

SUBJECT: Third Amendment to Agreement for Utility Bill and Business Tax Form Printing, Inserting and Mailing Services.

RECOMMENDATION: That the City Council approve and authorize the Mayor to execute a Third Amendment to the Agreement with InfoSend, Inc. for utility bill and business tax form printing, inserting and mailing services (No. A-7828) to extend the term for one year to June 30, 2022, and increase the amount by \$318,000 for a total amount not to exceed \$2,140,423.

9. Housing Department

SUBJECT: City Participation in the State Rental Assistance Program and the federal Emergency Rental Assistance Program.

RECOMMENDATION: That the City Council:

1. Adopt **Resolution No. 15-427** Authorizing the City's Participation in the State Rental Assistance Program ("SRAP") and Directing the City Manager to Take Actions to Effectuate the City's Participation;
2. Authorize and Direct the City Manager or his designee to accept an allocation of an amount between \$6,683,889.67 and \$18,631,184.67 of SRAP funds, appropriated pursuant to California Senate Bill 91 ("SB 91");
3. Authorize and Direct the City Manager or his designee to allocate and take the necessary steps to facilitate the transmittal or assignment of \$6,117,238 of the federal Emergency Rental Assistance Program ("ERAP") funds previously granted directly to the City pursuant to the Consolidated Appropriation Act of 2021, plus the entire amount of SRAP funds received allocated to the City pursuant to SB 91, to the Department of Housing and Community Development or State Business, Consumer Services and Housing Agency for the joint administration and disbursement of said funds;
4. Authorize the City Manager or his designee to execute and submit the Standard Agreement from the State of California, and any other agreements necessary for the

implementation of this program, to State and Federal agencies and to facilitate the transfer or assignment of funds provided under either Senate Bill 91 or the Federal Consolidated Appropriation Act of 2021; and

5. Authorize and direct the City Manager or his designee to do any and all things and to execute and deliver any and all documents which they may deem necessary or advisable in order to consummate the execution of the ERAP/SRAP program, or otherwise to effectuate the purpose of the Resolution, including but not limited to the execution of a Memorandum of Understanding with the County of Ventura establishing the parameters of the joint City-County regional ERAP/SRAP program.

6. Approve and authorize a budget appropriation for the City's participation in the Federal ERAP in the amount of \$6,210,395 (Fund 261-5139-801.82-09).

EXECUTIVE SUMMARY

On December 27, 2020, the federal Consolidated Appropriations Act of 2021, a \$908 billion COVID-19 relief bill, was signed into law, and \$25 billion was allocated to the United States Treasury for the Emergency Rental Assistance Program (ERAP) to assist households that are unable to pay rent or utilities due to the COVID-19 pandemic. California will receive \$2.6 billion in federal ERAP funds. To implement these rental assistance resources, the State of California worked with the state legislature to develop a programmatic framework that eases administrative burden and most effectively deploys these resources to those most in need.

Oxnard is eligible for a total nearly \$12.9 million. The City's total represents \$6,210,394.89 in direct federal ERAP funds plus \$6,683,889.67 in state ERAP funds. All indications are that thousands of Oxnard tenants are delinquent in rent as a result of the COVID-19 pandemic, and that hundreds or thousands of landlords are facing severe financial difficulties due to the impact of the pandemic. The City of Oxnard proposes to accept a State offer to administer all ERAP funds in partnership with the City Housing Department and the County of Ventura.

Consent Agenda Items: K.1., K.3 – K.9:

It was moved by Mayor Pro Tem MacDonald, seconded by Councilmember Perello, to approve the Information/Consent items K.1, K.3 – K-9 as presented. VOTE: MacDonald, Perello, Basua, Madrigal, Zaragoza, Teran, and Lopez voted in favor; motion passed 7-0.

Consent Agenda Item: K.2:

It was moved by Commissioner Lopez, Commissioner Teran, to approve the Information/Consent item K.2 as presented. VOTE: Zaragoza, MacDonald, Perello, Lopez, Madrigal, Basua, Teran, Housing Authority Commissioner Andrade voted in favor, Housing Authority Commissioner Vega voted against, motion passed 8-1.

L. REPORTS

1. Finance Department

SUBJECT: Adoption of City Council's Policy for Development and Implementation of Internal Controls (0/10/5)

RECOMMENDATION: That the City Council adopt **Resolution No. 15-428** adopting the Policy for Development and Implementation of Internal Controls to define the City Council's internal control activities as they relate to development and implementation of internal controls. (Finance and Governance Committee approved 3-0.)

Donna Ventura, Assistant Chief Financial Officer, presented. Discussion ensued among the Council and staff.

It was moved by Councilmember Perello, seconded by Mayor Pro Tem MacDonald, to approve the recommended action as presented. VOTE: MacDonald, Perello, Lopez, Zaragoza, Madrigal, Teran, and Basua voted in favor; the motion carried 7-0.

2. Public Works Department

SUBJECT: Award Agreement for Bryce Canyon North and South Neighborhood and Fremont North Neighborhood Street Resurfacing Project (Rebid) Specification No. PW 18-05R. (0/5/5)

RECOMMENDATION: That the City Council:

1. Approve and authorize the Mayor to execute Agreement A-8302 with All American Asphalt, in the amount of \$4,174,871.26, for the Bryce Canyon North and South Neighborhood and Fremont North Neighborhood Street Resurfacing Project (Rebid) Specification No. PW 18-05R (Project Nos. 183108 & 153117);
2. Approve \$417,487 for project contingency for the Bryce Canyon North and South Neighborhood and Fremont North Neighborhood Street Resurfacing Project (Rebid) (Project Nos. 183108 & 153117); and
3. Approve \$417,487 for engineering, inspection, survey and project management for the Bryce Canyon North and South Neighborhood and Fremont North Neighborhood Street Resurfacing Project (Rebid) (Project Nos. 183108 & 153117); and
4. Approve a budget appropriation in the amount of \$529,801 from the available fund balances in the Road Maintenance and Rehabilitation Account (RMRA) Gas Tax (185) Fund and the Water Operating Fund (601).

Tatiana Arnaout, City Engineer, presented. Discussion ensued among the Council and staff.

It was moved by Councilmember Teran, seconded by Councilmember Lopez, to approve the

recommended action as presented. VOTE: Teran, Basua, Zaragoza, Lopez, MacDonald, Madrigal and Perello voted in favor; the motion carried 7-0.

3. Public Works Department

SUBJECT: Water Infrastructure Finance and Innovation Act (WIFIA) Loan Application. (0/5/5)

RECOMMENDATION: That the City Council adopt **Resolution No. 15-429** 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, presented. Discussion ensued among the Council and staff.

It was moved by Councilmember Teran, seconded by Councilmember Lopez, to approve the recommended action as presented. VOTE: Teran, Basua, Zaragoza, Lopez, Madrigal, and Perello voted in favor; the motion carried 6-0-1. Mayor Pro Tem MacDonald abstained and did not participate, due to the proximity of his residence to the location of the project.

4. Public Works Department

SUBJECT: Procurement of Vehicles and Trailers for the Environmental Resources Division. (0/10/10)

RECOMMENDATION: That the City Council approve and authorize:

1. The Mayor to execute Purchase Orders in the total amount of \$10,189,921.49 for the purchase of new vehicles and accessories:

a. Purchase Order 7991 with Velocity Truck Center of VC for an amount not to exceed \$8,360,298.80 for the purchase of:

i. Ten (10) new residential, compressed natural gas (CNG) vehicles with accessories for a cost of \$3,343,980.80;

ii. Nine (9) new commercial, compressed natural gas (CNG) vehicles with accessories for a cost of \$3,016,424.97;

iii. Five (5) new industrial, compressed natural gas (CNG) vehicles with accessories for a cost of \$1,375,855.65;

iv. Two (2) new rear-loader, compressed natural gas (CNG) vehicles with accessories for a cost of \$624,037.38;

b. Purchase Order 7993 with Pape' Kenworth for an amount not to exceed \$906,092.30

for the purchase of seven (7) new semi-tractor transfer vehicles with accessories;
c. Purchase Order 7992 with The Trailer Company for an amount not to exceed \$923,530.39 for the purchase of ten (10) new transfer trailers with accessories; and
2. The City Manager to approve a budget appropriation in the amount of \$10,189,922 to recognize proceeds from a lease purchase to finance the acquisition of refuse collection vehicles and transfer trailers for the Environmental Resources Division (Project 216804). (Public Works and Transportation Committee approved 3-0.)

Brian Yanez, Assistant Public Works Director, was available to answer questions. Discussion ensued among the Council and staff.

It was moved by Councilmember Perello, seconded by Mayor Zaragoza, to approve the recommended action as presented. VOTE: Madrigal, Lopez Teran, MacDonald, Basua, Perello, and Zaragoza voted in favor; the motion carried 7-0.

M. ADJOURNMENT

There being no further business on the agenda, and without objection, Mayor Zaragoza adjourned the meeting at 8:20 p.m.

ROSE CHAPARRO
City Clerk

JOHN C. ZARAGOZA
Mayor

MINUTES
OXNARD CITY COUNCIL
Regular Meeting
March 16, 2021

A. ROLL CALL, POSTING OF AGENDA

At 5:01 p.m., Mayor John C. Zaragoza called to order the regular meeting of the Oxnard City Council (concurrently with the Oxnard Housing Authority), 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. Councilmembers Gabriela Basua, Vianey Lopez, Bert E. Perello, Gabriel (Gabe) Teran, and Mayor Pro Tem Bryan A. MacDonald were present via videoconference. Mayor Zaragoza participated in person.

Housing Authority Commissioners Jose Andrade and Francisco Vega also participated, and joined the meeting at 6:00 p.m. via videoconference.

Councilmember Madrigal joined the meeting at 6:30 p.m. via videoconference.

Staff members present in person were Alexander Nguyen, City Manager; Stephen M. Fischer, City Attorney; and Rose Chaparro, City Clerk.

Staff members Ashley Golden, Assistant City Manager; Emilio Ramirez, Housing Director; Jason Benites, Police Chief; Eric Sonstegard, Assistant Chief of Police; Alexander Hamilton, Fire Chief; John Colamarino, Assistant Fire Chief; Craig Beck, Interim Public Works Director; Brian Yanez, Assistant Public Works Director; Steve Howlett, Assistant Public Works Director; Omar Castro, Water Division Manager; Jeri Cooper, Special Districts Project Manager; Vyto Adomaitis, Community Development Director; Isidro Figueroa, CDD Principal Planner; Donna Ventura, Assistant Chief Financial Officer; and Eden Alomeri, Billing & Licensing Director participated via videoconference.

B. PUBLIC COMMENTS ON CLOSED SESSION ITEMS (None received.)

C. CLOSED SESSION (5:00 PM)

1. CONFERENCE WITH LEGAL COUNSEL — EXISTING LITIGATION
(Government Code Section 54956.9(d)(1))
Name of case: City of Oxnard v. Fox Canyon Groundwater Management Agency
Los Angeles County Superior Court, Case No. 20STCP00929
Legislative Body: City Council
2. CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION
(Government Code Section 54956.9(d)(1))

Name of case: City of Oxnard v. Brownstein, Hyatt, Farber, Schreck, LLP
Los Angeles County Superior Court, Case No. 20STCV19575
Legislative Body: City Council

At 5:01 p.m., the City Council recessed to a closed session. At 5:58 p.m., the City Council reconvened in open session in the Council Chambers. The City Attorney announced that there were no reportable actions out of closed session.

D. OPENING CEREMONIES (6:00 PM)

The flag salute was followed by a moment of silence.

E. PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

Public comments were received from Douglas Partello (LMD Funds), Steven Nash (Honor Lupe Anguiano), Laurence Stein (Water Credits), Alicia Percell (ReNew Oxnard Program/LMD Funds), Aaron Starr (Measure M/Staff Presentations), Maya Ch (Ormond Beach Illegal Dumping), Pat Brown (Thank you for fixing the roads on Rose Avenue and Rice Avenue/Trucks on Oxnard Boulevard).

F. REPORT OF CITY MANAGER

1. City Manager Department

SUBJECT: COVID-19 Update from Director of Emergency Services. (10/5/5)

RECOMMENDATION: That the City Council receive and file an update from the Director of Emergency Services on the COVID-19 Local Emergency.

The City Manager gave a report on the City's COVID-19 response. No action was required

G. CITY COUNCIL REPORTS

1. City Manager Department

SUBJECT: Appointment of Members to Serve on the City's Commissions, Committees, and Boards. (0/15/15)

RECOMMENDATION: That the Mayor, with the concurrence of the City Council, make the following appointments:

1. To Community Relations Commission: Adam Lopez (D3) and Khalilah Durias (D5);
2. To Parks and Recreation and Community Services Commission: Miguel Fernandez (D1) and Chris Hernandez (D2);
3. To Commission on Homelessness: Ruby Durias (D4) and Alejandro Fregoso (D6);
4. To Cultural Arts Commission: Sandra Diaz (D3) and Michelle Ascension (D5);

5. To Planning Commission: Miguel Lopez (City at large) and Robert Sanchez (D4); and
6. To Mobile Home Park Rent Review Board: Erik Fruth; and
7. To Measure O Citizen Oversight Committee: Steven Nash (D1)

(This item did not originate in Committee.)

Public comments were received from Manuel Herrera, Chris Hernandez, and Armando Delgado.

It was moved by Mayor Zaragoza, seconded by Councilmember Perello, to approve the recommended action as presented. VOTE: MacDonald, Perello, Basua, Madrigal, Zaragoza, Teran, and Lopez voted in favor; the motion carried 7-0.

H. REVIEW OF INFORMATION/CONSENT AGENDA

Items J-1 through J-9 were discussed among the Council and staff.

I. PUBLIC COMMENTS ON INFORMATION/CONSENT AGENDA

Public comments were received from Christina L. Zubko, Pat Brown, and Lawrence Stein.

J. INFORMATION/CONSENT AGENDA

1. Public Works Department

SUBJECT: Agreement for Primary Clarifiers and Activated Sludge Basins Improvement Project PW 21-17.

RECOMMENDATION: That the City Council approve and authorize the Mayor to execute Agreement A-8294 with Brown and Caldwell in the amount of \$843,344 for engineering design services for the Primary Clarifiers and Activated Sludge Basins Improvement Project (186607). (This item did not originate in Committee.)

2. Public Works Department

SUBJECT: Agreement for Central Trunk Sewer Main Replacement Project PW 21-27.

RECOMMENDATION: That the City Council approve and authorize the Mayor to execute Agreement A-8303 with Kennedy/Jenks Consultants, Inc. in the amount of \$359,894 for engineering design services for the Central Trunk Sewer Main Replacement Project (206602). (This item did not originate in Committee.)

3. Community Development Department

SUBJECT: Ormond Beach Wetlands Area Caretaker Services Agreement.

RECOMMENDATION: That the City Council approve and authorize the Mayor to execute an agreement with Walter Fuller (9132-21-CD) for a two year contract from July 1, 2021 through June 30, 2023, with an option for a third year from July 1, 2023

to June 30, 2024 for occupancy of a City-owned mobile home and the provision of caretaker services at Ormond Beach. (This item did not originate in Committee.)

4. Public Works Department

SUBJECT: Agreements for Consulting Services for Wastewater and Recycled Water Treatment Process Support.

RECOMMENDATION: That the City Council approve and authorize the Mayor to execute agreements for the following wastewater and recycled water treatment process support consultant services:

1. Agreement A-8283 with Dudek in the amount not to exceed \$100,000 for a three-year term ending February 17, 2024;
2. Agreement A-8286 with KEH Group, Inc., in the amount not to exceed \$100,000 for a three-year term ending February 17, 2024;
3. Agreement A-8288 with Separation Processes, Inc., in the amount not to exceed \$125,000 for a three-year term ending February 17, 2024; and
4. Agreement A-8289 with Carollo Engineers, Inc., in the amount not to exceed \$175,000 for a three-year term ending February 17, 2024. (Public Works and Transportation Committee approved 3-0)

5. Public Works Department

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

RECOMMENDATION: 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. (Public Works and Transportation Committee approved 3-0.)

6. Public Works Department

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

RECOMMENDATION: 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. (Public Works and Transportation Committee approved 3-0.)

7. Public Works Department

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

RECOMMENDATION: 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. (Public Works and Transportation Committee approved 3-0.)

8. Fire Department

SUBJECT: Award Agreement A-8299 to Wittman Enterprises, LLC to Provide Emergency Medical Services (EMS) Billing and Collection Services.

RECOMMENDATION: That City Council:

1) Award and authorize the Mayor to execute Agreement A-8299 with Wittman Enterprises, LLC for a not to exceed amount of \$500,000 annually for Emergency Medical Services (EMS) billing and collection services for a five year term commencing March 16, 2021; and

2) Approve the use of Oxnard City Code 4-3.L that permits the City to “piggyback”, whereby the City utilizes another agency or jurisdiction’s solicitation, as allowed in the agreement between the City of Chula Vista and Wittman Enterprises, LLC. (Community Services, Public Safety, and Housing & Economic Development Committee approved 3-0.)

9. Public Works Department

SUBJECT: Appropriation of Bond Proceeds.

RECOMMENDATION: That the City Council:

1. Find that the appropriation of bond proceeds is not a "project" pursuant to California Environmental Quality Act (CEQA) sections 15061(b)(3) and 15378;
2. Approve the list of redevelopment bond proceeds projects; and
3. Appropriate \$6,563,223 of 2006 Tax Allocation Bond (TAB) Proceeds for street and alley resurfacing, parking lot improvements, and fiber network expansions. (Finance and Governance Committee approved 3-0)

It was moved by Councilmember Perello, seconded by Councilmember Lopez, to approve the Information/Consent items as presented. VOTE: Zaragoza, MacDonald, Perello, Lopez, Madrigal, and Basua voted in favor; the motion carried 7-0.

K. REPORTS

1. Finance Department

SUBJECT: Revamped Chart of Accounts for New Tyler Munis Enterprise Resource Planning Software System. (0/15/15)

RECOMMENDATION: That the City Council receive and file a presentation on the revamped chart of accounts for new Tyler Munis Enterprise Resource Planning software system (This item did not originate in Committee.)

Kevin Riper, Chief Financial Officer, presented. Public comments were received from Ray Blattel, Larry Stein, Douglas D. Partello, and Aaron Starr. Discussion ensued among the Council and staff. No formal action was required.

2. Public Works Department

SUBJECT: Award Agreement for Central Trunk Sewer Manhole Replacement Project Phase I Specification No. PW 21-28. (0/5/5)

RECOMMENDATION: That the City Council approve and authorize:

1. The Mayor to award and execute Agreement A-8309 with Ayala Engineering, Inc. for \$867,490 for the Central Trunk Sewer Manhole Replacement Project Phase I (Project No. 206601);
2. A Project contingency amount of \$86,749 for the Central Trunk Sewer Manhole Replacement Project Phase I (Project No. 20661); and
3. A Project allocation of \$86,749 for engineering, inspection, survey and project management for the Central Trunk Sewer Manhole Replacement Project Phase I (Project No. 206601). (This item did not originate in Committee as this is a capital improvement project specifically listed in the City's Capital Improvement Program.)

Tatiana Arnaout, City Engineer, presented. Discussion ensued among the Council and staff.

It was moved by Mayor Pro Tem MacDonald, seconded by Councilmember Madrigal, to approve the recommended action as presented. VOTE: Basua, Madrigal, MacDonald Teran, Lopez, Perello, and Zaragoza voted in favor; the motion carried 7-0.

3. City Manager Department

SUBJECT: Adoption of the City Council's 2021–2025 Five-Year Priorities. (0/10/10)

RECOMMENDATION: That the City Council adopts its 2021 – 2025 Five-Year Priorities, which the City Council set at its February 25, 2021 Special City Council Workshop.

Alexander Nguyen, City Manager, presented. Public comments were received by Larry Stein and Tom Cady. Discussion ensued among the Council and staff.

It was moved by Councilmember Perello, seconded by Councilmember Lopez, to approve the recommended action as presented. VOTE: Perello, MacDonald,

Madrigal, Basua, Zaragoza, Lopez, and Teran voted in favor; the motion carried 7-0.

L. ADJOURNMENT

There being no further business on the agenda, and without objection, Mayor Zaragoza adjourned the meeting at 8:41 p.m.

ROSE CHAPARRO
City Clerk

JOHN C. ZARAGOZA
Mayor

MINUTES
OXNARD CITY COUNCIL
Regular Meeting
March 30, 2021

A. ROLL CALL, POSTING OF AGENDA

At 4:30 p.m., Mayor John C. Zaragoza called to order the regular meeting of the Oxnard City Council, 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. Councilmembers Gabriela Basua, Vianey Lopez, Oscar Madrigal, Bert E. Perello, Gabriel (Gabe) Teran, and Mayor Pro Tem Bryan A. MacDonald were present via videoconference. Mayor Zaragoza participated in person.

Staff members present in person were Alexander Nguyen, City Manager; Stephen M. Fischer, City Attorney; and Rose Chaparro, City Clerk.

Staff members that participated via videoconference were Ashley Golden, Assistant City Manager; Emilio Ramirez, Housing Director; Jason Benites, Police Chief; Eric Sonstegard, Assistant Police Chief; Denise Shadinger, Assistant Chief of Police; Alexander Hamilton, Fire Chief; Craig Beck, Interim Public Works Director; Steve Howlett, Assistant Public Works Director; Vyto Adomaitis, Community Development Director; Scott Kolwitz, Planning & Environmental Services Manager; Kathleen Mallory, Planning & Sustainability Manager Joe Pearson II, AICP, Senior Planner; and Eden Alomeri, Billing & Licensing Director.

Larry Haynes, Mercy House Executive Director; Linda Wilson, Mercy House Chief Housing Officer; Timothy Huynh, Mercy House Chief Program Officer; Alexander Russell, Housing Trust Fund Ventura County Executive Vice President; Linda Braunschweiger, Housing Trust Fund Ventura County CEO; Kyle Paine, Community Development Partners President; and Brittany Seniff, Community Development Partners; Christy Madden, County of Ventura Homeless Grants Management; Tara Carruth, County of Ventura Program Management Analyst; also participated via videoconference.

B. PUBLIC COMMENTS ON CLOSED SESSION ITEMS

Public comments were received from Greg Runyon.

C. CLOSED SESSION (4:30 PM)

1. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
(Government Code section 54956.9(d)(2))

Based on existing facts and circumstances, there is significant exposure to litigation against the City in one potential case.

Legislative Body: City Council

2. CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION
(Government Code Section 54956.9(d)(1))

Name of case: City of Oxnard v. Brownstein, Hyatt, Farber, Schreck, LLP

Los Angeles County Superior Court, Case No. 20STCV19575

Legislative Body: City Council

At 4:32 p.m., the City Council recessed to a closed session. At 5:38 p.m., the City Council reconvened in open session in the Council Chambers. The City Attorney announced that closed session item C.1 was discussed. However, item C.2 was not discussed during closed session. There were no reportable actions out of closed session.

D. OPENING CEREMONIES (6:00 PM)

The flag salute was followed by a moment of silence.

E. PRESENTATION

1. City Manager Department

SUBJECT: Special Presentation by the County of Ventura District Attorney's Office, Erik Nasarenko.

RECOMMENDATION: That the City Council receive and file an update from Erik Nasarenko, District Attorney for the County of Ventura.

District Attorney Erik Nasarenko presented to the City Council and introduced Michael R. Jump, Chief Deputy District Attorney. No action was required.

F. CEREMONIAL ITEMS

1. SUBJECT: Presentation of a Proclamation Designating March 31, 2021 as "Cesar E. Chavez Day."

Mayor Zaragoza read the proclamation and presented it to Javier Gomez, Founder of Inlakech Cultural Arts Center and 33 Years as Educator, who made some remarks. Public comments were received from Chris Hernandez and Armando Delgado.

2. SUBJECT: Presentation of a Commendation to Graciela Casillas, World Champion Athlete.

Mayor Zaragoza read the proclamation and presented it to Graciela (Grace) Casillas, past world champion, the only athlete to hold world titles in both boxing and full-contact karate, who made some remarks. Public comments were received from Manuel Herrera, Chris Hernandez, Armando Delgado, and Brenda Zaragoza.

G. PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

Public comments were received from Ray Blattel, Douglas D. Partello, Maria Navarro, Zuleth Lucero, Cecilia Cruz, Teresa, Lucila Cruz, Soledad Montoya, Arturo Villanueva, Greg Runyon, Lawrence Stein, and Chris Hernandez.

H. REPORT OF CITY MANAGER

1. City Manager Department

SUBJECT: COVID-19 Update from Director of Emergency Services. (10/5/5)

RECOMMENDATION: That the City Council receive and file an update from the Director of Emergency Services on the COVID-19 Local Emergency.

The City Manager gave a report on the City's COVID-19 response. No formal action was required.

I. CITY COUNCIL REPORTS

1. City Manager Department

SUBJECT: Appointment of Members to Serve on the City's Commissions and Committees. (0/10/10)

RECOMMENDATION: That the Mayor, with the concurrence of the City Council, make the following appointments:

1. To Community Relations Commission: Angel Garcia (D6);
2. To Parks and Recreation and Community Services Commission: Angela Whitecomb (D4);
3. To Planning Commission: Katherine Connelly (D6); and
4. To Downtown Design Review Committee: Arthur Valenzuela, Jr. (City at large). (This item did not originate in Committee.)

Shiri Klima, Deputy City Manager, presented. Public comments were received by Chris Hernandez. Discussion ensued among the Council and staff.

It was moved by Mayor Zaragoza, seconded by Mayor Pro Tem MacDonald, to approve the recommended action as presented. VOTE: MacDonald, Perello, Basua, Madrigal, Zaragoza, Teran, and Lopez voted in favor; the motion carried 7-0.

2. City Manager Department

SUBJECT: Request of Councilmembers Perello and Teran: Consider Adoption of **Resolution No. 15,430** Condemning Racism, Xenophobia, Violence, and Hate Crimes Against Asian Americans and Pacific Islanders.

RECOMMENDATION: That the City Council consider the adoption of **Resolution No. 15,430** condemning racism, xenophobia, violence, and hate crimes against Asian

Americans and Pacific Islanders. (This item did not originate in Committee.)

Alexander Nguyen, City Manager, presented. Public comments were received by Daniel Chavez, Jr., Lauraine R. Effress, Erik Fruth, Angel Garcia, Ronald Arruejo, Odette, Greg Runyon, Manuel Herrera, Chris Hernandez, Armando Delgado, and Karla Alejandra Ramirez. Discussion ensued among the Council and staff.

It was moved by Councilmember Perello, seconded by Councilmember Teran, to approve the recommended action as presented. VOTE: Zaragoza, MacDonald, Perello, Lopez, Madrigal, Basua, and Teran voted in favor; the motion carried 7-0.

J. REVIEW OF INFORMATION/CONSENT AGENDA

Items L-1 through L-4 were discussed among the Council and staff.

K. PUBLIC COMMENTS ON INFORMATION/CONSENT AGENDA

Public comments were received from Ray Blattel and Lawrence Stein.

L. INFORMATION/CONSENT AGENDA

1. Fire Department

SUBJECT: Purchase Order with McKesson Medical-Surgical for Personal Protective Equipment.

RECOMMENDATION: That the City Council approve and authorize the Mayor to execute a Purchase Order with McKesson for medical and sanitation supplies in the amount of \$250,000 for a one year term. (This item did not originate in Committee.)

2. Fire Department

SUBJECT: Affiliation Agreement with The Regents of the University of California for a Prehospital Care Program at No Cost for a Five Year Term.

RECOMMENDATION: That the City Council authorize the Mayor to enter an agreement with The Regents of the University of California for a Prehospital Care Paramedic Program at no cost for a five year term. (This item did not originate in Committee.)

3. Fire Department

SUBJECT: Appropriation of Wildland Fire Reimbursement Revenue.

RECOMMENDATION: That the City Council amend the FY 2020-21 Budget to recognize \$960,865 of General Fund revenue from wildland fire reimbursement, and appropriate \$431,532 to the Fire Department to restore the Department's original training budget; to improve and expand training related to mutual aid response; and to acquire vehicles needed for mutual aid response to wildland fire events. (This item did not originate in Committee.)

4. Fire Department

SUBJECT: Submission of FY2020 Staffing for Adequate Fire and Emergency Response (SAFER) Grant Application.

RECOMMENDATION: That the City Council adopts **Resolution No. 15,431**:

1. Ratifying the submission of a grant application for the Federal Emergency Management Agency (FEMA) FY2020 Staffing for Adequate Fire and Emergency Response (SAFER) Grant in the amount of \$1,058,013 to be used for the hiring of three additional firefighters, no local match is required;
 2. That authorizes the City Manager or designee to execute the grant agreement if grant funds are awarded to the City;
 3. That authorizes the Chief Financial Officer or designee to submit financial reports and grant claims, approve budget appropriations during FY2021-2022 for the use of grant funds and perform all other required financial actions; and
 4. That authorizes the Fire Chief or designee to submit non-financial reports.
- (This item did not originate in Committee.)

Written comments were received by Lawrence Stein regarding item L4.

It was moved by Councilmember Lopez, seconded by Councilmember Perello, to approve the Information/Consent items as presented. VOTE: MacDonald, Perello, Lopez, Zaragoza, Madrigal, Teran, and Basua voted in favor; motion passed 7-0.

M. PUBLIC HEARINGS

Housing Department

1. SUBJECT: Agreements and Funding for the Homeless Solutions Center (HSC) at 241 West Second Street. (0/20/20)

RECOMMENDATION: That the City Council:

1. Conduct a public hearing to adopt **Resolution No. 15-432** authorizing the Mayor to execute a Development and Disposition Agreement by and between Housing Trust Fund Ventura County, Community Development Partners Developers, LLC, and the City of Oxnard, and further authorizing the City Manager or Designee to execute and take all needed actions in consultation with the City Attorney relative to entering into a Donation Agreement by and between Housing Trust Fund Ventura County and the City of Oxnard, Agreement Containing Covenants, and Entering into a Loan Agreement with CDP Developers, LLC for the construction of the Homeless Solutions Center at 241 West Second Street and other matters pertaining thereto; and
2. Authorize the Mayor to execute a Memorandum of Understanding by and between the City of Oxnard and the County of Ventura regarding the financial sharing

arrangement for the development and operation of the permanent year-round shelter to be located on the ground floor of the Homeless Solutions Center; and

3. Approve a budget appropriation of \$1,500,000 to provide CDP Developers LLC with a gap-financing loan for the development of the Homeless Solution Center from the Low-and-Moderate Income Housing Fund of the former redevelopment agency; and

4. Approve a budget appropriation of \$94,000 for personnel expenses to pay for City staff time to carry out and administer eligible Low-and-Moderate Income Housing asset fund activities from the Low- and Moderate-Income Housing Asset Fund of the former redevelopment agency, which will allow staff to monitor, provide loan-servicing, and oversight of the Homeless Solutions Center's PSH units and loan agreement as well as provide the same services for other existing projects that were previously funded with the use of Low-and-Moderate Income Housing Asset Funds, but for which no budget was previously allocated for this purpose.

(Housing and Economic Development Committee (HEDC) recommended the Exclusive Negotiating Agreement to the City Council with a 3-0 vote. City Council approved with a 7-0 vote. On September 22, 2020 HEDC members each stated their preference to move forward with the entitlement process (DDR and SUP), followed by Council consideration of the DDA and memorandum of understanding (MOU) with the County for funding. No formal action was required.)

The City Clerk announced the affidavit of publication and stated that written communications were received from Anthony Mireles, Laborers International Union of North America; Mindy Greenberg; Max Ghenis, Ventura County YIMBY, , and submitted to Council. Emilio Ramirez, Housing Director, gave a report.

Larry Haynes, Mercy House Executive Director; Linda Wilson, Mercy House Chief Housing Officer; Timothy Huynh, Mercy House Chief Program Officer; Alexander Russell, Housing Trust Fund Ventura County Executive Vice President; Linda Braunschweiger, Housing Trust Fund Ventura County CEO; and Kyle Paine, Community Development Partners President were available to answer questions from Council.

Mayor Zaragoza opened the public testimony portion of the public hearing. Public comments were received from Max Ghenis, Jackson Piper, Tim Helton, Jessica Petrillo, Tom Cady, Douglas D. Partello, Angel Garcia, Nancy Lindholm, Pat Brown, Yukio Okano, Timothy McDonell, Desha Woods, Pastor Fernie Franco, Anthony Mireles, Greg Runyon, Armando Delgado, Alex Perez, Jonathan Duran, Joshua Medrano, Martin Rodriguez, and Mindy Greenberg.

Without objection, the Council approved closing the public testimony portion of the public hearing. Discussion ensued among the Council and staff.

It was moved by Councilmember Lopez, seconded by Councilmember Basua, to approve the recommended action as presented. VOTE: Basua, Madrigal, MacDonald, Teran, Lopez, Perello, and Zaragoza voted in favor; the motion carried 7-0.

(As it was after 10:00 p.m., the City Council voted unanimously for the remaining agenda items to be heard.)

N. REPORTS

1. Public Works Department

SUBJECT: Request of Mayor Zaragoza: Appropriation of Funds for Park Maintenance. (0/10/15)

RECOMMENDATION: That the City Council approve and authorize the City Manager to appropriate funds for park maintenance in the amount of \$300,000 from the available fund balance in the General Fund (101). (Finance and Governance Committee approved 3-0.)

Steve Howlett, Assistant Public Works Director, presented. Public comments were received from Daniel Chavez, Jr., Janette, Jacob C., Jacklyn Munoz, Manuel Herrera, Chris Hernandez, Armando Delgado, Angel Garcia. Written comments were received by Brenda Briones. Discussion ensued among the Council and staff.

It was moved by Mayor Zaragoza, seconded by Councilmember Basua, to approve the recommended action as presented. VOTE: Perello, MacDonald, Madrigal, Basua, Zaragoza, Lopez, and Teran voted in favor; the motion carried 7-0.

2. Community Development Department

SUBJECT: Update on the Preparation of the Climate Action and Adaptation Plan. (0/5/10)

RECOMMENDATION: That the City Council receive an update on work to prepare and engage the community in the preparation of the City's Climate Action and Adaptation Plan (CAAP).
(This item did not originate in Committee.)

Kathleen Mallory, Planning & Sustainability Manager, presented. Public comments were received from Daniel Chavez, Jr., Janette, Jacob C., Jacklyn Munoz, Angel

Garcia. Discussion ensued among the Council and staff.

It was moved by Mayor Zaragoza, seconded by Councilmember Basua, to approve the recommended action as presented. VOTE: MacDonald, Zaragoza, Perello, Madrigal, Basua, Teran, and Lopez voted in favor; the motion carried 7-0.

3. Community Development Department

SUBJECT: City of Oxnard 2020 General Plan Annual Progress Report. (0/5/5)

RECOMMENDATION: That the City Council receive and file the City of Oxnard 2020 General Plan and Housing Element Annual Progress Report.

(This item did not originate in Committee.)

Scott Kolwitz, Planning & Environmental Services Manager and Kathleen Mallory, Planning & Sustainability Manager presented. Public comments were received from Pat Brown. Discussion ensued among the Council and staff.

It was moved by Councilmember Basua, seconded by Councilmember Lopez, to approve the recommended action as presented. VOTE: Teran, Basua, Zaragoza, Lopez, MacDonald, Madrigal, and Perello voted in favor; the motion carried 7-0.

4. Public Works Department

SUBJECT: Award Agreement for Del Norte Regional Recycling Center and Transfer Station Waste Tipping Floor Restoration Project Specification No. 20-33. (0/5/5)

RECOMMENDATION: That the City Council approve and authorize:

1. The Mayor to award and execute Agreement A-8313 with American Restore, Inc. for \$1,084,053.14 for the Del Norte Regional Recycling Center and Transfer Station Waste Tipping Floor Restoration Project Specification No. 20-33 (Project No. 216802);

2. Approve a Project contingency amount of \$108,405 for the Del Norte Regional Recycling Center and Transfer Station Waste Tipping Floor Restoration Project Specification No. 20-33 (Project No. 216802);

3. Approve a Project allocation of \$54,202 for engineering, inspection, survey and project management for the Del Norte Regional Recycling Center and Transfer Station Waste Tipping Floor Restoration Project Specification No. 20-33 (Project No. 216802); and

4. Approve a budget appropriation in the amount of \$150,941 from the available fund balance in the Solid Waste Operating Fund (631).

Craig Beck, Interim Public Works Director, was available to answer questions. Public comments were received from Pat Brown. Discussion ensued among the Council and staff.

It was moved by Councilmember Lopez, seconded by Councilmember Perello, to approve the recommended action as presented. VOTE: Madrigal, Lopez, Teran, MacDonald, Basua, Perello, and Zaragoza voted in favor; the motion carried 7-0.

O. ADJOURNMENT

There being no further business on the agenda, and without objection, Mayor Zaragoza adjourned the meeting at 12:13 a.m.

ROSE CHAPARRO
City Clerk

JOHN C. ZARAGOZA
Mayor



CITY COUNCIL AGENDA REPORT
INFORMATION/CONSENT AGENDA
AGENDA ITEM NO. K.2

DATE: July 29, 2021

TO: City Council

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

SUBJECT: Environmental Protection Agency Grant Award and Budget Appropriation for the Food Waste and Anaerobic Digestion Feasibility Study Project.

RECOMMENDATION

That the City Council approve and authorize the Mayor to execute a budget appropriation recognizing grant revenue in the amount of \$182,630 of U.S. Environmental Protection Agency grant funds and \$37,126 of City matching funds to the Food Waste and Anaerobic Digestion Feasibility Study Project.

(This item did not originate in Committee. The grant application was approved by the City Council at the July 7, 2020, meeting.)

BACKGROUND

On July 7, 2020, City Council approved an application for an Environmental Protection Agency (EPA) grant up to \$300,000 for a feasibility study project titled Supporting Anaerobic Digestion in Communities. The EPA has awarded the competitive grant to the City to support anaerobic digestion (AD) projects for the purpose of accelerating the development of new or increasing existing AD capacity that results in an increase in the beneficial use of food waste materials.

The State of California Department of Resources Recycling and Recovery (CalRecycle) has required the implementation of mandatory organic recycling programs for all jurisdictions in the State. California Assembly Bill 1826 mandated that jurisdictions begin this program as of January 2016 with the goal of diverting organics from landfills. Organics include green waste materials from commercial and multi-family residential dwellings and commercial food waste materials. Oxnard currently contracts with Agromin to compost commercially collected food waste.

DISCUSSION

The Oxnard Wastewater and Environmental Resources Divisions (in Public Works) are currently working cooperatively to research and evaluate alternatives to meet the requirements of AB 1826. One of those alternatives is to use the existing digesters at the Oxnard Wastewater Treatment Plant (OWTP) to process food waste. To fully evaluate this alternative, a feasibility study needs to be conducted to determine if anaerobic digestion of food waste at the OWTP is a viable option. Under this concept, any excess capacity in the City's wastewater treatment plant digesters could be used to accept food waste for co-digestion with wastewater sludge without negatively impacting the current wastewater operation.

Commercial food waste is received, sorted and processed for shipment at the City's Del Norte facility. The OWTP digester alternative includes adding the processed food waste material to the OWTP digesters. In the digester, the food waste digests along with the treatment plant biosolids, creating biogas that is used to produce electricity through cogeneration. Studies have shown that food waste digests more readily than wastewater sludge. On a volumetric basis,

food waste may produce a significant amount of biogas, substantially increasing our current biogas production. The biogas is then used to power the wastewater co-generation facility, which currently provides about 35% of the energy used at the OWTP energy requirements.

The first step to including food waste into the OWTP digestion process is to complete a feasibility study. The feasibility study will evaluate existing digester excess capacity, ability to integrate food waste into the current operation, estimate potential increase in biogas and resultant energy production, identify capital improvement requirements including capital costs, estimate life cycle costs and make recommendations. The EPA grant will be used to cover the cost of the feasibility study. Matching funds of \$37,126 of an in-kind City match (staff time) and a \$26,500 third party contribution are required for this project. The Energy Coalition (TEC) has committed to support the development, modeling, and evaluation of the feasibility study. TEC is a California-based non-profit organization with over 45 years of designing and implementing strategies that transform energy use and generate capital. TEC implements the Southern California Regional Energy Network (SoCalREN) Public Agency Programs, which offers a suite of no-cost energy project identification and development services to public agency customers of Southern California Edison and Southern California Gas. The City of Oxnard is currently enrolled in the SoCalREN program and actively working with TCE to implement energy efficiency programs.

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 total cost for the project is \$246,256 of which \$182,630 are federal grant funds. The budget appropriation includes \$182,630 of grant funds and the required in-kind City matching funds of \$37,126 to the Food Waste and Anaerobic Digestion Feasibility Study Project. The remaining \$26,500 matching contribution will come from the TEC.

COMMITTEE OUTCOME

This item did not originate in Committee. The grant application was approved by the City Council at the July 7, 2020, meeting.

Prepared by: Eric Humel, Grants Specialist

ATTACHMENTS

1. EPA Grant Award
2. Budget Appropriation

	U.S. ENVIRONMENTAL PROTECTION AGENCY Cooperative Agreement	GRANT NUMBER (FAIN): 98T18001 MODIFICATION NUMBER: 0 PROGRAM CODE: X1		DATE OF AWARD 06/08/2021
		TYPE OF ACTION New		MAILING DATE 06/15/2021
		PAYMENT METHOD: ASAP		ACH# 90659
		RECIPIENT TYPE: Municipal		
RECIPIENT: CO - City of Oxnard 305 West Third Street Oxnard, CA 93030 EIN: 95-6000756		PAYEE: City of Oxnard 305 West Third Street Oxnard, CA 93030		
PROJECT MANAGER Jan Hauser 6001 S. Perkins Rd. Oxnard, CA 93033 E-Mail: jan.hauser@oxnard.org Phone: 805-271-2205		EPA PROJECT OFFICER Andre Villaseñor 75 Hawthorne Street, LND-1-1 San Francisco, CA 94105 E-Mail: villaseñor.andre@epa.gov Phone: 213-244-1813		EPA GRANT SPECIALIST Angela Mendiola Grants Management Branch, MSD-6 E-Mail: mendiola.angela@epa.gov Phone: 415-972-3284
PROJECT TITLE AND DESCRIPTION SWDA SPECIAL PURPOSE ACTIVITIES - Evaluation of Food Waste Pre-processing and Implementation of Co-digestion in the City of Oxnard Anaerobic The project will conduct a feasibility evaluation of the city's organic waste for anaerobic digestion and to test run delivery to the city's wastewater treatment plant for co-digestion. Specifically, the project will consist of two parts: Part I: Perform a feasibility evaluation for diversion of organic food waste into the City's wastewater treatment plant anaerobic digester, and Part II: Perform a bench scale study to verify and update the feasibility evaluation findings. It addresses EPA's search for proposals to increase the utilization of anaerobic digestion technology for a wide variety of feedstocks at many types of facilities. It also addresses the search for increased use of innovative infrastructure in the AD industry. The project will benefit the community by increasing the capacity to divert more food waste from landfills and incineration, and may reduce public expenses by reducing the amount of food waste currently being sent to a private composter. This assistance agreement provides full federal funding in the amount of \$182,630.				
BUDGET PERIOD 06/15/2021 - 06/14/2023	PROJECT PERIOD 06/15/2021 - 06/14/2023	TOTAL BUDGET PERIOD COST \$246,256.00	TOTAL PROJECT PERIOD COST \$246,256.00	
NOTICE OF AWARD Based on your Application dated 07/14/2020 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$182,630.00. EPA agrees to cost-share 74.16% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$182,630.00. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA regulatory and statutory provisions, all terms and conditions of this agreement and any attachments.				
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)		AWARD APPROVAL OFFICE		
ORGANIZATION / ADDRESS U.S. EPA, Region 9 Grants Branch, MSD-6 75 Hawthorne Street San Francisco, CA 94105		ORGANIZATION / ADDRESS EPA R9, LND-1 R9 - Region 9 75 Hawthorne Street San Francisco, CA 94105		
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY				
Digital signature applied by EPA Award Official Carolyn Truong - Grants Management Officer				DATE 06/08/2021

Budget Summary Page

Table A - Object Class Category (Non-Construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$24,108
2. Fringe Benefits	\$9,643
3. Travel	\$0
4. Equipment	\$0
5. Supplies	\$0
6. Contractual	\$182,630
7. Construction	\$0
8. Other	\$26,500
9. Total Direct Charges	\$242,881
10. Indirect Costs: 0.00 % Base null	\$3,375
11. Total (Share: Recipient <u>25.84</u> % Federal <u>74.16</u> %)	\$246,256
12. Total Approved Assistance Amount	\$182,630
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$182,630
15. Total EPA Amount Awarded To Date	\$182,630

Administrative Conditions

General Terms and Conditions

The recipient agrees to comply with the current EPA general terms and conditions available at: <https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-november-12-2020-or-later>.

These terms and conditions are in addition to the assurances and certifications made as a part of the award and the terms, conditions, or restrictions cited throughout the award.

The EPA repository for the general terms and conditions by year can be found at: <https://www.epa.gov/grants/grant-terms-and-conditions#general>.

A. Federal Financial Reporting (FFR)

For awards with cumulative project and budget periods greater than 12 months, the recipient will submit an annual FFR (SF 425) covering the period from "project/budget period start date" to **September 30** of each calendar year to the EPA Finance Center in Research Triangle Park, NC. The annual FFR will be submitted electronically to rtpfc-grants@epa.gov no later than **December 30** of the same calendar year. (NOTE: The grantee must submit the Final FFR to rtpfc-grants@epa.gov within 120 days after the end of the project period.)

B. Procurement

The recipient will ensure all procurement transactions will be conducted in a manner providing full and open competition consistent with 2 CFR Part 200.319. In accordance 2 CFR Part 200.324 the grantee and subgrantee(s) must perform a cost or price analysis in connection with applicable procurement actions, including contract modifications.

State recipients must follow procurement procedures as outlined in 2 CFR Part 200.317.

C. Non-Federal Third-Party Contributions

This award includes \$26,500 of estimated non-federal third party contributions. Third party contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantees. As applicable, these records must reflect how the value is placed on third party contributions. The value of third party contributions must be applicable to the period to which the cost sharing or matching requirement apply (2 CFR Part 200.306).

Programmatic Conditions

a. PERFORMANCE REPORTING:

(1)Quarterly Reports: The recipient will submit quarterly reports highlighting work status, progress, difficulties encountered, preliminary results and a statement of activity anticipated during the subsequent reporting period. In accordance with 2 CFR Parts 200 and 1500 (specifically, 200.328 monitoring and reporting program performance), the recipient agrees to submit performance reports that include brief information on each of the following areas:

- a.comparison of actual accomplishments to the outputs/outcomes established in the work plan for the period;
- b.the reasons for slippages if established outputs/outcomes were not met;
- c.additional pertinent information, including when appropriate, including analysis and information of cost overruns; and
- d.changes of key personnel concerned with the project.

(2)In accordance with 2 CFR 200.328 (d) (1), the recipient agrees to inform the EPA Project Officer as soon as problems, delays or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the assistance agreement work plan. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(3)Final Report: In accordance with grant regulations (2 CFR 200.328), the recipient agrees to submit to the EPA Project Officer within 90 days after the expiration or termination of the approved project period a final report documenting project activities over the entire project period.

(4)Sufficient Progress: EPA may terminate the assistance agreement for failure of the recipient to make sufficient progress so as to reasonably ensure completion of the project within the project period, including any extensions. EPA will measure sufficient progress by examining the performance required under the workplan in conjunction with the milestone schedule, the time remaining for performance within the project period, and/or the availability of funds necessary to complete the project.

(5)Subawards: The recipient must report on its subaward monitoring activities under 2 CFR 200.331(d). Such reporting include:

- a.Summaries of results from financial and programmatic reports.
- b.Summaries of findings from site visits and/or desk reviews to ensure effective subrecipient performance.
- c.Environmental results the subrecipient achieved.

b. SUBSTANTIAL FEDERAL INVOLVEMENT:

(1)Monitoring Progress: EPA will closely monitor the recipient performance to verify expected results proposed by the recipient. The EPA Project Officer or Technical Contact will maintain substantial involvement in the conduct of this project, including collaborative efforts with the recipient's Project Manager in planning and monitoring project activities and evaluation and review of progress throughout the phases of the project. The recipient will discuss the reporting elements for the information presented in the quarterly progress reports with the EPA Project Officer.

(2)Review and Comment:EPA may:

a. Review and comment on any proposed changes in the work plan and/or budget including tasks/deliverables and reports prepared under the cooperative agreement. However, the recipient will make the final decision on the content of these products.

b. Participate in meetings and/or conference calls with the recipient as needed, as well as comment on the quarterly reports.

c. Review and approve the substantive terms of contracts and subawards to verify consistency with the EPA approved scope of work. However, EPA personnel will not select the recipient's contractors or subawardees. In addition, the EPA Project Officer or Technical Contact will review any proposed procurements in accordance with the regulations at 2 CFR Parts 200 and 1500.

(3) Key Personnel: As provided in 2 CFR 200.308, the recipient must request prior written approval for a change in key personnel specified in the application or award document or the absence for more than three months, or a 25 percent reduction in time devoted to the project, by the recipient's project director identified in its EPA approved application for funding.

c. EQUIPMENT DISPOSITION INSTRUCTIONS:

In accordance with 2 CFR 200.313(e), the recipient may continue to use any equipment purchased under the assistance agreement on this project or on other Federally funded projects whether or not supported by Federal funds.

d. INFORMATION COLLECTION CONSIDERATIONS:

The recipient may not use cooperative agreement funds for a "collection of information" as described in 5 C.F.R. 1320.3. The provision does not apply to nonspecific and nondirective requests for information, such as opinions on a specific topic without further specification of the information being sought. In addition, the recipient may use its own funds to develop and administer surveys or other instruments collecting identical information from 10 or more respondents provided: 1) the recipient does not consult with EPA personnel in developing the specific questions or provide Agency personnel with an opportunity to comment on the draft questions. 2) The survey or other information collection instruments does not contain EPA's seal (i.e., logo or state or imply that the recipient is collecting information at EPA's request or on the behalf of EPA. 3) The recipient may use cooperative agreement funds to analyze information collected with its own funds and publish (including posting on websites) or otherwise disseminate the results of the information collection activity.

e. QUALITY ASSURANCE (QA) REQUIREMENTS

(1) When environmental data are collected as part of the Supporting Anaerobic Digestion in Communities funding opportunity assessment, the organization shall comply with 2 CFR § 1500.12 requirements to develop and implement quality assurance practices sufficient to produce data adequate to meet project objectives and to minimize data loss. State law may impose additional QA requirements. Recipients implementing environmental programs within the scope of the assistance agreement must submit to the EPA Project Officer an approvable Quality Assurance Project Plan (QAPP) at least 30 days prior to the initiating of data collection or data compilation. The Quality Assurance Project Plan (QAPP) is the document that provides comprehensive details about the quality assurance, quality control, and technical activities that must be implemented to ensure that project objectives are met. Environmental programs include direct measurements or data generation, environmental modeling, compilation of data from literature or electronic media, and data supporting the design, construction, and operation of environmental technology.

(2) The term "environmental data operations" refers to any measurement or information that describe environmental

processes, conditions, or location; ecological or health effects; produced from models or surveys; compiled from other sources such as data bases and literature; or the performance of environmental technology. The Quality Assurance Project Plan must be approved by EPA before data collection and/or data generation activities begin. The recipient will submit the QAPP to the EPA Project Officer.

No environmental data collection or data compilation may occur until the QAPP is approved by the EPA Project Officer and Quality Assurance Regional Manager. When the recipient is delegating the responsibility for an environmental data collection or data compilation activity to another organization, the EPA Regional Quality Assurance Manager may allow the recipient to review and approve that organization's QAPP. Additional information on these requirements can be found at the EPA Office of Grants and Debarment website at <https://www.epa.gov/grants/implementation-quality-assurance-requirements-organizations-receiving-epa-financial>.

f. BEST PRACTICES FOR PROCURING SERVICES, SUPPLIES, AND EQUIPMENT UNDER EPA ASSISTANCE AGREEMENTS

In addition to the above requirements the recipient agreed to follow the EPA Best Practices For Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements at <https://www.epa.gov/sites/production/files/2018-09/documents/best-practice-guide-for-procuring-services-supplies-equipment.pdf>.

g. CYBERSECURITY:

(a) The recipient agrees that when collecting and managing environmental data under this assistance agreement, it will protect the data by following all State or Tribal law cybersecurity requirements as applicable.

(b)(1) EPA must ensure that any connections between the recipient's network or information system and EPA networks used by the recipient to transfer data under this agreement, are secure. For purposes of this Section, a connection is defined as a dedicated persistent interface between an Agency IT system and an external IT system for the purpose of transferring information. Transitory, user-controlled connections such as website browsing are excluded from this definition.

If the recipient's connections as defined above do not go through the Environmental Information Exchange Network or EPA's Central Data Exchange, the recipient agrees to contact the EPA Project Officer (PO) no later than 90 days after the date of this award and work with the designated Regional/Headquarters Information Security Officer to ensure that the connections meet EPA security requirements, including entering into Interconnection Service Agreements as appropriate. This condition does not apply to manual entry of data by the recipient into systems operated and used by EPA's regulatory programs for the submission of reporting and/or compliance data.

(b)(2) The recipient agrees that any subawards it makes under this agreement will require the subrecipient to comply with the requirements in (b)(1) if the subrecipient's network or information system is connected to EPA networks to transfer data to the Agency using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange. The recipient will be in compliance with this condition: by including this requirement in subaward agreements; and during subrecipient monitoring deemed necessary by the recipient under 2 CFR 200.332(d), by inquiring whether the subrecipient has contacted the EPA Project Officer. Nothing in this condition requires the recipient to contact the EPA Project Officer on behalf of a subrecipient or to be involved in the negotiation of an Interconnection Service Agreement between the subrecipient and EPA.

END OF DOCUMENT

REQUEST FOR ADMINISTRATIVE BUDGET APPROPRIATION

Department: Public Works
Project/Program
Manager: Jan Hauser

Date: July 29, 2021

Phone: 805-844-5501

Reason for Appropriation:

Appropriate \$182,630 for new U.S. Environmental Protection Agency grant funds and \$37,126 of City matching funds to the Food Waste and Anaerobic Digestion Feasibility Study Project

Accounts and Descriptions

AMOUNT

Fund: 261 FEDERAL TERM GRANTS FUND

Revenues/Transfers In

FOOD WASTE AND ANAEROBIC DIG FEAS STUDY (PROJECT XXXXXX)

261-6631-531.72-01	FEDERAL GRANT REVENUE	182,630
	Sub-total Revenues	<u>182,630</u>

Expenditures/Transfers Out

FOOD WASTE AND ANAEROBIC DIG FEAS STUDY (PROJECT XXXXXX)

261-6631-805.82-09	SVCS-OTHER PROF/CONTRACT	182,630
	Sub-total Expenditures	<u>182,630</u>

Net Change to Fund Balance	<u>0</u>
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Net Appropriations	<u>0</u>
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Approvals

Department Director _____

Chief Financial Officer _____

City Manager _____



CITY COUNCIL AGENDA REPORT
INFORMATION/CONSENT AGENDA
AGENDA ITEM NO. K.3

DATE: July 29, 2021

TO: City Council

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.

RECOMMENDATION

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. (Public Works and Transportation Committee approved 3-0.)

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	\$116,853

Repayment Term	
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.

COMMITTEE OUTCOME

The Public Works and Transportation Committee approved 3-0 on July 13, 2021 to approve the staff recommendation and to forward the item for Council approval.

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



Southern California Edison
Rosemead, California (U 338-E)

Agreement A-8356

Original Cal. PUC Sheet No. 57074-E
Cancelling Cal. PUC Sheet No.

Sheet 1

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

Form 14-965

(To be inserted by utility)

Advice 3241-E
Decision 14-10-046

Issued by

R.O. Nichols
Senior Vice President

(To be inserted by Cal. PUC)

Date Filed Jun 30, 2015
Effective Jun 1, 2016
Resolution _____

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:

SCE:

(Name)

(Title)

(Address)

(City, State, Zip)

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: _____

SOUTHERN CALIFORNIA EDISON COMPANY

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.



CITY COUNCIL AGENDA REPORT
INFORMATION/CONSENT AGENDA
AGENDA ITEM NO. K.4

DATE: July 29, 2021

TO: City Council

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

SUBJECT: Hueneme Road Recycled Water Pipeline - Phase II Right of Way Agreements and Easement Deeds.

RECOMMENDATION

That the City Council approve and authorize the Mayor to execute:

1. Right of Way Agreement with Banjo Ranch, LLC, in the amount of \$18,800 as the entire consideration for the easement deed for the property identified by the County Assessor as APN 232-0-041-380, as particularly described in the Easement Deed;
 2. Certificate of Acceptance for an Easement Deed with Banjo Ranch, LLC, for the property identified by the County Assessor as APN 232-0-041-380;
 3. Right of Way Agreement with Dingaling Ranch, LLC, in the amount of \$19,200 as the entire consideration for the easement deed for the property identified by the County Assessor as APN 232-0-041-390, as particularly described in the Easement Deed;
 4. Certificate of Acceptance for an Easement Deed with Dingaling Ranch, LLC, for the property identified by the County Assessor as APN 232-0-041-390;
 5. Right of Way Agreement with GH Land Holdings, LLC, in the amount of \$47,200 as the entire consideration for the easement deed for the properties identified by the County Assessor as APN 223-0-031-190 and APN 223-0-031-210, as particularly described in the Easement Deed;
 6. Certificate of Acceptance for an Easement Deed with GH Land Holdings, LLC, for the properties identified by the County Assessor as APN 223-0-031-190 and APN 223-0-031-210;
 7. Right of Way Agreement with Marathon Land Inc., in the amount of \$40,500 as the entire consideration for the easement deed for the property identified by the County Assessor as APN 232-0-032-090, as particularly described in the Easement Deed;
 8. Certificate of Acceptance for an Easement Deed with Marathon Land Inc., for the property identified by the County Assessor as APN 232-0-032-090;
 9. Right of Way Agreement with P & R Properties, a California General Partnership, in the amount of \$70,000 as the entire consideration for the easement deed for the property identified by the County Assessor as APN 232-0-041-405, as particularly described in the Easement Deed; and
 10. Certificate of Acceptance for an Easement Deed with P & R Properties, a California General Partnership, for the property identified by the County Assessor as APN 232-0-041-405.
- (This item did not originate in Committee as this is associated with a capital improvement project specifically listed in the City's Capital Improvement Program, page 172.)

BACKGROUND

Phase I of the Groundwater Recovery Enhancement and Treatment (GREAT) program's recycled water pipeline was completed in 2015 and included the installation of a transmission pipeline from the City's Advanced Water Purification

Facility (AWPF) to Olds Road. Phase II of the GREAT program's recycled water pipeline will run along Hueneme Road from the end of Phase I of the pipeline at Olds Road to Wood Road. The length of the 24 inch in diameter High-density Polyethylene pipe in Phase II is approximately 3 miles.

The purpose of the Phase II pipeline is to expand recycled water service delivery to potential large agricultural customers on the east side of the Oxnard Plain. Many agricultural customers along Hueneme Road have already agreed to allow the City to install the Phase II pipeline within their property, as opposed to constructing the pipeline within Ventura County's roadway, allowing for substantial cost savings to the City. The City has recently obtained Right of Entry Agreements with each of the property owners in order to commence construction in early July of 2021. These Right of Entry Agreements will expire in December of 2021 and were only acquired for construction.

Capital Improvement Program (CIP) Reference:

Project No. **106002** – Hueneme Road Recycled Water Pipeline - Phase II - CIP 2021-2026 - Adopted May 18, 2021 - Page 172.

DISCUSSION

Permanent Easement Deeds and Right of Way (ROW) Agreements for those portions of the pipeline located within private property are required for future access and maintenance. These easements are necessary to facilitate the expansion of the Hueneme Road recycled water pipeline and provide recycled water to agricultural customers on the east side of the Oxnard Plain. Staff has negotiated for the costs of these easements and recommends the City enter into an agreement and easement deed with various property owners for those properties identified in Attachments 1-10.

The total cost for these agreements and easements is \$195,700 for the purpose of constructing, operating, and maintaining the water facilities. These costs were calculated based on the appraised property value and prorated for the square footage for each easement area.

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 total cost for the Easement Deeds is \$195,700. The Hueneme Road Recycled Water Pipeline - Phase II (Project No. 106002) has funds available from the Water Resource Development Fund (603) to cover the costs of these agreements and easements.

PROPERTY OWNER	APN	ROW AGREEMENT COST
Banjo Ranch, LLC	232-0-041-380	\$18,800
Dingaling Ranch, LLC	232-0-041-390	\$19,200
GH Land Holdings, LLC	223-0-031-190, 210	\$47,200
Marathon Land Inc.	232-0-032-090	\$40,500
P & R Properties	232-0-041-405	\$70,000
TOTAL		\$195,700

COMMITTEE OUTCOME

This item did not originate in Committee as this is associated with a capital improvement project specifically listed in the City's Capital Improvement Program, (page 172).

Prepared by: Tatiana Arnaout, City Engineer

ATTACHMENTS

1. Agreement - Banjo Ranch
2. Easement Deed - Banjo Ranch
3. Agreement - Dingaling Ranch
4. Easement Deed - Dingaling Ranch
5. Agreement - GH Land Holdings
6. Easement Deed - GH Land Holdings
7. Agreement - Marathon Land
8. Easement Deed - Marathon Land
9. Agreement - P&R Properties
10. Easement Deed - P&R Properties

PARCEL NO.: 232-0-041-380

OWNER: Banjo Ranch LLC

PROJECT: City of Oxnard –Hueneme Road Recycled Waterline Project

**RIGHT OF WAY AGREEMENT
(WITH ESCROW INSTRUCTIONS)**

THIS AGREEMENT dated MARCH 15, 2018, is made and entered into by and between

Banjo Ranch, LLC, a Delaware Limited Liability Company

hereinafter referred to as "Grantor", and

City of Oxnard

hereinafter called "City."

An Easement Deed covering the property rights particularly described therein, has been executed concurrently with this Agreement and delivered to City representatives. A copy of said Deed is labeled "Exhibit 1" and is attached hereto and incorporated herein by this reference.

In consideration of which, and other considerations hereinafter set forth, it is mutually agreed as follows:

1. The parties have herein set forth the whole of their agreement. The performance of this Agreement constitutes the entire consideration for said Easement Deed and shall relieve the City of all further obligation or claims on this account, or on account of the location, grade or construction of the proposed public improvement.

2. The City shall:

A. PAYMENT - Pay to the order of the Grantor the sum of **\$18,800** as consideration in full for the real property interests being conveyed in the referenced Easement Deed, for the loss, replacement and moving of any improvements, and for entering into this Agreement. Said sum shall be paid upon the close of escrow.

B. MISCELLANEOUS COSTS - Pay all escrow, title insurance, and recording fees incurred in this transaction.

C. CLEARANCE OF BONDS, ASSESSMENTS, OR DELINQUENT TAXES - Have the authority to deduct and pay from the amount shown in Clause 2.A. above any amount necessary to satisfy any bonds, demands and delinquent taxes due in any year except the year in which this escrow closes, together with penalties and interest thereon, and/or delinquent and unpaid non-delinquent assessments which have become a lien at the close of escrow. City agrees

to obtain and provide Grantor an updated title report within 30 days of Grantor's execution hereof to determine any such items.

D. PROPERTY RESTORATION - Generally restore the surface of the easement areas described in the referenced Easement Deed to the condition that existed prior to City's project construction except in areas where surface appurtenances such as markers, manholes, cabinets, air vents, and access hatches may be located.

E. CONSTRUCTION PERIOD AND CROPS – Undertake construction of City's project within the easement areas on Grantors land during the July 1 to August 31 time period. This construction period is meant to coincide with strawberry farming scheduled break period and thus limit any damages to crops. City shall pay crop damages directly the to the owner of said crops for the Fair Market Value (minus cost of harvest) of any crops damaged or destroyed by City's construction activities.

F. SERVICE CONNECTION –At no cost to Grantor, City shall construct a recycled water service connection to provide Grantor's property physical access to recycled City water. This Service Connection shall be constructed in the general location as shown on attach Exhibit "2". Grantor will need to enter into separate agreement(s) to pay for and use City water from this Service connection after it is constructed by City.

G. INDEMNIFICATION - Indemnify, defend and hold harmless Grantor, its members, partners, shareholders, agents, representatives, employees, officers, directors, tenants, property managers and their respective successors and assigns from any and all claims including but not limited to environmental claims, damages, costs, judgments, actions, causes of action, demands, obligations, expenses and fees, including without limitation, attorneys fees and consultant's fees, or liability (collectively "Claims") caused by City or its officers, employees, representatives, consultants or agents specifically arising from City construction and restoration work on Grantor's property or specifically resulting from City's operation of City facilities on Grantor's property. City's obligations hereunder shall not extend to that portion of any Claims that are caused by the negligence or intentional misconduct of Grantor, its representatives or agents. This indemnification shall survive the close of escrow and shall not merge with the Easement Deed.

H. RECORDATION OF INSTRUMENT - Accept the Easement Deed herein referenced and cause the same to be recorded in the office of the Ventura County Recorder at such time as when clear title can be conveyed to the City.

3. The Grantor:

A. LEASE INDEMNIFICATION - Grantor agrees to hold the City harmless and reimburse City for any and all of its losses and expenses occasioned by reason of any Lease on said property held by tenant of Grantor, except City shall pay crop damages directly the to the owner of said crops for the Fair Market Value (minus cost of harvest) of any crops damaged or destroyed by City's construction activities.

B. CITY SURFACE FACILITIES - Acknowledges that certain appurtenances related to City facilities may be placed upon the surface of the permanent easement areas, including but not limited to blowoff and manhole access structures, hatches, cabinets, air vents, intermittent surface markers denoting the location of the City's pipeline(s), and other facilities appurtenant to the operation of City facilities. City facilities will be constructed so that Grantor can continue to use the City's Easement area for farm access road purposes and crop uses that don't penetrate the ground surface by more than four feet.

C. PERMISSION TO ENTER -With advance notice to be agreed upon by and between the City and Grantor, the Grantor will Grant City, its agents and contractors, permission to enter upon the easement areas described in the referenced Easement Deed prior to the close of escrow for the purposes of preparation for and construction of the City's facilities, subject to all applicable terms and conditions contained in this Agreement and the associated Easement Deed.

4. The Parties agree:

A. ESCROW - To open an escrow in accordance with this Agreement at Camarillo Escrow Company. This Agreement constitutes the joint escrow instructions of City and Grantor, and the escrow agent to whom these instructions are delivered (hereafter "Escrow Agent") is hereby empowered to act under this Agreement. The parties hereto agree to do all acts necessary to close this escrow in the shortest possible time and will make all due effort to close escrow within sixty days of execution by Grantor and delivery to City of this Agreement and the associated Easement Deed.

As soon as possible after opening of escrow, City will deposit the executed Deed by Grantor, with Certificate of Acceptance attached, with Escrow Agent on Grantor's behalf. City agrees to deposit the purchase price upon demand of Escrow Agent. City and Grantor agree to execute and deposit with Escrow Agent all additional instruments as may be necessary to complete this transaction. All funds received in this escrow shall be deposited with other escrow funds in a general escrow fund account(s) and may be transferred to any other such escrow trust account in any State or National Bank doing business in the State of California. All disbursements shall be made by check or wire transfer from such account.

i) ESCROW AGENT DIRECTIVES - Escrow Agent is authorized to, and shall:

- a) Pay and charge Grantor for any unpaid delinquent taxes and/or any penalties and interest thereon, and for any delinquent assessments or bonds against that portion of Grantor's Land subject to this transaction as required to convey clear title.
- b) Pay and charge City for any escrow fees, charges and costs payable under Paragraph 2.B. of this Agreement.
- c) Disburse funds and deliver Deed when conditions of this escrow have been

fulfilled by City and Grantor.

- d) Following recording of Deed from Grantor, provide City, at City's expense, with a CLTA Standard Coverage Policy of Title Insurance in the amount of \$18,800 issued by Lawyers Title showing that the City has an easement in the real property described and depicted in the Easement Deed attached to Exhibit 1 of this Agreement,
- ii) CLOSE OF ESCROW - The term "close of escrow", if and where written in these instructions, shall mean the date necessary instruments of conveyance are recorded in the office of the County Recorder. Recordation of instruments delivered through this escrow is hereby authorized when Escrow Agent has completed performance under paragraph 4A(i) above.

B. ARTICLE HEADINGS - Article headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants and conditions of this Agreement.

C. COMPLETE UNDERSTANDING - This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof, superseding all negotiations, prior discussions, and preliminary agreements or understandings, written or oral. This Agreement may not be amended except in writing by the parties hereto or their successors or assigns.

E. CITY COUNCIL APPROVAL - This Agreement is subject to and conditioned upon approval and ratification by the City Council of the City of Oxnard. This Agreement is not binding upon the City until executed by the appropriate City official(s) acting in their authorized capacity.

No Obligation Other Than Those Set Forth Herein Will Be Recognized.

GRANTOR: Banjo Ranch, LLC, a Delaware Limited Liability Company

By: _____

Name: _____

Title: GENERAL MANAGER

Date: MARCH 15, 2018

CITY: City of Oxnard

By _____
Name _____
Title _____

Date _____

ATTEST:

APPROVED AS TO FORM:

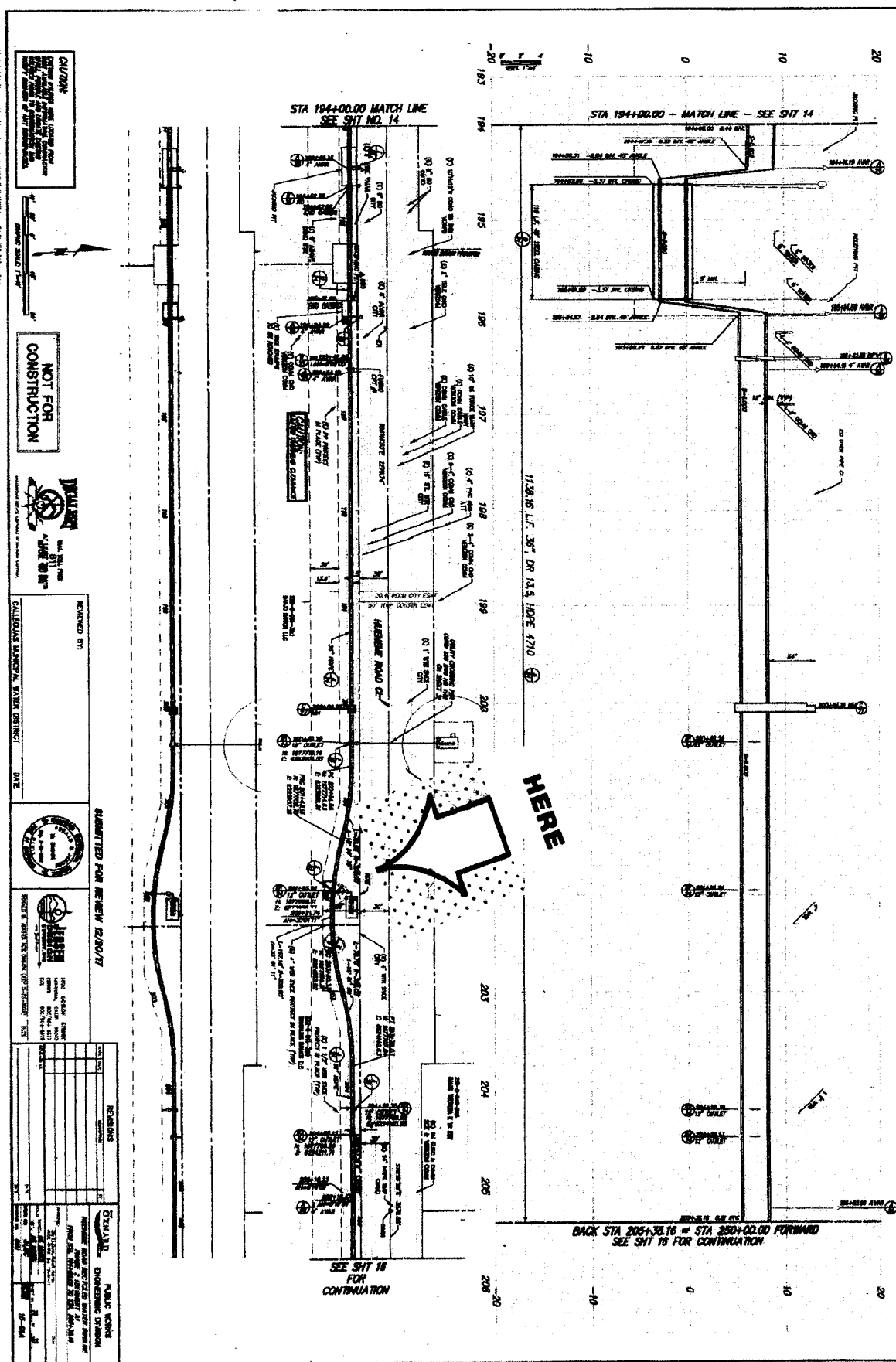
APPROVED AS TO INSURANCE:

Risk Manager

APPROVED AS TO CONTENT:

APPROVED AS TO AMOUNT:

(Water Service Connection Location Map)



**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

CITY OF OXNARD
305 W. Third Street
Oxnard, California 93030
Attention: City Clerk

APN:232-0-041-380

SPACE ABOVE THIS LINE FOR RECORDER'S USE
EXEMPT FROM RECORDING FEES PURSUANT TO GOV. CODE §§ 6103 and 27383

EASEMENT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Banjo Ranch, LLC, a Delaware Limited Liability Company

(hereinafter referred to as "**Grantor**"),

hereby GRANT(S) to the **City of Oxnard, a municipal corporation ("City")**, its successors and assigns the following interests in real property:

A. A permanent easement to survey, install, construct, reconstruct, enlarge, lay, alter, operate, patrol, remove, replace, and maintain a water conduit and vaults, consisting of one or more underground water pipelines and related facilities (the "**Easement**"). These related facilities may include but are not limited to markers, air valves, manholes, valves, meters, surge control devices, test stations, buried communication devices, buried electrical conduits and devices, pull boxes, and all related incidents, fixtures, and appurtenances. The markers, test stations, pull boxes, blow off valves, air release valves, manholes, other related facilities, and turnouts may be located above ground or partially above ground. This Easement shall be in, over, on, through within, under, and across that certain real property described in **Exhibit C** and depicted in **Exhibit D** (the "**Easement Area**"), both of which are attached hereto and incorporated by reference herein.

The Easement described herein shall be SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. The facilities and improvements installed in the Easement Area collectively are referred to herein as the "**City Facilities**."

2. As the amount of earth or other fill over underground City Facilities can affect the structural integrity of theses City Facilities, City shall have the right to maintain the height of earth or other fill over underground City Facilities. Grantor(s) shall not temporarily or permanently modify, or allow others to in any way modify, the ground surface elevation in the Easement Area from the elevation established upon completion of construction of the underground City Facilities without the City's written consent, which consent shall not be withheld unreasonably and shall be given or denied within 45 calendar days of written application. Grantor(s) shall not conduct, or permit others to conduct, grading operations, ripping, stockpiling, or use, or permit others to use, explosives within or proximate to the Easement Area to the extent that City Facilities may be damaged.

3. This Easement is subject to and intended to co-exist with the current surface use and uses of the Grantor's property, including but not limited to fencing, canals, irrigation ditches, laterals, pipelines, roads, electrical transmission facilities, and communication lines existing on the date this Easement is granted, and all future uses which do not directly or indirectly interfere with or endanger City's exercise of the rights described herein, including the right to use the Easement Area for agricultural purposes excepting vegetation which endangers the integrity of City Facilities; provided, however, that City shall have the right to clear and keep clear from the Easement Area all explosives, buildings, structures, walls, and other facilities of a permanent nature, and any earth cover or stockpile of material placed without the City's written consent, which interfere with City's use of the Easement Area. Asphalt pavement, landscaping, fencing, lighting and related appurtenances, with footings less than 1 foot deep and less than 1 foot across in any direction, sidewalks, curb, and gutter may be installed within the Easement Area provided they do not interfere with the function of any surface facilities. Grantor shall not construct, nor permit others to construct, such permanent facilities which conflict with City's ability to use the Easement Area. City shall have the right of exclusive use and possession within the Easement Area for a distance of two (2) feet in every direction around the outside surface of the City Facilities.

B. Temporary Construction Easement

A **Temporary Construction Easement** for the purposes of facilitating construction of City Facilities, including the right to place equipment and vehicles, pile earth thereon, and utilize said Temporary Construction Easement for all other related activities and purposes in, on, over, under, through, along and across that certain portion of the Real Property which is described **Exhibit "A"** and depicted in **Exhibit "B"** attached hereto and incorporated by reference herein ("Temporary Construction Easement"). Said Temporary Construction Easement shall commence thirty (30) days after written notice by the City of commencement of construction of the City Facilities ("Commencement Notification") and shall automatically terminate thirty (30) days after the City provides written notice to Grantor of termination of the Temporary Construction Easement, or one (1) year after the Commencement Notification, whichever occurs first, unless extended as set forth below.

City shall have the unilateral right to extend part or all of the one (1) year term of the Temporary Construction Easement for additional maximum of six (6) months as necessary for completion of construction of the City Facilities; however, under no circumstances shall the duration of the Temporary Construction Easement be extended beyond December 31, 2018. City must provide Grantor with the written notice of its intent to extend the term of the TCE, as well as the amount due for the time the TCE is to be extended, at least ten (10) days prior to the expiration of the current term. The rate for the extended use of the Temporary Construction Easement shall be **TWO HUNDRED FIFTY DOLLARS (\$250)** per month of the extension term exercised.

Executed this 15 day of MARCH 2018.

GRANTOR:
Banjo Ranch, LLC

By: _____
Name: _____



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Ventura

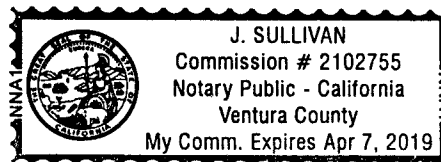
On March 15, 2018 before me, J. Sullivan, Notary Public, personally

appeared John S. Broome, Jr., proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Signature J. Sullivan (Seal)



CERTIFICATE OF ACCEPTANCE
(California Government Code Section 27281)

This is to certify that the interest in real property conveyed by the EASEMENT DEED dated _____ from _____ to the City of Oxnard, a municipal corporation and governmental agency is hereby accepted, and pursuant to City Council Resolution No. 1939, recorded in book 1591, Official Records of Ventura County at page 273, the City Council consents to recordation thereof by its duly authorized officer.

DATED: _____

CITY OF OXNARD, a California municipal
corporation

EXHIBIT "A"
(Temporary Construction Easement)
BANJO RANCH, LLC
APN: 232-0-041-380
(19390.00TCE)

Parcel 1

That portion of Parcel "A", Subdivision 75 of the Rancho El Rio De Santa Clara O'la Colonia, in the County of Ventura, State of California, as per the map titled "Map No 2 of Rancho El Rio De Santa Clara O' la Colonia" recorded November 15, 1888 in Book 3 at Page 14 of Miscellaneous Records (Maps) in the Office of the County Recorder of said County, also being that portion of Parcel 1 of the deed recorded September 24, 2007 as Document Number 20070924-00182361-0 of Official Records in said Office, described as follows:

Beginning at a point on the westerly line of said Parcel A, distant thereon, South 01°07'07" West, 55.00 feet from the northwest corner of said Parcel A; thence along said westerly line,

- 1st North 01°07'07" East, a distance of 24.98 feet to the southerly terminus of the 2nd course of the Roadway Easement to the County of Ventura recorded September 21, 1987 per document No. 87-152174 of Official Records in said Office; thence along the 3rd course of said Roadway Easement,
- 2nd South 88°44'55" East, a distance of 20.00 feet; thence,
- 3rd North 01°15'05" East, a distance of 4.62 feet; thence,
- 4th South 88°44'53" East, a distance of 538.23 feet; thence,
- 5th South 75°50'32" East, a distance of 79.05 feet; thence,
- 6th South 88°47'08" East, a distance of 49.75 feet to the easterly line of said Parcel 1; thence along the easterly line of said Parcel 1,
- 7th South 01°07'07" West, a distance of 11.98 feet to a line that is parallel with, and distant, 55.00 feet southerly of the northerly line of said Parcel 1; thence along said parallel line,
- 8th North 88°44'53" West, a distance of 685.00 feet to the **Point of Beginning**.

Contains: 18,628 Square Feet / 0.43 Acres, more or less.

The above described parcel of land is delineated on the attached Exhibit "B".

William T. Hurdle 6-28-2021

William T. Hurdle
PLS 5453

Date



EXHIBIT "B"

SHEET 1 OF 1

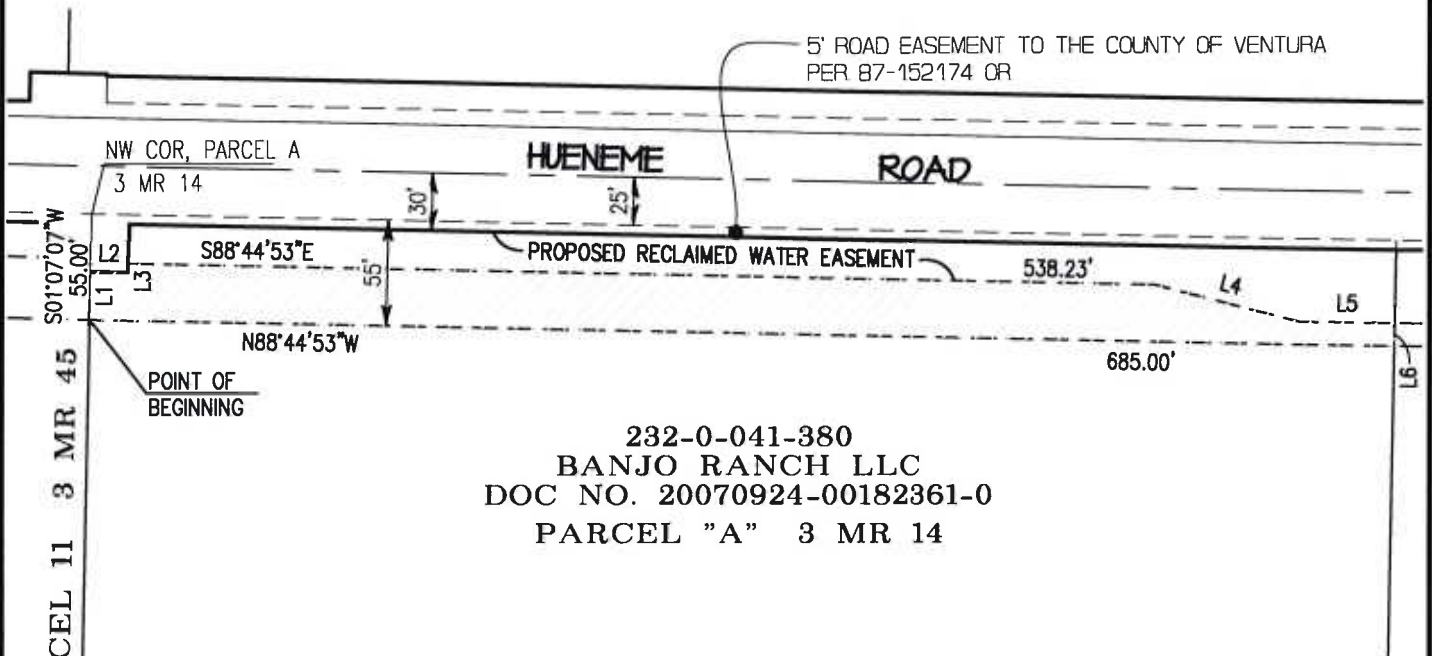
(TEMPORARY CONSTRUCTION EASEMENT)

BANJO RANCH, LLC

APN: 232-0-041-380

(S19390.00TCE)

5' ROAD EASEMENT TO THE COUNTY OF VENTURA
PER 87-152174 OR



232-0-041-380
BANJO RANCH LLC
DOC NO. 20070924-00182361-0
PARCEL "A" 3 MR 14

LINE DATA

LINE	BEARING	DISTANCE
L1	N01°07'07"E	24.98'
L2	S88°44'55"E	20.00'
L3	N01°15'05"E	4.62'
L4	S75°50'32"E	79.05'
L5	S88°47'08"E	49.75'
L6	S01°07'07"W	11.98'

SURVEYOR'S NOTE

THE COURSES AND DISTANCES SHOWN HEREON REFLECT RECORD DATA PER THE WRITTEN DEEDS, AND ARE NOT THE RESULTS OF A FIELD SURVEY, OR MATHEMATICALLY CLOSED BOUNDARY SURVEY.

AREA

18,628 SQ. FEET / 0.43 ACRES, MORE OR LESS

HATCHED AREA DENOTES LAND
DESCRIBED IN THE ATTACHED
EXHIBIT "A"

William T. Hurdle 6-28-2021

WILLIAM T. HURDLE
PLS 5453

DATE

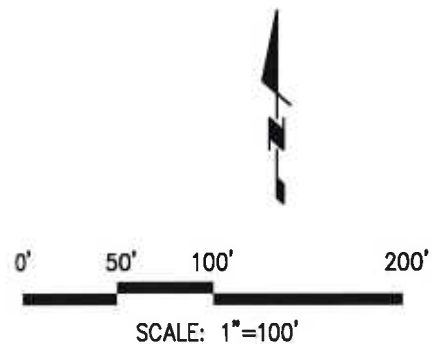


EXHIBIT "C"
(Reclaimed Water Easement)
BANJO RANCH, LLC
APN: 232-0-041-380
(S19390.00E)

That portion of Parcel "A", Subdivision 75 of the Rancho El Rio De Santa Clara O'la Colonia, in the County of Ventura, State of California, as per the map titled "Map No 2 of Rancho El Rio De Santa Clara O' la Colonia" recorded November 15, 1888 in Book 3 at Page 14 of Miscellaneous Records (Maps) in the Office of the County Recorder of said County, also being that portion of Parcel 1 of the deed recorded September 24, 2007 as Document Number 20070924-00182361-0 of Official Records in said Office, described as follows:

Commencing at the northwest corner of said Parcel A; thence along the westerly line of said Parcel, South 01°07'07" West, 5.00 feet; thence leaving said westerly line, South 88°44'55 East, 20.06 feet to the **Point of Beginning**, said point being the the northerly terminus of the 4th course of the existing Roadway Easement to the County of Ventura recorded September 21, 1987 per the Document No. 87-152174 of Official Records in said Office; thence along said 4th course,

- 1st South 01°15'05" West, a distance of 20.40 feet; thence leaving said 4th course,
- 2nd South 88°44'53" East, a distance of 538.23 feet; thence,
- 3rd South 75°50'32" East, a distance of 79.05 feet; thence,
- 4th South 88°47'08" East, a distance of 49.75 feet to the easterly line of said Parcel A; thence along said easterly line,
- 5th North 01°07'07" East, a distance of 38.02 feet to the intersection of said easterly line with the 5th course of said Roadway Easement; thence along said 5th course,
- 6th North 88°44'55" West, a distance of 664.94 feet to the **Point of Beginning**.

Contains: 15,122 Square Feet / 0.35 Acres, more or less.

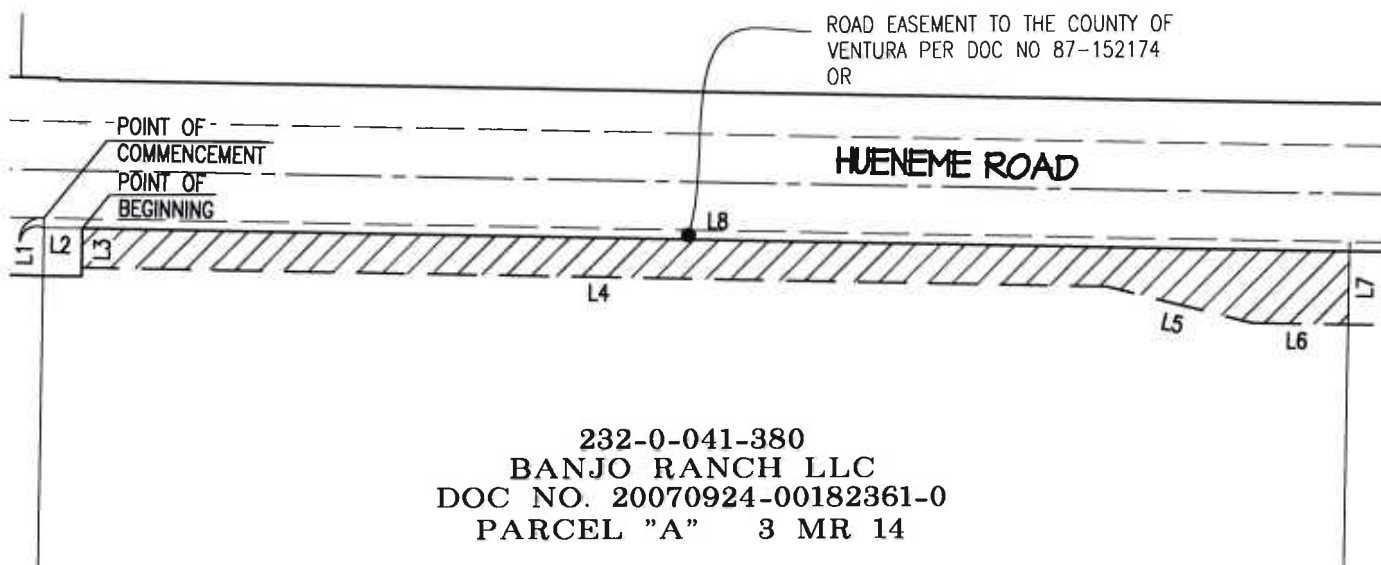
The above described parcel of land is delineated on the attached Exhibit "D".

William T. Hurdle
William T. Hurdle
PLS 5453

6-28-2021
Date



EXHIBIT "D"
(RECLAIMED WATER EASEMENT)
BANJO RANCH, LLC
APN: 232-0-041-380
(S19390.00E)



232-0-041-380
 BANJO RANCH LLC
 DOC NO. 20070924-00182361-0
 PARCEL "A" 3 MR 14

LINE DATA

LINE	BEARING	DISTANCE
L1	S01°07'07"W	5.00'
L2	S88°44'55"E	20.06'
L3	S01°15'05"W	20.40'
L4	S88°44'53"E	538.23'
L5	S75°50'32"E	79.05'
L6	S88°47'08"E	49.75'
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L8	N88°44'55"W	664.94'

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0' 50' 100' 200'
 SCALE: 1"=100'

AREA

15,122 SQUARE FEET / 0.35 ACRES, MORE OR LESS.

HATCHED AREA DENOTES LAND
 DESCRIBED IN THE ATTACHED
 EXHIBIT "C"

William T. Hurdle 6-28-2021
 WILLIAM T. HURDLE DATE
 PLS 5453



PARCEL NO.: 232-0-041-390

OWNER: Dingaling Ranch LLC

PROJECT: City of Oxnard –Hueneme Road Recycled Waterline Project

**RIGHT OF WAY AGREEMENT
(WITH ESCROW INSTRUCTIONS)**

THIS AGREEMENT dated MARCH 15th, 2018, is made and entered into by and between

Dingaling Ranch, LLC, a Delaware Limited Liability Company

hereinafter referred to as "Grantor", and

City of Oxnard

hereinafter called "City."

An Easement Deed covering the property rights particularly described therein, has been executed concurrently with this Agreement and delivered to City representatives. A copy of said Deed is labeled "Exhibit 1" and is attached hereto and incorporated herein by this reference.

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2. The City shall:

A. PAYMENT - Pay to the order of the Grantor the sum of **\$19,200** as consideration in full for the real property interests being conveyed in the referenced Easement Deed, for the loss, replacement and moving of any improvements, and for entering into this Agreement. Said sum shall be paid upon the close of escrow.

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fulfilled by City and Grantor.

- d) Following recording of Deed from Grantor, provide City, at City's expense, with a CLTA Standard Coverage Policy of Title Insurance in the amount of \$18,800 issued by Lawyers Title showing that the City has an easement in the real property described and depicted in the Easement Deed attached to Exhibit 1 of this Agreement,
- ii) CLOSE OF ESCROW - The term "close of escrow", if and where written in these instructions, shall mean the date necessary instruments of conveyance are recorded in the office of the County Recorder. Recordation of instruments delivered through this escrow is hereby authorized when Escrow Agent has completed performance under paragraph 4A(i) above.

B. ARTICLE HEADINGS - Article headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants and conditions of this Agreement.

C. COMPLETE UNDERSTANDING - This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof, superseding all negotiations, prior discussions, and preliminary agreements or understandings, written or oral. This Agreement may not be amended except in writing by the parties hereto or their successors or assigns.

E. CITY COUNCIL APPROVAL - This Agreement is subject to and conditioned upon approval and ratification by the City Council of the City of Oxnard. This Agreement is not binding upon the City until executed by the appropriate City official(s) acting in their authorized capacity.

No Obligation Other Than Those Set Forth Herein Will Be Recognized.

GRANTOR: Dingaling Ranch, LLC, a Delaware Limited Liability Company

By: 
Name: _____
Title: GENERAL MANAGER

Date: MARCH 15, 2018

CITY: City of Oxnard

By
Name
Title

Date

ATTEST:

APPROVED AS TO FORM:

APPROVED AS TO INSURANCE:

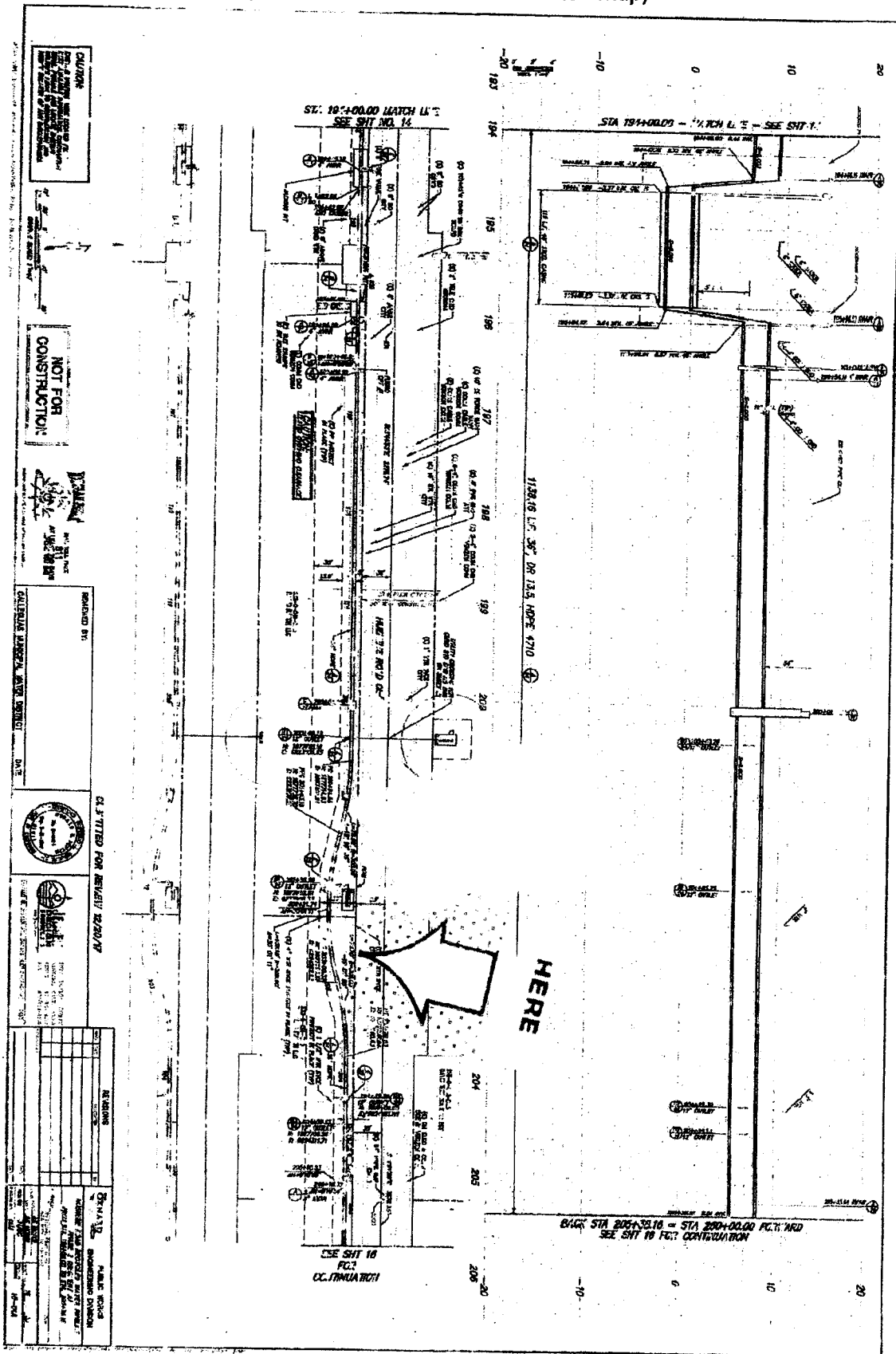
Risk Manager

APPROVED AS TO CONTENT:

APPROVED AS TO AMOUNT:

Exhibit 2

(Water Service Connection Location Map)



**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

CITY OF OXNARD
305 W. Third Street
Oxnard, California 93030
Attention: City Clerk

APN:232-0-041-390

SPACE ABOVE THIS LINE FOR RECORDER'S USE
EXEMPT FROM RECORDING FEES PURSUANT TO GOV. CODE §§ 6103 and 27383

EASEMENT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Dingaling Ranch, LLC, a Delaware Limited Liability Company

(hereinafter referred to as "**Grantor**"),

hereby GRANT(S) to the **City of Oxnard, a municipal corporation ("City")**, its successors and assigns the following interests in real property:

A. A permanent easement to survey, install, construct, reconstruct, enlarge, lay, alter, operate, patrol, remove, replace, and maintain a water conduit and vaults, consisting of one or more underground water pipelines and related facilities (the "**Easement**"). These related facilities may include but are not limited to markers, air valves, manholes, valves, meters, surge control devices, test stations, buried communication devices, buried electrical conduits and devices, pull boxes, and all related incidents, fixtures, and appurtenances. The markers, test stations, pull boxes, blow off valves, air release valves, manholes, other related facilities, and turnouts may be located above ground or partially above ground. This Easement shall be in, over, on, through within, under, and across that certain real property described in **Exhibit C** and depicted in **Exhibit D** (the "**Easement Area**"), both of which are attached hereto and incorporated by reference herein.

The Easement described herein shall be SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. The facilities and improvements installed in the Easement Area collectively are referred to herein as the "**City Facilities**."

2. As the amount of earth or other fill over underground City Facilities can affect the structural integrity of theses City Facilities, City shall have the right to maintain the height of earth or other fill over underground City Facilities. Grantor(s) shall not temporarily or permanently modify, or allow others to in any way modify, the ground surface elevation in the Easement Area from the elevation established upon completion of construction of the underground City Facilities without the City's written consent, which consent shall not be withheld unreasonably and shall be given or denied within 45 calendar days of written application. Grantor(s) shall not conduct, or permit others to conduct, grading operations, ripping, stockpiling, or use, or permit others to use, explosives within or proximate to the Easement Area to the extent that City Facilities may be damaged.

3. This Easement is subject to and intended to co-exist with the current surface use and uses of the Grantor's property, including but not limited to fencing, canals, irrigation ditches, laterals, pipelines, roads, electrical transmission facilities, and communication lines existing on the date this Easement is granted, and all future uses which do not directly or indirectly interfere with or endanger City's exercise of the rights described herein, including the right to use the Easement Area for agricultural purposes excepting vegetation which endangers the integrity of City Facilities; provided, however, that City shall have the right to clear and keep clear from the Easement Area all explosives, buildings, structures, walls, and other facilities of a permanent nature, and any earth cover or stockpile of material placed without the City's written consent, which interfere with City's use of the Easement Area. Asphalt pavement, landscaping, fencing, lighting and related appurtenances, with footings less than 1 foot deep and less than 1 foot across in any direction, sidewalks, curb, and gutter may be installed within the Easement Area provided they do not interfere with the function of any surface facilities. Grantor shall not construct, nor permit others to construct, such permanent facilities which conflict with City's ability to use the Easement Area. City shall have the right of exclusive use and possession within the Easement Area for a distance of two (2) feet in every direction around the outside surface of the City Facilities.

B. Temporary Construction Easement

A **Temporary Construction Easement** for the purposes of facilitating construction of City Facilities, including the right to place equipment and vehicles, pile earth thereon, and utilize said Temporary Construction Easement for all other related activities and purposes in, on, over, under, through, along and across that certain portion of the Real Property which is described **Exhibit "A"** and depicted in **Exhibit "B"** attached hereto and incorporated by reference herein ("Temporary Construction Easement"). Said Temporary Construction Easement shall commence thirty (30) days after written notice by the City of commencement of construction of the City Facilities ("Commencement Notification") and shall automatically terminate thirty (30) days after the City provides written notice to Grantor of termination of the Temporary Construction Easement, or one (1) year after the Commencement Notification, whichever occurs first, unless extended as set forth below.

City shall have the unilateral right to extend part or all of the one (1) year term of the Temporary Construction Easement for additional maximum of six (6) months as necessary for completion of construction of the City Facilities; however, under no circumstances shall the duration of the Temporary Construction Easement be extended beyond December 31, 2018. City must provide Grantor with the written notice of its intent to extend the term of the TCE, as well as the amount due for the time the TCE is to be extended, at least ten (10) days prior to the expiration of the current term. The rate for the extended use of the Temporary Construction Easement shall be **TWO HUNDRED FIFTY DOLLARS (\$250)** per month of the extension term exercised.

Executed this 15th day of MARCH 2018.

GRANTOR:

Dingaling Ranch, LLC

By: _____

Name: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Ventura

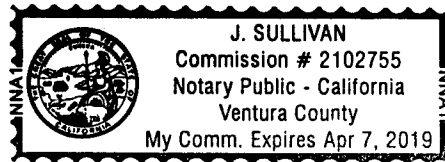
On March 15, 2018 before me, J. Sullivan, Notary Public, personally

appeared John S. Broome, Jr., proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Signature J. Sullivan (Seal)



CERTIFICATE OF ACCEPTANCE
(California Government Code Section 27281)

This is to certify that the interest in real property conveyed by the EASEMENT DEED dated _____ from _____ to the City of Oxnard, a municipal corporation and governmental agency is hereby accepted, and pursuant to City Council Resolution No. 1939, recorded in book 1591, Official Records of Ventura County at page 273, the City Council consents to recordation thereof by its duly authorized officer.

DATED: _____

CITY OF OXNARD, a California municipal
corporation

EXHIBIT "A"
(Temporary Construction Easement)
DINGALING RANCH, LLC.
APN: 232-0-041-390
(S20070.00TCE)

Parcel 1

That portion of Subdivision 75 of the Rancho El Rio De Santa Clara O'la Colonia, in the County of Ventura, State of California, as per the map titled "Map of Rancho El Rio De Santa Clara O'la Colonia" filed with the Ventura County Clerk in the action titled "Thomas A. Scott, et al., vs. Rafael Gonzales, et al., Defts.", described as follows:

Being the northerly 55.00 feet of the land described in the deed to Dingaling Ranch, LLC recorded September 24, 2007 per Instrument No. 20070924-00182360-0 of Official Records, in the Office of the County Recorder of said County.

EXCEPT that portion lying northerly of the following described line:

Beginning at a point on the westerly line of said deed, distant thereon South 01°07'07" West, 43.02 feet from the northwest corner of said deed; thence leaving said westerly line,

- 1st South 88°47'08" East a distance of 50.02 feet; thence,
- 2nd North 74°49'55" East a distance of 61.58 feet; thence,
- 3rd South 88°47'08" East a distance of 575.84 feet, more or less, to the easterly line of said land.

Contains: 18,729 Square Feet / 0.43 Acres, more or less.

The above described parcel of land is delineated on the attached Exhibit "B".

William T. Hurdle
William T. Hurdle
PLS 5453

6-28-2021
Date



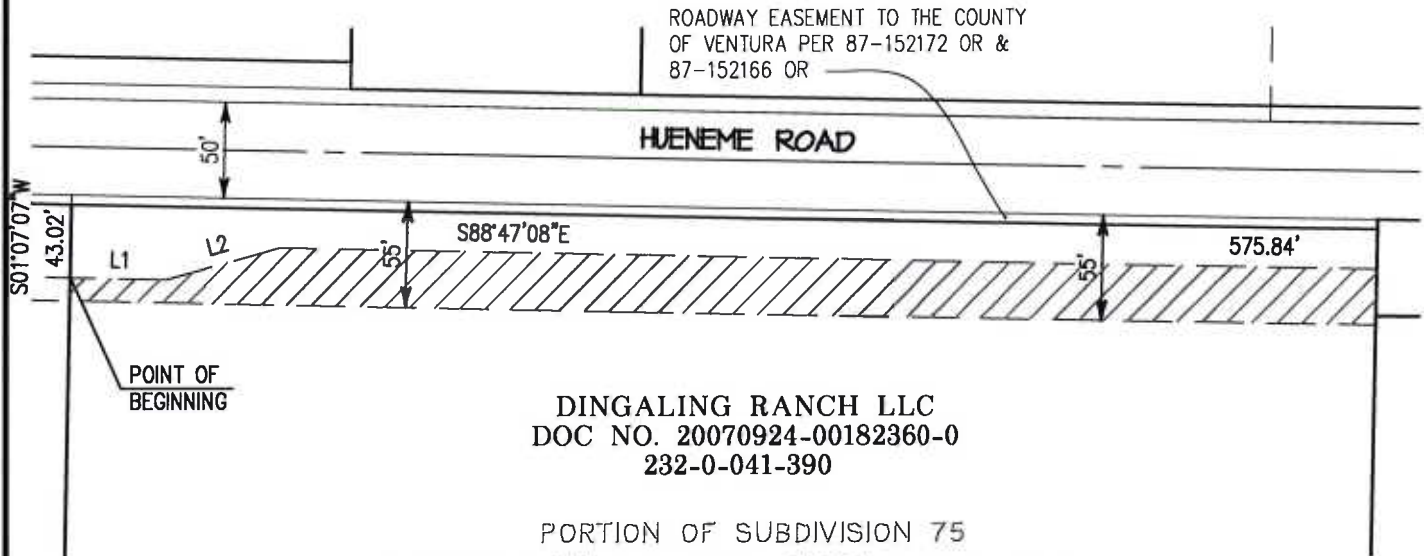
EXHIBIT "B"

SHEET 1 OF 1

(TEMPORARY CONSTRUCTION EASEMENT)
DINGALING RANCH, LLC
APN: 232-0-041-390
(S20070.00TCE)

ROADWAY EASEMENT TO THE COUNTY
OF VENTURA PER 87-152172 OR &
87-152166 OR

HUENEME ROAD



DINGALING RANCH LLC
DOC NO. 20070924-00182360-0
232-0-041-390

PORTION OF SUBDIVISION 75
RANCHO EL RIO DE SANTA CLARA O'LA COLONIA

SURVEYOR'S NOTE

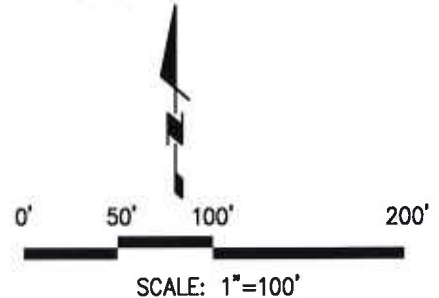
THE COURSES AND DISTANCES SHOWN HEREON REFLECT RECORD
DATA PER THE WRITTEN DEEDS, AND ARE NOT THE RESULTS OF
A FIELD SURVEY, OR MATHEMATICALLY CLOSED BOUNDARY
SURVEY.

AREA

18,729 SQ. FEET / 0.43 ACRES, MORE OR LESS.

LINE DATA

LINE	BEARING	DISTANCE
L1	S88°47'08"E	50.02'
L2	N74°49'55"E	61.58'



HATCHED AREA DENOTES LAND
DESCRIBED IN THE ATTACHED
EXHIBIT "A"

William T. Hurdle 6-28-2021
WILLIAM T. HURDLE
PLS 5453
DATE



EXHIBIT "C"
(Reclaimed Water Easement)
DINGALING RANCH, LLC.
APN: 232-0-041-390
(S20070.00E)

Parcel 1

That portion of Subdivision 75 of the Rancho El Rio De Santa Clara O'la Colonia, in the County of Ventura, State of California, as per the map titled "Map of Rancho El Rio De Santa Clara O'la Colonia" filed with the Ventura County Clerk in the action titled "Thomas A. Scott, et al., vs. Rafael Gonzales, et al., Defts.", also being that portion of the land described in the deed to Dingaling Ranch, LLC recorded September 24, 2007 per Instrument No. 20070924-00182360-0 of Official Records, in the Office of the County Recorder of said County, described as follows:

Beginning at a point on the westerly line of said deed, distant thereon South 01°07'07" West, 5.00 feet from the northwest corner of said deed; thence continuing along said westerly line,

- 1st South 01°07'07" West, a distance of 38.02 feet; thence leaving said westerly line,
- 2nd South 88°47'08" East, a distance of 50.02 feet; thence,
- 3rd North 74°49'55" East, a distance of 61.58 feet; thence,
- 4th South 88°47'08" East, a distance of 575.84 feet to the easterly line of said deed; thence along said easterly line,
- 5th North 01°13'34" East a distance of 20.63 feet to the southerly line of a 5.00 feet wide Roadway Easement to the County of Ventura recorded September 21, 1987 per Document No. 87-152172 of Official Records in said Office; thence along said southerly line,
- 6th North 88°47'01" West, a distance of 685.01 feet to the **Point of Beginning**.

Contains: 15,522 Square Feet / 0.36 Acres, more or less.

The above described parcel of land is delineated on the attached Exhibit "D".

William T. Hurdle

William T. Hurdle
PLS 5453

6-28-2021

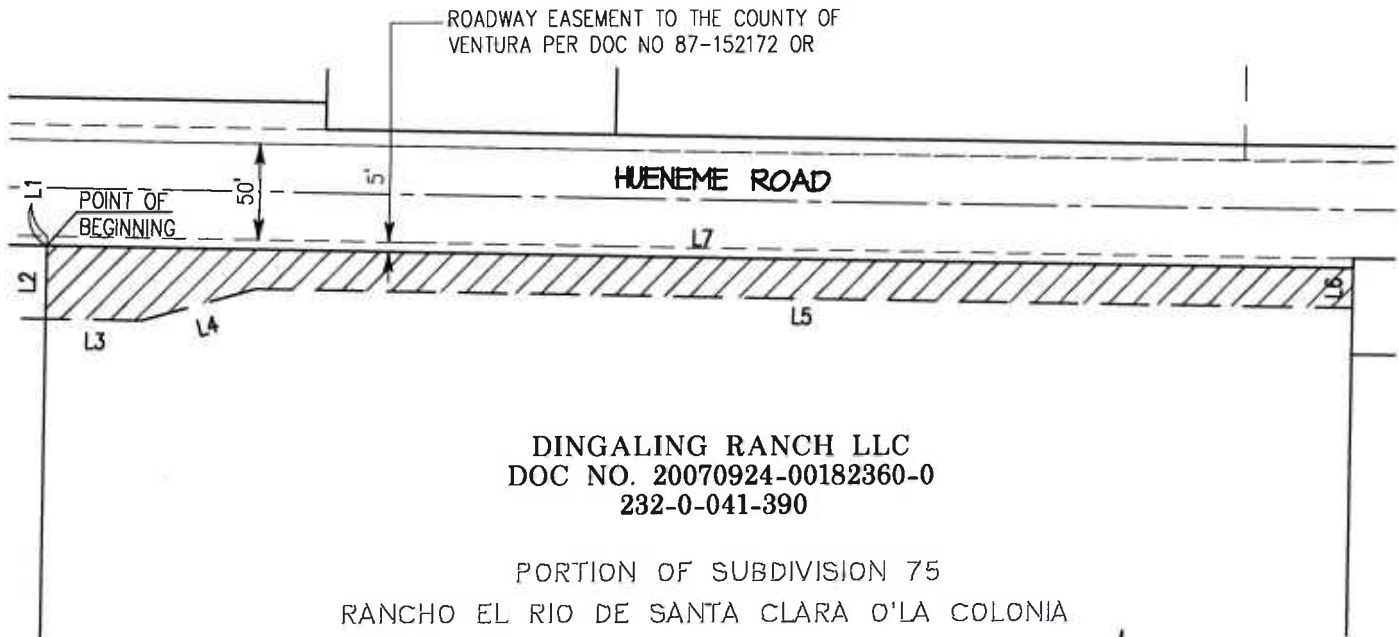
Date



EXHIBIT "D"

SHEET 1 OF 1

(RECLAIMED WATERLINE EASEMENT)
DINGALING RANCH, LLC
APN: 232-0-041-390
(S20070.00E)



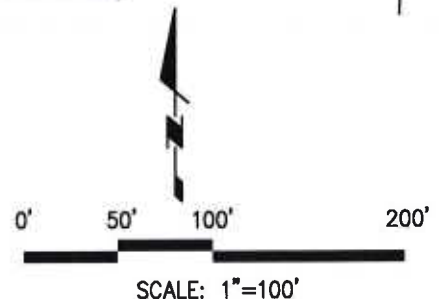
SURVEYOR'S NOTE

THE COURSES AND DISTANCES SHOWN HEREON REFLECT RECORD DATA PER THE WRITTEN DEEDS, AND ARE NOT THE RESULTS OF A FIELD SURVEY, OR MATHEMATICALLY CLOSED BOUNDARY SURVEY.

AREA

15,522 SQ. FEET / 0.36 ACRES, MORE OR LESS

LINE	BEARING	DISTANCE
L1	S01°07'07"W	5.00'
L2	S01°07'07"W	38.02'
L3	S88°47'08"E	50.02'
L4	N74°49'55"E	61.58'
L5	S88°47'08"E	575.84'
L6	N01°13'34"E	20.63'
L7	N88°47'01"W	685.01'



HATCHED AREA DENOTES LAND DESCRIBED IN THE ATTACHED EXHIBIT "A"

William T. Hurdle 6-28-2021
WILLIAM T. HURDLE
PLS 5453

DATE



PARCEL NO.: 232-0-031-190 & 210

OWNER: Hasegawa

PROJECT: City of Oxnard –Hueneme Road Recycled Waterline Project

**RIGHT OF WAY AGREEMENT
(WITH ESCROW INSTRUCTIONS)**

THIS AGREEMENT dated _____, 2018, is made and entered into by and between

GH Land Holdings, LLC, a California limited liability company

hereinafter referred to as "Grantor", and

City of Oxnard

hereinafter called "City."

An Easement Deed covering the property rights particularly described therein, has been executed concurrently with this Agreement and delivered to City representatives. A copy of said Deed is labeled "Exhibit 1" and is attached hereto and incorporated herein by this reference.

In consideration of which, and other considerations hereinafter set forth, it is mutually agreed as follows:

1. The parties have herein set forth the whole of their agreement. The performance of this Agreement constitutes the entire consideration for said Easement Deed and shall relieve the City of all further obligation or claims on this account, or on account of the location, grade or construction of the proposed public improvement.

2. The City shall:

A. PAYMENT - Pay to the order of the Grantor the sum of **\$47,200** as consideration in full for the real property interests being conveyed in the referenced Easement Deed, for the loss, replacement and moving of any improvements, and for entering into this Agreement. Said sum shall be paid upon the close of escrow. -

B. MISCELLANEOUS COSTS - Pay all escrow, title insurance, and recording fees incurred in this transaction.

C. CLEARANCE OF BONDS, ASSESSMENTS, OR DELINQUENT TAXES - Have the authority to deduct and pay from the amount shown in Clause 2.A. above any amount necessary to satisfy any bonds, demands and delinquent taxes due in any year except the year in which this escrow closes, together with penalties and interest thereon, and/or delinquent and unpaid non-delinquent assessments which have become a lien at the close of escrow. City agrees

to obtain and provide Grantor an updated title report within 30 days of Grantor's execution hereof to determine any such items.

D. PROPERTY RESTORATION - Generally restore the surface of the easement areas described in the referenced Easement Deed to the condition that existed prior to City's project construction except in areas where surface appurtenances such as markers, manholes, cabinets, air vents, and access hatches may be located.

E. CONSTRUCTION PERIOD AND CROPS – Undertake construction of City's project within the easement areas on Grantors land during the July 1 to August 31 time period. This construction period is meant to coincide with farming scheduled break period and thus limit any damages to crops. City shall pay crop damages directly the to the owner of said crops for the Fair Market Value (minus cost of harvest) of any crops damaged or destroyed by City's construction activities.

F. SERVICE CONNECTION –At no cost to Grantor, City shall construct a recycled water service connection to provide Grantor's property (APN: 232-0-031-190 & 210) physical access to recycled City water. Additionally, the City shall construct another recycled water service connection on a separate property owned by Glenn Hasegawa (APN 232-0-042-045) which is located at the Southwest corner of the intersection in Hueneme and Raytheon Roads. Grantor and Glen Hasegawa will need to enter into separate agreement(s) to pay for and use City water from the service connections after they are constructed by City, however, the City shall not charge Grantor any connection fees for access to the recycled water.

G. INDEMNIFICATION - Indemnify, defend and hold harmless Grantor, its members, partners, shareholders, agents, representatives, employees, officers, directors, property managers and their respective successors and assigns from any and all claims, damages, costs, judgments, actions, causes of action, demands, obligations, expenses and fees, including without limitation, attorneys fees and consultant's fees, or liability (collectively "Claims") caused by City or its officers, employees, representatives, consultants or agents specifically arising from City construction and restoration work on Grantor's property or specifically resulting from any cause whatsoever in connection with the City use of the Easement and Temporary Construction Easement (as such terms are defined in the Easement Deed), including but not limited to City's operation of City facilities on Grantor's property. City's obligations hereunder shall not extend to that portion of any Claims that are caused by the negligence or intentional misconduct of Grantor, its representatives or agents. This indemnification shall survive the close of escrow and shall not merge with the Easement Deed.

H. RECORDATION OF INSTRUMENT - Accept the Easement Deed herein referenced and cause the same to be recorded in the office of the Ventura County Recorder at such time as when clear title can be conveyed to the City.

G. Agree that Sections 2D, 2E, 2F and 2G herein above shall survive the close of escrow and remain in effect after the close of escrow.

3. The Grantor:

A. LEASE INDEMNIFICATION - Grantor agrees to hold the City harmless and reimburse City for any and all of its losses and expenses occasioned by reason of any Lease on said property held by Lessee of Grantor, except City shall pay crop damages directly to the owner of said crops for the Fair Market Value (minus cost of harvest) of any crops damaged or destroyed by City's construction activities. Grantor's herein indemnification is limited only to claims by Lessee related to City exercising its rights under the terms of this Agreement and the Easement Deed.

B. CITY SURFACE FACILITIES - Acknowledges that certain appurtenances related to City facilities may be placed upon the surface of the permanent easement areas, including but not limited to blowoff and manhole access structures, hatches, cabinets, air vents, intermittent surface markers denoting the location of the City's pipeline(s), and other facilities appurtenant to the operation of City facilities.

C. PERMISSION TO ENTER - Hereby grants to the City, its agents and contractors, permission to enter upon the easement areas described in the referenced Easement Deed prior to the close of escrow for the purposes of preparation for and construction of the City's facilities, subject to all applicable terms and conditions contained in this Agreement and the associated Easement Deed.

4. The Parties agree:

A. ESCROW - To open an escrow in accordance with this Agreement at Camarillo Escrow Company. This Agreement constitutes the joint escrow instructions of City and Grantor, and the escrow agent to whom these instructions are delivered (hereafter "Escrow Agent") is hereby empowered to act under this Agreement. The parties hereto agree to do all acts necessary to close this escrow in the shortest possible time and will make all due effort to close escrow within sixty days of execution by Grantor and delivery to City of this Agreement and the associated Easement Deed.

As soon as possible after opening of escrow, City will deposit the executed Deed by Grantor, with Certificate of Acceptance attached, with Escrow Agent on Grantor's behalf. City agrees to deposit the purchase price upon demand of Escrow Agent. City and Grantor agree to execute and deposit with Escrow Agent all additional instruments as may be necessary to complete this transaction. All funds received in this escrow shall be deposited with other escrow funds in a general escrow fund account(s) and may be transferred to any other such escrow trust account in any State or National Bank doing business in the State of California. All disbursements shall be made by check or wire transfer from such account.

- i) ESCROW AGENT DIRECTIVES - Escrow Agent is authorized to, and shall:

- a) Pay and charge Grantor for any unpaid delinquent taxes and/or any penalties and interest thereon, and for any delinquent assessments or bonds against that portion of Grantor's Land subject to this transaction as required to convey clear title.
 - b) Pay and charge City for any escrow fees, charges and costs payable under Paragraph 2.B. of this Agreement.
 - c) Disburse funds and deliver Deed when conditions of this escrow have been fulfilled by City and Grantor.
 - d) Following recording of Deed from Grantor, provide City, at City's expense, with a CLTA Standard Coverage Policy of Title Insurance in the amount of \$47,200 issued by Lawyers Title showing that the City has an easement in the real property described and depicted in the Easement Deed attached to Exhibit 1 of this Agreement,
- ii) CLOSE OF ESCROW - The term "close of escrow", if and where written in these instructions, shall mean the date necessary instruments of conveyance are recorded in the office of the County Recorder. Recordation of instruments delivered through this escrow is hereby authorized when Escrow Agent has completed performance under paragraph 4A(i) above.

B. ARTICLE HEADINGS - Article headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants and conditions of this Agreement.

C. COMPLETE UNDERSTANDING - This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof, superseding all negotiations, prior discussions, and preliminary agreements or understandings, written or oral. This Agreement may not be amended except in writing by the parties hereto or their successors or assigns.

E. CITY COUNCIL APPROVAL - This Agreement is subject to and conditioned upon approval and ratification by the City Council of the City of Oxnard. This Agreement is not binding upon the City until executed by the appropriate City official(s) acting in their authorized capacity.

No Obligation Other Than Those Set Forth Herein Will Be Recognized.

GRANTOR: **GH Land Holdings, LLC, a California limited liability company**

By: [Signature]
Name:
Title: member

Date: May 18, 2018

By: [Signature]
Name:
Title:

Date: May 21, 2018

CITY: City of Oxnard

By _____
Name
Title

Date _____

ATTEST:

APPROVED AS TO FORM:

APPROVED AS TO INSURANCE:

APPROVED AS TO CONTENT:

APPROVED AS TO AMOUNT:

CERTIFICATE OF ACCEPTANCE
(California Government Code Section 27281)

This is to certify that the interest in real property conveyed by the EASEMENT DEED dated _____ from _____ to the City of Oxnard, a municipal corporation and governmental agency is hereby accepted, and pursuant to City Council Resolution No. 1939, recorded in book 1591, Official Records of Ventura County at page 273, the City Council consents to recordation thereof by its duly authorized officer.

DATED: _____

CITY OF OXNARD, a California municipal
corporation

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

CITY OF OXNARD
305 W. Third Street
Oxnard, California 93030
Attention: City Clerk

APN: 232-0-031-190
& 232-0-031-210

SPACE ABOVE THIS LINE FOR RECORDER'S USE
EXEMPT FROM RECORDING FEES PURSUANT TO GOV. CODE §§ 6103 and 27383

EASEMENT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

GH Land Holdings, LLC, a California limited liability company

(hereinafter referred to as "**Grantor**"),

hereby GRANT(S) to the **City of Oxnard, a municipal corporation ("City")**, its successors and assigns the following interests in real property:

A. A permanent easement to survey, install, construct, reconstruct, enlarge, lay, alter, operate, patrol, remove, replace, and maintain a water conduit and vaults, consisting of one or more underground water pipelines and related facilities (the "**Easement**"). These related facilities may include but are not limited to markers, air valves, manholes, valves, meters, surge control devices, test stations, buried communication devices, buried electrical conduits and devices, pull boxes, and all related incidents, fixtures, and appurtenances. The markers, test stations, pull boxes, blow off valves, air release valves, manholes, other related facilities, and turnouts may be located above ground or partially above ground, but shall be placed in locations to minimize any impacts to the surface of the property. This Easement shall be in, over, on, through, within, under, and across that certain real property described in **Exhibit C** and depicted in **Exhibit D** (the "**Easement Area**"), both of which are attached hereto and incorporated by reference herein.

The Easement described herein shall be SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. The facilities and improvements installed in the Easement Area collectively are referred to herein as the "**City Facilities**."

2. As the amount of earth or other fill over underground City Facilities can affect the structural integrity of theses City Facilities, City shall have the right to maintain the height of earth or other fill over underground City Facilities. Grantor(s) shall not temporarily or permanently modify, or allow others to in any way modify, the ground surface elevation in the Easement Area from the elevation established upon completion of construction of the underground City Facilities without the City's written consent, which consent shall not be withheld unreasonably and shall be given or denied within 45 calendar days of written application. Grantor(s) shall not conduct, or permit others to conduct, grading

operations, ripping, stockpiling, or use, or permit others to use, explosives within or proximate to the Easement Area to the extent that City Facilities may be damaged.

3. This Easement is subject to all existing fencing, canals, irrigation ditches, laterals, pipelines, roads, electrical transmission facilities, and communication lines existing on the date this Easement is granted, and all future uses which do not directly or indirectly interfere with or endanger City's exercise of the rights described herein, including the right to use the Easement Area for agricultural purposes excepting vegetation which endangers the integrity of City Facilities; provided, however, that City shall have the right to clear and keep clear from the Easement Area all explosives, buildings, structures, walls, and other facilities of a permanent nature, and any earth cover or stockpile of material placed without the City's written consent, which interfere with City's use of the Easement Area. Asphalt pavement, landscaping, fencing, lighting and related appurtenances, with footings less than 1 foot deep and less than 1 foot across in any direction, sidewalks, curb, and gutter may be installed within the Easement Area provided they do not interfere with the function of any surface facilities. Grantor shall not construct, nor permit others to construct, such permanent facilities which conflict with City's ability to use the Easement Area. City shall have the right of exclusive use and possession within the Easement Area for a distance of two (2) feet in every direction around the outside surface of the City Facilities.

4. The City shall have the obligation to maintain City Facilities in good condition. The Grantor and City have entered into a separate document identified as a Right of Way Agreement covering additional rights and obligations of the parties for the property rights granted herein.

5. Nothing herein contained shall be construed or deemed to constitute a dedication or offer of dedication, express or implied, by Grantor of all or any portion of Grantor's property or the Easement Area or the area of the Temporary Construction Easement granted herein, or any interest therein, to any governmental entity or agency or utility or for any public use or purpose whatsoever.

B. Temporary Construction Easement

A **Temporary Construction Easement** for the purposes of facilitating construction of City Facilities, including the right to place equipment and vehicles, pile earth thereon, and utilize said Temporary Construction Easement for all other related activities and purposes in, on, over, under, through, along and across that certain portion of the Real Property which is described **Exhibit "A"** and depicted in **Exhibit "B"** attached hereto and incorporated by reference herein ("Temporary Construction Easement"). Said Temporary Construction Easement shall commence thirty (30) days after written notice by the City of commencement of construction of the City Facilities ("Commencement Notification") and shall automatically terminate thirty (30) days after the City provides written notice to Grantor of termination of the Temporary Construction Easement, or one (1) year after the Commencement Notification, whichever occurs first, unless extended as set forth below.

City shall have the unilateral right to extend part or all of the one (1) year term of the Temporary Construction Easement for additional maximum of six (6) months as necessary for completion of construction of the City Facilities; however, under no circumstances shall the duration of the Temporary Construction Easement be extended beyond December 31, 2019. City must provide Grantor with the written notice of its intent to extend the term of the TCE, as well as the amount due for the time the TCE is to be extended, at least ten (10) days prior to the expiration of the current term. The rate for the extended use of the Temporary Construction Easement shall be **TWO HUNDRED FIFTY DOLLARS (\$250)** per month of the extension term exercised.

Executed this 18th day of May 2018.

GRANTOR:

GH Land Holdings, LLC, a California limited liability company

By: [Signature]

Name:

By: [Signature]

Name:

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Ventura

On May 18, 2018 before me, Susan E. Montorio, Notary Public, personally

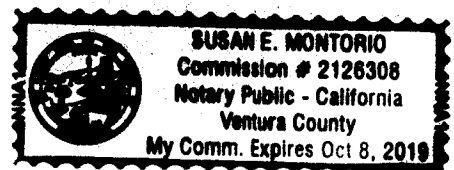
appeared Glen S. Hasegawa, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Signature Susan E. Montorio

(Seal)



ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of Ventura)

On May 21, 2018, before me, Elizabeth T. Ladiana,
notary public, personally appeared Kenneth Hasegawa, who proved to me on
the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the
within instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Elizabeth T. Ladiana

Signature of Notary Public

(Seal)

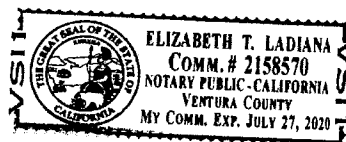


EXHIBIT "A"
(Temporary Construction Easement)
KENNETH K & GLEN S HASEGAWA
223-0-031-190 & 210
(S10103.45TCE & S10340.00TCE)

STRIP 1

That portion of Subdivision 79 of the Rancho El Rio De Santa Clara O'La Colonia, in the County of Ventura, State of California, as per the map titled "Map of Rancho El Rio De Santa Clara O'La Colonia" filed with the Ventura County Clerk in the action titled "Thomas A. Scott, et al., Pliffs., vs. Rafael Gonzales, et al., Defts.", described as follows:

The northerly 55.00 feet of the land described in the deed recorded on August 1, 1995 as Document Number 95-089846 of Official Records in the Office of the County Recorder of said County,

EXCEPT that portion lying easterly and northerly of the following described line:

Beginning at a point on the westerly line of the land described in said deed, distant thereon South 01°09'41" West, 5.00 feet from the northwest corner of said deed, at the intersection of the southerly line of a Roadway Easement Deed to the County of Ventura recorded on August 13, 1987 per Document No. 87-131094 of Official Records in said Office; thence, along said southerly line,

- 1st South 88°54'24" East, a distance of 12.61 feet; thence at right angles,
- 2nd South 01°05'36" West, a distance of 26.98 feet; thence at right angles,
- 3rd South 88°54'08" East a distance of 246.45 feet to the easterly line of said Document No. 95-089846.

Contains: 6,323 Sq. Feet / 0.15 Acres, more or less.

STRIP 2

That portion of Subdivision 79 of the Rancho El Rio De Santa Clara O'La Colonia, in the County of Ventura, State of California, as per the map titled "Map of Rancho El Rio De Santa Clara O'La Colonia" filed with the Ventura County Clerk in the action titled "Thomas A. Scott, et al., Pliffs., vs. Rafael Gonzales, et al., Defts.", described as follows:

The northerly 55.00 feet of the land described in the deed recorded on August 1, 1995 as Document Number 95-089845 of Official Records in the Office of the County Recorder of said County,

EXCEPT that portion lying northerly of the following described line:

Commencing at a point on the westerly line of the land described in the deed recorded on August 1, 1995 as Document Number 95-089846 of Official Records in said Office, distant thereon South 01°09'41" West, 5.00 feet from the northwest corner of last said deed, at the intersection of the southerly line of the Roadway Easement Deed to the County of Ventura recorded on August 13, 1987 per Document No. 87-131094 of Official Records in said Office; thence, along said southerly line of Roadway Easement, South 88°54'24" East, a distance of 12.61 feet; thence, at right angles, South 01°05'36" West, a distance of 26.98 feet; thence, at right angles, South 88°54'08" East, a distance of 246.45 feet to the easterly line of said Roadway Easement and the **Point of Beginning**, said point also being on the westerly line of the land described in said Document No. 95-089845; thence, continuing along said line,

- 1st South 88°54'24" East, a distance of 190.81 feet; thence,
- 2nd South 78°00'48" East, a distance of 85.21 feet; thence,
- 3rd South 88°54'24" East, a distance of 250.00 feet; thence,
- 4th North 82°39'58" East, a distance of 106.58 feet; thence,
- 5th South 88°54'24" East, a distance of 437.78 feet to the westerly line of Casper Road.

Also **EXCEPT** any portion lying within the Roadway Easement Deed to the County of Ventura recorded on August 21, 1987 per Document No. 87-136098 of Official Records in said Office.

Contains: 19,541 Sq. Feet / 0.45 Acres, more or less.

The above described strips of land are delineated on the attached "Exhibit B".

William T. Hurdle 6-28-2021

William T. Hurdle
PLS 5453

Date



EXHIBIT "B"

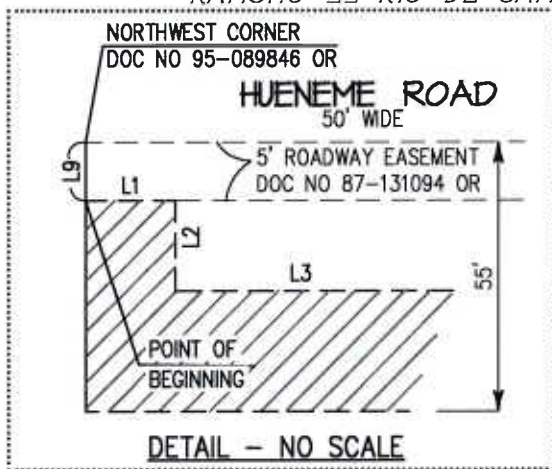
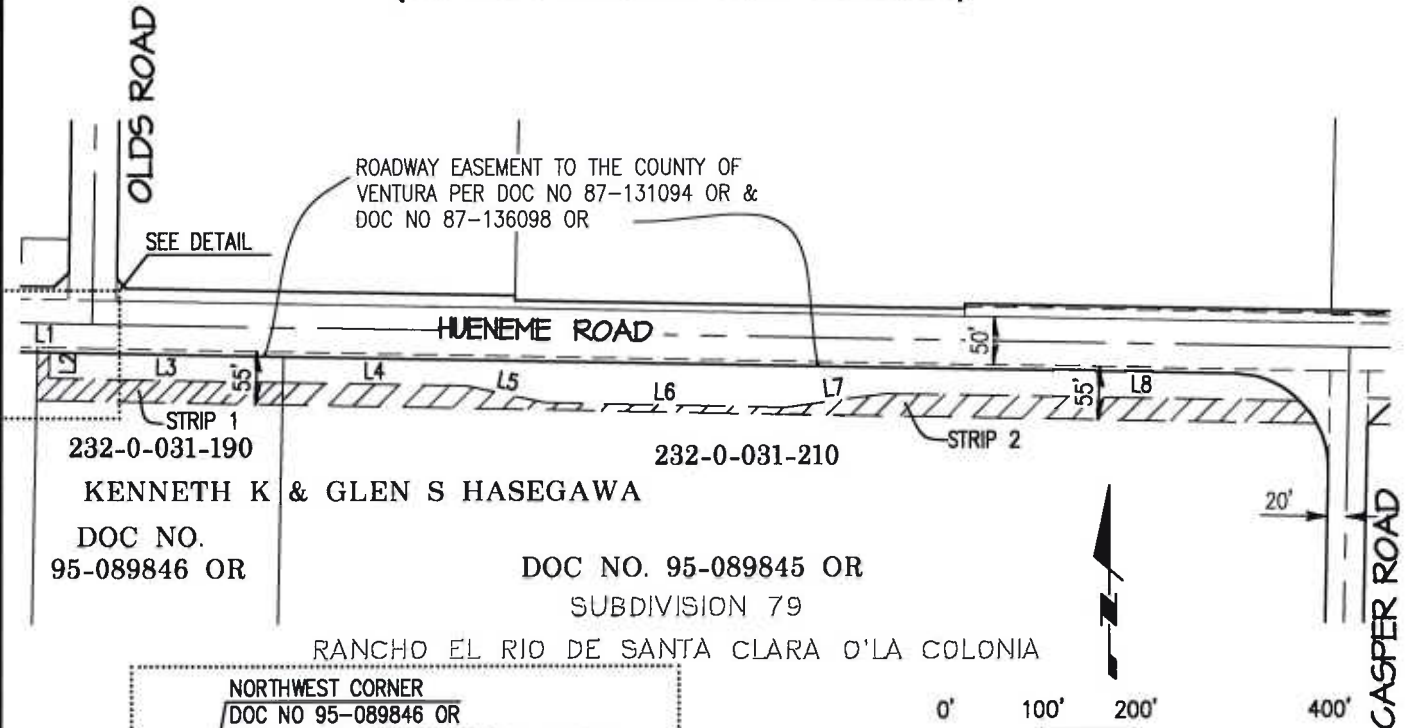
SHEET 1 OF 1

(TEMPORARY CONSTRUCTION EASEMENT)

KENNETH K & GLEN S HASEGAWA

APN. 232-0-031-190 & 210

(S10103.45TCE & S10340.00TCE)



LINE DATA

LINE	BEARING	DISTANCE
L1	S88°54'24"E	12.61'
L2	S01°05'36"W	26.98'
L3	N88°54'08"W	246.45'
L4	S88°54'46"E	190.81'
L5	S78°00'48"E	85.21'
L6	N88°54'24"W	250.00'
L7	N82°39'58"E	106.58'
L8	S88°54'24"E	437.78'
L9	S01°09'41"W	5.00'

AREA

STRIP 1

6,323 SQ. FEET / 0.15 ACRES, MORE OR LESS.

STRIP 2

19,541 SQ. FEET / 0.45 ACRES, MORE OR LESS.

HATCHED AREA DENOTES LAND DESCRIBED IN THE ATTACHED EXHIBIT "A"

William T. Hurdle 6-28-2021

WILLIAM T. HURDLE
PLS 5453

DATE



EXHIBIT "C"
(Reclaimed Water Easement)
KENNETH K & GLEN S HASEGAWA
223-0-031-190 & 210
(S10103.45E & S10340.00E)

PARCEL 1

That portion of Subdivision 79 of the Rancho El Rio De Santa Clara O'La Colonia, in the County of Ventura, State of California, as per the map titled "Map of Rancho El Rio De Santa Clara O'La Colonia" filed with the Ventura County Clerk in the action titled "Thomas A. Scott, et al., Plffs, vs. Rafael Gonzales, et al., Defts.", also being that portion of land described in the deed recorded on August 1, 1995 as Document Number 95-089846 of Official Records in the Office of the County Recorder of said County, described as follows:

Commencing at a point on the westerly line of the land described in said deed, distant thereon South 01°09'41" West, 5.00 feet from the northwest corner of said deed, at the intersection of the southerly line of a Roadway Easement Deed to the County of Ventura recorded on August 13, 1987 per Document No. 87-131094 of Official Records in said Office; thence, along said southerly line of the Roadway Easement, South 88°54'24" East, a distance of 12.61 feet to the **Point of Beginning**; thence at right angles,

- 1st South 01°05'36" West, a distance of 26.98 feet; thence at right angles,
- 2nd South 88°54'24" East, a distance of 246.45 feet to the easterly line of said deed; thence along said easterly line,
- 3rd North 01°09'41" East, a distance of 26.98 feet to the southerly line of said Roadway Easement; thence along said southerly line,
- 4th North 88°54'24" West, a distance of 246.48 feet to the **Point of Beginning**.

Contains: 6,650 Square Feet / 0.15 Acres, more or less.

PARCEL 2

That portion of Subdivision 79 of the Rancho El Rio De Santa Clara O'La Colonia, in the County of Ventura, State of California, as per the map titled "Map of Rancho El Rio De Santa Clara O'La Colonia" filed with the Ventura County Clerk in the action titled "Thomas A. Scott, et al., Plffs, vs. Rafael Gonzales, et al., Defts.", also being that portion of land described in the deed recorded on August 1, 1995 as Document Number 95-089845 of Official Records in the Office of the County Recorder of said County, described as follows:

Commencing at a point on the westerly line of the land described in the deed recorded on August 1, 1995 as Document Number 95-089846 of Official Records in said Office, distant thereon South 01°09'41" West, 5.00 feet from the northwest corner of last said deed, at the intersection of the southerly line of the Roadway Easement Deed to the County of Ventura recorded on August 13, 1987 per Document No. 87-131094 of Official Records in said Office; thence, along said southerly line of Roadway Easement, South 88°54'24" East, a distance of 12.61 feet; thence, at right angles, South 01°05'36" West, a distance of 26.98 feet; thence, at right angles, South 88°54'08" East, a distance of 246.45 feet to the easterly line of said Roadway Easement and the **Point of Beginning**, said point also being on the westerly line of the land described in said Document No. 95-089845; thence, continuing along said line,

- 1st South 88°54'24" East, a distance of 190.81 feet; thence,
- 2nd South 78°00'48" East, a distance of 85.21 feet; thence,
- 3rd South 88°54'24" East, a distance of 250.00 feet; thence,
- 4th North 82°39'58" East, a distance of 106.58 feet; thence,
- 5th South 88°54'24" East, a distance of 437.78 feet, more or less, to a point on the southerly line of the Roadway Easement Deed to the County of Ventura recorded on August 21, 1987 per Document No. 136098 of Official Records in said Office, said point being on a non-tangent curve concave southwesterly, a radial line bears South 44°35'39" West, having a radius of 100.00 feet; thence, along said curve and last said southerly line,
- 6th Northwesterly an arc distance of 76.03 feet, through a central angle of 43°33'34"; thence continuing along said southerly line of said easement,
- 7th North 88°54'24" West, a distance of 998.73 feet to the westerly line of said Document No. 95-089845; thence along said westerly line,
- 8th South 01°09'41" West, a distance of 26.98 feet to the **Point of Beginning**.

Contains: 34,001 Square Feet / 0.78 Acres, more or less.

The above described parcels of land are delineated on the attached "Exhibit D".

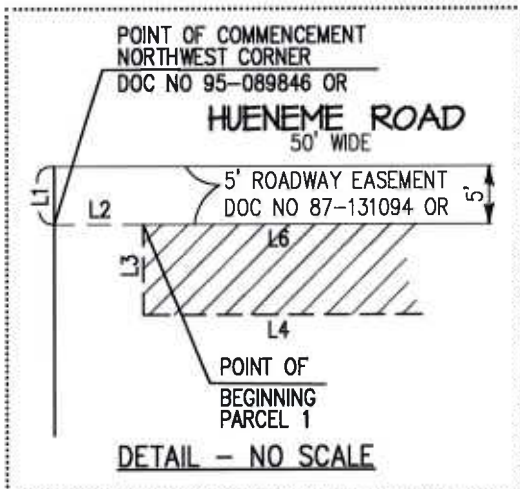
William T. Hurdle 6-28-2021
William T. Hurdle Date
PLS 5453



EXHIBIT "D"

SHEET 1 OF 1

(WATERLINE EASEMENT)
KENNETH K & GLEN S HASEGAWA
A.P.N. 232-0-031-210 & 190
(S10103.45E & S10340.00E)



LINE DATA

LINE	BEARING	DISTANCE
L1	S01°09'41"W	5.00'
L2	S88°54'24"E	12.61'
L3	S01°05'36"W	26.98'
L4	N88°54'24"W	246.45'
L5	S01°09'41"W	26.98'
L6	S88°54'24"E	246.48'
L7	N88°54'24"W	190.81'
L8	S78°00'48"E	85.21'
L9	N88°54'24"W	250.00'
L10	S82°39'58"W	106.58'
L11	S88°54'24"E	437.78'
L12	S88°54'24"E	998.73'
L13	S01°09'41"W	26.98'

CURVE DATA

CURVE	DELTA	RADIUS	LENGTH	RADIAL BEARING-IN	RADIAL BEARING-OUT
C1	43°33'34"	100.00'	76.03'	S44°35'39"W	S01°02'05"W

AREA

PARCEL 1

6,650 SQ. FEET / 0.15 ACRES, MORE OR LESS.

PARCEL 2

34,001 SQ. FEET / 0.78 ACRES, MORE OR LESS.

HATCHED AREA DENOTES LAND DESCRIBED IN THE ATTACHED EXHIBIT "C"

WILLIAM T. HURDLE
PLS 5453

DATE

William T. Hurdle 6-28-2021



PARCEL NO.: 232-0-032-090

OWNER: Marathon Land Inc.

PROJECT: City of Oxnard –Hueneme Road Recycled Waterline Project

**RIGHT OF WAY AGREEMENT
(WITH ESCROW INSTRUCTIONS)**

THIS AGREEMENT dated _____, 2018, is made and entered into by and between

Marathon Land Inc.

hereinafter referred to as "Grantor", and

City of Oxnard

hereinafter called "City."

An Easement Deed covering the property rights particularly described therein, has been executed concurrently with this Agreement and delivered to City representatives. A copy of said Deed is labeled "Exhibit 1" and is attached hereto and incorporated herein by this reference.

In consideration of which, and other considerations hereinafter set forth, it is mutually agreed as follows:

1. The parties have herein set forth the whole of their agreement. The performance of this Agreement constitutes the entire consideration for said Easement Deed and shall relieve the City of all further obligation or claims on this account, or on account of the location, grade or construction of the proposed public improvement.

2. The City shall:

A. PAYMENT - Pay to the order of the Grantor the sum of **\$40,500** as consideration in full for the real property interests being conveyed in the referenced Easement Deed, for the loss, replacement and moving of any improvements, and for entering into this Agreement. Said sum shall be paid upon the close of escrow. -

B. MISCELLANEOUS COSTS - Pay all escrow, title insurance, and recording fees incurred in this transaction.

C. CLEARANCE OF BONDS, ASSESSMENTS, OR DELINQUENT TAXES - Have the authority to deduct and pay from the amount shown in Clause 2.A. above any amount necessary to satisfy any bonds, demands and delinquent taxes due in any year except the year in which this escrow closes, together with penalties and interest thereon, and/or delinquent and unpaid non-delinquent assessments which have become a lien at the close of escrow. City agrees

to obtain and provide Grantor an updated title report within 30 days of Grantor's execution hereof to determine any such items.

D. PROPERTY RESTORATION - Generally restore the surface of the easement areas described in the referenced Easement Deed to the condition that existed prior to City's project construction except in areas where surface appurtenances such as markers, manholes, cabinets, air vents, and access hatches may be located.

E. INDEMNIFICATION - Indemnify, defend and hold harmless Grantor, its members, partners, shareholders, agents, representatives, employees, officers, directors, property managers and their respective successors and assigns from any and all claims, damages, costs, judgments, actions, causes of action, demands, obligations, expenses and fees, including without limitation, attorneys fees and consultant's fees, or liability (collectively "Claims") caused by City or its officers, employees, representatives, consultants or agents specifically arising from City construction and restoration work on Grantor's property or specifically resulting from City's operation of City facilities on Grantor's property. City's obligations hereunder shall not extend to that portion of any Claims that are caused by the negligence or intentional misconduct of Grantor, its representatives or agents. This indemnification shall survive the close of escrow and shall not merge with the Easement Deed.

F. RECORDATION OF INSTRUMENT - Accept the Easement Deed herein referenced and cause the same to be recorded in the office of the Ventura County Recorder at such time as when clear title can be conveyed to the City.

3. The Grantor:

A. LEASE INDEMNIFICATION - Warrants there are no oral or written leases on all or any portion of the easement area described in the referenced Easement Deed, or if there are any such leases, Grantor agrees to hold the City harmless and reimburse City for any and all of its losses and expenses occasioned by reason of any undisclosed lease of said property held by tenant of Grantor.

B. CITY SURFACE FACILITIES - Acknowledges that certain appurtenances related to City facilities may be placed upon the surface of the permanent easement areas, including but not limited to blowoff and manhole access structures, hatches, cabinets, air vents, intermittent surface markers denoting the location of the City's pipeline(s), and other facilities appurtenant to the operation of City facilities.

C. PERMISSION TO ENTER - Hereby grants to the City, its agents and contractors, permission to enter upon the easement areas described in the referenced Easement Deed prior to the close of escrow for the purposes of preparation for and construction of the City's facilities, subject to all applicable terms and conditions contained in this Agreement and the associated Easement Deed.

4. The Parties agree:

A. ESCROW - To open an escrow in accordance with this Agreement at Camarillo Escrow Company. This Agreement constitutes the joint escrow instructions of City and Grantor, and the escrow agent to whom these instructions are delivered (hereafter "Escrow Agent") is hereby empowered to act under this Agreement. The parties hereto agree to do all acts necessary to close this escrow in the shortest possible time and will make all due effort to close escrow within sixty days of execution by Grantor and delivery to City of this Agreement and the associated Easement Deed.

As soon as possible after opening of escrow, City will deposit the executed Deed by Grantor, with Certificate of Acceptance attached, with Escrow Agent on Grantor's behalf. City agrees to deposit the purchase price upon demand of Escrow Agent. City and Grantor agree to execute and deposit with Escrow Agent all additional instruments as may be necessary to complete this transaction. All funds received in this escrow shall be deposited with other escrow funds in a general escrow fund account(s) and may be transferred to any other such escrow trust account in any State or National Bank doing business in the State of California. All disbursements shall be made by check or wire transfer from such account.

- i) ESCROW AGENT DIRECTIVES - Escrow Agent is authorized to, and shall:
 - a) Pay and charge Grantor for any unpaid delinquent taxes and/or any penalties and interest thereon, and for any delinquent assessments or bonds against that portion of Grantor's Land subject to this transaction as required to convey clear title.
 - b) Pay and charge City for any escrow fees, charges and costs payable under Paragraph 2.B. of this Agreement.
 - c) Disburse funds and deliver Deed when conditions of this escrow have been fulfilled by City and Grantor.
 - d) Following recording of Deed from Grantor, provide City, at City's expense, with a CLTA Standard Coverage Policy of Title Insurance in the amount of \$40,500 issued by Lawyers Title showing that the City has an easement in the real property described and depicted in the Easement Deed attached to Exhibit 1 of this Agreement,
- ii) CLOSE OF ESCROW - The term "close of escrow", if and where written in these instructions, shall mean the date necessary instruments of conveyance are recorded in the office of the County Recorder. Recordation of instruments delivered through this escrow is hereby authorized when Escrow Agent has completed performance under paragraph 4A(i) above.

B. ARTICLE HEADINGS - Article headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants and conditions of this Agreement.

C. COMPLETE UNDERSTANDING - This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof, superseding all negotiations, prior discussions, and preliminary agreements or understandings, written or oral. This Agreement may not be amended except in writing by the parties hereto or their successors or assigns.

E. CITY COUNCIL APPROVAL - This Agreement is subject to and conditioned upon approval and ratification by the City Council of the City of Oxnard. This Agreement is not binding upon the City until executed by the appropriate City official(s) acting in their authorized capacity.

No Obligation Other Than Those Set Forth Herein Will Be Recognized.

GRANTOR: **Marathon Land Inc.**

By: _____

~~Name: Jurgen Gramkow~~

Title: _____

Date: _____

1/8/18

CITY: City of Oxnard

By _____

Name _____

Title Mayor

Date _____

ATTEST:

APPROVED AS TO FORM:

APPROVED AS TO INSURANCE:

APPROVED AS TO CONTENT:

APPROVED AS TO AMOUNT:

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

CITY OF OXNARD
305 W. Third Street
Oxnard, California 93030
Attention: City Clerk

APN:232-0-032-090

SPACE ABOVE THIS LINE FOR RECORDER'S USE
EXEMPT FROM RECORDING FEES PURSUANT TO GOV. CODE §§ 6103 and 27383

EASEMENT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Marathon Land Inc.
(hereinafter referred to as "Grantor"),

hereby GRANT(S) to the **City of Oxnard, a municipal corporation ("City")**, its successors and assigns the following interests in real property:

A. A permanent easement to survey, install, construct, reconstruct, enlarge, lay, alter, operate, patrol, remove, replace, and maintain a water conduit and vaults, consisting of one or more underground water pipelines and related facilities (the "**Easement**"). These related facilities may include but are not limited to markers, air valves, manholes, valves, meters, surge control devices, test stations, buried communication devices, buried electrical conduits and devices, pull boxes, and all related incidents, fixtures, and appurtenances. The markers, test stations, pull boxes, blow off valves, air release valves, manholes, other related facilities, and turnouts may be located above ground or partially above ground. This Easement shall be in, over, on, through, within, under, and across that certain real property described in Exhibit C and depicted in Exhibit D (the "**Easement Area**"), both of which are attached hereto and incorporated by reference herein.

The Easement described herein shall be SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. The facilities and improvements installed in the Easement Area collectively are referred to herein as the "**City Facilities**."
2. As the amount of earth or other fill over underground City Facilities can affect the structural integrity of these City Facilities, City shall have the right to maintain the height of earth or other fill over underground City Facilities. Grantor(s) shall not temporarily or permanently modify, or allow others to in any way modify, the ground surface elevation in the Easement Area from the elevation established upon completion of construction of the underground City Facilities without the City's written consent, which consent shall not be withheld unreasonably and shall be given or denied within 45 calendar days of written application. Grantor(s) shall not conduct, or permit others to conduct, grading operations, ripping, stockpiling, or use, or permit others to use, explosives within or proximate to the Easement Area to the extent that City Facilities may be damaged.
3. This Easement is subject to all existing fencing, canals, irrigation ditches, laterals, pipelines, roads, electrical transmission facilities, and communication lines existing on the date this

Easement is granted, and all future uses which do not directly or indirectly interfere with or endanger City's exercise of the rights described herein, including the right to use the Easement Area for agricultural purposes excepting vegetation which endangers the integrity of City Facilities; provided, however, that City shall have the right to clear and keep clear from the Easement Area all explosives, buildings, structures, walls, and other facilities of a permanent nature, and any earth cover or stockpile of material placed without the City's written consent, which interfere with City's use of the Easement Area. Asphalt pavement, landscaping, fencing, lighting and related appurtenances, with footings less than 1 foot deep and less than 1 foot across in any direction, sidewalks, curb, and gutter may be installed within the Easement Area provided they do not interfere with the function of any surface facilities. Grantor shall not construct, nor permit others to construct, such permanent facilities which conflict with City's ability to use the Easement Area. City shall have the right of exclusive use and possession within the Easement Area for a distance of two (2) feet in every direction around the outside surface of the City Facilities.

B. Temporary Construction Easement

A **Temporary Construction Easement** for the purposes of facilitating construction of City Facilities, including the right to place equipment and vehicles, pile earth thereon, and utilize said Temporary Construction Easement for all other related activities and purposes in, on, over, under, through, along and across that certain portion of the Real Property which is described **Exhibit "A"** and depicted in **Exhibit "B"** attached hereto and incorporated by reference herein ("Temporary Construction Easement"). Said Temporary Construction Easement shall commence thirty (30) days after written notice by the City of commencement of construction of the City Facilities ("Commencement Notification") and shall automatically terminate thirty (30) days after the City provides written notice to Grantor of termination of the Temporary Construction Easement, or one (1) year after the Commencement Notification, whichever occurs first, unless extended as set forth below.

City shall have the unilateral right to extend part or all of the one (1) year term of the Temporary Construction Easement for additional maximum of six (6) months as necessary for completion of construction of the City Facilities; however, under no circumstances shall the duration of the Temporary Construction Easement be extended beyond December 31, 2019. City must provide Grantor with the written notice of its intent to extend the term of the TCE, as well as the amount due for the time the TCE is to be extended, at least ten (10) days prior to the expiration of the current term. The rate for the extended use of the Temporary Construction Easement shall be **THREE HUNDRED FIFTY DOLLARS (\$300)** per month of the extension term exercised.

Executed this 8 day of January 2018.

GRANTOR:
Marathon Land Inc.

By: 

Name: Jurgen Granckow

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Ventura

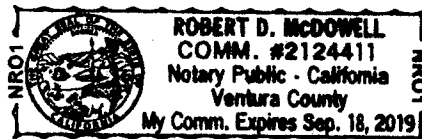
On January 8 2017 before me, Robert D. McDowell, Notary Public, personally

appeared Jorgen Gramkow, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Signature Robert D. McDowell (Seal)



CERTIFICATE OF ACCEPTANCE
(California Government Code Section 27281)

This is to certify that the interest in real property conveyed by the EASEMENT DEED dated _____ from _____ to the City of Oxnard, a municipal corporation and governmental agency is hereby accepted, and pursuant to City Council Resolution No. 1939, recorded in book 1591, Official Records of Ventura County at page 273, the City Council consents to recordation thereof by its duly authorized officer.

DATED: _____

CITY OF OXNARD, a California municipal
corporation

—

EXHIBIT "A"
(Temporary Construction Easement)
MARATHON LAND INC.
APN: 232-0-032-090
(S11500.00TCE)

That portion of Lot 4 in Subdivision 75 of the Rancho El Rio De Santa Clara O'la Colonia, in the County of Ventura, State of California, as per the map titled "Map of the Lands In Subdivision No 75 Rancho El Rio De Santa Clara O'la Colonia belonging to M.L. Wolf and A. Levy" recorded in Book 3, at Page 45 of Miscellaneous Records (Maps) in the Office of the County Recorder of said County, described as follows:

Beginning at a point in the west line of said Lot 4 distant thereon, South 01°07'22" West, a distance of 55.00 feet from the northwest corner of said Lot 4; thence,

- 1st South 88°49'21" East, a distance of 459.49 feet; thence,
- 2nd South 87°40'36" East, a distance of 402.93 feet; thence,
- 3rd South 88°49'14" East, a distance of 295.27 feet; thence,
- 4th South 87°40'22" East, a distance of 154.15 feet to the easterly line of said Lot 4; thence along said easterly line,
- 5th North 01°10'39" East a distance of 9.73 feet; thence leaving said easterly line,
- 6th North 87°40'28" West a distance of 49.63 feet; thence,
- 7th North 69°09'50" West a distance of 51.74 feet; thence,
- 8th North 88°49'21" West a distance of 261.90 feet; thence,
- 9th South 68°29'49" West a distance of 30.49 feet; thence,
- 10th North 88°49'21" West a distance of 204.55 feet; thence,
- 11th North 64°27'03" West a distance of 52.74 feet; thence,
- 12th North 88°49'21" West a distance of 670.79 feet to said westerly line; thence along said westerly line,
- 13th South 01°07'22" West, a distance of 27.00 feet to the **Point of Beginning**.

Except that portion of land conveyed to the County of Ventura for road purposes recorded on August 19, 2002 per Document No. 2002-0196197 of Official Records in said Office.

Contains: 30,472 Sq. Feet / 0.70 Acres, more or less.

The above described strip of land is delineated on the attached "Exhibit B".

William T. Hurdle 6-28-2021
William T. Hurdle Date
PLS 5453



EXHIBIT "B"

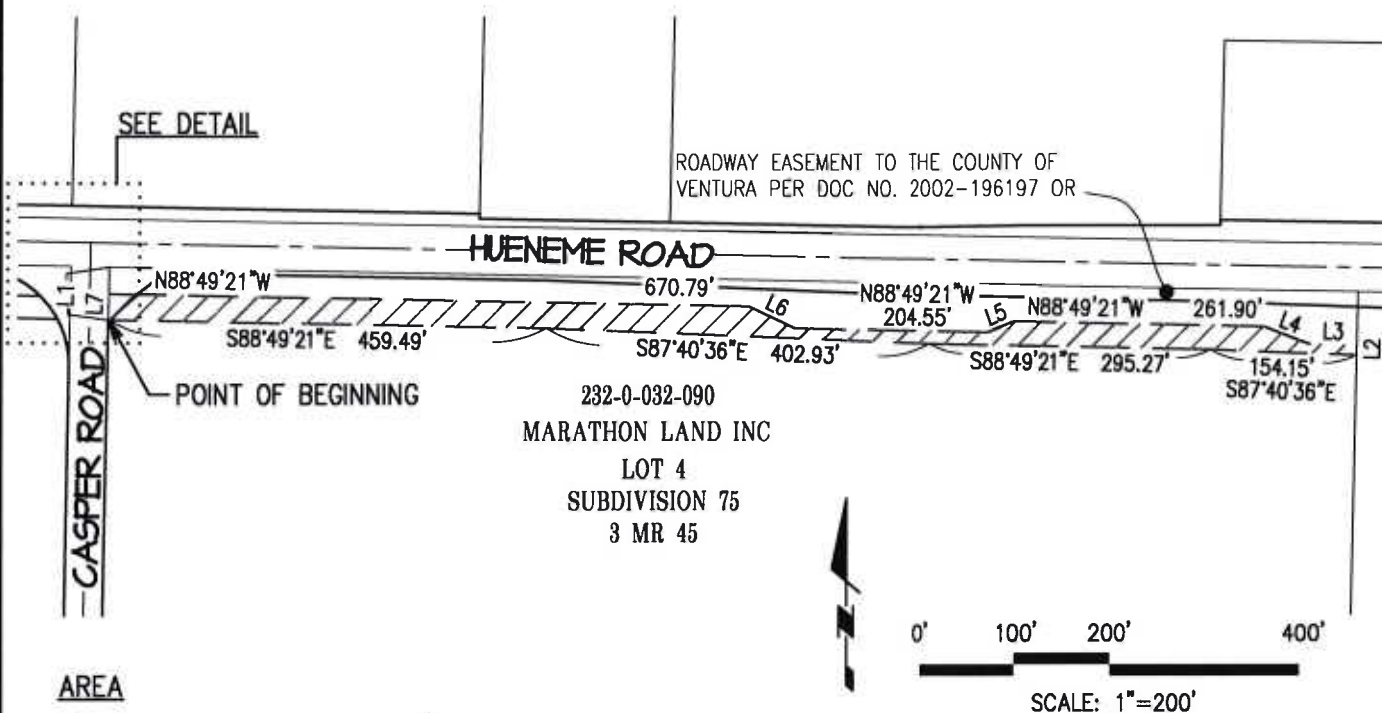
SHEET 1 OF 1

(TEMPORARY CONSTRUCTION EASEMENT)

MARATHON LAND INC

APN: 232-0-032-090

(S11500.00TCE)



AREA

30,472 SQ. FEET / 0.70 ACRES, MORE OR LESS

LINE TABLE

NO.	BEARING	LENGTH
L1	N01°07'22"E	55.00'
L2	S01°10'39"W	9.73'
L3	N87°40'28"W	49.63'
L4	N69°09'50"W	51.74'
L5	N68°29'49"E	30.49'
L6	N64°27'03"W	52.74'
L7	S01°07'22"W	27.00'

SURVEYOR'S NOTE

THE COURSES AND DISTANCES SHOWN HEREON REFLECT RECORD DATA PER THE WRITTEN DEEDS, AND ARE NOT THE RESULTS OF A FIELD SURVEY, OR MATHEMATICALLY CLOSED BOUNDARY SURVEY.

HATCHED AREA DENOTES LAND DESCRIBED IN THE ATTACHED EXHIBIT "A"

William T. Hurdle 6-28-2021
WILLIAM T. HURDLE
PLS 5453
DATE

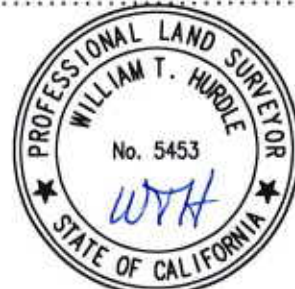
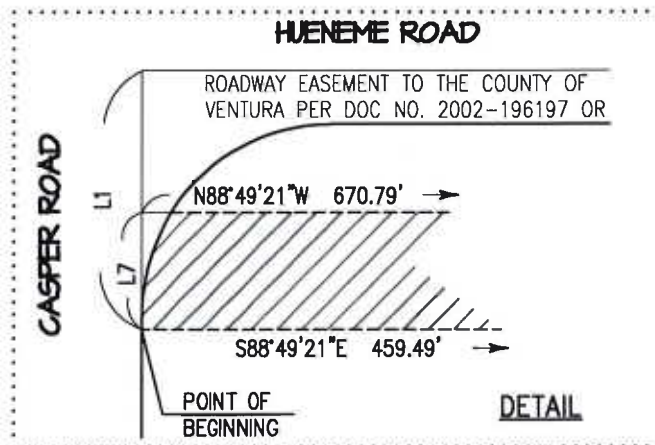


EXHIBIT "C"
(Reclaimed Water Easement)
MARATHON LAND INC.
APN: 232-0-032-090
(S11500.00E)

That portion of Lot 4 in Subdivision 75 of the Rancho El Rio De Santa Clara O'la Colonia, in the County of Ventura, State of California, as per the map titled "Map of the Lands In Subdivision No 75 Rancho El Rio De Santa Clara O'la Colonia belonging to M.L. Wolf and A. Levy" recorded in Book 3, at Page 45 of Miscellaneous Records (Maps) in the Office of the County Recorder of said County, lying northerly of the following described line:

Beginning at a point in the west line of said Lot 4 distant thereon, South 01°07'22" West, a distance of 28.00 feet from the northwest corner of said Lot 4; thence leaving said westerly line,

- 1st South 88°49'21" East, a distance of 670.79 feet; thence,
- 2nd South 64°27'03" East, a distance of 52.74 feet; thence,
- 3rd South 88°49'21" East, a distance of 204.55 feet; thence,
- 4th North 68°29'49" East a distance of 30.49 feet; thence,
- 5th South 88°49'21" East a distance of 261.90 feet; thence,
- 6th South 69°09'50" East a distance of 51.74 feet; thence,
- 7th South 87°40'28" East a distance of 49.63 feet to the easterly line of said Lot 4.

Except that portion of land conveyed to the County of Ventura for road purposes recorded on August 19, 2002 per Document No. 2002-0196197 of Official Records in said Office.

Contains: 34,044 Sq. Feet / 0.78 Acres, more or less.

The above described strip of land is delineated on the attached "Exhibit D".

William T. Hurdle 6-28-2021
William T. Hurdle Date
PLS 5453



EXHIBIT "D"

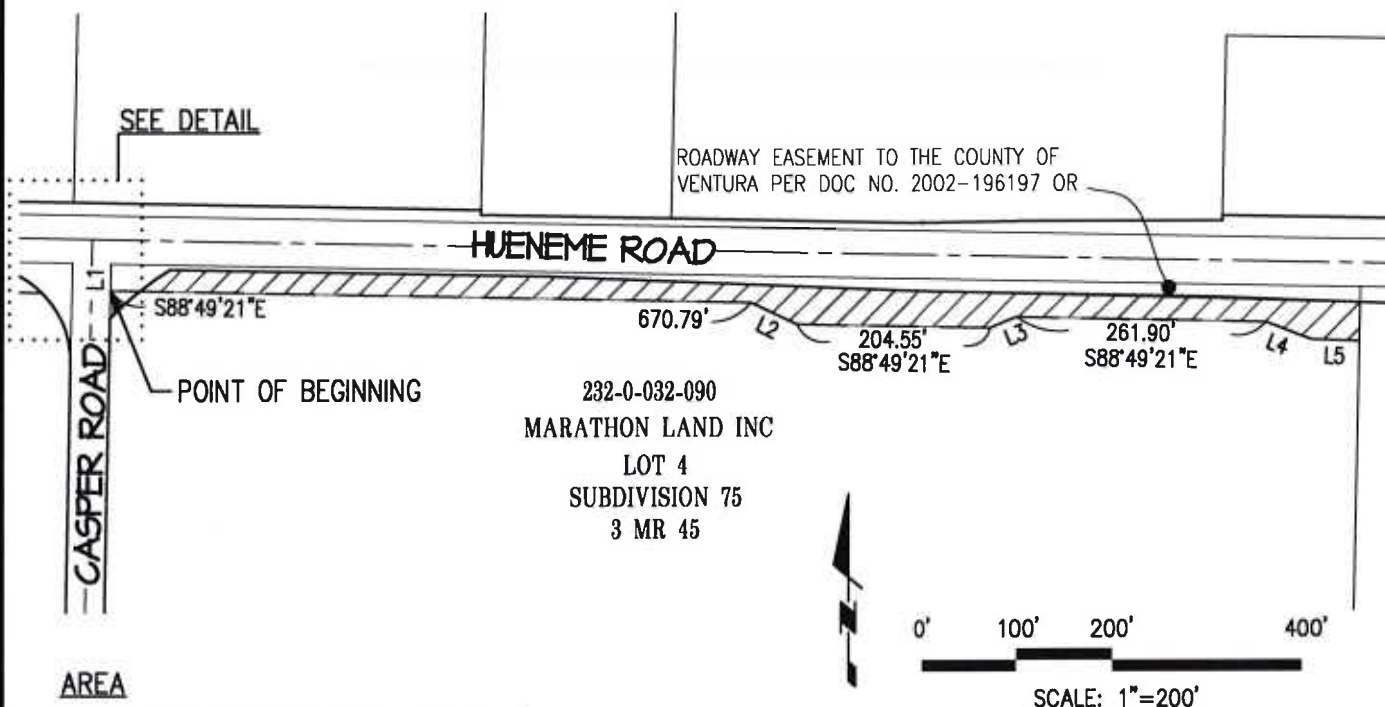
SHEET 1 OF 1

(RECLAIMED WATER EASEMENT)

MARATHON LAND INC

APN: 232-0-032-090

(S11500.00E)

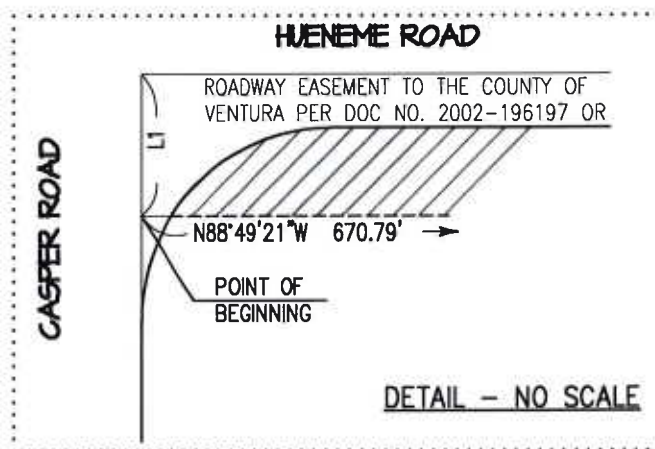


AREA

34,044 SQ. FEET / 0.78 ACRES, MORE OR LESS

LINE TABLE

L1	S01°07'22"W	28.00'
L2	S64°27'03"E	52.74'
L3	N68°29'49"E	30.49'
L4	S69°09'50"E	51.74'
L5	S87°40'28"E	49.63'



SURVEYOR'S NOTE

THE COURSES AND DISTANCES SHOWN HEREON REFLECT RECORD DATA PER THE WRITTEN DEEDS, AND ARE NOT THE RESULTS OF A FIELD SURVEY, OR MATHEMATICALLY CLOSED BOUNDARY SURVEY.

HATCHED AREA DENOTES LAND DESCRIBED IN THE ATTACHED EXHIBIT "C"

William T. Hurdle 6-28-2021
WILLIAM T. HURDLE
PLS 5453

DATE



PARCEL NO.: 232-0-041-405

OWNER: P & R Properties, a California General Partnership

PROJECT: City of Oxnard –Hueneme Road Recycled Waterline Project

**RIGHT OF WAY AGREEMENT
(WITH ESCROW INSTRUCTIONS)**

THIS AGREEMENT dated 2-15, 2018, is made and entered into by and between

P & R Properties, a California General Partnership

hereinafter referred to as "Grantor", and

City of Oxnard

hereinafter called "City."

An Easement Deed covering the property rights particularly described therein, has been executed concurrently with this Agreement and delivered to City representatives. A copy of said Deed is labeled "Exhibit 1" and is attached hereto and incorporated herein by this reference.

In consideration of which, and other considerations hereinafter set forth, it is mutually agreed as follows:

1. The parties have herein set forth the whole of their agreement. The performance of this Agreement constitutes the entire consideration for said Easement Deed and shall relieve the City of all further obligation or claims on this account, or on account of the location, grade or construction of the proposed public improvement.

2. The City shall:

A. PAYMENT - Pay to the order of the Grantor the sum of **\$70,000** as consideration in full for the real property interests being conveyed in the referenced Easement Deed, for the loss, replacement and moving of any improvements, and for entering into this Agreement. Said sum shall be paid upon the close of escrow.

B. MISCELLANEOUS COSTS - Pay all escrow, title insurance, and recording fees incurred in this transaction.

C. CLEARANCE OF BONDS, ASSESSMENTS, OR DELINQUENT TAXES - Have the authority to deduct and pay from the amount shown in Clause 2.A. above any amount necessary to satisfy any bonds, demands and delinquent taxes due in any year except the year in which this escrow closes, together with penalties and interest thereon, and/or delinquent and unpaid non-delinquent assessments which have become a lien at the close of escrow. City agrees to obtain and provide Grantor an updated title report within 30 days of Grantor's execution hereof to determine any such items.

D. PROPERTY RESTORATION - Generally restore the surface of the easement areas described in the referenced Easement Deed to the condition that existed prior to City's project construction except in areas where surface appurtenances such as markers, manholes, cabinets, air vents, and access hatches may be located.

E. CONSTRUCTION PERIOD AND CROPS – Undertake construction of City's project within the easement areas on Grantors land during the July 1 to August 31 time period. This construction period is meant to coincide with farming scheduled break period and thus limit any damages to crops. City shall pay crop damages directly to the owner of said crops for the Fair Market Value (minus cost of harvest) of any crops damaged or destroyed by City's construction activities.

F. SERVICE CONNECTION –At no cost to Grantor, City shall construct a recycled water service connection to provide Grantor's property physical access to recycled City water. Grantor will need to enter into separate agreement(s) to pay for and use City water from this Service connection after it is constructed by City.

G. INDEMNIFICATION - Indemnify, defend and hold harmless Grantor, its members, partners, shareholders, agents, representatives, employees, officers, directors, property managers and their respective successors and assigns from any and all claims, damages, costs, judgments, actions, causes of action, demands, obligations, expenses and fees, including without limitation, attorneys fees and consultant's fees, or liability (collectively "Claims") caused by City or its officers, employees, representatives, consultants or agents specifically arising from City construction and restoration work on Grantor's property or specifically resulting from City's operation of City facilities on Grantor's property. City's obligations hereunder shall not extend to that portion of any Claims that are caused by the negligence or intentional misconduct of Grantor, its representatives or agents. This indemnification shall survive the close of escrow and shall not merge with the Easement Deed.

F. RECORDATION OF INSTRUMENT - Accept the Easement Deed herein referenced and cause the same to be recorded in the office of the Ventura County Recorder at such time as when clear title can be conveyed to the City.

3. The Grantor:

A. LEASE INDEMNIFICATION - Warrants there are no oral or written leases on all or any portion of the easement area described in the referenced Easement Deed, or if there are any such leases, Grantor agrees to hold the City harmless and reimburse City for any and all of its losses and expenses occasioned by reason of any undisclosed lease of said property held by tenant of Grantor.

B. CITY SURFACE FACILITIES - Acknowledges that certain appurtenances related to City facilities may be placed upon the surface of the permanent easement areas, including but not limited to blowoff and manhole access structures, hatches, cabinets, air vents, intermittent surface markers denoting the location of the City's pipeline(s), and other facilities appurtenant to the operation of City facilities.

C. PERMISSION TO ENTER - Hereby grants to the City, its agents and contractors, permission to enter upon the easement areas described in the referenced Easement Deed prior to the close of escrow for the purposes of preparation for and construction of the City's facilities, subject to all applicable terms and conditions contained in this Agreement and the associated Easement Deed.

4. The Parties agree:

A. ESCROW - To open an escrow in accordance with this Agreement at Camarillo Escrow Company. This Agreement constitutes the joint escrow instructions of City and Grantor, and the escrow agent to whom these instructions are delivered (hereafter "Escrow Agent") is hereby empowered to act under this Agreement. The parties hereto agree to do all acts necessary to close this escrow in the shortest possible time and will make all due effort to close escrow within sixty days of execution by Grantor and delivery to City of this Agreement and the associated Easement Deed.

As soon as possible after opening of escrow, City will deposit the executed Deed by Grantor, with Certificate of Acceptance attached, with Escrow Agent on Grantor's behalf. City agrees to deposit the purchase price upon demand of Escrow Agent. City and Grantor agree to execute and deposit with Escrow Agent all additional instruments as may be necessary to complete this transaction. All funds received in this escrow shall be deposited with other escrow funds in a general escrow fund account(s) and may be transferred to any other such escrow trust account in any State or National Bank doing business in the State of California. All disbursements shall be made by check or wire transfer from such account.

- i) ESCROW AGENT DIRECTIVES - Escrow Agent is authorized to, and shall:
- a) Pay and charge Grantor for any unpaid delinquent taxes and/or any penalties and interest thereon, and for any delinquent assessments or bonds against that portion of Grantor's Land subject to this transaction as required to convey clear title.
 - b) Pay and charge City for any escrow fees, charges and costs payable under Paragraph 2.B. of this Agreement.
 - c) Disburse funds and deliver Deed when conditions of this escrow have been fulfilled by City and Grantor.
 - d) Following recording of Deed from Grantor, provide City, at City's expense, with a CLTA Standard Coverage Policy of Title Insurance in the amount of \$70,000 issued by Lawyers Title showing that the City has an easement in the real property described and depicted in the Easement Deed attached to Exhibit 1 of this Agreement,

- ii) CLOSE OF ESCROW - The term "close of escrow", if and where written in these instructions, shall mean the date necessary instruments of conveyance are recorded in the office of the County Recorder. Recordation of instruments delivered through this escrow is hereby authorized when Escrow Agent has completed performance under paragraph 4A(i) above.

B. ARTICLE HEADINGS - Article headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants and conditions of this Agreement.

C. COMPLETE UNDERSTANDING - This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof, superseding all negotiations, prior discussions, and preliminary agreements or understandings, written or oral. This Agreement may not be amended except in writing by the parties hereto or their successors or assigns.

E. CITY COUNCIL APPROVAL - This Agreement is subject to and conditioned upon approval and ratification by the City Council of the City of Oxnard. This Agreement is not binding upon the City until executed by the appropriate City official(s) acting in their authorized capacity.

No Obligation Other Than Those Set Forth Herein Will Be Recognized.

GRANTOR: **P & R Properties, a California General Partnership**

By: *J. J. Myasaka* Date: *2-15-18*
Name: _____
Title: *MANAGING PARTNER*
CAI-AG FUNDING (PARTNER IN
P+R PROPERTIES)

CITY: City of Oxnard

By: _____ Date: _____
Name: _____
Title: Mayor

ATTEST:

APPROVED AS TO FORM:

APPROVED AS TO INSURANCE:

APPROVED AS TO CONTENT:

APPROVED AS TO AMOUNT:

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of Santa Cruz)

On 02-15-2018 before me, Wilfrido Zambrano-Hernandez, A Notary Public,

Date

Here Insert Name and Title of the Officer

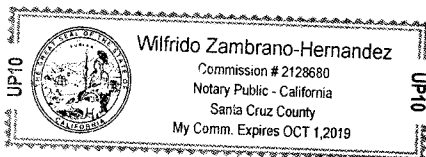
personally appeared Timothy Toshimi Miyasaka

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Right of Way Agreement

Document Date: 2-15-18

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

CITY OF OXNARD
305 W. Third Street
Oxnard, California 93030
Attention: City Clerk

APN:232-0-041-405

SPACE ABOVE THIS LINE FOR RECORDER'S USE
EXEMPT FROM RECORDING FEES PURSUANT TO GOV. CODE §§ 6103 and 27383

EASEMENT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

P & R Properties, a California General Partnership

(hereinafter referred to as "**Grantor**"),

hereby GRANT(S) to the **City of Oxnard, a municipal corporation ("City")**, its successors and assigns the following interests in real property:

A. A permanent easement to survey, install, construct, reconstruct, enlarge, lay, alter, operate, patrol, remove, replace, and maintain a water conduit and vaults, consisting of one or more underground water pipelines and related facilities (the "**Easement**"). These related facilities may include but are not limited to markers, air valves, manholes, valves, meters, surge control devices, test stations, buried communication devices, buried electrical conduits and devices, pull boxes, and all related incidents, fixtures, and appurtenances. The markers, test stations, pull boxes, blow off valves, air release valves, manholes, other related facilities, and turnouts may be located above ground or partially above ground. This Easement shall be in, over, on, through, within, under, and across that certain real property described in **Exhibit C** and depicted in **Exhibit D** (the "**Easement Area**"), both of which are attached hereto and incorporated by reference herein.

The Easement described herein shall be SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. The facilities and improvements installed in the Easement Area collectively are referred to herein as the "**City Facilities**."

2. As the amount of earth or other fill over underground City Facilities can affect the structural integrity of theses City Facilities, City shall have the right to maintain the height of earth or other fill over underground City Facilities. Grantor(s) shall not temporarily or permanently modify, or allow others to in any way modify, the ground surface elevation in the Easement Area from the elevation established upon completion of construction of the underground City Facilities without the City's written consent, which consent shall not be withheld unreasonably and shall be given or denied within 45 calendar days of written application. Grantor(s) shall not conduct, or permit others to conduct, grading operations, ripping, stockpiling, or use, or permit others to use, explosives within or proximate to the Easement Area to the extent that City Facilities may be damaged.

3. This Easement is subject to all existing fencing, canals, irrigation ditches, laterals, pipelines, roads, electrical transmission facilities, and communication lines existing on the date this

Easement is granted, and all future uses which do not directly or indirectly interfere with or endanger City's exercise of the rights described herein, including the right to use the Easement Area for agricultural purposes excepting vegetation which endangers the integrity of City Facilities; provided, however, that City shall have the right to clear and keep clear from the Easement Area all explosives, buildings, structures, walls, and other facilities of a permanent nature, and any earth cover or stockpile of material placed without the City's written consent, which interfere with City's use of the Easement Area. Asphalt pavement, landscaping, fencing, lighting and related appurtenances, with footings less than 1 foot deep and less than 1 foot across in any direction, sidewalks, curb, and gutter may be installed within the Easement Area provided they do not interfere with the function of any surface facilities. Grantor shall not construct, nor permit others to construct, such permanent facilities which conflict with City's ability to use the Easement Area. City shall have the right of exclusive use and possession within the Easement Area for a distance of two (2) feet in every direction around the outside surface of the City Facilities.

B. Temporary Construction Easement

A **Temporary Construction Easement** for the purposes of facilitating construction of City Facilities, including the right to place equipment and vehicles, pile earth thereon, and utilize said Temporary Construction Easement for all other related activities and purposes in, on, over, under, through, along and across that certain portion of the Real Property which is described **Exhibit "A"** and depicted in **Exhibit "B"** attached hereto and incorporated by reference herein ("Temporary Construction Easement"). Said Temporary Construction Easement shall commence thirty (30) days after written notice by the City of commencement of construction of the City Facilities ("Commencement Notification") and shall automatically terminate thirty (30) days after the City provides written notice to Grantor of termination of the Temporary Construction Easement, or one (1) year after the Commencement Notification, whichever occurs first, unless extended as set forth below.

City shall have the unilateral right to extend part or all of the one (1) year term of the Temporary Construction Easement for additional maximum of six (6) months as necessary for completion of construction of the City Facilities; however, under no circumstances shall the duration of the Temporary Construction Easement be extended beyond December 31, 2019. City must provide Grantor with the written notice of its intent to extend the term of the TCE, as well as the amount due for the time the TCE is to be extended, at least ten (10) days prior to the expiration of the current term. The rate for the extended use of the Temporary Construction Easement shall be **SEVEN HUNDRED FIFTY DOLLARS (\$750)** per month of the extension term exercised.

Executed this 15 day of 2 2018.

GRANTOR:

P & R Properties, a California General Partnership

By: JJ Meyers
Name: MANAGING PARTNER OF CH-AG FUNDING (PARTNER IN P+R PROPERTIES)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Santa Cruz

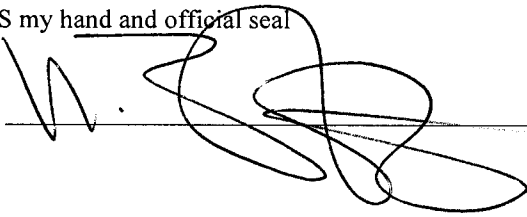
On 02-15-2016 before me, Wilfrido Zambrano-Hernandez, Notary Public, personally

appeared Timothy Toshimi Miyasaka, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

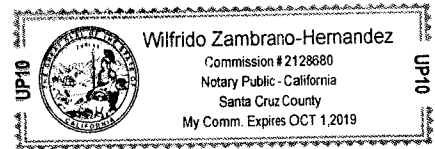
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Signature



(Seal)



CERTIFICATE OF ACCEPTANCE
(California Government Code Section 27281)

This is to certify that the interest in real property conveyed by the EASEMENT DEED dated _____ from _____ to the City of Oxnard, a municipal corporation and governmental agency is hereby accepted, and pursuant to City Council Resolution No. 1939, recorded in book 1591, Official Records of Ventura County at page 273, the City Council consents to recordation thereof by its duly authorized officer.

DATED: _____

CITY OF OXNARD, a California municipal
corporation

EXHIBIT "A"
(Temporary Construction Easement)
P & R PROPERTIES
APN: 232-0-041-405
(S16790.00TCE)

That portion of Lot 11 in Subdivision 75 of the Rancho El Rio De Santa Clara O'la Colonia, in the County of Ventura, State of California, as per the map titled "Map of the Lands In Subdivision No 75 Rancho El Rio De Santa Clara O'la Colonia belonging to M.L. Wolf and A. Levy" recorded in Book 3, at Page 45 of Miscellaneous Records (Maps) in the Office of the County Recorder of said County, described as follows:

The northerly 55 feet of Parcel 1 and Parcel 2 as described in the deed to P & R Properties recorded August 12, 2004 as Document Number 20040812-0221810 of Official Records in said Office;

EXCEPT that portion lying northerly of the following described line,

Beginning at a point on the westerly line of said Parcel 2, distant thereon, South 01°09'09" West, 31.07 feet from the northwest corner of said Parcel 2; thence leaving said westerly line,

- 1st South 88°49'05" East, a distance of 1043.06 feet; thence,
- 2nd North 84°23'50" East, a distance of 67.70 feet; thence,
- 3rd South 88°49'05" East, a distance of 218.18 feet to a point of the easterly line of said Parcel 2; thence,
- 4th South 88°44'53" East, a distance of 1277.86 feet; thence,
- 5th South 01°15'06" West, a distance of 7.00 feet; thence,
- 6th North 88°44'53" West, a distance of 20.00 feet to the easterly line of said Parcel 1.

Contains: 75,241 Sq. Feet / 1.73 Acres, more or less.

The above described strip of land is delineated on the attached "Exhibit B".

William T. Hurdle 6-28-2021
William T. Hurdle Date
PLS 5453



EXHIBIT "B"

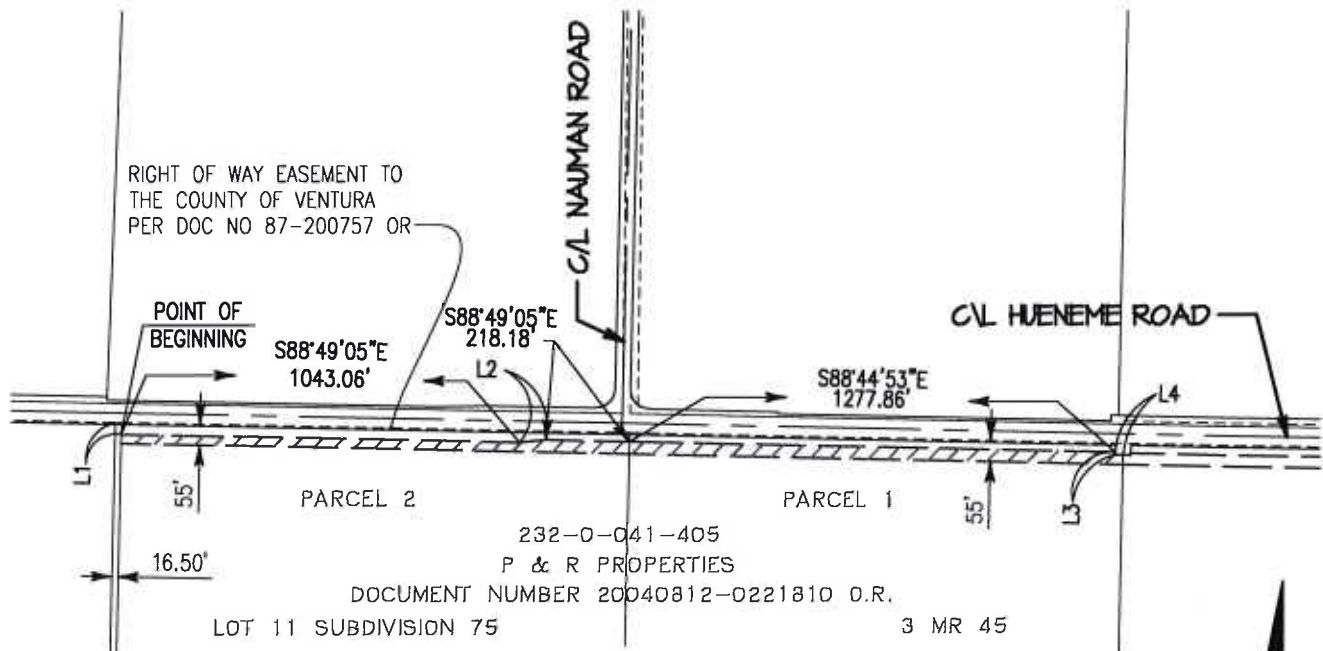
SHEET 1 OF 1

(TEMPORARY CONSTRUCTION EASEMENT)

P & R PROPERTIES GROUP

APN: 232-0-041-405

(S16790.00TCE)



SURVEYOR'S NOTE

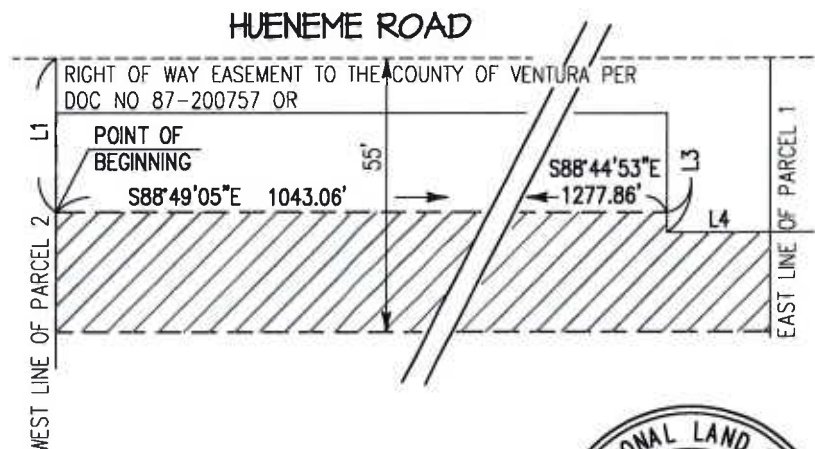
THE COURSES AND DISTANCES SHOWN HEREON REFLECT RECORD DATA PER THE WRITTEN DEEDS, AND ARE NOT THE RESULTS OF A FIELD SURVEY, OR MATHEMATICALLY CLOSED BOUNDARY SURVEY.

AREA

75,241 SQ. FEET / 1.73 ACRES, MORE OR LESS.

LINE DATA

LINE	BEARING	DISTANCE
L1	S01°09'09"W	31.07'
L2	N84°23'50"E	67.70'
L3	S01°15'06"W	7.00'
L4	S88°44'53"E	20.00'



HATCHED AREA DENOTES LAND DESCRIBED IN THE ATTACHED EXHIBIT "A"

William T. Hurdle 6-28-2021

WILLIAM T. HURDLE
PLS 5453

DATE



EXHIBIT "C"
(Reclaimed Water Easement)
P & R PROPERTIES
APN: 232-0-041-405
(S16790.00E)

That portion of Lot 11 in Subdivision 75 of the Rancho El Rio De Santa Clara O'la Colonia, in the County of Ventura, State of California, as per the map titled "Map of the Lands In Subdivision No 75 Rancho El Rio De Santa Clara O'la Colonia belonging to M.L. Wolf and A. Levy" recorded in Book 3, at Page 45 of Miscellaneous Records (Maps) in the Office of the County Recorder of said county, also being that portion of Parcel 1 and Parcel 2 as described in the deed to P & R Properties recorded August 12, 2004 as Document Number 20040812-0221810 of Official Records in the said Office of the County Recorder, lying northerly of the following described line,

Beginning at a point on the westerly line of said Parcel 2, distant thereon, South 01°09'09" West, 31.07 feet from the northwest corner of said Parcel 2; thence leaving said westerly line,

- 1st South 88°49'05" East, a distance of 1043.06 feet; thence,
- 2nd North 84°23'50" East, a distance of 67.70 feet; thence,
- 3rd South 88°49'05" East, a distance of 218.18 feet to a point of the easterly line of said Parcel 2; thence,
- 4th South 88°44'53" East, a distance of 1297.86 feet to the easterly line of said Parcel 1.

EXCEPT that portion of land conveyed to the County of Ventura for Right-of-way Easement recorded December 17, 1987 per Document No. 87-200757 of Official Records in said Office.

Contains: 55,693 Sq. Feet / 1.28 Acres, more or less.

The above described strip of land is delineated on the attached "Exhibit D".

William T. Hurdle

William T. Hurdle
PLS 5453

6-28-2021
Date



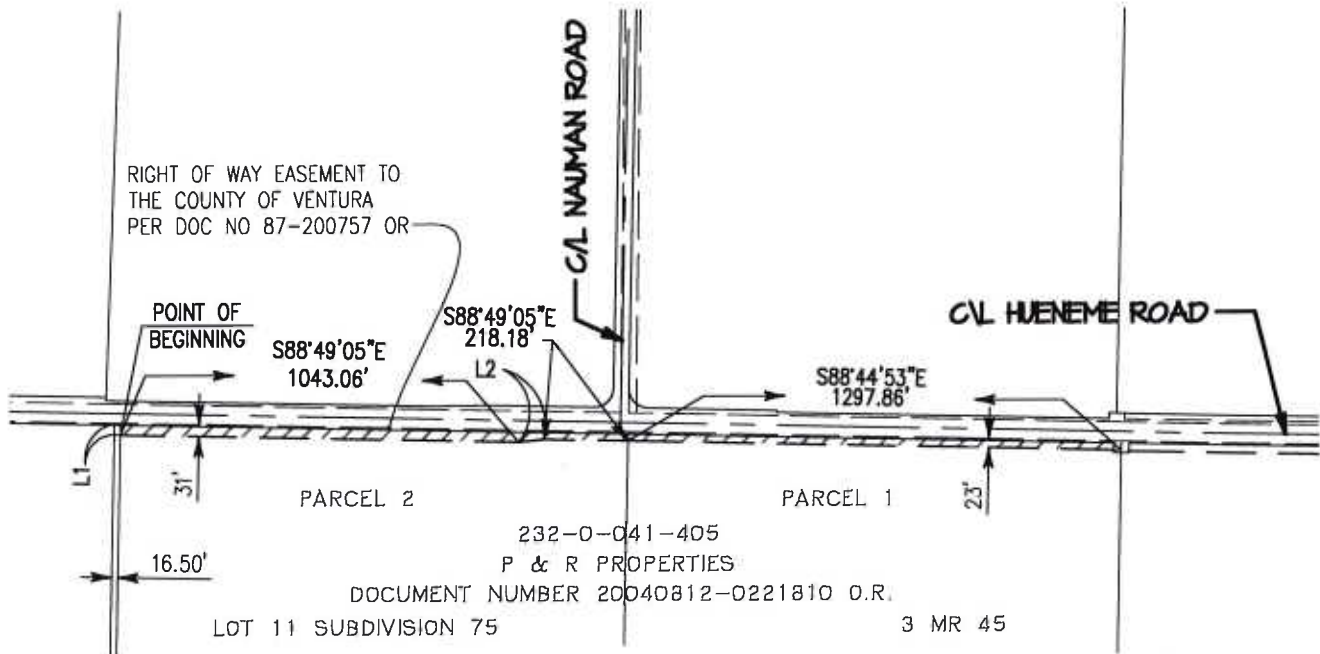
EXHIBIT "D"

SHEET 1 OF 1

(RECLAIMED WATER EASEMENT)

P & R PROPERTIES GROUP

APN: 232-0-041-405
(S16790.00E)



SURVEYOR'S NOTE

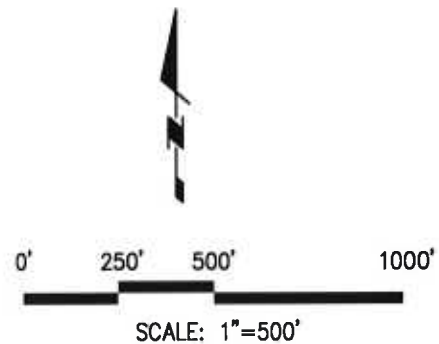
THE COURSES AND DISTANCES SHOWN HEREON REFLECT RECORD DATA PER THE WRITTEN DEEDS, AND ARE NOT THE RESULTS OF A FIELD SURVEY, OR MATHEMATICALLY CLOSED BOUNDARY SURVEY.

AREA

55,693 SQ. FEET / 1.28 ACRES, MORE OR LESS.

LINE DATA

LINE	BEARING	DISTANCE
L1	S01°09'09\"W	31.07'
L2	N84°23'50\"E	67.70'



HATCHED AREA DENOTES LAND DESCRIBED IN THE ATTACHED EXHIBIT "C"

WILLIAM T. HURDLE
PLS 5453

DATE

William T. Hurdle 6-28-2021



5249 RWE P & R Properties Group.dwg



CITY COUNCIL AGENDA REPORT
INFORMATION/CONSENT AGENDA
AGENDA ITEM NO. K.5

DATE: July 29, 2021

TO: Housing Authority Board

FROM: Emilio Ramirez, Housing Director, (805) 385-8094, emilio.ramirez@oxnard.org

SUBJECT: Award of Contract for the Residential Rehabilitation & Remodel Project at Pleasant Valley Village.

RECOMMENDATION

That the Board of Commissioners of the Housing Authority of the City of Oxnard approve and authorize the Chairman to execute a firm-fixed price contract in the amount of \$757,683.20 with Waisman Construction Inc. (Agreement Number A-8343 using funds previously appropriated from the 2019 Capital Fund grant for Section 504 compliance (Americans with Disabilities Act).

(Community Services, Public Safety, Housing & Development Committee approved 3-0 on July 13, 2021.)

BACKGROUND

This project is part of a multi-phase conversion project that will bring Oxnard Housing Authority (OHA) into compliance with HUD's ADA-Section 504 regulations. These 504 regulations establish a minimum number of dwelling units that must be accessible for individuals with disabilities (ADA). As a result of the demolition of units in the 31-1 (Colonia site), the OHA lost 44 accessible units.

In order to comply with HUD requirements, the OHA must convert a minimum of 24 units to be ADA compliant. The 24 units that will be converted have been selected from each OHA project site based on ease of conversion, availability of space and cost effectiveness. This conversion project was anticipated and planned for in the OHA's 5-Year PHA Plan originally adopted on March 20, 2018.

In April 2021, the Oxnard Housing Authority (OHA) solicited bids for the Residential Rehabilitation and Remodel Project at Pleasant Valley Village site. During the solicitation period three (3) bids were received and evaluated. Waisman Construction Inc. was considered to be the lowest and responsive bidder.

This project involves converting two (2) existing 1 story 5-bedroom units (located at 5191 and 5201 Squires Drive) to two (2) ADA units on the ground floor and two (2) non-ADA units on the second floor.

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.

FINANCIAL IMPACT

The funding for this item will be from the Housing Authority (Non-City) 2019 Capital Fund grant. There is sufficient

funding from the grant to cover the cost of the agreement, and no impact to the City General Fund.

COMMITTEE OUTCOME

The Community Services, Public Safety, Housing & Development Committee approved 3-0 on July 13, 2021 to approve the staff recommendation and to forward the item for Council approval.

Prepared by: Emilio Ramirez, Housing Director

ATTACHMENTS

1. Waisman Contract

CAPITAL IMPROVEMENT CONTRACT

Contract No: **A-8343**

Name of Contractor: Waisman Construction, Inc.

Address: 21430 Strathern Street, Units D & E, Canoga Park, CA 91304

Project description: Residential Rehabilitation & Remodel Project at Pleasant Valley Village (CAL 31-4)

This Capital Improvement Contract ("**Contract**") is made at Oxnard, California, as of this 15th day of June 2021 between the City of Oxnard Housing Authority, called herein the "**Authority**", and the above-named contractor ("**Contractor**") for the construction of the capital improvement project described herein. The parties hereto agree as follows:

1. Type of Contract

This contract is a firm-fixed price contract as defined by 2CFR Part 200 and the Department of Housing and Urban Development (HUD) Handbook 7460.8, Rev. 2.

2. Contract Price

Contractor shall perform the scope of work per the approved plans for 5191 Squires Drive (application number 19-00006138) and 5201 Squires Drive (application number 20-00002586). Authority shall pay Contractor, as described in **Exhibit B**, attached hereto and incorporated herein by this reference, in full payment for said work, the following sum: **\$757,683.29**

The above sum includes all taxes and the costs of any required bonds, required certificates and permit fees.

3. Payment Schedule

Authority shall pay Contractor no later than 30 calendar days after Authority accepts Contractor's invoices and Authority shall make final payment no later than 60 calendar days after Authority has issued and approved a certificate of completion for the work contemplated herein, provided that the Authority may withhold from progress payments an amount equal to 5 percent of the progress payment and may withhold from final payment an amount sufficient to protect the Authority from disputes equivalent to 150 percent of the value of any disputed amount of work.

4. Scope of Work

Contractor shall furnish all tools, equipment, apparatus, facilities, labor and materials necessary to, and shall perform and complete in a good, safe and

workmanlike manner, the work described in the approved plans.

5. Contract Documents

The complete Contract consists of all the following, which are specifically incorporated herein by reference:

- a. Change Orders
- b. Contract Amendments
- c. This Contract
- d. Amendments to HUD Form 5370
- e. HUD Form 5370 General Conditions for Construction Contracts – Public Housing Programs
- f. Specifications
- g. Plans
- h. Permits
- i. Contractor's bid proposal and list of subcontractors (if applicable)
- j. Addenda to Notice Inviting Bids
- k. The Notice Inviting Bids
- l. Performance and payment bonds as required by the specifications and applicable law. Unless otherwise specified, each such bond shall be 100 percent of the Contract price.
- m. Insurance as required by the specifications and applicable law
- n. All applicable wage determinations, safety and health regulations, non-discrimination provisions, labor standards, and requirements if the Contract is federally assisted. This includes but is not limited to such items enumerated in the specifications and addenda thereto.

6. Indemnity

Contractor agrees to indemnify, hold harmless and defend Authority, its Commission, and each member thereof, and every officer, employee, representative or agent of Authority, 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 Contractor or its agents, employees, Subcontractors, Contractors, and other persons acting on Contractor'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 Contractor or its agents, employees, subcontractors, consultants and other persons acting on Contractor's behalf would be held strictly liable.

7. Time for Performance

The time limit for the completion of the work is **160 working days** after receipt of the Notice to Proceed.

Contractor shall not perform any work until the Authority issues a Notice to Proceed. Work will be completed within the time limit specified above and in the Notice to Proceed.

8. Acknowledgement

Contractor by signing hereunder acknowledges that he has reviewed all the foregoing documents and agrees with the requirements, conditions and covenants contained therein.

OXNARD HOUSING AUTHORITY

Waisman Construction, Inc.

John C. Zaragoza
Chairman

Guy Waisman
President

APPROVED AS TO FORM:

APPROVED AS TO INSURANCE:

Stephen M. Fischer,
Housing General Counsel

Rhonda Hodge
Housing Finance Officer

APPROVED AS TO COMPLIANCE:

Rhonda Hodge
Contract Administrator

Exhibit A

Scope of Work

The project scope of work includes Section 504 disability compliant design and modifications of two existing 1 story 5-bedroom units, converting each unit into two smaller 1- and 2-bedroom units at 5191 and 5201 Squires Drive in Oxnard, California. Contractor is to carry out the intent of the work incorporated in the contract documents which include a permit set of construction documents, approved plans, drawings, specifications and addenda provided by Coast Reprographics via Lauterbach & Associates for Project # 20-190201 for City of Oxnard – Pleasant Valley Village.

Work Hours:

From 8:00 AM to 5:00 PM max. Including 1-hour lunch.

No work is allowed Saturdays, Sundays and during any official holidays.

Housing Authority is closed every other Fridays and no work is allowed on the off Fridays.

Safety and Security:

The contractors are required to secure the work area during the work hours, lunch hours, weekends, and holidays. The contractors shall secure and render safe the entire construction area at the end of each working day. Work areas must be well barricaded and flagged, and all precautions should be taken to avoid injury or damage to any person or property and shall protect and indemnify the Housing against any claim or liability arising from or based on the lack of proper safeguards or negligence whether by it or its agents, employees or Subcontractors.

Compliance with all Laws:

The contractors shall comply with all applicable federal, State and local laws, ordinances, codes and regulations in force at the time the contractors perform pursuant to the contract documents.

Project Schedule:

The contractor is expected to complete the job in not to exceed one hundred-sixty **(160) working days**.

Construction Debris:

Due to the nature of the job, the contractor is responsible for hauling away debris.

Storage Bin

The contractor shall provide bins and/or containers for temporary storage.

Warranty:

The contractor shall warranty the work for a period of **Three (3) years** against workmanship and **One (1) year** for the material by the manufacturer.

Final Walkthrough, and Sign off:

The contractor is required to call for a final walk through with the project manager and/ or the Housing Authority staff after completion of each building at the job sites. Upon approval, the contractor may partially bill the Housing Authority for that completed building. All the payments will be pending obtaining a final sign off from the City inspector and turning in those permits.

Exhibit B
Payment Schedule

General Requirements	\$60,000.00
Demolition & Site Work	\$50,000.00
Concrete	\$40,000.00
Wood and Plastics	\$55,000.00
Thermal and Moisture	\$5,000.00
Doors and Windows	\$25,000.00
Finishes	\$85,000.00
Specialties	\$4,000.00
Equipment	\$3,000.00
Furnishings	\$20,000.00
Plumbing	\$155,000.00
HVAC	\$30,000.00
Electrical	\$70,000.00
Site Improvements	\$5,000.00
SUB TOTAL	\$607,000.00
Contractor's Fee	\$59,486.00
Payment & Performance Bonds	\$10,000.00
Insurance	\$10,000.00
SUB TOTAL	\$686,486.00
General Requirements	\$60,000.00
Contractor Contingency	\$11,197.29
TOTAL	\$757,683.29



CITY COUNCIL AGENDA REPORT
INFORMATION/CONSENT AGENDA
AGENDA ITEM NO. K.6

DATE: July 29, 2021

TO: City Council

FROM: Emilio Ramirez, Housing Director, (805) 385-8094, emilio.ramirez@oxnard.org

SUBJECT: Encampment Response Project and Related Agreement.

RECOMMENDATION

That the City Council:

1. Review Encampment Response Project Plan;
2. Approve a plan and updated timeline for encampment response to an existing encampment near Ormond Beach; and
3. Approve and authorize the Mayor to execute an agreement with the County of Ventura/Ventura County Health Care Agency to provide encampment outreach, case management and motel voucher administration services.

(As of the date of this City Council agenda being posted, there is not yet an outcome from the July 27, 2021, Community Services, Public Safety, Housing & Development Committee.)

BACKGROUND

On October 6, 2020, City Council approved the 2020 Annual Action Plan CARES Act Amendment, which set forth several proposed activities that conform with the Community Development Block Grant (CDBG) and Emergency Solutions Grant (ESG) requirements and regulatory CARES Act requirements.

As part of the Annual Action Plan CARES Act Amendment, Council authorized the utilization of \$200,000 of CDBG-CV for Homeless Encampment Response, and \$150,000 of ESG-CV for Homeless Encampment Response Outreach.

On January 25, 2021, City Council received and approved a plan to respond to an existing homeless encampment near Ormond Beach; and authorized the City Manager to procure and contract a third party to administer temporary motel assistance to effectuate the objectives of the Encampment Response Project Plan.

This report is an update on the encampment response activities that have been done to date at the site near Ormond Beach and plans for encampment response going forward, which include an expanded outreach/case management and a motel assistance program using previously unallocated funds.

DISCUSSION

There is a large homeless encampment in Oxnard near Ormond Beach, in an area that is known as the 'slag pile'. In addition to well documented health risks that are correlated with living unsheltered in encampments, this area was previously the site of a scrap metal recycling facility and as a result contains toxic chemicals and is not a safe area for people to reside. However, during the COVID-19 pandemic, federal guidance states that if individual housing options are not available, that local authorities should allow people living in encampments to remain where they are. Contending

with these compound risk factors, in August 2020 the City undertook an extensive outreach and service engagement program in partnership with Ventura County and other agency partners with the goal of providing immediate services, engaging people into ongoing services, and talking to them about shelter/housing and other relocation options.

In January 2021, Council approved extending these encampment response efforts for six months with plans to re-assess the overall timeline at the conclusion of that six-month period. This extension was due to a number of factors including high rates of COVID-19, limited services due to active outbreaks, and federal guidance advising local authorities to allow people living in encampments to remain if there were not individual housing options available.

During these past 10 months, the City of Oxnard, Ventura County, and our agency partners have engaged with over 70 unique individuals at the encampment to provide medical services, practical assistance, and engagement with street outreach. In addition, approximately 10 people were placed into shelters and/or residential treatment including through Project RoomKey. Staff and partners also spoke with people about their shelter and housing needs. By a large majority, those living on the encampment said they were not interested in entering congregate shelter but would be interested in non-congregate options including motel rooms.

The overall number of people on the site went down over the winter with numbers estimated around 35 people at the site, but has recently increased over the spring with estimates of about 70 people currently living at the site (although exact numbers are hard to determine).

Assessment of Timeline

Staff are recommending that the City (and partners) continue providing services and outreach to the site for an additional 4 months (until November 2021). Reasons for this recommendation are summarized below:

Federal Guidance:

As of June 2021, CDC guidance still states that, if individual housing options are not available, local authorities should allow people living in encampments to remain where they are.

Expanded Motel Voucher Program:

The City of Oxnard issued a Request for Proposals seeking qualified contractors for two components of an Encampment Response program: 1) Outreach Services and 2) Case Management and Administration of Motel Vouchers as a non-congregate shelter program.

Based on that procurement process, staff have selected Ventura County Health Care Agency (VCHCA) as the qualified contractor for both of these program components. VCHCA submitted a strong proposal that received high scores from the entire evaluation committee. VCHCA has been serving the homeless population for decades, including at the large encampment near Ormond Beach, and has experience administering motel vouchers as emergency shelter. With authorization, staff anticipates that this program will be up and running by September 2021.

Feedback from Partners:

In June, staff held a partners' meeting with attendees from across various City departments, homeless service providers, healthcare providers, neighboring land owners, and conservationists. The purpose of this meeting was to discuss how the services and outreach have been going and to give input on the timeline for eventual clearing and abatement.

This group expressed the following priorities:

- Should engage with as many people as possible
- Clearing should line up with when we have capacity in non-congregate shelters or housing options available
- Would like the motel program to be up and running for at least a couple months
- This needs to be a coordinated effort - not moving people from one property over to the next one
- Would like to communicate the deadline to encampment residents a few months in advance to let them know when there is an upcoming hard deadline.

- Bird nesting season continues throughout the summer. Waiting until the fall will limit disturbance to the nesting birds (*note this was from a conversation staff had with conservationists outside of the main partners meeting).

Proposed Agreement with Ventura County Health Care Agency

Main components of the Proposed Encampment Response Program are summarized below:

Outreach:

- Establishment of trusted relationships/communications, intake, assessment of needs, solution-focused brief therapy, alcohol and drug assessment, referral and linkage to support services, Individual Service Plan development, access to immediate/emergency services, and linkages with the project's motel voucher and case management services.

Case Management/ Motel Voucher Administration:

- Negotiation with motels for placement of persons experiencing homelessness, direct payment to motels for services, relationship building and problem/conflict resolution with motel operators, and prioritization of residents for placement.
- Placement of prioritized persons in motels, linkage/application assistance with more available permanent housing options, risk reduction, mitigation of difficulties among placed individuals, connections with needed service providers, and linkage and transition facilitation with new housing network upon project transfer.

The overall cost for the Encampment Response Program to be administered by the County of Ventura/Ventura County Health Care Agency is \$790,000 (\$190,000 for Outreach & \$600,000 for Case Management and Motel Voucher Administration). The source of funds is \$720,000 ESG-CV and \$70,000 CDBG-CV. The contract terminates September 15, 2022.

STRATEGIC PRIORITIES

This agenda item supports Economic Development strategy. The purpose of 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 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 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 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 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.

This agenda item is a routine operational item or does not relate to the five strategic priorities adopted by City Council on March 16, 2021.

FINANCIAL IMPACT

The cost of the Encampment Response Plan described above will be paid with funding previously approved by Council for CARES Community Development Block Grant and Emergency Solutions Grant - CV. No additional appropriation is

requested at this time.

COMMITTEE OUTCOME

As of the date of this City Council agenda being posted, there is not yet an outcome from the July 27, 2021, Community Services, Public Safety, Housing & Development Committee. Staff is available to answer any questions.

Prepared by: Emilio Ramirez, Housing Director

ATTACHMENTS

1. DRAFT Professional Service Agreement ERP 2021

**AGREEMENT FOR PROFESSIONAL SERVICES
COVER PAGE**

- (1) Agreement Start Date: **September 15 2021**
- (2) Consultant: Ventura County Health Care Agency
- (3) Services: Outreach, Case Management and Motel Voucher Administration Services
- (4) Schedule of Services: The services must be completed by September 15 2022
- (5) Agreement Ending Date: **September 15 2022**
- (6) Total Agreement Amount: Not to exceed \$790,000
- (7) City's Project Manager: Jessica Petrillo - Homeless Assistance Program Coordinator
- (8) Consultant's Project Manager: Matthew Tufte, Manager of Case Management with Ventura County Health Care Agency
- (9) Insurance Coverage: INS **(Following up with Risk Mgmt for this Info)**
- (10) Addresses for Notice:

FOR CONSULTANT:

FOR CITY:

Oxnard Housing Department

435 S D Street, Oxnard CA 93030

Attn: Emilio Ramirez, Housing Director

- (11) Contact Emails:

*CONSULTANT'S PROJECT
MANAGER:*

Matthew.tufte@ventura.org

CITY'S PROJECT MANAGER:

Jessica.petrillo@oxnard.org

The Agreement for Professional Services is attached hereto and incorporated herein by this reference. The following exhibits are also attached hereto and incorporated herein by this reference into the Agreement:

- ☐ Scope of Services Exhibit
- ☐ Rates and Costs Exhibit
- ☐ Insurance Exhibit (INS-)

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES ("Agreement") is entered into in Ventura County, California, on the date that is written as "(1) Agreement Start Date" on the Cover Page, which is attached hereto and incorporated herein by this reference. This Agreement is entered by and between the City of Oxnard ("City") and the person or entity listed as "(2) Consultant" on the Cover Page, subject to the following terms and conditions:

1. Scope of Services. Consultant shall provide to City the services listed as "(3) Services" on the Cover Page (the "Services"). Consultant shall provide the Services during the term of this Agreement, as set forth below, according to the schedule written as "(4) Schedule of Services" on the Cover Page, and as further explained in the Scope of Services Exhibit, which is attached hereto and incorporated herein by this reference. In the event of any conflict between the terms of this Agreement and any incorporated document(s), the terms of this Agreement shall control.
2. Standard of Performance. Consultant shall undertake and complete the Services to conclusion using the standard of care, skill and diligence normally provided by a professional person in the performance of similar consulting services.
3. Correction of Errors. Consultant shall correct, at its expense, all errors which may be disclosed during review of the Services. Should Consultant fail to make such correction in a reasonably timely manner, such correction shall be made by City, and the cost thereof shall be paid by Consultant.
4. Term. This Agreement shall begin on the date that is written as "(1) Agreement Start Date" on the Cover Page and shall end on the date that is written as "(5) Agreement Ending Date" on the Cover Page. Time is of the essence in this Agreement.
5. Compensation. For the Services performed during the term of this Agreement, City shall pay Consultant an amount not to exceed the amount that is listed as "(6) Total Agreement Amount" on the Cover Page, at the rates listed in Rates and Costs Exhibit, attached hereto and incorporated herein by this reference. The rates in Rates and Costs Exhibit shall be in effect through the end of this Agreement. Except as otherwise expressly provided in this Agreement, City shall not be responsible for expenses incurred by Consultant in performing the Services.
6. Invoices. Consultant shall submit a payment request to City by the end of each calendar month listing the Services provided, costs of those Services, and total amount due for the month. Each invoice must also list the current balance on the Agreement, including that invoice, as well as the months remaining on the term of the Agreement. Invoices may be emailed to: invoices@oxnard.org.
7. Acceptance of Payment. Consultant's acceptance of final payment made pursuant to this Agreement shall constitute a release of City from all claims and liabilities for compensation to Consultant for anything completed, finished or relating to the Services. City's payment shall not constitute nor be deemed a release of the responsibility and liability of Consultant for the accuracy and competency of the information provided and/or the Services performed hereunder, nor shall such payment be deemed to be an assumption of responsibility or liability by City for any defect or error in the Services performed by Consultant and its employees, agents and subcontractors. Consultant shall provide City with a completed Request for Taxpayer Identification Number and Certification, as issued by the Internal Revenue Service. If any sales tax is due for the Services performed by Consultant or materials or products provided to City by Consultant, Consultant shall pay the sales tax. City shall not reimburse Consultant for sales taxes paid by Consultant.
8. Non-Appropriation of Funds. Payments to be made to Consultant by City for the Services performed within the current fiscal year are within the current fiscal budget and within an available, unexhausted and unencumbered appropriation of City. In the event City does not appropriate sufficient funds for payment of the Services beyond the current fiscal year, this Agreement shall cover payment for the Services only up to the

conclusion of the last fiscal year in which City appropriated sufficient funds and shall automatically terminate at that fiscal year's conclusion.

9. Coordination of Services. The Services shall be coordinated with the person in the position listed in "(7) City's Project Manager" on the Cover Page, subject to the direction of the City Manager and Department Director. Consultant hereby designates the person in the position listed in "(8) Consultant's Project Manager" on the Cover Page as the person responsible for the Services who shall coordinate with City's Project Manager in making binding decisions in line with this Agreement on behalf of Consultant.

10. Personnel. Consultant represents that it has, or shall secure at its own expense, all personnel required to perform the Services. Any person who performs engineering services pursuant to this Agreement shall be licensed as a Civil Engineer by the State of California and in good standing. Consultant shall make reasonable efforts to maintain the continuity of Consultant's staff who are assigned to perform the Services. Consultant may associate with or employ associates or subcontractors in the performance of the Services, but at all times shall Vendor be responsible for its associates and subcontractors' labor, advice or materials provided in furtherance of providing the Services. Should any of Consultant's employees, assigns or subcontractors not conduct him- or herself appropriately, as determined by the City's Project Manager, in the process of providing the Services or any portion thereof, the City's Project Manager may notify the Consultant's Project Manager, who shall immediately handle the problem, as determined appropriate by him or her, such that the problem does not persist.

11. Additional Work. City may request additional specified work under this Agreement. The City's Project Manager must authorize all such work in writing before commencement. Consultant shall perform such work, and City shall pay for such additional work, in accordance with Rates and Costs Exhibit. Should the work not fall under any such listed rate or cost, Consultant shall submit a quote for all additional work, which the City's Project Manager must approve in writing by before any such work may commence. The City shall compensate Consultant for any work that does not fall under a rate or cost listed in the Rates and Costs Exhibit, and for which Consultant did not obtain the City's Project Manager's written approval before work commenced, as determined by the City's Project Manager in his or her sole discretion.

12. Audit. City shall have the option of inspecting, auditing and/or reproducing all records and other written materials used by Consultant in preparing its billings to City as a condition precedent to any payment to Consultant. Consultant will promptly furnish all documents requested by City. Additionally, if this Agreement is in excess of \$10,000, the State Auditor may examine and audit Consultant for a period of 3 years after final payment under the Agreement. Regardless of whether a State audit is permitted, Consultant shall maintain and preserve all such records for a period of at least 3 years after final payment under the Agreement. Consultant shall include a copy of this Section 12 in all contracts with its subcontractors, and Consultant shall be responsible for immediately obtaining those records or other written material from its subcontractors upon a request by the State Auditor and/or City.

13. Termination. City may terminate this Agreement at any time, with or without cause and without penalty, upon 15 days prior written notice. Such termination shall be effective on the date specified in the notice, or if no date is specified, then 10 calendar days from the date of delivery or mailing of such notice. Consultant may terminate this Agreement at any time, with or without cause and without penalty, upon 30 days prior written notice. Such termination shall be effective on the date specified in the notice, or if no date is specified, then 10 calendar days from the date of delivery or mailing of such notice and only if all assignments accepted by Consultant have been completed before the date of termination. In the event of termination of this Agreement by either party due to no fault or failure of performance by Consultant, City shall pay Consultant compensation for all Services satisfactorily completed in accordance with all of the terms and provisions of this Agreement, as determined by the City, before the effective date of termination; provided, in no event shall the Consultant receive an amount exceeding that which would have been paid to Consultant for the full performance of the Services.

14. Hold Harmless, Defense and Indemnity.

If Consultant provides any architectural, landscape architectural, engineering or land surveying ("design professional") services, to the maximum extent permitted by law, Consultant shall hold harmless, defend, and

indemnify City, its legislative and advisory bodies, and the City's officials, directors, officers, employees, and agents (collectively, "Indemnitees") from and against any and all claims, demands, causes of action, damages, injuries, liabilities, losses, penalties, fines, judgments, costs or expenses, including reimbursement of attorneys' fees, court costs and costs of alternative dispute resolution, including but not limited to those relating to death or injury to any person and injury to any property (collectively, "Claims"), to the extent that the Claims arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant or of any of its officers, employees, subcontractors or agents in the performance of the Agreement or in the failure to comply with any of the obligations contained in this Agreement. Consultant's obligation to defend is a separate and distinct obligation from Consultant's duty to indemnify and applies through final judgment, including exhaustion of any appeals. Consultant shall be obligated to defend Indemnitees in all legal, equitable, administrative, or special proceedings, with counsel approved by the City Attorney, to the extent required herein immediately upon tender to Consultant of the Claim in any form or at any stage of an action or proceeding. The defense obligation includes the obligation to provide independent defense counsel if Consultant asserts that the liability is caused in whole or in part by the negligence or willful misconduct of any of the Indemnitees.

If Consultant provides no design professional services, to the maximum extent permitted by law, Consultant shall hold harmless, defend and indemnify the Indemnitees from and against any and all Claims, which arise out of, pertain to, or relate to the performance of this Agreement, or the failure to comply with any of the obligations contained in this Agreement, by Consultant or of any of its officials, directors, officers, employees, subcontractors, or agents. Consultant's obligation to defend is a separate and distinct obligation from Consultant's duty to indemnify and applies through final judgment, including exhaustion of any appeals. Consultant shall be obligated to defend Indemnitees in all legal, equitable, administrative, or special proceedings, with counsel approved by the City Attorney, immediately upon tender to Consultant of the Claim in any form or at any stage of an action or proceeding. The defense obligation includes the obligation to provide independent defense counsel if Consultant asserts that the liability is caused in whole or in part by the negligence or willful misconduct of any of the Indemnitees.

a. The review, acceptance or approval of Consultant's work or work product by any of the Indemnitees shall not affect, relieve or reduce Consultant's indemnification or defense obligations. This Section 14 shall survive completion of the Services or termination of this Agreement. The provisions of this Section 14 shall not be restricted by and does not affect the provisions of this Agreement relating to insurance.

15. Insurance. Consultant shall obtain and maintain during the performance of any services under this Agreement the insurance coverages listed within the insurance document stated in "(9) Insurance Coverage" on the Cover Page and in the Insurance Exhibit, which is attached hereto and incorporated herein by this reference, unless the City's Risk Manager waives, in writing, the requirement that Consultant obtain and maintain such insurance coverages. Consultant shall, before performance of any Services, file with the City's Risk Manager evidence of insurance coverage as specified in "(9) Insurance Coverage" on the Cover Page and in the Insurance Exhibit. Maintenance of insurance coverages by Consultant is a material element of this Agreement. Consultant's failure to maintain or renew insurance coverages or to provide renewal evidence, and any lapse in insurance coverage, may be considered a material breach of this Agreement.

16. Documents and Materials.

a. All final computations, exhibits, files, plans, correspondence, reports, drawings, designs, data, photographs, specifications, information, images, video files, media, or other deliverables prepared, created, drawn, calculated, photographed or developed by Consultant pursuant to this Agreement ("Documents and Materials") shall be the City's property without restriction or limitation upon its use, duplication or dissemination. All Documents and Materials shall be considered "works made for hire," and all Documents and Materials and any and all intellectual property rights arising from their creation, including, but not limited to, all copyrights and other proprietary rights, shall be and remain the property of the City without restriction or limitation upon their use, duplication or dissemination by the City. Consultant shall not obtain or attempt to obtain copyright protection as to any Documents and Materials. Consultant hereby assigns to the City all ownership and any and all intellectual property rights to the Documents and Materials that are not otherwise vested in the City pursuant to this Section 16.

b. Consultant shall deliver all Documents and Materials to City's Project Manager upon completion of the Services or termination of this Agreement without additional cost or expense to the City. Additionally, anytime at City's request, City shall be entitled to possession of, and Consultant shall furnish to City's Project Manager within 10 calendar days, any or all of the Documents and Materials without additional cost or expense to the City. In both situations, if Consultant prepares Documents and Materials on a computer, Consultant shall provide City with said Documents and Materials both in a printed format and in an electronic format that is acceptable to the City. Consultant may retain copies of these Documents and Materials but must request permission from the City before use, duplication or dissemination of these Documents and Materials for any purpose other than for the Services provided to the City pursuant to this Agreement.

c. Any substantive modification of the Documents and Materials by City staff or any use of the completed Documents and Materials for other City projects, or any use of incomplete Documents and Materials, without the written consent of Consultant, shall be at City's sole risk and without liability or legal exposure to Consultant.

d. Consultant warrants and represents that it has secured all necessary licenses, consents or approvals to use any instrumentality, thing or component as to which any intellectual property right exists, including computer software, used in the rendering of the Services and the production of all Documents and Materials, and that the City has full legal title to and the right to use, duplicate or disseminate the Documents and Materials. Consultant shall defend, indemnify and hold Indemnitees harmless from any loss, claim or liability in any way related to a claim that City's use of any of the Documents and Materials is violating federal, state or local laws, any contractual provisions, or any laws relating to trade names, licenses, franchises, copyrights, patents or other means of protecting intellectual property rights and/or interests in products or inventions. Consultant shall bear all costs arising from the use of patented, copyrighted, trade secret or trademarked documents, materials, equipment, devices or processes in connection with its provision of the services and Documents and Materials. In the event the use of any of the Documents and Materials by the City is held to constitute an infringement and the use of any of the same is enjoined, Consultant, at its own expense, shall: secure for City the right to continue using the Documents and Materials by suspension of any injunction, or by procuring a license or licenses for City; or modify the Documents and Materials so that they become non-infringing while remaining in compliance with the requirements of this Agreement.

e. This Section 16 shall survive the termination of this Agreement.

17. Confidentiality of Information.

a. For the purposes of this Agreement, "Confidential Information" means all information, in whatever form transmitted, relating to the past, present or future business affairs of the City, including without limitation, (i) technical information, including patent, copyright, trade secret, and other proprietary information, techniques, sketches, drawings, models, inventions, processes, apparatus, equipment, algorithms, software programs, software source documents, and formulas; or (ii) non-technical information, including without limitation finances, financial and accounting data and information, suppliers, customers, customer lists, purchasing data and any other information belonging to the City or to a third party whose information is in the City's possession or control under obligations of confidentiality, and which is disclosed to Consultant or is developed by Consultant in whole or in part at the City's expense.

b. All Documents and Materials shall be considered Confidential Information and shall not be reproduced, transmitted, disclosed or used by the Consultant without the written consent of the City, except as may be necessary for Consultant to fulfill its obligations to the City.

c. Notwithstanding the above, these limitations shall not apply to information that (i) is already known to Consultant at the time of that information's disclosure or becomes publicly known through no wrongful act or omission of Consultant, (ii) is communicated to a third party with the express written consent of City and is not subject to restrictions on further use or disclosure, (iii) is independently developed by Consultant and has no relation to this Agreement, or (iv) is required by law, court order, court-issued subpoena or other legal process to be disclosed; provided, however, that before making such disclosure, Consultant shall immediately provide City with

written notice and a reasonable opportunity for City to object to the disclosure or to take action to maintain the confidentiality of the information, unless such prior disclosure is legally impermissible.

d. Consultant shall use reasonable care to protect the Confidential Information. In the event of a breach or threatened breach of this Agreement, City shall be entitled to obtain an injunction prohibiting any such breach, the costs of which shall be paid by Consultant. Any relief granted shall be in addition to and not in lieu of any other legal or equitable relief, including money damages. The parties acknowledge that Confidential Information is valuable and unique and that disclosure of the Confidential Information in breach of this Agreement may result in irreparable injury to the City.

e. Other than an obligation upon the City to deal in good faith, the City makes no warranties and shall bear no liability or responsibility for errors or omissions in any Confidential Information disclosed under this Agreement or for any business decisions made by Consultant in reliance on any Confidential Information disclosed under this Agreement.

f. This Section 17 shall survive the termination of this Agreement.

18. Independent Contractor. Consultant is and shall at all times remain, as to City, a wholly independent contractor. Neither City nor any of its employees or agents shall have control over the conduct of Consultant or any of its employees, except as stated in this Agreement. Consultant has and shall retain the right to exercise full control over the employment, direction, means of performance, location, compensation and discharge of all persons assisting Consultant, and it is free to dispose of all portions of its time which it is not obligated to devote to City in such a manner and to such persons, firms, or corporations as Consultant wishes except as expressly provided in this Agreement. This Agreement shall not be interpreted to prevent or preclude Consultant from rendering any services for Consultant's own account or to any other person or entity as Consultant in its sole discretion shall determine; provided, however, that performing such services shall not materially interfere with the Services Consultant shall perform for the City. Except as City's Project Manager specifies in writing, Consultant and its employees and agents have no authority, express or implied, to act on behalf of City in any capacity, to incur any debt, obligation or liability on behalf of City, bind City in any manner, or otherwise act on behalf of City as an agent. Consultant and its employees are not employees of City. Consultant and its employees are not entitled to receive from City any of the benefits or rights afforded employees of City, including but not limited to reserve leave, sick leave, vacation leave, holiday leave, compensatory leave, Public Employees Retirement System benefits, and health, life, dental, long-term disability and workers' compensation insurance benefits. Consultant shall not, at any time or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of City. Consultant agrees to pay all required taxes on amounts paid to Consultant under this Agreement, and to indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant shall be solely responsible for, and shall save City harmless from, all matters relating to the payment of Consultant's subcontractors, material suppliers, directors, officers, employees, agents and representatives, including compliance with social security requirements, federal and State income tax withholding, and all other regulations governing employer-employee relations, as applicable. City shall have the right to offset against the amount of any compensation due to Consultant under this Agreement any amount due to City from Consultant as a result of its failure to promptly pay to City any reimbursement or indemnification arising under this Section 18.

19. Nondiscriminatory Employment. Consultant shall not unlawfully discriminate against any individual based on race, color, religion or religious creed, national origin, ancestry, ethnic group identification, primary language, physical disability, mental disability, medical condition, genetic information, marital status, gender, gender identity, gender expression, sex, sexual orientation, age, immigration status, citizenship or military and veteran status. Consultant understands and agrees that it is bound by and will comply with all legal nondiscrimination mandates. For every subcontractor who will perform Services, Consultant shall be responsible for such subcontractor's compliance with this Section 19.

20. Consultant's Representations. Consultant represents, covenants and guarantees that: a) Consultant is licensed, qualified, and capable of furnishing the labor, materials, and expertise necessary to perform the Services in accordance with the terms and conditions set forth in this Agreement; b) there are no obligations, commitments, or

impediments of any kind that will limit or prevent Consultant's full performance under this Agreement; c) to the extent required by the standard of practice, Consultant has investigated and considered the scope of Services performed, has carefully considered how the Services should be performed, and understands the facilities, difficulties and restrictions attending performance of the Services under this Agreement.

21. Compliance with Laws. In performing the Services under this Agreement, Consultant shall comply with all applicable laws, ordinances and regulations. Before providing any Services under this Agreement, Consultant shall, at its own expense, obtain and maintain all required certificates, licenses and permits, including a City business tax certificate.

22. Conflict of Interest. If, in performing the Services set forth in this Agreement, Consultant makes, or participates in, a "governmental decision" as described in Title 2, Section 18701(a)(2) of the California Code of Regulations, or performs the same or substantially all the same duties for City that would otherwise be performed by a City employee holding a position specified in City's conflict of interest code, Consultant shall be subject to City's conflict of interest code, the requirements of which include the filing of one or more statements of economic interests disclosing the relevant financial interests of Consultant's personnel providing the Services set forth in this Agreement. Furthermore, Consultant shall not to accept any employment or representation during the term of this Agreement or within 12 months after completion of the Services which is or may likely make Consultant "financially interested," as provided in California Government Code Sections 1090 and 87100, in any decisions made by City on any matter in connection with which Consultant has been retained pursuant to this Agreement.

23. Fictitious Name. If Consultant has a fictitious name, Consultant shall submit to City a new Fictitious Business Name Statement approved by any California county before Consultant's prior Fictitious Business Name Statement expires if such expiration may occur during the term of this Agreement, including any term amendment.

24. Non-Assignability. This Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's personnel's unique competence, experience and specialized personal knowledge. Consultant shall not assign or transfer any interest in this Agreement or any part thereof, whether by assignment or novation, without City's prior written consent, which may be withheld for any reason or for no reason at all. Any purported assignment without written consent shall be null, void, and of no effect, and Consultant shall hold harmless, defend and indemnify Indemnitees from and against all Claims arising from or relating to any unauthorized assignment.

25. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of Consultant.

26. Applicable Law; Venue. The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of California, excluding California's choice of law rules. Venue for any such action relating to the Agreement shall be in the Ventura County Superior Court.

27. Titles. The titles used in this Agreement are for convenience only and shall in no way define, limit or describe the scope or intent of this Agreement or any part of it.

28. Force Majeure. Neither City nor Consultant shall be responsible for delays or failures in performance resulting from acts beyond the control of either party. Such acts shall include but are not be limited to acts of God, riots, acts of war, epidemics, fire, earthquakes, or other disasters.

29. Authority. Any person executing this Agreement on behalf of Consultant warrants and represents that s/he has the authority to execute this Agreement on behalf of Consultant and to bind it to the performance of these obligations.

30. Binding Agreement. The parties do not intend this Agreement to be binding upon them and shall not be held liable to its terms until it is fully executed by all required signers.

31. Integration; Amendment. This Agreement, including any other documents incorporated herein by specific reference, constitutes the entire and integrated agreement of City and Consultant regarding the subject matter described herein. This Agreement supersedes all prior oral or written communications, negotiations, representations, agreements and promises. This Agreement may not be modified or amended, nor any provision or breach waived, except in a writing, signed by both parties, that expressly refers to this Agreement.
32. Construction. In the event of any asserted ambiguity in or dispute regarding the interpretation of any matter herein, the interpretation of this Agreement shall not be resolved by any rules of construction providing for interpretation against the party who causes the uncertainty to exist or who drafted the Agreement in whole or in part.
33. No Waiver. Waiver by either party of any one or more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by City of any payment to Consultant constitute or be construed as a waiver by City of any breach of covenant, or any default that may then exist on the part of Consultant, and the making of any such payment by City shall in no way impair or prejudice any right or remedy available to City with regard to such breach or default.
34. Attorneys' Fees. The prevailing party shall be entitled to recover reasonable costs, attorneys' fees (including the reasonable value of the services rendered by the City Attorney's Office) and expenses, including investigation fees and expert witness fees, in addition to any other relieve to which that party may be entitled, in any legal action or other proceeding, including an action for declaratory relief, for the enforcement of this Agreement or because of an alleged dispute, breach, default or misrepresentation in connection with this Agreement.
35. Notice. Except as otherwise required by law, a notice or communication authorized or required by this Agreement shall be in writing and shall be deemed received—on (a) the day of delivery if delivered by hand or overnight courier service during City's regular business hours or (b) the third business day following deposit in the United States mail, postage prepaid—to the addresses listed as "(10) Addresses for Notice" on the Cover Page or at such other address as one party may notify the other in writing.
36. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to be one and the same agreement. A signed copy of this Agreement transmitted by email to Project Managers' emails listed in "(11) Contact Emails" on the Cover Page or by other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement for all purposes.
37. Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

[Signatures on next page]

IN WITNESS WHEREOF, the parties hereto have executed the Agreement on the date that is written as “(1) Agreement Start Date” on the Cover Page.

CITY OF OXNARD

[VENDOR]

☐ John C. Zaragoza, Mayor¹ Date
☐ Alexander Nguyen, City Manager
☐ Daniel Willhite, Purchasing Agent
☐ , Buyer

_____,² Date

_____, Date

ATTEST:

Rose Chaparro, City Date
Clerk (only if Mayor signs)

APPROVED AS TO FORM:

Stephen M. Fischer, City Date
Attorney (always required)

¹ The City Council must authorize and the Mayor must sign any agreement over \$200,000 annually. The City Manager may authorize and sign any agreement over \$100,000 but up to \$200,000 annually. The Purchasing Manager may authorize and sign any agreement up to \$100,000 annually. A Buyer may authorize and sign any agreement up to \$25,000 annually.

² The City requires the following for any contract:

- For a corporation, the signatures of the Board President, CEO or Vice President and of the Board Secretary, Assistant Secretary, CFO or Assistant Treasurer;
- For an LLC, the signatures of at least two managers of the LLC; or
- For a partnership, the signature of a partner. If the partnership is a limited partnership, the signer must be a general partner.

If the company has a different structure, or if the above-listed persons are not the appropriate signers, please submit to the City Attorney legally-binding documentation stating who can sign and bind your company.

SCOPE OF SERVICES EXHIBIT

Consultant will provide both Outreach and Case Management and Administration of a Motel Voucher project to effectively support the City of Oxnard's strategies and efforts to provide a pathway into housing for persons living in identified encampments. The specific areas in which the Consultant will provide services are (1) Provide outreach services to persons experiencing homelessness living in encampments in the City of Oxnard. (2) Provide motel vouchers to persons experiencing homelessness in encampments that have been prioritized by the City of Oxnard. (3) Provide case management for persons experiencing homelessness who have been sheltered through the motel voucher program. These areas are detailed with more specificity below:

Consultant will provide the following services:

Outreach:

- Establishment of trusted relationships/communications, intake (HMIS), assessment of needs, solution-focused brief therapy, alcohol and drug assessment, referral and linkage to support services, Individual Service Plan development, access to immediate/emergency services, and linkages with the project's motel voucher and case management services.
- Assess individuals' needs and eligibility for available housing programs (including the Case Management and Motel voucher component), and provide linkages to the available housing programs

Motel Voucher Administration:

- Negotiation with motels for placement of persons experiencing homelessness, direct payment to motels for services, relationship building and problem/conflict resolution with motel operators, and prioritization of residents for placement based on city parameters.
- Administration of the motel voucher component will be provided to participants identified through the VCHCA Outreach component operations, or referral from the City of Oxnard, Homeless Assistance Program and other project partners.

Case Management:

- Placement of prioritized persons in motels, linkage/application assistance with more available permanent housing options, risk reduction by facilitating access to services for assessed needs, mitigation of difficulties among placed individuals with adapting to the transition from streets to a sheltered living situation, life skills and self-care education, counseling, mitigation of issues that arise with motels related to motel placement, connections with needed service providers, and linkage and transition facilitation with new housing network upon project transfer.

The Consultant will provide reports as required by the City:

- Documentation required by HUD, including quarterly HMIS reports
- Monthly Summary Reports
- Encampment Response Project participant summary reports (demographics, motel stay data and statistics, case management compiled data etc.)
- Final Project Evaluation Report
- Project budgetary expenditure reports and invoicing

RATES AND COSTS EXHIBIT

Compensation: For the term of this 12 month agreement, City shall compensate Consultant a not-to-exceed total of \$790,000, consisting of the following components:

(A) Outreach: not to exceed \$190,000

(B) Case Management, and Administration of Motel Vouchers: not to exceed \$600,000, of which a minimum of \$387,000 will be for motel vouchers.

In addition to the above, Consultant shall provide the following services in-kind:

- Outreach:
 - Project Director
 - Project Manager
- Case Management and Administration of Motel Vouchers
 - Project Director
 - Project Case Management Director
 - Project Manager

Terms of Payment: Payment by the City for services will be made only after the services have been performed and an invoice is submitted. Consultant shall invoice the City on a quarterly basis. The appropriate City representative must approve the invoice. The City will make payment on a monthly basis, thirty (30) days after receipt of the invoice.

INSURANCE EXHIBIT

(Following up with Risk Management for this)



CITY COUNCIL AGENDA REPORT
INFORMATION/CONSENT AGENDA
AGENDA ITEM NO. K.7

DATE: July 29, 2021

TO: City Council

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

SUBJECT: Award Agreement A-8359 to Avidex Industries, LLC for Council Chambers Production System Improvement Project PW 21-97.

RECOMMENDATION

That the City Council:

1. Approve and authorize the Mayor to execute Agreement A-8359 with Avidex Industries, LLC in the amount of \$833,227.20 for the Council Chambers Production System Improvement Project, Specification No. PW 21-97 (Project No. 211401).
2. Approve \$83,322 for project contingency for the Council Chambers Production System Improvement Project (Project No. 211401); and
3. Approve \$83,322 for engineering, inspection, survey and project management for the Council Chambers Production System Improvement Project (Project No. 211401).

(This item did not originate in Committee as this is a capital improvement project specifically listed in the City's Capital Improvement Program.)

BACKGROUND

The existing Production System in the Council Chambers is outdated, falling apart, and unreliable. It requires upgrading in order to provide a reliable, quality product for both in-person meetings and live broadcasts. The specific work needed to upgrade the Council Chamber production system includes: replacing the broadcast system; video systems including large chamber and small tabletop video displays; audio system including microphones and speakers; playback controller and system controls; and lighting.

Also included in the project scope are physical upgrades to the production system control room including: new consoles and equipment rack; the addition of a display screen and virtual meeting capabilities in the conference room; and installation of a new fully-enclosed modular interpreter booth located inside the Council Chamber.

Capital Improvement Program (CIP) Reference

Project No. **211401** - Council Chambers Remodel Project PW 21-97 - CIP 2021-2026 - Adopted May 18, 2021 – Page 44.

DISCUSSION

The notice inviting formal bids (NIFB) on the Project was published on July 1, 2021, and all bids were due on July 15, 2021. The City received three (3) bids for this project; however, two (2) of the bids were rejected. The only responsive

bid was from Avidex Industries, LLC. That bid came in at \$833,227.20.

Following the determination that Avidex Industries, LLC was the only remaining bidder with a responsive bid, procurement staff reviewed all documentation received from Avidex Industries, LLC, and procurement staff verified possession of required currently valid licenses, reviewed the federal Occupational Safety and Health Administration (OSHA) website for safety violations, and verified registration with the California Department of Industrial Relations (DIR). Staff has no reason at this time to believe that the contractor is not legally responsible, which means trustworthy and fit and capable to satisfactorily complete the project. Thus, staff recommends that the City Council award the contract for this Project to Avidex Industries, LLC.

The project includes Additive Item 1 for equipment and the base bid for work items to furnish all necessary labor to install, configure and provide training. Additive Item 1 includes the purchase of all equipment for the Council Chambers production improvement project as detailed in the bid documents. The total project costs are \$999,871.20, which includes Additive Item 1 of \$677,721.48, the base bid of \$155,505.72 and \$166.644 for additional funds. The additional funds is estimated in the amount of \$166,644 as needed for the project which includes \$83,322 for project contingency (10% of the contract costs) and \$83,322 for the cost for engineering services and City staff (10% of the contract cost) to perform the following activities during construction: engineering, inspection, survey and project management.

The tentative construction schedule is from August 2021 through September 2021. Staff will update the City Council and City Management on the construction progress and schedule during construction.

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 total cost for this Project shall not exceed \$999,871.20. The cost will be funded using PEG (Public, Educational and Governmental fees) and TAB (Tax Allocation Bond) Hero (Historic Enhancement and Revitalization of Oxnard) funds from Project 211401. There are sufficient funds available to fund this Project.

Project	Fund Number	Fund Name	Projects Appropriations	Available Budget
211401 - Council Chambers Production System Improvement Project	311	PEG Fees Capital Improvement Fund	\$1,300,000	\$1,138,015
	315	2006 TAB HERO/SW/ORMOND Fund	\$300,000	\$158,650
TOTAL			\$1,600,000	\$1,296,665

COMMITTEE OUTCOME

This item did not originate in Committee as this is a capital improvement project specifically listed in the City's Capital

Improvement Program.

Prepared by: Tatiana Arnaout, City Engineer

ATTACHMENTS

1. A-8359 AVIDEX PW 21-97

CONTRACT

CITY OF OXNARD CONTRACT FOR COUNCIL CHAMBERS PRODUCTION SYSTEM IMPROVEMENT PROJECT SPECIFICATION NO. PW 21-97

THIS CONTRACT ("Contract") is made and entered this _____ day of _____, 2021 ("Effective Date"), by and between the CITY OF OXNARD, a California municipal corporation ("City") and AVIDEX INDUSTRIES, LLC. ("Contractor"). Contractor's license number is 981651.

In consideration of the covenants set forth herein, the parties hereto agree as follows:

1. Incorporation. The Contract consists of all Contract Documents, which shall include the Notice Inviting Bids, Instructions to Bidders, General Provisions, Special Provisions, Plans, Standard Plans, Greenbook, Reference Specifications, Bid (including documentation accompanying the Bid and post-Bid documentation submitted before the notice of award), insurance documentation, Bonds, the City business license, permits from regulatory agencies, Addenda, Change Orders and Supplemental Agreements. These documents are incorporated herein by reference.
2. Scope of Services. Contractor shall perform the Work in a good and workmanlike manner for the project identified as Council Chambers Production System Improvement Project Specification No. PW 21-97 ("Project"), as described in this Contract and in the incorporated Contract Documents.
3. Compensation. In consideration of the services rendered hereunder, City shall pay Contractor a not to exceed amount of eight hundred thirty three thousand two hundred twenty seven dollars and twenty cents (\$833,227.20) in accordance with the prices as submitted in the Bid, attached hereto as Exhibit "A" and incorporated herein by this reference.
4. Antitrust Claims. In entering into this Contract, Contractor assigns to City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Business and Professions Code Section 16700 *et seq.*) arising from purchases of goods, services, or materials pursuant to the Contract. This assignment shall be made and become effective at the time City tenders final payment to Contractor without further acknowledgment by the parties.
5. Prevailing Wages. City and Contractor acknowledge that the Project is a public work to which prevailing wages apply. Copies of the prevailing rate of per diem wages for each craft, classification, or type of worker needed to perform the Project are on file with the Project Coordinator at City Hall and will be made available to any interested party on request. Contractor and all Subcontractors are not qualified to bid on, be listed in a Bid proposal, or engage in the performance of any contract for public work, as defined in Labor Code Sections 1720 through 1861, unless registered and qualified to perform public work pursuant to Labor Code Section 1725.5 at the time of Bid submission.
6. Workers' Compensation. Labor Code Sections 1860 and 3700 provide that every contractor will be required to secure the payment of compensation to its employees. In accordance with the provisions of Labor Code Section 1861, by signing this Contract, the Contractor certifies as follows: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance

in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the Work of this Contract.”

7. Titles. The titles used in this Contract are for convenience only and shall in no way define, limit or describe the scope or intent of this Contract or any part of it.

8. Authority. Any person executing this Contract on behalf of Contractor warrants and represents that he or she has the authority to execute this Contract on behalf of Contractor and has the authority to bind Contractor to the performance of its obligations hereunder.

9. Entire Agreement. This Contract, including all incorporated documents, constitutes the entire agreement between the parties hereto with respect to the Project, and supersedes all previous agreements, promises, proposals, representations, understandings and negotiations, whether written or oral, between the parties regarding the subject matter.

10. Amendment. No Contract modification, amendment or supplement to this Contract other than Change Orders will be binding unless written and signed by the parties' duly authorized representatives.

11. Counterparts. This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A signed copy of this Contract transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Contract for all purposes.

[signatures on following page]

IN WITNESS WHEREOF, the parties hereto have executed the Agreement on the first written above.

CITY OF OXNARD

AVIDEX INDUSTRIES, LLC

☒ John C. Zaragoza, Mayor¹ _____ Date _____
☐ Alexander Nguyen, City Manager
☐ Purchasing Manager
☐ [name] , Buyer

Gary Kolbeck, Manager² _____ Date _____

Jeff Davis, Manager _____ Date _____

ATTEST:

Rose Chaparro, City Clerk (only if Mayor signs) _____ Date _____

APPROVED AS TO FORM:

Stephen M. Fischer, City Attorney (always required) _____ Date _____

¹ The City Council must authorize and the Mayor must sign any agreement over \$200,000 annually. The City Manager may authorize and sign any agreement over \$100,000 but up to \$200,000 annually. The Purchasing Manager may authorize and sign any agreement up to \$100,000 annually. A Buyer may authorize and sign any agreement up to \$25,000 annually.

² The City requires the following for any contract:

- For a corporation, the signatures of the Board President, CEO or Vice President and of the Board Secretary, Assistant Secretary, CFO or Assistant Treasurer;
- For an LLC, the signatures of at least two managers of the LLC (company directors, not lower-level managers); or
- For a partnership, the signature of a partner. If the partnership is a limited partnership, the signer must be a general partner.

If the company has a different structure, or if the above-listed persons are not the appropriate signers, please submit to the City Attorney legally-binding documentation stating who can sign and bind your company.

Exhibit INS-D

INSURANCE REQUIREMENTS FOR SMALL/MEDIUM CONSTRUCTION AND SERVICES CONTRACTS (WITHOUT BUILDER'S RISK REQUIREMENT)

1 Contractor shall obtain and maintain during the performance of any services under this Contract the following insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of services hereunder by Contractor, its agents, representatives, employees or subcontractors.

- 1.1 Commercial General Liability Insurance, including Contractual Liability, 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 CG 0001). If a general aggregate limit is used, that limit shall apply separately to the project location or shall be twice the occurrence amount;
- 1.2 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 Insurance Services Office Automobile Liability Coverage (Occurrence Form CA0001) covering Code No. 1, "any auto;"
- 1.3 If architectural, engineering, or electrical work will be performed under the Contract, Professional Liability/Errors and Omissions Insurance appropriate to the work being done in an amount not less than \$1,000,000, with neither Contractor nor listed subcontractors having less than \$500,000 individually. The Professional Liability/Errors and Omissions Insurance must be project specific with at least a one-year extended reporting period, or longer upon request.
- 1.4 Workers' Compensation Insurance in compliance with the laws of the State of California, and Employer's Liability Insurance in an amount not less than \$1,000,000 per claimant. Additionally, the workers' compensation policy shall include a waiver of all rights of subrogation which the insurer may have against the City.

2 Contractor shall, prior to performance of any services, file with the Risk Manager certificates of insurance with original endorsements effecting coverage required by this Exhibit INS-D. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on the attached forms or on other forms approved by the Risk Manager. All certificates and endorsements are to be received and approved by the Risk Manager before work commences. City reserves the right to require complete certified copies of all required insurance policies at any time. The certificates of insurance and endorsements shall be sent via email (or fax if necessary) to the Risk Manager, addressed as follows (do not send hard copies):

City of Oxnard
Insurance Compliance
Reference No. A-8359
P.O. Box 100085 – OX
Duluth, GA 30096
Via Email: cityofoxnard@ebix.com
Via Fax: 678-259-1007

3 Contractor agrees that all insurance coverages shall be provided by a California admitted insurance carrier with an A.M. Best rating of A:VII or better and shall be endorsed to state that coverage may not be suspended, voided, canceled by either party, or reduced in coverage or limits without 30 days' prior written notice to the Risk Manager. The Risk Manager shall not approve or accept any endorsement if the endorsement contains "best effort" modifiers or if the insurer is relieved from the responsibility to give such notice.

4 Contractor agrees that the Commercial General Liability and Business Automobile Liability Insurance policies shall be endorsed to name City, its City Council, officers, employees and volunteers as additional insureds as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City, its City Council, officers, employees and volunteers. **The General Liability Special Endorsement Form and Automobile Liability Special Endorsement Form attached to this Exhibit INS-D or substitute forms containing the same information and acceptable to the Risk Manager shall be used to provide the endorsements (ISO form CG 2010 11/85 or if not available, CG 2010 with an edition date prior to 01/04 and CG 2037).**

5 The coverages provided to City shall be primary and not contributing to or in excess of any existing City insurance or self-insurance coverages (**this must be endorsed**). Additionally, the workers' compensation policy shall include a waiver of all

rights of subrogation which the insurer may have against the City. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its City Council, officers, employees and volunteers. The insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6 Any deductibles or self-insured retentions must be declared to and approved by the Risk Manager. At the option of the Risk Manager, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its City Council, officers, employees and volunteers, or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

7 All insurance standards applicable to Contractor shall also be applicable to Contractor's subcontractors. Contractor agrees to maintain appropriate agreements with subcontractors and to provide proper evidence of coverage upon receipt of a written request from the Risk Manager.

INSTRUCTION FOR SUBMITTING INSURANCE CERTIFICATES AND ENDORSEMENT FORMS

Certificates of Insurance

The sample accord form on the following page is provided to facilitate your preparation and submission of certificates of insurance. You may use this or any industry form that shows coverage as broad as that shown on the attached sample. **Please note the certificate holder address must be as shown on the attached sample accord form with the contract number and insurance exhibit identification information completed.** Improperly addressed certificates may delay the contract start-up date because the City's practice is to return unidentifiable insurance certificates to the insured for clarification as to the contract number. **Cancellation provisions must be endorsed to the policy. Modifying the certificate does not change coverage or obligate the carrier to provide notice of cancellation.**

Endorsement Forms

Original endorsements are required for general liability and automobile liability insurance policies and must be attached to the applicable certificate of insurance. City preference is that you use the endorsement forms which are attached. Substitute forms will be accepted, however, as long as they include provisions comparable to the attached.

ACORD CERTIFICATE OF INSURANCE

ISSUE DATE (MM/DD/YY)

PRODUCER

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

CODE

SUB-CODE

COMPANIES AFFORDING INSURANCE COVERAGE

INSURED

COMPANY

LETTER **A**

SPECIFY COMPANY NAMES IN THIS SPACE

COMPANY

LETTER **B****COVERAGES**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY [x] COMMERCIAL GENERAL LIABILITY [x] CLAIMS MADE [x] OCCUR. [x] OWNER'S & CONTRACTOR'S PROT.				GENERAL AGGREGATE \$1,000,000 PRODUCTS COMP/OP AGG. \$1,000,000 PERSONAL & ADV. INJURY \$1,000,000 EACH OCCURRENCE \$1,000,000 FIRE DAMAGE (Any one fire) \$ MED. EXPENSE (Any one person) \$
A	AUTOMOBILE LIABILITY [x] ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS GARAGE LIABILITY				COMBINED SINGLE LIMIT \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$
A	EXCESS LIABILITY UMBRELLA FORM OTHER THAN UMBRELLA FORM				EACH OCCURRENCE \$ AGGREGATE \$
A	WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY				STATUTORY LIMITS EACH ACCIDENT \$1,000,000 DISEASE-POLICY LIMIT \$1,000,000 DISEASE-EACH EMPLOYEE \$1,000,000
A	OTHER Errors and omissions insurance or malpractice insurance available for the insured's profession; if architectural, engineering or electrical work will be performed under the Agreement				Minimum coverage \$1,000,000 Each consultant/ \$500,000 & listed sub-consultant

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/RESTRICTIONS/SPECIAL ITEMS

CERTIFICATE HOLDER

CITY OF OXNARD

Attn: Insurance Compliance

Reference No. ___ A-8359 ___

P.O. Box 100085 – OX

Duluth, GA 30096

Via Email: cityofoxnard@ebix.com

Via Fax: 678-259-1007

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

SUBMIT IN DUPLICATE

ENDORSEMENT NO.

ISSUE DATE (MM/DD/YY)

PRODUCER

POLICY INFORMATION:

Insurance Company:
Policy No.:
Policy Period: (from) (to)
LOSS ADJUSTMENT EXPENSE ☐ Included in Limits
☐ In Addition to Limits

Telephone:

NAMED INSURED

☐ Deductible ☐ Self-Insured Retention (check which) of \$ _____
with an Aggregate of \$ _____ applies to _____
coverage. ☐ Per Occurrence ☐ Per Claim (which)

APPLICABILITY This insurance pertains to the operations, products and/or tenancy of the named insured under all written agreements and permits in force with the City unless checked here ☐ in which case only the following specific agreements and permits with the City are covered:

TYPE OF INSURANCE

CITY AGREEMENTS/PERMITS

GENERAL LIABILITY

- ☐ COMMERCIAL GENERAL LIABILITY
- ☐ COMPREHENSIVE GENERAL LIABILITY
- ☐ OWNERS & CONTRACTORS PROTECTIVE

☐ Claims Made
Retroactive Date _____
☐ Occurrence

OTHER PROVISIONS

COVERAGES

LIABILITY LIMITS IN THOUSANDS \$

EACH OCCURRENCE

AGGREGATE

- ☐ GENERAL
- ☐ PRODUCTS/COMPLETED OPERATIONS
- ☐ PERSONAL & ADVERTISING INJURY
- ☐ FIRE DAMAGE
-
- ☐
- ☐

Underwriter=s representative for claims pursuant to this insurance.

CLAIMS:

Name: _____
Address: _____
Telephone: () _____

In consideration of the premium charged and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any endorsement now or hereafter attached thereto, insurance company agrees as follows:

INSURED. The City, its officers, agents, employees and volunteers are included as insureds with regard to liability and defense of suits arising from the operations, products and activities performed by or on behalf of the named insured.

CONTRIBUTION NOT REQUIRED. As respects: (a) work performed by the named insured for or on behalf of the City; or (b) products sold by the named insured to the City; or (c) premises leased by the named insured from the City, the insurance afforded by this policy shall be primary insurance as respects the City, its officers, agents, employees or volunteers; or stand in an unbroken chain of coverage excess of the named insured's scheduled underlying primary coverage. In either event, any other insurance maintained by the City, its officers, agents, employees or volunteers shall be in excess of this insurance and shall not contribute with it.

SEVERABILITY OF INTEREST. This insurance applies separately to each insured against whom claim is made or suit is brought except with respect to the company's limits of liability. The inclusion of any person or organization as an insured shall not affect any right which such person or organization would have as a claimant if not so included.

CANCELLATION NOTICE. With respect to the interests of the City, this insurance shall not be canceled, or materially reduced in coverage or limits except after thirty (30) days prior written notice by receipted delivery has been given to the City.

PROVISIONS REGARDING THE INSURED'S DUTIES. Any failure to comply with reporting provisions of the policy or breaches or violations of warranties shall not affect coverage provided to the City, its officers, agents, employees or volunteers.

SCOPE OF COVERAGE. This policy, if primary, affords coverage at least as broad as:

Insurance Services Office Commercial General Liability Coverage, "occurrence" form CG0001; or

If excess, affords coverage which is at least as broad as the primary insurance form CG0001.

Except as stated above nothing herein shall be held to waive, alter or extend any of the limits, conditions, agreements or exclusions of the policy to which this endorsement is attached.

ENDORSEMENT HOLDER

CITY OF OXNARD

Attn: Insurance Compliance

Reference No. A-8359

P.O. Box 100085 – OX

Duluth, GA 30096

Via Email: cityofoxnard@ebix.com

Via Fax: 678-259-1007

AUTHORIZED REPRESENTATIVE

☐ Broker/Agent ☐ Underwriter ☐ _____

I _____ (print/type name), warrant that I have authority to bind the above-mentioned insurance company and by my signature hereon do so bind this company to this endorsement.

Signature _____
(original signature required)

Telephone: () Date Signed _____

Bond No. _____

PAYMENT BOND
(LABOR AND MATERIALS)

KNOW ALL PERSONS BY THESE PRESENTS that:

WHEREAS the City of Oxnard ("Agency"), State of California, has awarded to _____

____ (“Principal”)

(Name and address of Contractor)

a contract (the "Contract") for the Work described as COUNCIL CHAMBERS PRODUCTION SYSTEM IMPROVEMENT PROJECT SPECIFICATION NO. PW 21-97.

WHEREAS, under the terms of the Contract, the Principal is required before entering upon the performance of any Work, to file a good and sufficient Payment Bond with the Agency to secure the claims to which reference is made in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code.

NOW, THEREFORE, we, the undersigned Principal, and _____

(Name and address of Surety)

a corporation organized and existing under the laws of the State of _____
 ("Surety") a duly admitted surety insurer under the laws of the State of California, as Surety, and
 our heirs, assignees, successors, executors and administrators are held and firmly bound,
 jointly and severally, unto the Agency and all Contractors, Subcontractors, laborers, material
 suppliers, and other persons employed in the performance of the Contract and referred to in
 Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code in the penal sum
 of _____ Dollars (\$ _____), this
 amount being not less than a hundred percent (100%) of the total Contract Price in lawful
 money of the United States of America, for materials furnished or labor thereon of any kind, or
 for amounts due under the Unemployment Insurance Act with respect to this Work or labor, that
 the Surety will pay the same in an amount not exceeding the amount hereinabove set forth, and
 also in case suit is brought upon this Bond, will pay, in addition to the face amount thereof, costs
 and reasonable expenses and fees, including reasonable attorneys' fees, incurred by Agency in
 successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as
 costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this Bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this Bond.

Upon expiration of the time within which the California Labor Commissioner may serve a civil wage and penalty assessment against the principal, any of its Subcontractors, or both the principal and its Subcontractors pursuant to Labor Code Section 1741, and upon expiration of the time within which a joint labor management committee may commence an action against the principal, any of its Subcontractors, or both the principal and its Subcontractors pursuant to

Labor Code Section 1771.2, if the condition of this Bond be fully performed, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

The Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract, including all incorporated documents, shall in any manner affect its obligations on this Bond. The Surety hereby waives notice of any such change, extension, alteration, or addition. Additionally, the Surety hereby waives California Civil Code 2845 and 2849 as well as any statutes of limitation, statutes of repose and laches as they may apply to an action on this Bond.

IN WITNESS WHEREOF, this instrument has been duly executed by Principal and Surety, on the date set forth below, the name of each party being hereto affixed and these presents duly signed by its undersigned representative(s) pursuant to authority of its governing body.

Dated: _____

“Principal”

“Surety”

By: _____

By: _____

Its: _____

Its: _____

By: _____

By: _____

Its: _____

Its: _____

(Seal)

(Seal)

Notes: This Bond must be executed in duplicate and dated, all signatures must be notarized, and evidence of the authority of any person signing as attorney-in-fact must be attached. Date of Bond must not be before the Effective Date of the Contract. Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of California.

Bond No. _____

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS that:

WHEREAS the City of Oxnard ("Agency"), has awarded to _____

(“Principal”)

(Name and address of Contractor)

a contract (the "Contract") for the Work described as COUNCIL CHAMBERS PRODUCTION
SYSTEM IMPROVEMENT PROJECT SPECIFICATION NO. PW 21-97.

WHEREAS, Principal is required under the terms of the Contract to furnish a Bond for the faithful performance of the Contract.

NOW, THEREFORE, we, the undersigned Principal, and _____

(Name and address of Surety)

a corporation organized and existing under the laws of the State of _____
 ("Surety") a duly admitted surety insurer under the laws of the State of California, as Surety, are
 held and firmly bound unto the Agency in the penal sum of _____

_____ Dollars (\$ _____), this amount being not less than a hundred percent (100%) of the total Contract Price in lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, assignees, successors, executors and administrators, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if the hereby bounded Principal, his, her or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the Contract and any alteration thereof made as therein provided, on the Principal's part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the Agency, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void one (1) year from the date of recordation of the Notice of Completion for the Project; otherwise, it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by Agency in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered. Surety hereby waives any statutes of limitation, statutes of repose and laches as they may apply to an action on this Bond.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract, including all incorporated documents, or of the Work to be performed thereunder or the Specifications accompanying the same shall in any way affect the Surety's obligations under this Bond. The Surety hereby waives notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Work or to the

Specifications. Surety hereby waives California Civil Code 2845 and 2849. The City is the principal beneficiary of this Bond and has all rights of a party hereto.

IN WITNESS WHEREOF, this instrument has been duly executed by Principal and Surety, on the date set forth below, the name of each party being hereto affixed and these presents duly signed by its undersigned representative(s) pursuant to authority of its governing body.

Dated: _____

“Principal”

“Surety”

By: _____

By: _____

Its: _____

Its: _____

By: _____

By: _____

Its: _____

Its: _____

(Seal)

(Seal)

Notes: This Bond must be executed in duplicate and dated, all signatures must be notarized, and evidence of the authority of any person signing as attorney-in-fact must be attached. Date of Bond must not be before the Effective Date of the Contract. Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of California.

CITY OF OXNARD

**BID SHEETS FOR COUNCIL CHAMBERS PRODUCTION SYSTEM
IMPROVEMENT PROJECT
SPECIFICATION NO. PW 21-97**

Bidder's Name: Avidex Industries LLC

To the Honorable Mayor and Members of the City Council:

In compliance with the Notice Inviting Bids, the undersigned hereby agrees to execute the Contract to furnish all labor, materials, equipment and supplies for the Project in accordance with the Contract Documents to the satisfaction and under the direction of the City Engineer at the following prices:

BASE AMOUNT:

ITEM NO.	DESCRIPTION	UNIT OF MEASURE	PRICE
1.	Install, configure and provide training for all Council Chambers equipment as listed in Special Provisions Schedule A	LS	\$ 155,505.72
TOTAL BASE AMOUNT:			\$ 155,505.72

ADDITIVE ITEM 1:

ITEM NO.	DESCRIPTION	UNIT OF MEASURE	Price
1.	Purchase of all equipment for the Council Chambers as listed in Special Provisions Schedule A.	LS	\$ 677,721.48
TOTAL ADDITIVE ITEM 1:			\$ 677,721.48

Note: Several items may be adjusted or deleted. Any changes to the quantities for these items shall not classify as a substantial change as stipulated in Greenbook Section 7-3.5.1. Regardless of total actual volume compared to estimated quantities, the unit prices provided above shall be applied to the final quantity when payment is calculated for these items. No adjustment in the unit prices will be allowed. The City reserves the right to not use any of the estimated quantities, and if this right is exercised, the Contractor will not be entitled to any additional compensation. The cost of all labor, materials, export of material shall be included in the above unit costs; no additional compensation will be granted for such expenses.

TOTAL BID PRICE = BASE AMOUNT + ADDITIVE ITEM 1

TOTAL BID PRICE IN DIGITS: \$ 833,227.20

TOTAL BID PRICE IN WORDS: eight hundred thirty three thousand two hundred twenty seven dollars & 20/100

*** The lowest Bid will be determined on the basis of the lowest base amount including the Base Amount Total and Additive Item 1.

Contractor must complete all Work within sixty (60) Working Days of the City's Notice to Proceed.

Bidder acknowledges receipt of all addenda

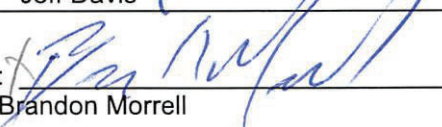
Addendum:	Date Received:
#01	<u>7-9-2021</u>
#02	<u>7-15-2021</u>

Addendum:	Date Received:
#03	<u> </u>
#04	<u> </u>

Bidder's Name (Company): Avidex Industries LLC

Signature: 
Print: Jeff Davis

Title: CEO
Date: 7-13-2021

Signature: 
Print: Brandon Morrell

Title: General Manager
Date: 7-13-2021



CITY COUNCIL AGENDA REPORT

PUBLIC HEARINGS AGENDA ITEM NO. L.1

DATE: July 29, 2021

TO: City Council

FROM: Stephen Fischer, City Attorney, (805) 385-7483, stephen.fischer@oxnard.org

SUBJECT: Public Hearing regarding Redistricting of City Council Districts. (15/20/20) - **Time Certain 7:00 PM.**

RECOMMENDATION

That the City Council conduct a public hearing to:

1. Receive a report on the redistricting process for City Council Districts and the criteria to be considered to redraw City Council district boundaries; and
2. Receive public input regarding the composition of one or more Council districts.
(Presentation will be live upon consultant's request.)

BACKGROUND

Following each federal decennial census, cities with by-district elections are required to use that new census data to review and redraw district lines to reflect population changes. This process, called redistricting, ensures that all districts within a city have nearly an equal number of people residing within each district.

Council districts are a very recent addition in the City of Oxnard. From the City's incorporation in 1903 until 2016, members of the City Council were elected on an at-large basis. The City Council adopted the existing Council districts on March 6, 2018, after an extended public process that included six public hearings and a community workshop. The public process also included the City Council's consideration of 39 qualifying maps submitted by the public that met the basic qualifications for a district map (number of districts, contiguous district boundaries, and population balanced).

Although the City recently went through the districting process, the Council districts created in 2018 reflected the population totals from the 2010 census. Under state law, public entities with elections in November 2022 have until April 17, 2022, to adopt district maps that reflect the changes in population indicated in the 2020 census (as modified by the State of California to reflect the original residency of persons incarcerated in California's prisons).

The City's redistricting process is a standalone process that is not connected to the redistricting that will occur at a state level (including for Congressional, Assembly, and state Senate districts) or at the County level (for the Supervisorial districts). The City's process will only address any necessary rebalancing of the Council district boundaries that will now occur once a decade after the U.S. Census.

Under recently adopted state laws (AB 849 and AB 1276), when the City Council goes through the redistricting process, the Council is required to draw and adopt boundaries using the following criteria in the listed order of priority:

1. Substantially equal in population for each of the districts.
2. Complies with the U.S. Constitution, the California Constitution and the federal Voting Rights Act.
3. Geographically contiguous.

4. Minimize the division of local neighborhoods and local communities of interest. (The law defines a “community of interest” as a population that shares common social or economic interests.)
5. Create district boundaries that residents can easily identify and understand. (These would include natural or artificial barriers such as streets, highways, rivers or rail lines, or the boundaries of the city.)
6. Districts that are compact in size.
7. District boundaries that are not adopted to favor or discriminate against a political party. (Elections Code Section 21601.)

Once the prioritized criteria are met, other traditional districting principles can be considered, such as:

1. Minimize the number of voters delayed from voting from 2022 to 2024; and
2. Future population growth.

As part of the redistricting process, the City is required to hold at least four public hearings or workshops, with at least one of these public hearings or workshops held before any of the new district maps are drawn. Among other statutory requirements, at least one hearing must occur on a Saturday, Sunday, or after 6 p.m. on a weekday.

ANALYSIS

The City has contracted with National Demographics Corporation, the demographer that assisted in the City's prior districting process.

The purpose of tonight’s public hearing is to inform the public about the upcoming redistricting process and to receive input regarding the composition of one or more Council districts.

The public is also invited to provide input regarding communities of interest and other local factors that should be considered while drafting revised district maps. A community of interest under the relevant Elections Code section relating to cities (Section 21601(c)) is “a population that shares common social or economic interests that should be included within a single district for purposes of its effective and fair representation.” Examples of possible features defining a community of interest could include (without limitation):

1. School attendance areas;
2. Natural dividing lines such as major roads, hills, or highways;
3. Areas around parks and other neighborhood landmarks;
4. Common issues, neighborhood activities, or legislative/election concerns; and
5. Shared demographic characteristics, such as similar levels of income, education, or linguistic isolation; languages spoken at home; or single-family and multi-family housing unit areas.

The public will have additional opportunities to provide input on the redistricting process through the use of the Maptitude Online Redistricting -- an online mapping tool that can be used to draw revised district maps. It is anticipated that this tool will be available by the end of August. As with the 2017/2018 districting process in Oxnard, members of the public will also have the opportunity to draw proposed redistricting maps for submittal to the City Council for its consideration using a paper mapping system that does not require computer access.

Staff recommends that the City Council conduct additional public hearings on redistricting as follows:

1. Second public hearing -- Thursday, September 30 at 6:00 p.m.
2. Third public hearing -- Monday, December 6 at 6:00 p.m.
3. Fourth public hearing -- Saturday, January 22 at 10:00 a.m.
4. Fifth public hearing -- Thursday, February 24 at 6:00 p.m.

Based upon this schedule, the City Council would consider the final adoption of the Council district map at the regular City Council meeting on Tuesday, March 15, 2021.

STRATEGIC PRIORITIES

This agenda item is a routine operational item or does not relate to the five strategic priorities adopted by City Council on March 16, 2021.

FINANCIAL IMPACT

The agreement with National Demographics Corporation is for a not-to-exceed amount of \$50,000.

COMMITTEE OUTCOME

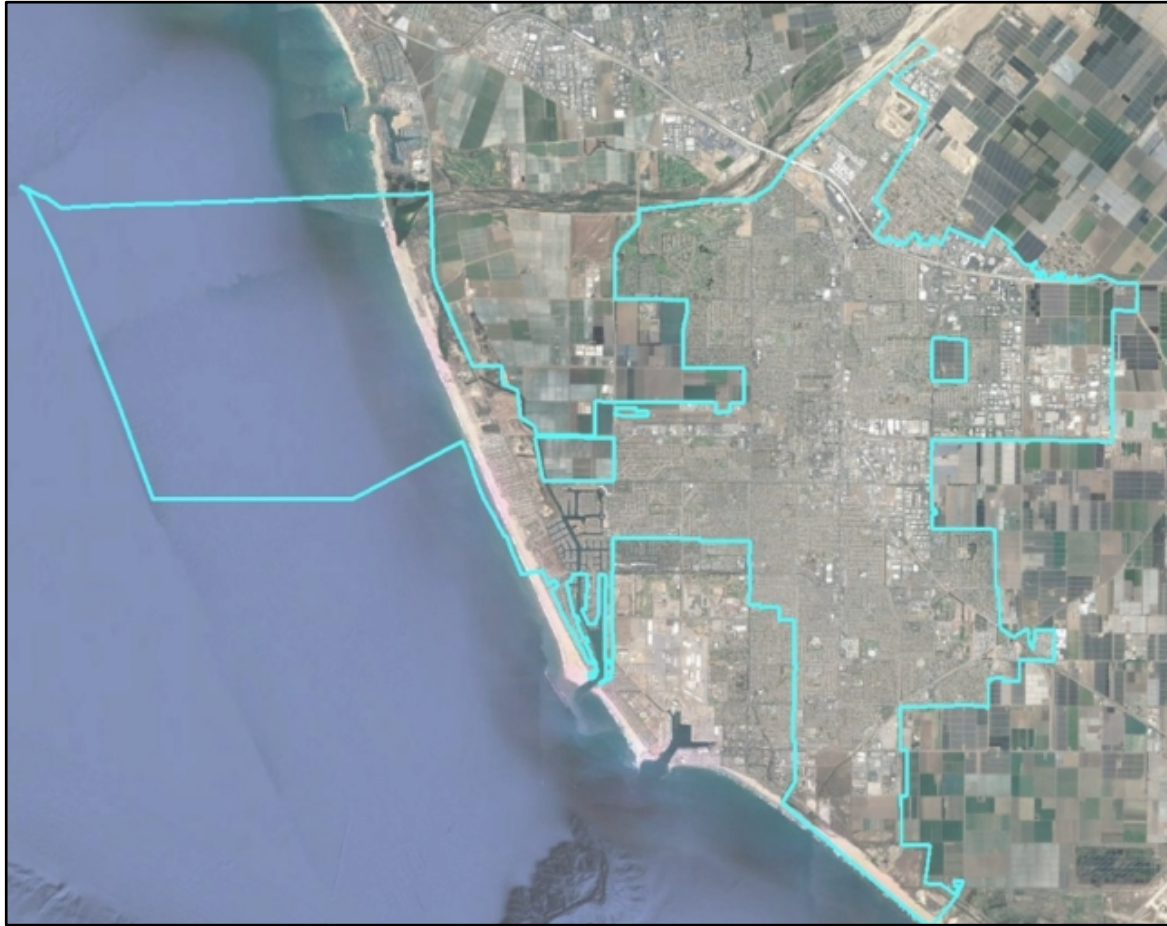
This item did not originate in Committee.

Prepared by: Kenneth Rozell, Chief Assistant City Attorney, Stephen Fischer, City Attorney, Jason Zaragoza, Deputy City Attorney

ATTACHMENTS

1. PH1 Redistricting Intro 7-2-21 KP
2. 20190AB849_91

City of Oxnard

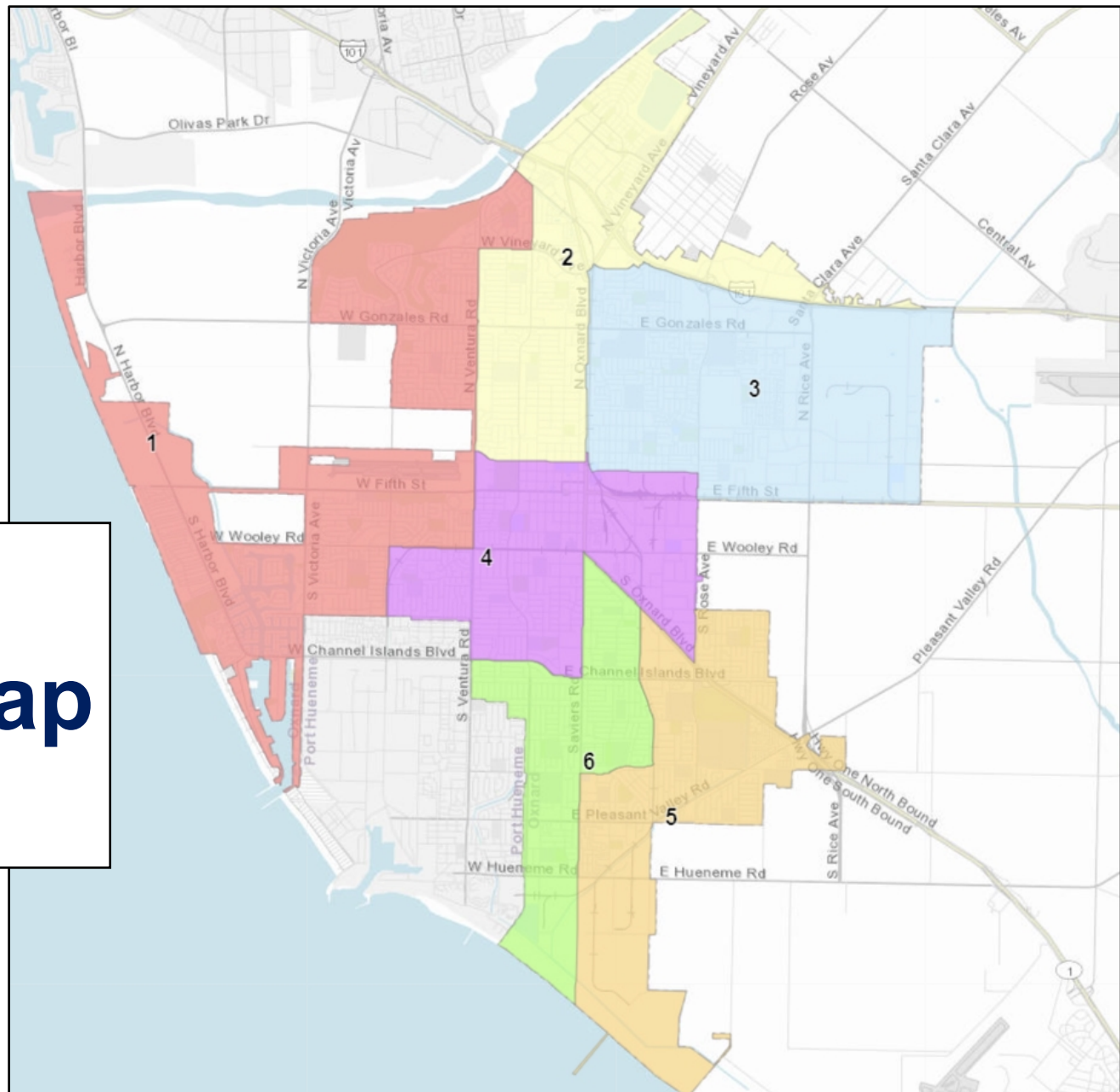


2021 Redistricting

Districting vs. Redistricting

Date	Event
October 7, 2017	City received letter claiming violation of the California Voting Rights Act (CVRA) because Council members were elected at-large rather than by districts
November 27, 2017	Council passed resolution to change to district elections
March 6, 2018	Council passed ordinance approving district boundaries
2021	Districts will be redrawn to reflect 2020 Census data
2022	First election with new district boundaries

Current District Map (2018)



2021 Redistricting Timeline

Date	Event(s)
July 29, 2021	1 st Public Hearing to educate the public on the redistricting process and solicit input on “communities of interest”
Mid-August 2021	Expected release of 2020 Census data
End of September	Expected release of California adjusted data
September - October	2 nd Public Hearing to present demographic analysis and demo public mapping tools
October - December	Time for public to draw draft maps
January - March 2022	At least 2 public hearings to discuss and revise draft maps
April 17, 2022	Statutory deadline to adopt map (E-205)
November 8, 2022	First election with new map

Legal Requirements & Other Goals

1. Federal Law

- ✓ Ensure equal population
- ✓ Comply with federal Voting Rights Act
- ✓ Prevent racial gerrymandering

2. California Law

1. Ensure geographic **contiguity**
 2. Minimize division of neighborhoods & “**communities of interest**”
 3. Create easily identifiable boundaries
 4. Maintain **compactness**
- ✓ Do not “favor or discriminate against a political party”

3. Other Goals

- Minimize changes to election cycles
- Respect voters’ choices
- Preserve core of existing districts
- Anticipate future growth

Do not bypass a nearby population to take in a more distant population

Defining Neighborhoods



What is your neighborhood?

What are its geographic boundaries?

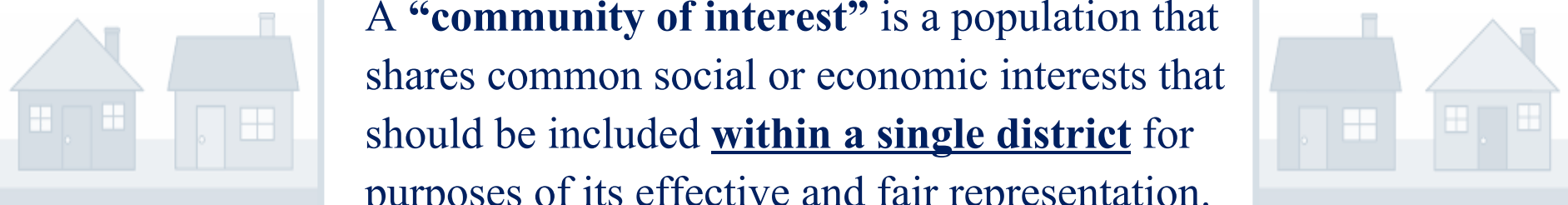
Examples of physical features defining a neighborhood boundary:

- Natural neighborhood dividing lines, such as highway or major roads, rivers, canals and/or hills
- Areas around parks or schools
- Other neighborhood landmarks

In the absence of public testimony, planning records and other similar documents may provide definition.

Beyond Neighborhoods: Defining “Communities of Interest”

Under California Elections Code, “**community of interest**” has a very specific definition in the context of redistricting:



A “**community of interest**” is a population that shares common social or economic interests that should be included within a single district for purposes of its effective and fair representation.

Definitions of “communities of interest” do **not** include relationships with political parties, incumbents, or political candidates.

What Defines YOUR Community?

Ask yourself...

What brings us together?

- Common social or economic interests
- Shared characteristics or experiences
- Similar issues or impacts of city policies

+

Where are we?

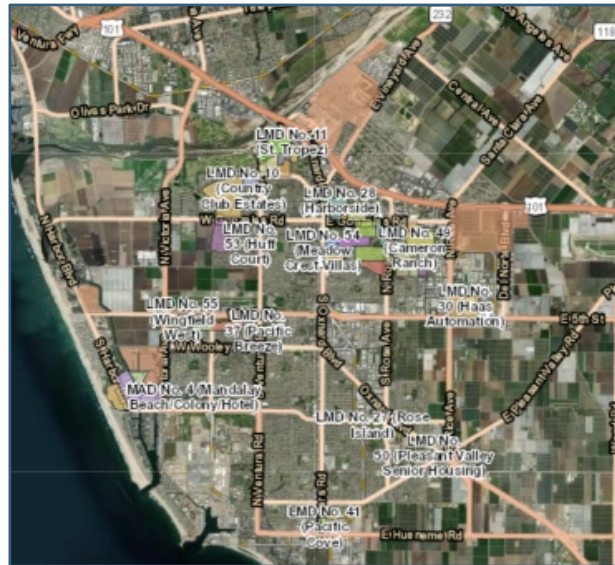
- Physical boundaries, such as highways or major roads, waterways, hills, etc.
- Areas around parks, schools, or other landmarks

→ Would my community be best represented within a single district?

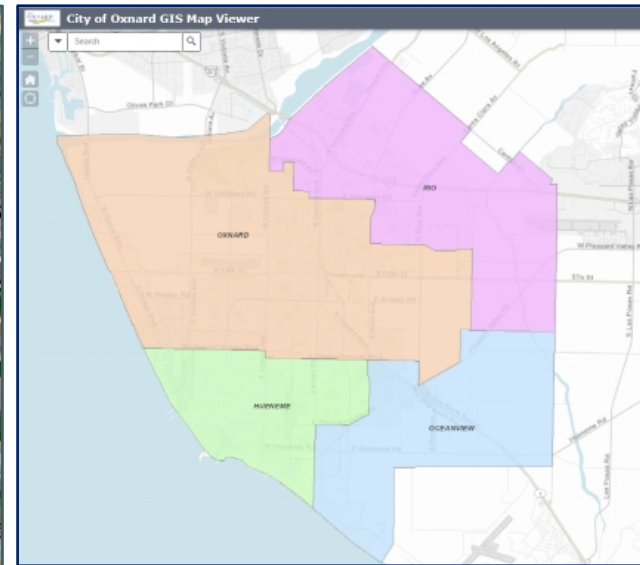
Possible Communities of Interest



General Plan Areas



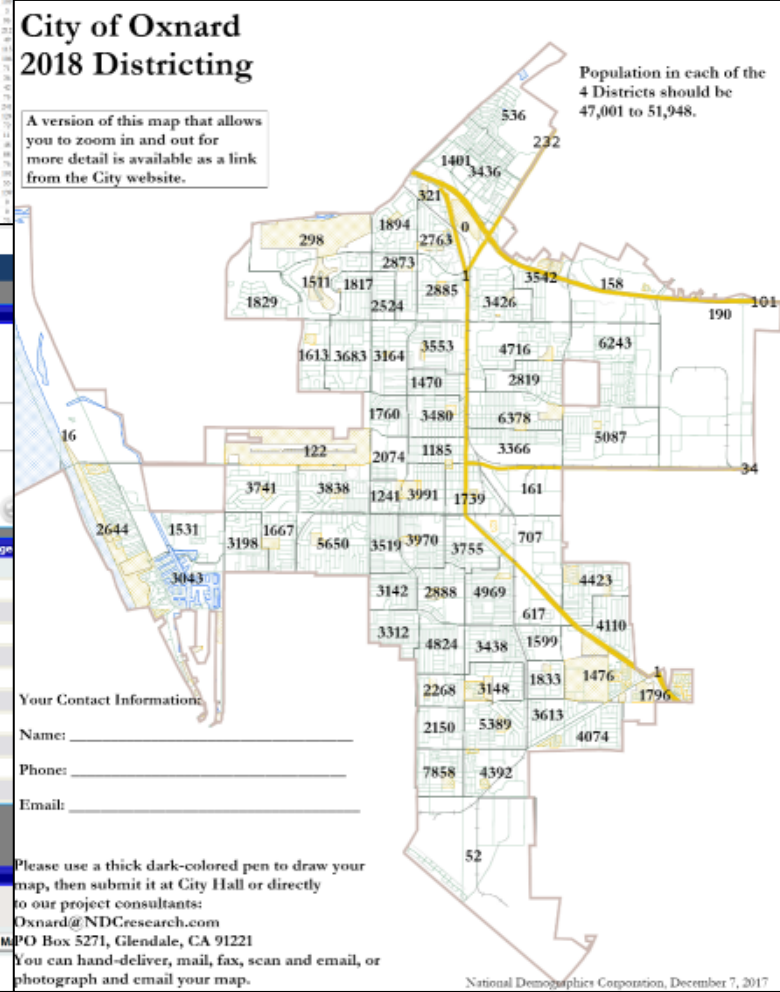
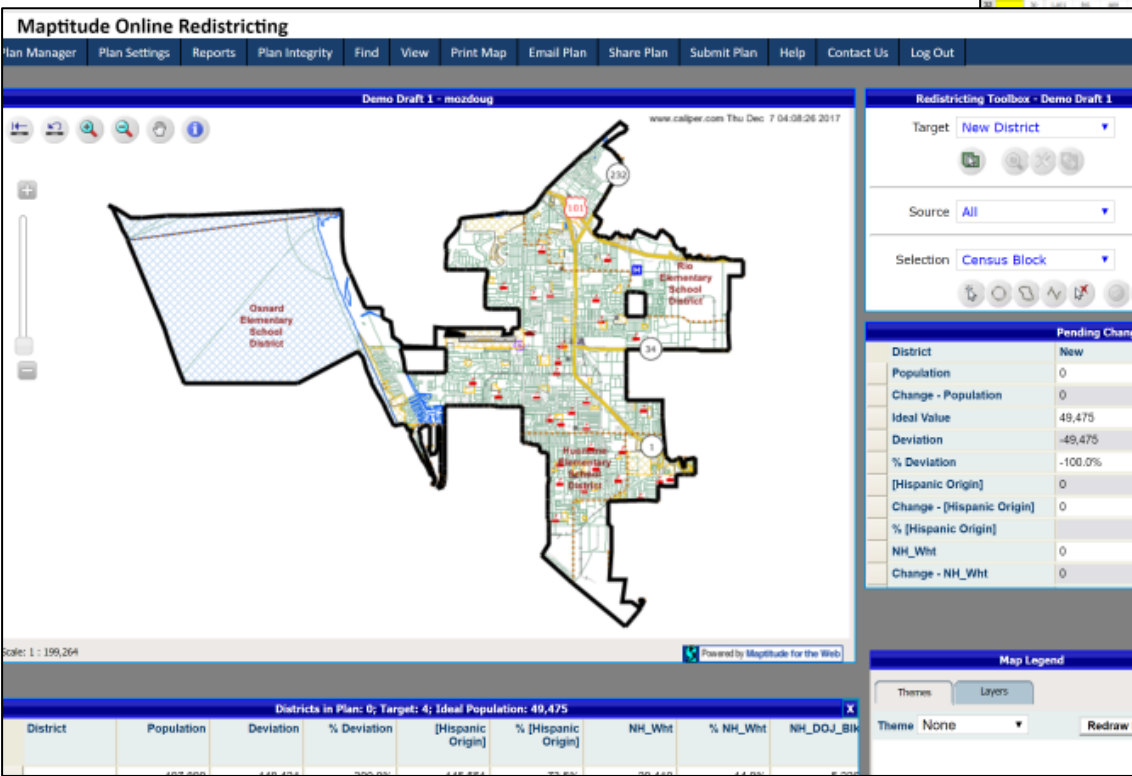
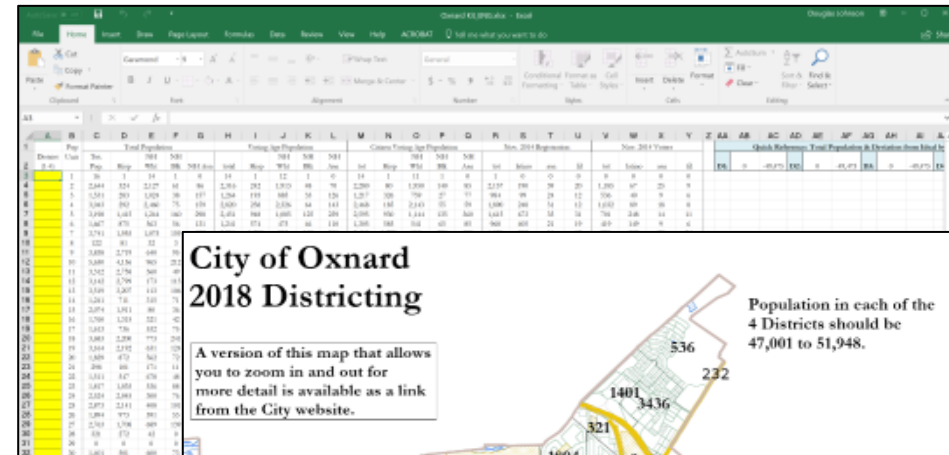
Assessment Districts



School Districts

Public Mapping Tools

- Use the paper map, the online tool, or any other map
- Draw your community of interest, draw the district you want for your area, or draw an entire citywide map



Caliper's “Maptitude Online Redistricting”

- Powerful online mapping tool and database
- Available in 6 languages: English, Spanish, Portuguese, Vietnamese, Mandarin, Korean

Mapitude Online Redistricting

Plan Manager | Plan Settings | Reports | Plan Integrity | Find | View | Print Map | Email Plan | Share Plan | Submit Plan | Help | Contact Us | Log Out

Demo Draft 1 - mozdoug www.caliper.com Thu Dec 7 04:08:26 2017

Scale: 1 : 199,264

Powered by Mapitude for the Web

Redistricting Toolbox - Demo Draft 1

Target: **New District**

Source: **All**

Selection: **Census Block**

Pending Changes (New)

District	New
Population	0
Change - Population	0
Ideal Value	49,475
Deviation	-49,475
% Deviation	-100.0%
[Hispanic Origin]	0
Change - [Hispanic Origin]	0
% [Hispanic Origin]	
NH_Wht	0
Change - NH_Wht	0

Map Legend

Themes | Layers

Theme: **None** Redraw Map

Districts in Plan: 0; Target: 4; Ideal Population: 49,475

District	Population	Deviation	% Deviation	[Hispanic Origin]	% [Hispanic Origin]	NH_Wht	% NH_Wht	NH_DOJ_Blk
-	197,899	148,424	300.0%	145,551	73.5%	29,410	14.9%	5,226

Discussion

- What is your neighborhood and what are its boundaries?
- What is your “community of interest” and what are its boundaries?
- What other notable areas are in the City, and what are their boundaries?

Assembly Bill No. 849

CHAPTER 557

An act to amend Sections 21500, 21501, 21506, 21507, 21600, 21601, 21606, and 21607 of, to add Sections 21500.1, 21507.1, 21508, 21509, 21605, 21607.1, 21608, 21609, 21622, 21623, 21625, 21626, 21627, 21627.1, 21628, and 21629 to, to repeal Sections 21502, 21504, and 21604 of, and to repeal and add Sections 21503, 21602, 21603, 21620, and 21621 of, the Elections Code, and to amend Sections 34874, 34877.5, 34884, and 34886 of the Government Code, relating to elections.

[Approved by Governor October 8, 2019. Filed with Secretary
of State October 8, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 849, Bonta. Elections: city and county redistricting.

Existing law establishes criteria and procedures pursuant to which cities and counties adjust or adopt council and supervisorial district area boundaries, as applicable, for the purpose of electing members of the governing body of each of those local jurisdictions.

This bill would revise and recast these provisions. The bill would require the governing body of each local jurisdiction described above to adopt new district boundaries after each federal decennial census, except as specified. The bill would specify redistricting criteria and deadlines for the adoption of new boundaries by the governing body. The bill would specify hearing procedures that would allow the public to provide input on the placement of boundaries and on proposed boundary maps. The bill would require the governing body to take specified steps to encourage the residents of the local jurisdiction to participate in the redistricting process. By increasing the duties of these local jurisdictions, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. This act shall be known, and may be cited, as the Fair And Inclusive Redistricting for Municipalities And Political Subdivisions (FAIR MAPS) Act.

SEC. 2. Section 21500 of the Elections Code is amended to read:

21500. (a) Following each federal decennial census, and using that census as a basis, the board shall adjust the boundaries of any or all of the supervisorial districts of the county so that the supervisorial districts shall be substantially equal in population as required by the United States Constitution.

(1) Population equality shall be based on the total population of residents of the county as determined by that census.

(2) Notwithstanding paragraph (1), an incarcerated person, as that term is used in Section 21003, shall not be counted as part of a county's population, except for an incarcerated person whose last known place of residence may be assigned to a census block in the county, if information about the last known place of residence for incarcerated persons is included in the computerized database for redistricting that is developed in accordance with subdivision (b) of Section 8253 of the Government Code, and that database is made publicly available.

(b) The board shall adopt supervisorial district boundaries that comply with the United States Constitution, the California Constitution, and the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.).

(c) The board shall adopt supervisorial district boundaries using the following criteria as set forth in the following order of priority:

(1) To the extent practicable, supervisorial districts shall be geographically contiguous. Areas that meet only at the points of adjoining corners are not contiguous. Areas that are separated by water and not connected by a bridge, tunnel, or regular ferry service are not contiguous.

(2) To the extent practicable, the geographic integrity of any local neighborhood or local community of interest shall be respected in a manner that minimizes its division. A "community of interest" is a population that shares common social or economic interests that should be included within a single supervisorial district for purposes of its effective and fair representation. Communities of interest do not include relationships with political parties, incumbents, or political candidates.

(3) To the extent practicable, the geographic integrity of a city or census designated place shall be respected in a manner that minimizes its division.

(4) Supervisorial district boundaries should be easily identifiable and understandable by residents. To the extent practicable, supervisorial districts shall be bounded by natural and artificial barriers, by streets, or by the boundaries of the county.

(5) To the extent practicable, and where it does not conflict with the preceding criteria in this subdivision, supervisorial districts shall be drawn to encourage geographical compactness in a manner that nearby areas of population are not bypassed in favor of more distant populations.

(d) The board shall not adopt supervisorial district boundaries for the purpose of favoring or discriminating against a political party.

SEC. 3. Section 21500.1 is added to the Elections Code, to read:

21500.1. (a) This chapter applies only to counties electing members of the board of supervisors by districts or from districts.

(b) This chapter shall not be interpreted to limit the discretionary remedial authority of any federal or state court.

SEC. 4. Section 21501 of the Elections Code is amended to read:

21501. The boundaries of the supervisorial districts shall be adopted by the board no earlier than August 1, 2021, and August 1 in each year ending in the number one thereafter, but no later than 151 days before the county's next regular election occurring after March 1, 2022, and after March 1 in each year ending in the number two thereafter. However, this section does not prohibit the board from holding public hearings or workshops on the placement of supervisorial district boundaries before August 1.

SEC. 5. Section 21502 of the Elections Code is repealed.

SEC. 6. Section 21503 of the Elections Code is repealed.

SEC. 7. Section 21503 is added to the Elections Code, to read:

21503. (a) After redistricting or districting pursuant to Section 21500, a board shall not adopt new supervisorial district boundaries until after the next federal decennial census, except under the following circumstances:

(1) A court orders the board to redistrict.

(2) The board is settling a legal claim that its supervisorial district boundaries violate the United States Constitution, the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.), or this chapter.

(3) The boundaries of the county change by the addition or subtraction of territory.

(b) This section does not prohibit a board from adopting supervisorial districts between federal decennial censuses if the board is adopting supervisorial districts for the first time, including when a board adopts supervisorial districts for the purpose of transitioning from electing its supervisors in at-large elections to elections by districts or from districts.

SEC. 8. Section 21504 of the Elections Code is repealed.

SEC. 9. Section 21506 of the Elections Code is amended to read:

21506. (a) The term of office of any supervisor who has been elected and whose term of office has not expired shall not be affected by any change in the boundaries of the district from which the supervisor was elected.

(b) At the first election for county supervisors in each county following adoption of the boundaries of supervisorial districts, a supervisor shall be elected for each district under the new district plan that has the same district number as a district whose incumbent's term is due to expire.

(c) A change in the boundaries of a supervisorial district shall not be made between the direct primary election and the general election.

(d) The successor to the office of supervisor in a supervisorial district for which the district boundaries have been changed shall be a resident and voter of that supervisorial district.

SEC. 10. Section 21507 of the Elections Code is amended to read:

21507. Before adjusting the boundaries of a district pursuant to Section 21501 or 21503, or for any other reason, the board shall hold public hearings on the proposal in accordance with Section 21507.1. This section does not apply when a county transitions from at-large to district-based elections.

SEC. 11. Section 21507.1 is added to the Elections Code, to read:

21507.1. (a) Before adopting a final map, the board shall hold at least four public hearings at which the public is invited to provide input regarding the composition of one or more supervisorial districts.

(1) At least one public hearing shall be held before the board draws a draft map or maps of the proposed supervisorial district boundaries.

(2) At least two public hearings shall be held after the board has drawn a draft map or maps of the proposed supervisorial district boundaries.

(b) At least one public hearing or public workshop shall be held on a Saturday, on a Sunday, or after 6 p.m. on a weekday Monday through Friday.

(c) Public hearing buildings shall be accessible to persons with disabilities.

(d) If a public hearing is consolidated with a regular or special meeting of the board that includes other substantive agenda items, the public hearing shall begin at a fixed time regardless of its order on the agenda, except that the board may first conclude any item being discussed or acted upon, including any associated public comment, when that time occurs. The time of the public hearing shall be noticed to the public.

(e) The board may have county staff or a consultant conduct one or more public workshops in lieu of holding one of the public hearings required by paragraph (1) of subdivision (a).

(f) The board may establish an advisory redistricting commission pursuant to Section 23002 to hold the public hearings required by paragraph (1) of subdivision (a).

SEC. 12. Section 21508 is added to the Elections Code, to read:

21508. (a) The board shall take steps to encourage residents, including those in underrepresented communities and non-English speaking communities, to participate in the redistricting public review process. A good faith effort satisfies the requirements of this subdivision. These steps shall include the following:

(1) Providing information to media organizations that provide county news coverage, including media organizations that serve language minority communities.

(2) Providing information through good government, civil rights, civic engagement, or community groups or organizations that are active in the county, including those active in language minority communities, or that have requested to be notified concerning county redistricting.

(b) The board shall arrange for the live translation in an applicable language of a public hearing or workshop held pursuant to this chapter if a request for translation is made at least 72 hours before the hearing or workshop, unless less than five days' notice are provided for the hearing or workshop, in which case the request shall be made at least 48 hours before the hearing or workshop.

(c) Notwithstanding Section 54954.2 of the Government Code, the board shall publish the date, time, and location for any public hearing or workshop on the internet at least five days before the hearing or workshop. However, if there are fewer than 179 days until the county's next regular election, the board may publish the agenda on the internet for at least three days before the hearing or workshop.

(d) (1) A draft map shall be published on the internet for at least seven days before being adopted as a final map by the board provided that, if there are fewer than 179 days until the county's next regular election, the draft map may instead be published on the internet for at least three days.

(2) Each draft map prepared by a member of the board or by employees of the county shall be accompanied by information on the total population, citizen voting age population, and racial and ethnic characteristics of the citizen voting age population of each proposed supervisorial district, to the extent the county has that data.

(e) The board shall allow the public to submit testimony or draft maps in writing and electronically.

(f) The county shall either record or prepare a written summary of each public comment and board deliberation made at every public hearing or workshop held pursuant to this article. The county shall make the recording or written summary available to the public within two weeks after the public hearing or workshop.

(g) The board shall establish, and maintain for at least 10 years after the adoption of new supervisorial district boundaries, an internet web page dedicated to redistricting. The web page may be hosted on the county's existing internet website or another internet website maintained by the county. The web page shall include, or link to, all of the following information:

(1) A general explanation of the redistricting process for the county, in English and applicable languages.

(2) The procedures for a member of the public to testify during a public hearing or to submit written testimony directly to the board, in English and applicable languages.

(3) A calendar of all public hearing and workshop dates. A calendar listing that includes the time and location of the public hearing or workshop meets the notice required by subdivision (c).

(4) The notice and agenda for each public hearing and workshop.

(5) The audio or audiovisual recording and adopted minutes of each public hearing.

(6) Each draft map considered by the board at a public hearing.

(7) The adopted final map of supervisorial district boundaries.

(h) For purposes of this section, "applicable language" means any language in which ballots are required to be provided in the county pursuant to Section 203 of the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10503).

(i) This section does not apply when a county transitions from at-large to district-based elections.

(j) The Secretary of State shall publish on the internet a template explaining the county redistricting process that meets the requirements of paragraphs (1) and (2), inclusive, of subdivision (g). The Secretary of State shall publish the template in all of the languages into which ballots are required to be translated in the state pursuant to Section 203 of the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10503). The template shall be published in a conspicuous location on the Secretary of State's internet website.

SEC. 13. Section 21509 is added to the Elections Code, to read:

21509. (a) If the board does not adopt supervisorial district boundaries by the deadlines set forth in Section 21501, the board shall immediately petition the superior court of the county for an order adopting supervisorial district boundaries. If the board does not petition the superior court within five days after the deadline, any resident of the county may file that petition and shall be entitled to recover the resident's reasonable attorney's fees and costs from the county for doing so.

(b) (1) Upon finding that a petition filed pursuant to subdivision (a) is valid, the superior court shall adopt supervisorial district boundaries in accordance with the criteria set forth in Section 21500, which shall be used in the county's next regular election. The superior court may also order the adjustment of electoral deadlines as necessary to implement the new supervisorial district boundaries in the next regular election.

(2) The superior court may appoint a special master to assist the court with adopting the supervisorial district boundaries. The county shall pay the cost for the special master and associated costs.

(3) The superior court or the special master shall hold one or more public hearings before the superior court adopts the supervisorial district boundaries.

(4) Subject to the approval of the superior court, the special master may employ redistricting experts or other consultants or counsel, independent experts in the field of redistricting and computer technology, and other necessary personnel to assist them in their work. In addition, the special master may seek the full cooperation of the county in producing and using whatever data, computer models and programs, and technical assistance that was made available to the board and county personnel who are knowledgeable in the mechanics of drafting redistricting legislation. The superior court may assist the special master in securing the necessary personnel and the physical facilities required for their work, and to prepare for the prompt submission to the county of a request for county funding for the necessary expenses of the special master and the special master's staff.

(5) The supervisorial district boundaries adopted by the superior court shall be immediately effective in the same manner as if the court's order were an enacted resolution or ordinance of the board.

SEC. 14. Section 21600 of the Elections Code is amended to read:

21600. (a) This article applies only to general law cities electing members of the legislative body by districts or from districts, as defined in Section 34871 of the Government Code.

(b) This article shall not be interpreted to limit the discretionary remedial authority of any federal or state court.

SEC. 15. Section 21601 of the Elections Code is amended to read:

21601. (a) Following each decennial federal census, and using that census as a basis, the council shall, by ordinance or resolution, adopt boundaries for any or all of the council districts of the city so that the council districts shall be substantially equal in population as required by the United States Constitution.

(1) Population equality shall be based on the total population of residents of the city as determined by that census.

(2) Notwithstanding paragraph (1), an incarcerated person as that term is used in Section 21003, shall not be counted as part of a city's population, except for an incarcerated person whose last known place of residence may be assigned to a census block in the city, if information about the last known place of residence for incarcerated persons is included in the computerized database for redistricting that is developed in accordance with subdivision (b) of Section 8253 of the Government Code, and that database is made publicly available.

(b) The council shall adopt council district boundaries that comply with the United States Constitution, the California Constitution, and the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.).

(c) The council shall adopt district boundaries using the following criteria as set forth in the following order of priority:

(1) To the extent practicable, council districts shall be geographically contiguous. Areas that meet only at the points of adjoining corners are not contiguous. Areas that are separated by water and not connected by a bridge, tunnel, or regular ferry service are not contiguous.

(2) To the extent practicable, the geographic integrity of any local neighborhood or local community of interest shall be respected in a manner that minimizes its division. A "community of interest" is a population that shares common social or economic interests that should be included within a single district for purposes of its effective and fair representation. Communities of interest do not include relationships with political parties, incumbents, or political candidates.

(3) Council district boundaries should be easily identifiable and understandable by residents. To the extent practicable, council districts shall be bounded by natural and artificial barriers, by streets, or by the boundaries of the city.

(4) To the extent practicable, and where it does not conflict with the preceding criteria in this subdivision, council districts shall be drawn to encourage geographical compactness in a manner that nearby areas of population are not bypassed in favor of more distant populations.

(d) The council shall not adopt council district boundaries for the purpose of favoring or discriminating against a political party.

SEC. 16. Section 21602 of the Elections Code is repealed.

SEC. 17. Section 21602 is added to the Elections Code, to read:

21602. The boundaries of the council districts shall be adopted by the council no earlier than August 1, 2021, and August 1 in each year ending in the number one thereafter, but not later than 151 days before the city's next regular election occurring after March 1, 2022, and after March 1 in each year ending in the number two thereafter. However, this section does not prohibit the council from holding public hearings or workshops on the placement of council district boundaries before August 1.

SEC. 18. Section 21603 of the Elections Code is repealed.

SEC. 19. Section 21603 is added to the Elections Code, to read:

21603. (a) If the boundaries of a city expand by the addition of new territory, including through annexation of unincorporated territory or consolidation with another city, the council shall add that new territory to the nearest existing council district without changing the boundaries of other council district boundaries.

(b) Notwithstanding subdivision (a), the council may adopt new boundaries for each council district under the circumstances described in subdivision (a) if both of the following conditions are met:

(1) There are more than four years until the council is next required to redistrict pursuant to Section 21601.

(2) The population of the new territory being annexed or consolidated is greater than 25 percent of the city's population, as determined by the most recent federal decennial census.

SEC. 20. Section 21604 of the Elections Code is repealed.

SEC. 21. Section 21605 is added to the Elections Code, to read:

21605. (a) After redistricting or districting pursuant to Section 21601 or 21603, a council shall not adopt new council district boundaries until after the next federal decennial census, except under the following circumstances:

(1) A court orders the council to redistrict.

(2) The council is settling a legal claim that its council district boundaries violate the United States Constitution, the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.), or this article.

(3) The boundaries of the city expand by the addition of new territory pursuant to Section 21603.

(b) This section does not prohibit a council from adopting council districts between federal decennial censuses if the council is adopting council districts for the first time, including when a city adopts council districts for the purpose of transitioning from electing its council members in at-large elections to elections by districts or from districts.

SEC. 22. Section 21606 of the Elections Code is amended to read:

21606. (a) The term of office of any council member who has been elected and whose term of office has not expired shall not be affected by any change in the boundaries of the district from which the council member was elected.

(b) At the first election for council members in each city following adoption of the boundaries of council districts, a council member shall be

elected for each district under the new district plan that has the same district number as a district whose incumbent's term is due to expire.

(c) The successor to the office in a council district for which the boundaries have changed shall be a resident and voter of that council district.

SEC. 23. Section 21607 of the Elections Code is amended to read:

21607. Before adopting the boundaries of a council district pursuant to Section 21601, 21603, or 21604, or for any other reason, the council shall hold public hearings on the proposal in accordance with Section 21607.1. This section does not apply when a city transitions from at-large to district-based elections.

SEC. 24. Section 21607.1 is added to the Elections Code, to read:

21607.1. (a) Before adopting a final map, the council shall hold at least four public hearings at which the public is invited to provide input regarding the composition of one or more council districts.

(1) At least one public hearing shall be held before the council draws a draft map or maps of the proposed council boundaries.

(2) At least two public hearings shall be held after the council has drawn a draft map or maps of the proposed council boundaries.

(b) At least one public hearing or public workshop shall be held on a Saturday, on a Sunday, or after 6 p.m. on a weekday Monday through Friday.

(c) Public hearing buildings shall be accessible to persons with disabilities.

(d) If a public hearing is consolidated with a regular or special meeting of the council that includes other substantive agenda items, the public hearing shall begin at a fixed time regardless of its order on the agenda, except that the council may first conclude any item being discussed or acted upon, including any associated public comment, when that time occurs. The time of the public hearing shall be noticed to the public.

(e) The council may have city staff or a consultant conduct one or more public workshops in lieu of holding one of the public hearings required by paragraph (1) of subdivision (a).

(f) The council may establish an advisory redistricting commission pursuant to Section 23002 to hold the public hearings required by paragraph (1) of subdivision (a).

SEC. 25. Section 21608 is added to the Elections Code, to read:

21608. (a) The council shall take steps to encourage residents, including those in underrepresented communities and non-English speaking communities, to participate in the redistricting public review process. A good faith effort satisfies the requirements of this subdivision. These steps shall include the following:

(1) Providing information to media organizations that provide city news coverage, including media organizations that serve language minority communities.

(2) Providing information through good government, civil rights, civic engagement, or community groups or organizations that are active in the city, including those active in language minority communities, or that have requested to be notified concerning city redistricting.

(b) The council shall arrange for the live translation of a public hearing or workshop held pursuant to this article in an applicable language if a request for translation is made at least 72 hours before the hearing or workshop, unless less than five days' notice are provided for the hearing or workshop, in which case the request shall be made at least 48 hours before the hearing or workshop.

(c) Notwithstanding Section 54954.2 of the Government Code, the council shall publish the date, time, and location for any public hearing or workshop on the internet at least five days before the hearing or workshop. However, if there are fewer than 179 days until the city's next regular election, the council may publish the agenda on the internet for at least three days before the hearing or workshop.

(d) (1) A draft map shall be published on the internet for at least seven days before being adopted as a final map by the council provided that, if there are fewer than 179 days until the city's next regular election, the draft map may instead be published on the internet for at least three days.

(2) Each draft map prepared by a member of the council or by employees of the city shall be accompanied by information on the total population, citizen voting age population, and racial and ethnic characteristics of the citizen voting age population of each proposed council district, to the extent the city has that data.

(e) The council shall allow the public to submit testimony or draft maps in writing and electronically.

(f) The city shall either record or prepare a written summary of each public comment and council deliberation made at every public hearing or workshop held pursuant to this article. The city shall make the recording or written summary available to the public within two weeks after the public hearing or workshop.

(g) The council shall establish, and maintain for at least 10 years after the adoption of new council district boundaries, an internet web page dedicated to redistricting. The web page may be hosted on the city's existing internet website or another internet website maintained by the city. The web page shall include, or link to, all of the following information:

(1) A general explanation of the redistricting process for the city in English and any applicable language.

(2) The procedures for a member of the public to testify during a public hearing or to submit written testimony directly to the council in English and any applicable language.

(3) A calendar of all public hearing and workshop dates. A calendar listing that includes the time and location of the public hearing or workshop satisfies the notice required by subdivision (c).

(4) The notice and agenda for each public hearing and workshop.

(5) The recording or written summary of each public hearing and workshop.

(6) Each draft map considered by the council at a public hearing.

(7) The adopted final map of council district boundaries.

(h) For purposes of this section, “applicable language” means any language that is spoken by a group of city residents with limited English proficiency who constitute 3 percent or more of the city’s total population over four years of age for whom language can be determined. Before January 1, 2021, and before January 1 in every year ending in the number one thereafter, the Secretary of State shall post the applicable languages for each city in a conspicuous location on the Secretary of State’s internet website. To determine the applicable languages for each city, in 2020 and in each year ending in the number zero thereafter, the Secretary of State, in consultation with the Statewide Database, shall request a special tabulation from the United States Bureau of the Census of the most recent data on limited English proficiency from the bureau’s American Community Survey that satisfies this subdivision. If the bureau is unable to produce that data, the Secretary of State shall base the Secretary of State’s determination on the table from the American Community Survey enumerating the number of residents with limited English proficiency that has the largest number of languages included, that is publicly available, and that was produced within the previous ten years.

(i) This section does not apply when a city transitions from at-large to district-based elections.

(j) Before January 1, 2021, and before January in each year ending in the number one thereafter, the Secretary of State shall publish on the internet a template explaining the city redistricting process that meets the requirements of paragraphs (1) and (2), inclusive, of subdivision (g). The Secretary of State shall publish the template in all of the languages into which ballots are required to be translated in the state pursuant to subdivision (h). The template shall be published in the same conspicuous location on the Secretary of State’s internet website that is described in subdivision (h).

SEC. 26. Section 21609 is added to the Elections Code, to read:

21609. (a) If the council does not adopt council district boundaries by the deadlines set forth in Section 21602 or subdivision (a) or (b) of Section 21604, the council shall immediately petition the superior court in the county in which the city is located for an order adopting council district boundaries. If the council does not petition the superior court within five days after the deadline, any resident of the city may file that petition and shall be entitled to recover the resident’s reasonable attorney’s fees and costs from the city for doing so.

(b) (1) Upon finding that a petition filed pursuant to this subdivision is valid, the superior court shall adopt council district boundaries in accordance with the criteria set forth in Section 21601, which shall be used in the city’s next regular election. The superior court may also order the adjustment of electoral deadlines as necessary to implement the new council district boundaries in the next regular election.

(2) The superior court may appoint a special master to assist the court with adopting the council district boundaries. The city shall pay the cost for the special master and associated costs.

(3) The superior court or the special master shall hold one or more public hearings before the superior court adopts the council district boundaries.

(4) Subject to the approval of the superior court, the special master may employ redistricting experts or other consultants or counsel, independent experts in the field of redistricting and computer technology, and other necessary personnel to assist them in their work. In addition, the special master may seek the full cooperation of the city in producing and using whatever data, computer models and programs, and technical assistance that was made available to the council and city personnel who are knowledgeable in the mechanics of drafting redistricting legislation. The superior court may assist the special master in securing the necessary personnel and the physical facilities required for their work, and to prepare for the prompt submission to the city of a request for city funding for the necessary expenses of the special master and the special master's staff.

(5) The council district boundaries adopted by the superior court shall be immediately effective in the same manner as if the court's order were an enacted resolution or ordinance of the city council.

SEC. 27. Section 21620 of the Elections Code is repealed.

SEC. 28. Section 21620 is added to the Elections Code, to read:

21620. (a) This article applies to charter cities that elect members of the charter city's legislative body by districts or from districts, as defined in Section 34871 of the Government Code.

(b) This article shall not be interpreted to limit the discretionary remedial authority of any federal or state court.

SEC. 29. Section 21621 of the Elections Code is repealed.

SEC. 30. Section 21621 is added to the Elections Code, to read:

21621. (a) Following each federal decennial census, and using that census as a basis, the council shall, by ordinance or resolution, adopt boundaries for all of the council districts of the city so that the council districts shall be substantially equal in population as required by the United States Constitution.

(1) Population equality shall be based on the total population of residents of the city as determined by the census.

(2) Notwithstanding paragraph (1), an incarcerated person, as that term is used in Section 21003, shall not be counted towards a city's population, except for an incarcerated person whose last known place of residence may be assigned to a census block in the city, if information about the last known place of residence for incarcerated persons is included in the computerized database for redistricting that is developed in accordance with subdivision (b) of Section 8253 of the Government Code, and that database is made publicly available.

(b) The council shall adopt council district boundaries that comply with the United States Constitution, the California Constitution, and the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.).

(c) The council shall adopt district boundaries using the following criteria as set forth in the following order of priority:

(1) To the extent practicable, council districts shall be geographically contiguous. Areas that meet only at the points of adjoining corners are not contiguous. Areas that are separated by water and not connected by a bridge, tunnel, or regular ferry service are not contiguous.

(2) To the extent practicable, the geographic integrity of any local neighborhood or local community of interest shall be respected in a manner that minimizes its division. A “community of interest” is a population that shares common social or economic interests that should be included within a single district for purposes of its effective and fair representation. Communities of interest do not include relationships with political parties, incumbents, or political candidates.

(3) Council district boundaries should be easily identifiable and understandable by residents. To the extent practicable, council districts shall be bounded by natural and artificial barriers, by streets, or by the boundaries of the city.

(4) To the extent practicable, and where it does not conflict with the preceding criteria in this subdivision, council districts shall be drawn to encourage geographical compactness in a manner that nearby areas of population are not bypassed in favor of more distant populations.

(d) The council shall not adopt council district boundaries for the purpose of favoring or discriminating against a political party.

SEC. 31. Section 21622 is added to the Elections Code, to read:

21622. (a) The boundaries of the council districts shall be adopted by the council no earlier than August 1, 2021, and August 1 in each year ending in the number one thereafter, but no later than 151 days before the city’s next regular election occurring after March 1, 2022, and after March 1 in each year ending in the number two thereafter. However, this subdivision does not prohibit the council from holding public hearings or workshops on the placement of council district boundaries before August 1.

(b) This section does not apply to a charter city that has adopted a different redistricting deadline by ordinance or in its city charter before October 1, 2021, and October 1 of each year ending in the number one thereafter.

SEC. 32. Section 21623 is added to the Elections Code, to read:

21623. (a) If the boundaries of a city expand by the addition of new territory, including through annexation of unincorporated territory or consolidation with another city, the council shall add that new territory to the nearest existing council district without changing the boundaries of other council district boundaries.

(b) Notwithstanding subdivision (a), the council may adopt new boundaries for each council district if both of the following conditions are met:

(1) There are more than four years until the council is next required to redistrict pursuant to Section 21621.

(2) The population of the new territory being annexed or consolidated is greater than 25 percent of the city’s population as determined by the most recent federal decennial census.

(c) This section does not apply to a charter city that has adopted, by ordinance or in its city charter, a different standard for adding new territory to existing council districts.

SEC. 33. Section 21625 is added to the Elections Code, to read:

21625. (a) After redistricting or districting pursuant to Section 21621 or 21623, a council shall not adopt new council district boundaries until after the next federal decennial census, except under the following circumstances:

(1) A court orders the council to redistrict.

(2) The council is settling a legal claim that its council district boundaries violate the United States Constitution, the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.), or this article.

(3) The boundaries of the city expand by the addition of new territory pursuant to Section 21623.

(b) This section does not prohibit a council from adopting council districts between federal decennial censuses if the council is adopting council districts for the first time, including when a city adopts council districts for the purpose of transitioning from electing its council members in at-large elections to elections by districts or from districts.

(c) This section does not apply to a charter city that has adopted different rules for mid-cycle redistricting in its city charter.

SEC. 34. Section 21626 is added to the Elections Code, to read:

21626. (a) The term of office of any council member who has been elected and whose term of office has not expired shall not be affected by any change in the boundaries of the district from which the council member was elected.

(b) At the first election for council members in each city following adoption of the boundaries of council districts, a council member shall be elected for each district under the new district plan that has the same district number as a district whose incumbent's term is due to expire.

(c) The successor to the office in a council district for which the boundaries have changed shall be a resident and voter of that council district.

SEC. 35. Section 21627 is added to the Elections Code, to read:

21627. Before adopting the boundaries of a council district pursuant to Section 21621, 21623, or 21624, or for any other reason, the council shall hold public hearings on the proposal, in accordance with Section 21627.1. This section does not apply when a city transitions from at-large to district-based elections.

SEC. 36. Section 21627.1 is added to the Elections Code, to read:

21627.1. (a) Before adopting a final map, the council shall hold at least four public hearings at which the public is invited to provide input regarding the composition of one or more council districts.

(1) At least one public hearing shall be held before the council draws a draft map or maps of the proposed council boundaries.

(2) At least two public hearings shall be held after the council has drawn a draft map or maps of the proposed council boundaries.

(b) At least one public hearing or public workshop shall be held on a Saturday, on a Sunday, or after 6 p.m. on a weekday Monday through Friday.

(c) Public hearing buildings shall be accessible to persons with disabilities.

(d) If a public hearing is consolidated with a regular or special meeting of the council that includes other substantive agenda items, the public hearing shall begin at a fixed time regardless of its order on the agenda, except that the council may first conclude any item being discussed or acted upon, including any associated public comment, when that time occurs. The time of the public hearing shall be noticed to the public.

(e) The council may have city staff or a consultant conduct one or more public workshops in lieu of holding one of the public hearings required by paragraph (1) of subdivision (a).

(f) The council may establish an advisory redistricting commission pursuant to Section 23002 to hold the public hearings required by paragraph (1) of subdivision (a).

SEC. 37. Section 21628 is added to the Elections Code, to read:

21628. (a) The council shall take steps to encourage residents, including those in underrepresented communities and non-English speaking communities, to participate in the redistricting public review process. These steps shall include a good faith effort to do all of the following:

(1) Providing information to media organizations that provide city news coverage, including media organizations that serve language minority communities.

(2) Providing information through good government, civil rights, civic engagement, or community groups or organizations that are active in the city, including those active in language minority communities, or that have requested to be notified concerning city redistricting.

(b) The council shall arrange for the live translation of a public hearing or workshop held pursuant to this article in an applicable language if a request for translation is made at least 72 hours before the hearing or workshop, unless less than five days' notice are provided for the hearing or workshop, in which case the request shall be made at least 48 hours before the hearing or workshop.

(c) Notwithstanding Section 54954.2 of the Government Code, the council shall publish the date, time, and location for any public hearing or workshop on the internet at least five days before the hearing or workshop. However, if there are fewer than 179 days until the city's next regular election, the council may publish the agenda on the internet for at least three days before the hearing or workshop.

(d) (1) A draft map shall be published on the internet for at least seven days before being adopted as a final map by the council provided that, if there are fewer than 179 days until the city's next regular election, the draft map may instead be published on the internet for at least three days.

(2) Each draft map prepared by a member of the council or by employees of the city shall be accompanied with information on the total population, citizen voting age population, and racial and ethnic characteristics of the

citizen voting age population of each proposed council district, to the extent the city has that data.

(e) The council shall allow the public to submit testimony or draft maps in writing and electronically.

(f) The city shall either record or prepare a written summary of each public comment and council deliberation made at every public hearing or workshop held pursuant to this article. The city shall make the recording or written summary available to the public within two weeks after the public hearing or workshop.

(g) The council shall establish, and maintain for at least 10 years after the adoption of new council district boundaries, an internet web page dedicated to redistricting. The web page may be hosted on the city's existing internet website or another internet website maintained by the city. The web page shall include, or link to, all of the following information:

(1) A general explanation of the redistricting process for the city in English and any applicable language.

(2) The procedures for a member of the public to testify during a public hearing or to submit written testimony directly to the council in English and any applicable language.

(3) A calendar of all public hearing and workshop dates. A calendar listing that includes the time and location of the public hearing or workshop satisfies the notice required by subdivision (c).

(4) The notice and agenda for each public hearing and workshop.

(5) The recording or written summary of each public hearing and workshop.

(6) Each draft map considered by the council at a public hearing.

(7) The adopted final map of council district boundaries.

(h) For purposes of this section, "applicable language" means any language that is spoken by a group of city residents with limited English proficiency who constitute 3 percent or more of the city's total population over four years of age for whom language can be determined. Before January 1, 2021, and before January 1 in every year ending in the number one thereafter, the Secretary of State shall post the applicable languages for each city in a conspicuous location on the Secretary of State's internet website. To determine the applicable languages for each city, in 2020 and in each year ending in the number zero thereafter, the Secretary of State, in consultation with the Statewide Database, shall request a special tabulation from the United States Bureau of the Census of the most recent data on limited English proficiency from the bureau's American Community Survey that satisfies this subdivision. If the bureau is unable to produce that data, the Secretary of State shall base the Secretary of State's determination on the table from the American Community Survey enumerating the number of residents with limited English proficiency that has the largest number of languages included, that is publicly available, and that was produced within the previous ten years.

(i) This section does not apply when a city transitions from at-large to district-based elections.

(j) Before January 1, 2021, and before January in each year ending in the number one thereafter, the Secretary of State shall publish on the internet a template explaining the city redistricting process that meets the requirements of paragraphs (1) and (2), inclusive, of subdivision (g). The Secretary of State shall publish the template in all of the languages into which ballots are required to be translated in the state pursuant to subdivision (h). The template shall be published in the same conspicuous location on the Secretary of State's internet website that is described in subdivision (h).

SEC. 38. Section 21629 is added to the Elections Code, to read:

21629. (a) If the council does not adopt council district boundaries by the deadlines set forth in Section 21622 or subdivision (a) or (b) of Section 21624, the council shall immediately petition the superior court in the county in which the city is located for an order adopting council district boundaries. If the council does not petition the superior court within five days after the deadline, any resident of the city may file that petition and shall be entitled to recover the resident's reasonable attorney's fees and costs from the city for doing so.

(b) (1) Upon finding that a petition filed pursuant to this subdivision is valid, the superior court shall adopt council district boundaries in accordance with the criteria set forth in Section 21621, which shall be used in the city's next regular election. The superior court may also order the adjustment of electoral deadlines as necessary to implement the new council district boundaries in the next regular election.

(2) The superior court may appoint a special master to assist the court with adopting the council district boundaries. The city shall pay the cost for the special master and associated costs.

(3) The superior court or the special master shall hold one or more public hearings before the superior court adopts the council district boundaries.

(4) Subject to the approval of the superior court, the special master may employ redistricting experts or other consultants or counsel, independent experts in the field of redistricting and computer technology, and other necessary personnel to assist them in their work. In addition, the special master may seek the full cooperation of the city in producing and using whatever data, computer models and programs, and technical assistance that was made available to the council and city personnel who are knowledgeable in the mechanics of drafting redistricting legislation. The superior court may assist the special master in securing the necessary personnel and the physical facilities required for their work, and to prepare for the prompt submission to the city of a request for city funding for the necessary expenses of the special master and the special master's staff.

(5) The council district boundaries adopted by the superior court shall be immediately effective in the same manner as if the court's order were an enacted resolution or ordinance of the city council.

(c) This section does not apply to a charter city that has adopted in its city charter a different method for adopting city council district boundaries when a redistricting deadline is missed.

SEC. 39. Section 34874 of the Government Code is amended to read:

34874. (a) An amendatory ordinance altering the boundaries of the legislative districts established pursuant to this article shall not be submitted to the registered voters until the ordinance has been submitted to the planning commission of the city or, in absence of a planning commission, to the legislative body of said city for an examination as to the definiteness and certainty of the boundaries of the legislative districts proposed.

(b) An amendatory ordinance altering the boundaries of legislative districts shall comply with the requirements and criteria of Section 21601 or 21621 of the Elections Code, as applicable.

SEC. 40. Section 34877.5 of the Government Code is amended to read:

34877.5. (a) After an ordinance is passed by the voters pursuant to Section 34876.5, or after an ordinance is enacted by the legislative body pursuant to Section 34886, the legislative body shall prepare a proposed map that describes the boundaries and numbers of the districts for the legislative body. In preparing the proposed map, the legislative body shall comply with the requirements and criteria of Section 21601 or 21621 of the Elections Code, as applicable, and shall seek public input, including accepting proposed maps submitted by the public.

(b) If the legislative body is changing from an at-large method of election to a district-based election, as those terms are defined in Section 14026 of the Elections Code, the legislative body shall hold public hearings pursuant to Section 10010 of the Elections Code. If the legislative body is otherwise adjusting the district boundaries, the legislative body shall hold public hearings on the proposed district boundaries pursuant to Section 21607 or 21627 of the Elections Code, as applicable.

SEC. 41. Section 34884 of the Government Code is amended to read:

34884. (a) If, at the time a vote is held on the subject of incorporation of a new city, a majority of the votes cast is for incorporation and, if, in accordance with Section 57116, a majority of the votes cast on the question of whether members of the city council in future elections are to be elected by district or at large is in favor of election by district, all of the following procedures apply:

(1) Before the first day on which voters may nominate candidates for election at the next regular municipal election, the legislative body shall, by ordinance or resolution, establish the boundaries of the districts of the legislative body. The districts shall be substantially equal in population as required by the United States Constitution. The districts shall comply with the requirements and criteria of Section 21601 or 21621 of the Elections Code, as applicable.

(2) The terms of office of the two members elected with the lowest vote shall expire on the Tuesday succeeding the next regular municipal election. At that election, members shall be elected by district in the even-numbered districts and shall hold office for four years.

(3) The terms of office of the three members elected with the highest vote shall expire on the Tuesday succeeding the second regular municipal election following the incorporation. At that election, members shall be

elected by district in the odd-numbered districts and shall hold office for four years.

(b) The result of the vote cast on the question of whether members of the city council in future elections are to be elected by district or at large shall not preclude the submission to the voters at any future election of a measure in accordance with Section 34871.

SEC. 42. Section 34886 of the Government Code is amended to read:

34886. Notwithstanding Section 34871 or any other law, the legislative body of a city may adopt an ordinance that requires the members of the legislative body to be elected by district or by district with an elective mayor, as described in subdivisions (a) and (c) of Section 34871, without being required to submit the ordinance to the voters for approval. An ordinance adopted pursuant to this section shall comply with the requirements and criteria of Section 21601 or 21621 of the Elections Code, as applicable, and include a declaration that the change in the method of electing members of the legislative body is being made in furtherance of the purposes of the California Voting Rights Act of 2001 (Chapter 1.5 (commencing with Section 14025) of Division 14 of the Elections Code).

SEC. 43. The district boundary criteria specified in this act apply to supervisorial and council district boundaries that are adopted or readopted on or after January 1, 2020. Supervisorial and council district boundaries adopted before January 1, 2020, shall comply with the applicable district boundary criteria in effect at the time of their adoption.

SEC. 44. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.



CITY COUNCIL AGENDA REPORT
PUBLIC HEARINGS
AGENDA ITEM NO. L.2

DATE: July 29, 2021
TO: City Council
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 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. (The Public Works and Transportation Committee approved 3-0).

Please click the following link to view the required Measure M pre-recorded presentation video: <https://youtu.be/kQpUGofhY5g>

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).

After Council approval, staff will submit the signed resolution approving the PSA to the California Department of Housing and Community Development (HCD) for their review. Staff at HCD have up to thirty (30) days to approve the resolution. After receiving approval, the PSA can be executed by the City and the Foundation.

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.

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.

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).

COMMITTEE OUTCOME

The Public Works & Transportation Committee recommended City Council approval 3-0 with the addition of language in the Purchase and Sale Agreement that requires the Buyer to submit an application and all supporting documentation and fees with the California Office of Historical Preservation for approval of the site as a California Historical Landmark.

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 agrees to complete and submit an application, as well as any supporting documents or fees, with the California Office of Historical Preservation for designation of the Property as a California Historical Landmark within 90 days of Closing. 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
Project/Program
Manager: Adam Smith

Date: July 13, 2021
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

Revised : 2/23/2012

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 _____

REQUIRES CITY COUNCIL AUTHORIZATION

BA# (Finance Use Only) _____

BA Doc# (Finance Use Only) _____

Revised : 2/23/2012

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:

APPROVED AS TO FORM:

Rose Chaparro, City Clerk

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.

Full appraisal report located at:

<https://drive.google.com/file/d/1VKftyIffoIKh47TpZnvQx44Bp3aGlXPC/view?usp=sharing>

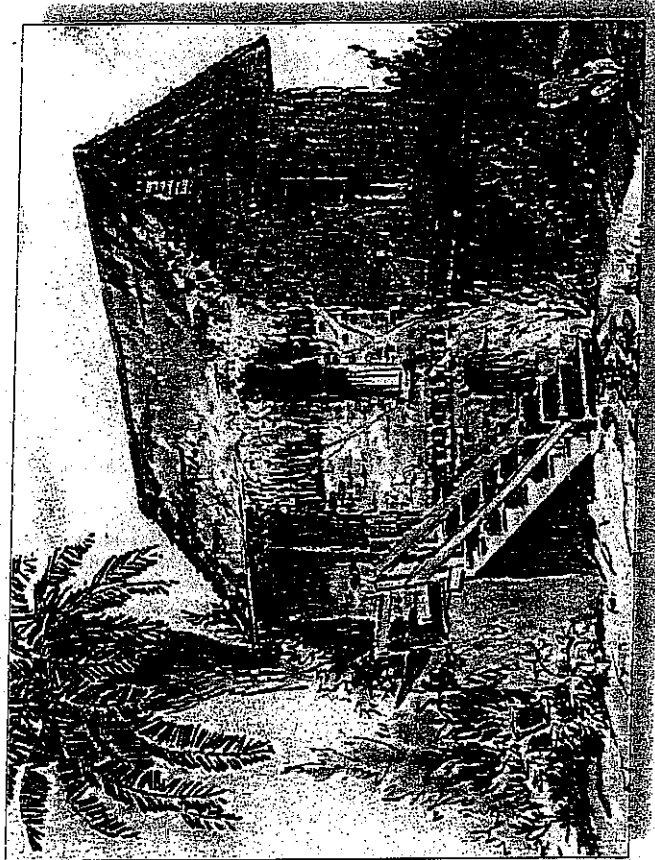
APPRAISAL REPORT

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

SUMMARY

SUMMARY

VISION

HISTORICAL BACKGROUND

SITE DEVELOPMENT

GOALS

PROGRAMMING

COLONIA SCHOOL

STRATEGIES

LANDSCAPE

HOURS OF OPERATION

BUDGET

COST ESTIMATE

FUNDRAISING

FINAL WORD

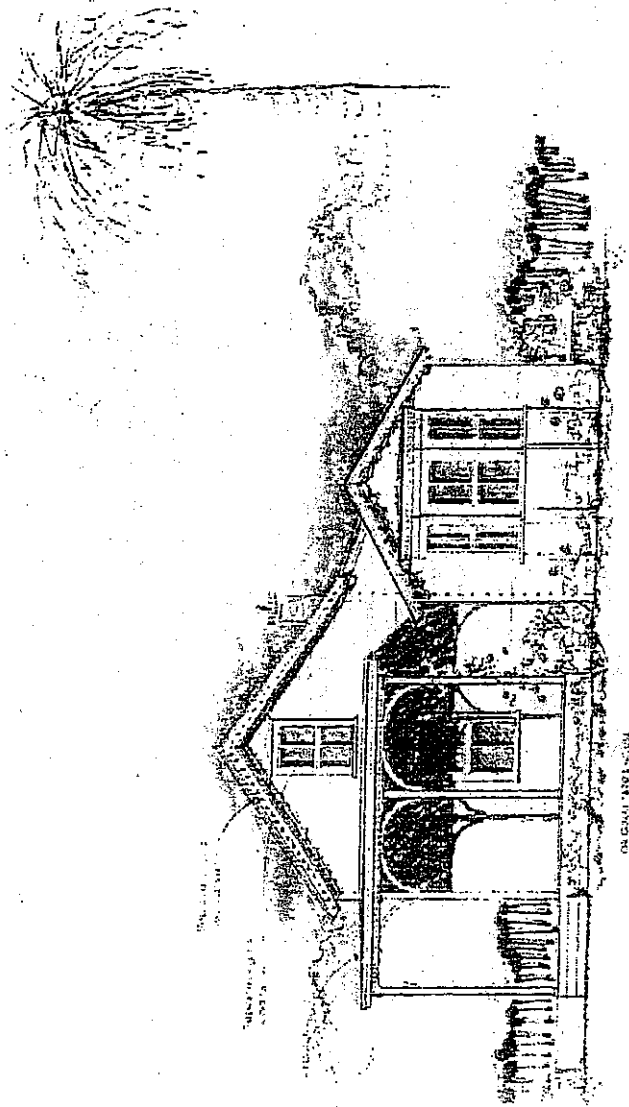
The Oxnard Historic Farm Park Foundation, is a 501(c)3 nonprofit organization that was formed in 2002 for the purpose of developing the .87 acres of land containing the original Gottfried Maulhardt/Albert Pfeiler cottage house, the Gottfried Maulhardt winery and the 1900 carriage house. Discussion for 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. JLIH 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 JLIH 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 JLIH 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"

HISTORICAL SIGNIFICANCE AND BACKGROUND

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. Siree. She did her banking

DEED.

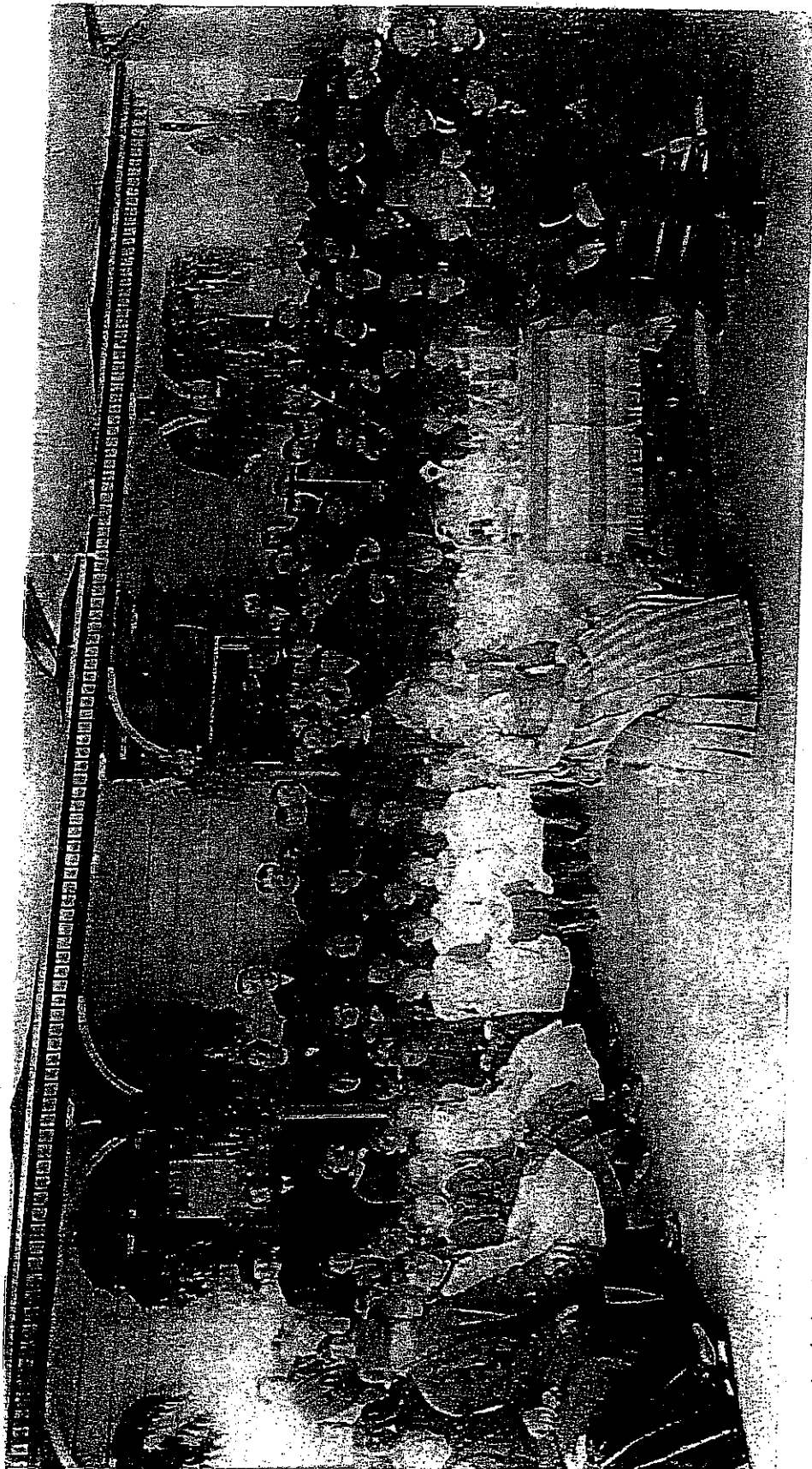
Juan Camarillo.

to
J. Maulhardt & J. Maulhardt
and
Johannes Borchard

Dated Dec 26th 1872

Recorded at Request of

J. Maulhardt & J. Maulhardt
December 30th A.D. 1872
at 10 min past 11 a. M.
in the Reg. of Deeds,
p. 70 & 71.



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.

SITE DEVELOPMENT

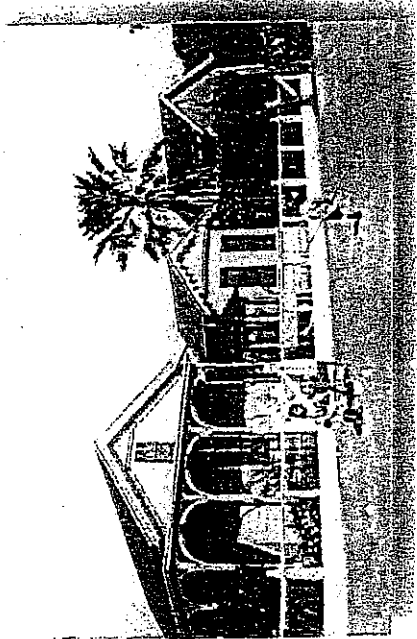
PROPOSED RESTORATION AND DEVELOPMENT

- Restore the Gottfried Maulhardt / Albert Pfeiler House to be utilized as a museum
- Create a courtyard with engraved bricks
- Carriage house - meeting center, office, kitchen and restroom facility
- Restore the 10x10 Bathroom/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.

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.



PROGRAMMING COMPONENTS

AGRICULTURAL HERITAGE

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

EDUCATION

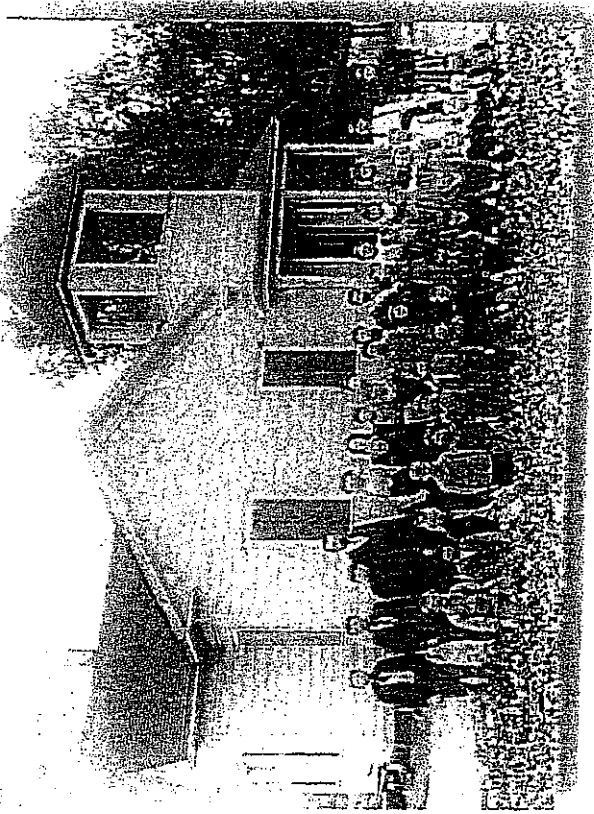
The Oxnard Historic Farm Park will serve as a window into the past. By restoring the original house to the cottage house beginning the community will recognize the humble beginnings these early families endured. The brick storehouse represents the early farmers' pious dedication and as well as a reverence 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, Cloyac, Connolly, Gieseler, Gonzales, Haydock, McLaughlin, McGrath, Milligan and Oliver 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.

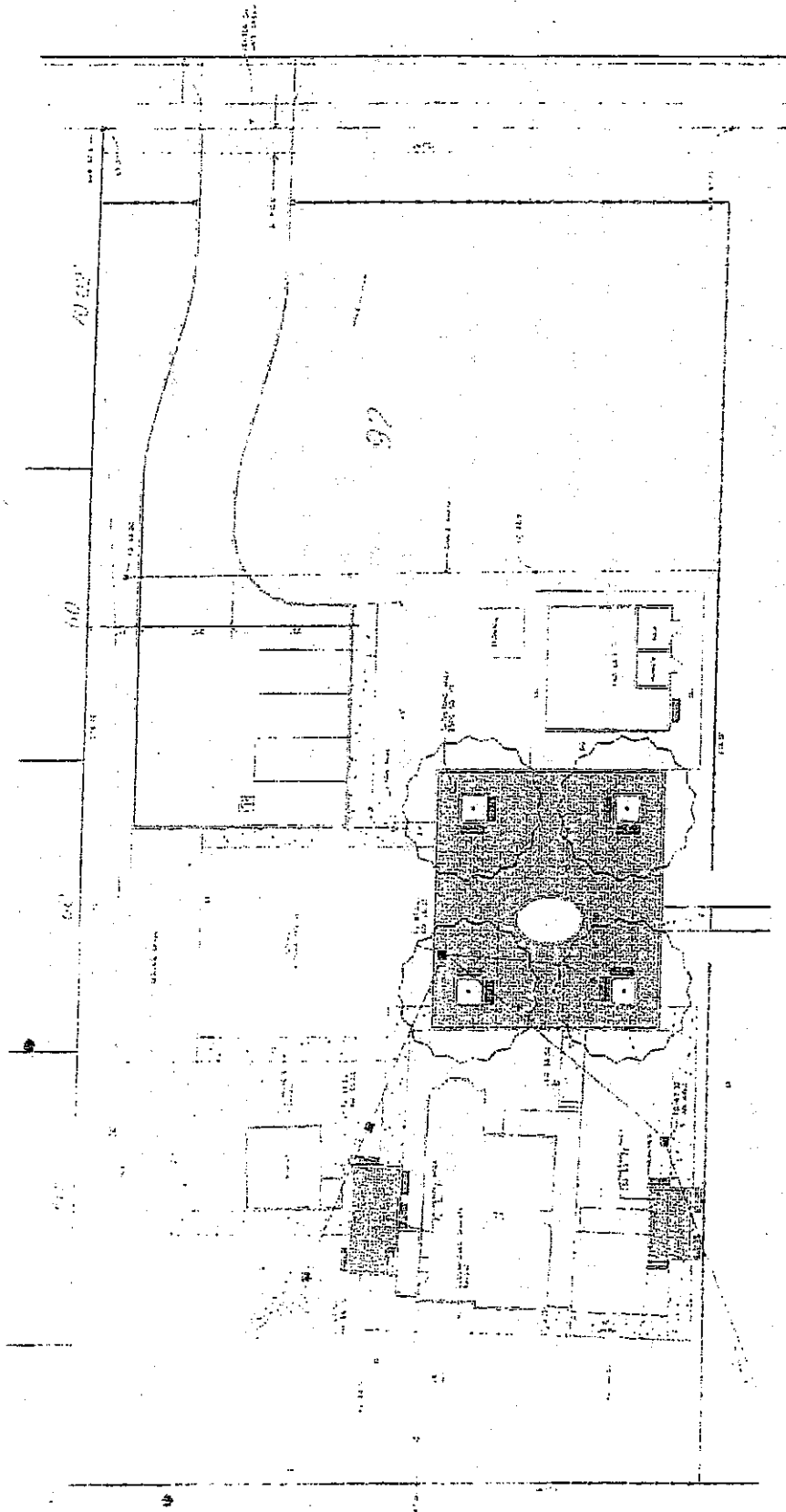
Agricultural Community: Grower, Labor, and Businesses

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



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

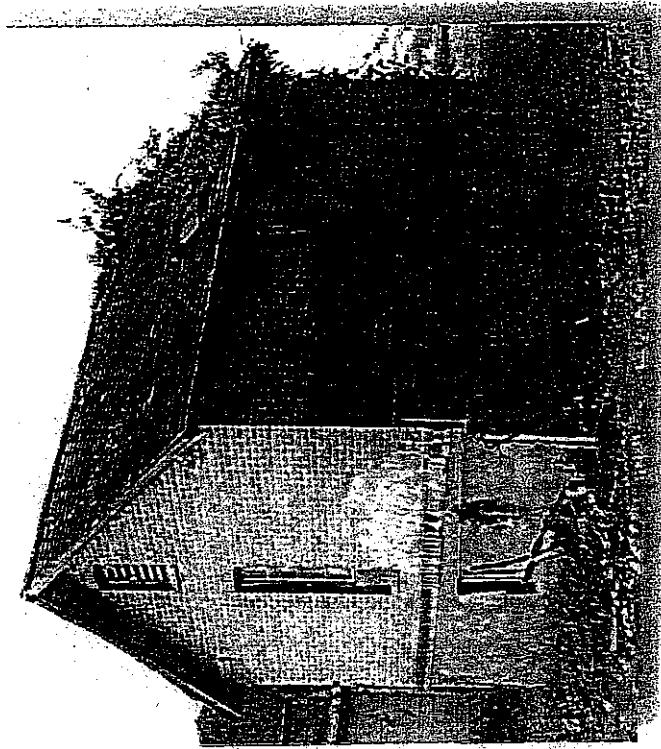
Wednesday - 7th grade day from 10:00-12:00

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



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	\$88888
Donations	\$88888
Total	\$500,000+

EXPENSES

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

PROJECT COST ESTIMATE

Historic Farm House Restoration

Compiled by Jake Cohorn

I. FARM HOUSE:

1. Plans, Permits, Fees:
2. Temporary Facilities:
3. Fencing? Power? Sanitation, Misc. rentals.
4. Utilities:
5. Permanent water, power, minimum outside plugs and security, including yard/roof drainage.
6. Demo:
7. 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.
8. Foundation:
9. Plumbing:
10. Trench and pipe plus temporary water and fire protection.
11. HVAC: nic.
12. Insulation: nic.
13. Structural Repairs/Modifications: (including roof sheathing)
14. Siding Repairs and Exterior Trim:

15. Masonry Repairs:
16. Window Repairs and Exterior Door Tune-up/Repair/Replacement:
17. Roof: (including sheet metal)
18. Plaster:
19. Interior Finish Carpentry:
20. Repair and/or replace doors, windows, base, casing and misc. trim/cabinetry.
21. Paint:
22. Interior: strip/deal with existing lead
23. Exterior: including prep all doors and windows.
24. Flooring:
25. Appliances/Furniture/Fixtures:
26. Woodstove? Sink/ wash basins? Lights/Lanterns?
27. Clean Up:
28. Landscaping:
29. Supervision, Overhead:
30. Total +/-
31. \$265,000.00

FUND RAISERS LTD

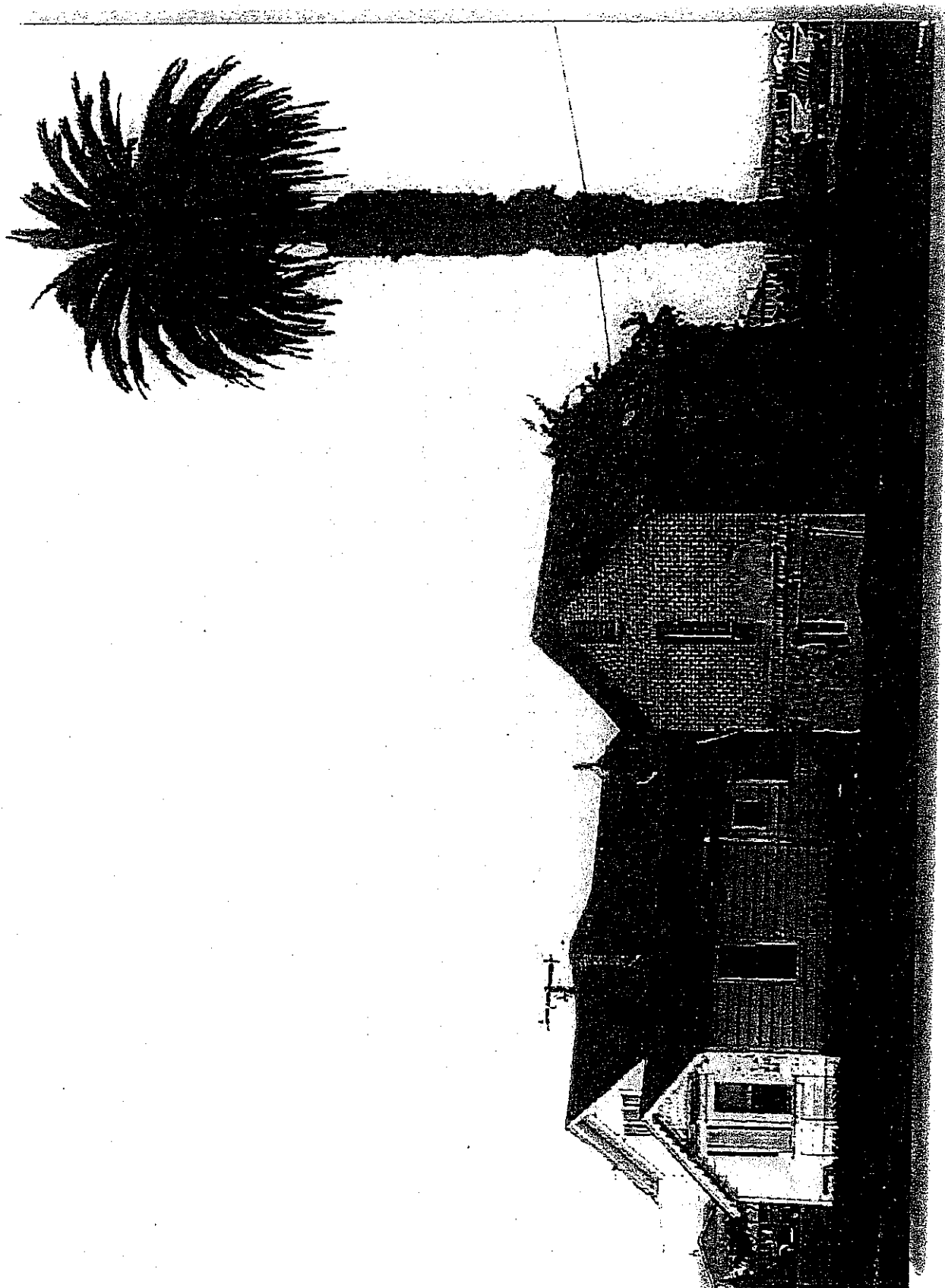
1-800-288-6447

EMERSONIAN DEPTH

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



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 complement 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

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**

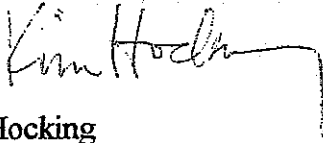
Action Date: June 11, 2007

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
Staff



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)

Susan L. Martin

Susan L. Martin, AICP
Planning Division Manager

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. Lease Term and Termination.

- (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 as 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.

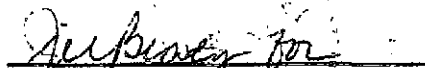
25. Entire Agreement. This Agreement constitutes the entire agreement of the parties regarding the subject matter described herein and supersedes all prior communications, agreements and promises, either oral or written, on the subject matter of this Agreement.

CITY OF OXNARD



Dr. Thomas E. Holden, Mayor

ATTEST:


Daniel Martinez, City Clerk

APPROVED AS TO FORM:

 07-03-07
Gary L. Gillig, City Attorney

OXNARD HISTORIC FARM PARK
FOUNDATION



Jeff Maulhardt, President

APPROVED AS TO INSURANCE:


Susan Winder, Acting Risk Manager

APPROVED AS TO CONTENT:

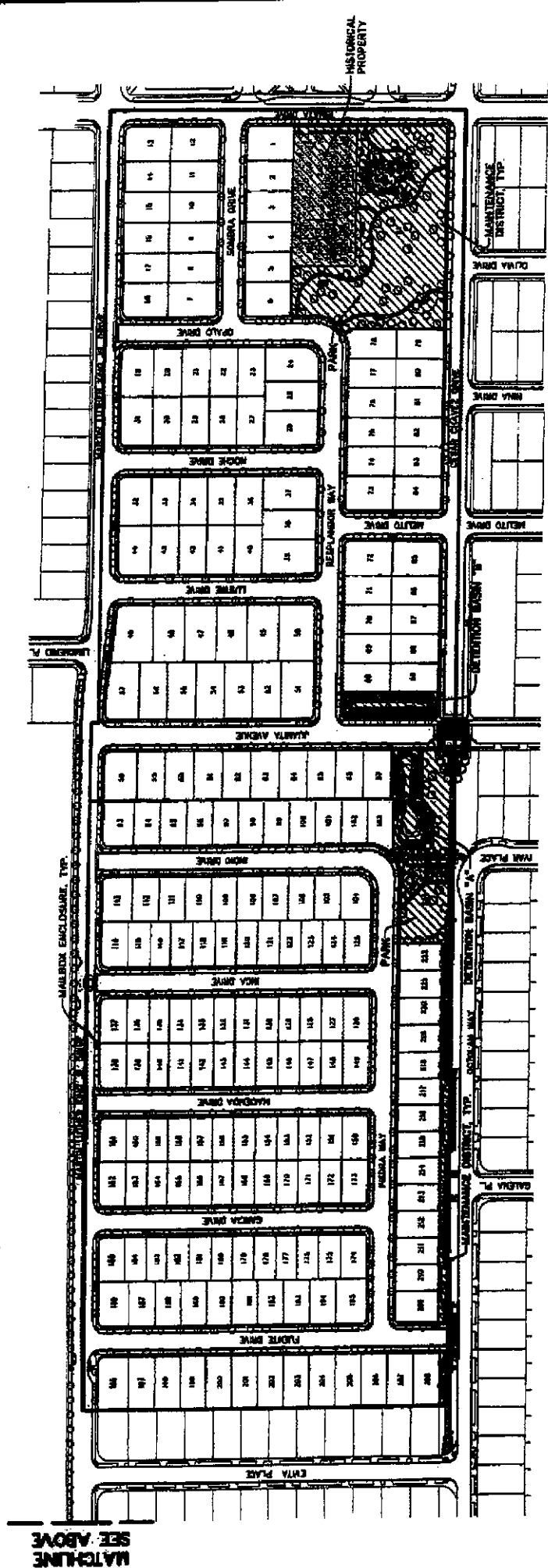


Ken Ortega, Public Works Director



Michael Henderson, Deputy Public
Works Director

EXHIBIT A



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

LEGEND:
 CITY MAINTAINED LANDSCAPE
 ASSESSMENT DISTRICT IMPROVEMENTS
 CITY MAINTAINED STREET TREE
 MAILBOX ENCLOSURE

ATTACHMENT NO. 1
 PAGE 9 OF 13

Prepared by: [Signature]
 Date: [Date]
 Title: [Title]

Sale of the Oxnard Farm Park Public Hearing

City Council
July 29, 2021

Adam Smith, Project Manager



RECOMMENDATION

2

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.

- 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

OXNARD FARM PARK

- 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

- 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

- 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.

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

PURCHASE & SALE AGREEMENT

- 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/recreational use with the most likely buyer being a local municipality or non-profit public entity

- 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

5220I REPORT

- Pursuant to California Government Code Section 5220I, 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 5220I report requires staff to submit a summary report of the sale agreement

- After Council approval, staff will submit the signed resolution approving the Purchase and Sale Agreement to the California Department of Housing and Community Development (HCD) for their review.
- Staff at HCD have up to thirty (30) days to approve the resolution.
- After receiving approval from HCD, the Purchase and Sale Agreement can be executed by the City and the Foundation.

FINANCIAL IMPACT

12

- 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
- 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 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.



THE END



CITY COUNCIL AGENDA REPORT

PUBLIC HEARINGS AGENDA ITEM NO. L.3

DATE: July 29, 2021

TO: City Council

FROM: Eden Alomeri, Billing and Licensing Director, (805) 385-7811, eden.alomeri@oxnard.org

SUBJECT: Discontinuing the Approximately \$500,000 Subsidy for Convenience Fee Costs Associated with Accepting Credit Cards, Debit Cards and Electronic Checks as Payment Methods for Certain City Services and Fees. (0/10/10)

RECOMMENDATION

That the City Council:

1. Conduct a public hearing to consider the establishment of fees to cover the costs of banking convenience fees for the use of credit card, debit card and electronic check transactions for certain City services, and for certain fees, charges or taxes due to the City; and
2. Following the public hearing, adopt a resolution establishing fees to cover the costs of banking convenience fees for the use of credit card, debit card and electronic check transactions for certain City services, and for certain fees, charges or taxes due to the City. (Finance and Governance Committee approved 3-0).

Please click the following link to view the required Measure M pre-recorded presentation video: <https://youtu.be/kGy8FGueChc>

BACKGROUND

Government Code section 6159 authorizes the acceptance of a credit card, debit card or electronic funds transfer for payment of services rendered by a city, or for payment of a fee, charge, or tax due to a city, provided the legislative body of the city approves such use. In 2003, City Council approved the use of credit cards to pay City fees. The statute authorizes the City to impose a fee for the use of a credit or debit card or electronic funds transfer, not to exceed the costs incurred by the City in providing for payment by credit or debit card or electronic funds transfer. In 2003, when Council approved the use of credit cards to pay City fees, staff estimated this would cost the City \$17,800 for every \$1,000,000 in credit card transactions. In actuality, the City has subsidized customers' use of payment cards and eChecks \$492,617.64 in 2018, \$534,832.30 in 2019, and \$520,565.20 in 2020.

DISCUSSION

Currently, the City accepts credit and debit cards for a broad range of services, including utilities, business taxes, short term rentals, building permits, fire inspections, recreation class fees, parking citations, false alarm citations, and parking meters. Additionally, eChecks are accepted for utility payments over the phone. Although credit and debit card and eCheck payments offer convenience to customers, since 2003 the City has had to pay fees for transactions to the gateway, the merchant and the credit card companies (Visa and MasterCard) or eCheck processor, each of which performs a function to complete a transaction and enable the City to collect payments. Below is a table showing some of the fees

that these service providers charge the City.

Fee			
Gateway	Paymentus	Per credit card transaction	\$0.45
Interchange	Visa	Traditional Rewards Card Present	1.65%+\$0.10
	Visa	Signature Preferred Card Not Present	2.50%+\$0.10
	Visa	Business Tier 3 Card Present	2.10%+\$0.10
	Visa	Business Tier 5 Card Not Present	3.00%+\$0.10
	Mastercard	High Value Convenience Purchase	2.3%+\$0.04
	Mastercard	Card Not Present High Value Small Tkt	2.6%+\$0.02
	Mastercard	World Elite Standard	3.15%+\$0.10
Merchant	Telecheck	Per Electronic Payment	2.55%+\$0.20
	Elavon	Per transaction	0.05%

Some of these fees for utility payments are discounted. The credit card providers would not continue the discount if the City stops subsidizing this expense.

Please note, there are some services for which the City is already charging a fee for using credit cards, so the City is not currently subsidizing those usages. Because in the past departments implemented different programs using various vendors and software to address their needs, this fee varies. In some cases, they are just using a different credit card processor. In other cases, the processor is selected by the vendor that offers the larger program. The variety is great: some programs charge a flat fee while some charge a percentage. Due to contractual obligations, the City cannot immediately change the rate that is currently being used by their service providers. Instead, the City will continue to use the rate that was set in the contract with the various service providers. As each contract comes due, staff will evaluate the value and viability of switching over to the vendor used for utility billing. Eventually, the City may be able to uniformly implement the credit card processing fee to all departments that are accepting credit/debit cards across the City's various payment locations.

Program	Software	Fees Paid By Users	Annual Collection
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CD- Short Term Rentals	Stripe	\$2.95+\$0.30 per transaction	\$50K
CCS Recreation Classes	ActiveNet/Facilitron	\$2.00 processing fee	\$150K
PD Administration Citation	Phoenix Group	\$3.95 or 3.25% per transaction	\$60K
PD Parking Citation	Win Cite/Phoenix Group	\$3.95 or 3.25% per transaction	\$1.7 Million
PD Animal Safety Citation	Win Cite/Phoenix Group	\$3.95 or 3.25% per transaction	\$60K

Also, there are instances where the City is subsidizing the fee, and staff recommends continuing that subsidy, at least temporarily. For example, some programs don't allow us to pass along the credit card processing fee to customers, so if we are intent on doing so, we will have to opt out of those programs. We need to weigh the benefit of the program with this subsidy and also consider alternative programs if available. Staff will be following up on this work regarding Fire inspection fees, Police Records and Property Division fees, and Police false alarm fees.

The threshold question for Council is whether the City should continue to subsidize the use of credit cards where this convenience fee has not already been passed on to users and where it is possible to pass along the fees to the users. If not, the various companies charging the fee have asked the City what transaction fee they should charge. Staff is targeting the percentage that recovers as much as possible of the actual subsidy without inadvertently charging extra. To arrive at the proposed rate to charge as a transaction fee, staff performed an analysis of the fees paid in the past three years in relation to the amount collected using only the regular (no discount) rates.

	2018	2019	2020	Average
Over The Counter	1.83%	1.82%	2.36%	2.00%
eCheck	2.67%	2.68%	2.75%	2.70%

The analysis above shows that the average cost to the City per transaction is 2.35%. The rate of 2.35% is on the low end of the range when compared with some other agencies that charge transaction fees. Below is a table that shows the rates other cities charge summarized from a recent survey of convenience fees. (This is provided for reference.)

AGENCY	FEE
Thousand Oaks	2.65% over \$500/\$2.75 below \$500
Ventura	3% in person/ \$3.95 online/ \$4.25 by phone
Ventura County	2.15% minimum of \$1.00
Belmont	2.45%

San Mateo	2.60%
Lake Elsinore	2.75%
Rolling Hills Estate	2.75% minimum of \$1.00
El Segundo	2.75%
Hermosa Beach	2.75% online
Willits	2.75%
Fresno Metro Flood Ctrl	2.8%
Covina	2.90%
Ridgecrest	2.95%
La Canada Flintridge	3.0%

Pursuant to Government Code section 66018, the City Council must hold a public hearing for the purpose of implementing such fees. If Council adopts the fees, the implementation period will take place over a few months. Throughout the summer, City will go through the testing phase with Paymentus (gateway) to ensure that the payment processes will work as expected. The testing phase should be completed by early fall. We will provide an update to the City Council when the program takes effect.

The establishment of the fee is exempt from the California Environmental Quality Act (“CEQA”) because setting fees fits within the statutory exemptions for local agency decisions involving rates, tolls or other charges pursuant to Public Resources Code Section 21080(b)(8) and Section 15273 of the CEQA Guidelines.

STRATEGIC PRIORITIES

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.

FINANCIAL IMPACT

Approval of the recommended transaction fee is estimated to save the City approximately \$500,000 annually.

COMMITTEE OUTCOME

The Finance and Governance Committee approved 3-0 on July 14, 2021, the staff recommendation and to forward the item for Council approval.

Prepared by: Eden Alomeri, Billing and Licensing Director

ATTACHMENTS

1. Convenience Fee Power Point Presentation to City Council 2021 07 29
2. Credit Card, Debit Card and eCheck Transaction Fees Resolution

DISCONTINUING THE APPROXIMATELY \$500,000 SUBSIDY FOR CONVENIENCE FEE ASSOCIATED WITH ACCEPTING CREDIT CARDS, DEBIT CARDS AND ELECTRONIC CHECKS AS PAYMENT METHODS FOR CERTAIN CITY SERVICES AND FEES

City Council
July 29, 2021

Eden Alomeri, Asst. City Treasurer/Billing & Licensing Director

That the City Council:

1. Conduct a public hearing to consider the establishment of fees to cover the costs of banking convenience fees for the use of credit card, debit card and electronic check transactions for City services, and for fees, charges or taxes due to the City; and
2. Following the public hearing, adopt a resolution establishing fees to cover the costs of banking convenience fees for the use of credit card, debit card and electronic check transactions for City services, and for fees, charges or taxes due to the City.

- Government Code Sec. 6159:
 - Authorizes acceptance of credit/debit cards or electronic fund transfer
 - Authorizes the City to impose a fee
 - Fee not to exceed the costs incurred by the City in providing for payment by credit/debit card or electronic fund transfer
- 2003 – City Council approved the use of credit cards to pay City fees (staff estimated cost would be \$17,800 for every \$1,000,000 in credit card transactions)
- Actual amount subsidized by City:
 - 2018 - \$492,617.64
 - 2019 - \$534,832.30
 - 2020 - \$520,565.20

- Credit Card accepted for:
 - Utility payments
 - Business taxes
 - Short term rentals
 - Building permits
 - Fire inspection
 - Recreation class fees
 - Parking citation
 - False alarm citation
 - Parking meters
- eChecks also accepted for:
 - Utility payments over the phone

Some fees for utility payments are discounted; credit card providers would discontinue discount if City stops subsidizing

			Fee
Gateway	Paymentus	Per credit card transaction	\$0.45
Interchange	Visa	Traditional Rewards Card Present	1.65% + \$0.10
	Visa	Signature Preferred Card Not Present	2.50% + \$0.10
	Visa	Business Tier 3 Card Present	2.10% + \$0.10
	Visa	Business Tier 5 Card Not Present	3.00% + \$0.10
	MasterCard	High Value Convenience Purchase	2.3% + \$0.04
	MasterCard	Card Not Present High Value Small Tkt	2.6% + \$0.02
	MasterCard	World Elite Standard	3.15% + \$0.10
Merchant	Telecheck	Per electronic check payment	2.55% + \$0.20
	Elavon	Per transaction	0.05%

- Some departments already charging clients fee for using credit cards
- Fee varies because using different credit card processors
- Some charge flat fees vs. percentage
- Some programs don't allow fees to be passed along
- City will continue to use rate set in contracts with various providers
- Eventually City may be able to uniformly implement fee to all programs

CREDIT CARD USAGE NOT SUBSIDIZED BY CITY			
Program	Software	Fees Paid By Users	Annual Collection
CD - STRs	Stripe	\$2.95 + \$0.30 per trans.	\$50K
CCS Rec Classes	ActiveNet/Facilitron	\$2.00	\$150K
PD Admin. Citation	Phoenix Group	\$3.95 or 3.25% per trans.	\$60K
PD Parking Citation	Win Cite/Phoenix Group	\$3.95 or \$3.25% per trans.	\$1.7 million
PD Animal Safety Citation	Win Cite/Phoenix Group	\$3.95 or \$3.25% per trans.	\$60K

- Question for Council: Should the City continue to subsidize the use of credit cards where convenience fee has not already been passed on to users and where it is possible to pass along fees to the users?
- Target: Recover as much as possible for the actual subsidy without inadvertently charging extra
- Proposed rate: Based on analysis of fees paid in the past 3 years using regular undiscounted rates: **2.35%**

	2018	2019	2020	Average
Over The Counter	1.83%	1.82%	2.36%	2.00%
eCheck	2.67%	2.68%	2.75%	2.70%

Rate of 2.35% is on the low end of the range compared with some other agencies that charge transaction fees

AGENCY	FEE
Thousand Oaks	2.65% over \$500/ \$2.75 below \$500
City of Ventura	3% in person / \$3.95 online / \$4.25 phone
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Belmont	2.45%
San Mateo	2.60%
Lake Elsinore	2.75%
Rolling Hills Est.	2.75%
El Segundo	2.75%

AGENCY	FEE
Hermosa Beach	2.75% online
Willits	2.75%
Fresno Metro Flood Ctrl	2.8%
Covina	2.90%
Ridgecrest	2.95%
La Canada Flintridge	3.0%
Truckee	3%

- City Council must hold a public hearing for the purpose of implementing such fees
- Summer— testing phase with Paymentus (gateway)
- Fall - testing period completed
- Update will be provided to the City Council when program takes effect

- Approval of the recommended transaction fee is estimated to save the City approximately \$500,000 annually.

That the City Council:

1. Conduct a public hearing to consider the establishment of fees to cover the costs of banking convenience fees for the use of credit card, debit card and electronic check transactions for City services, and for fees, charges or taxes due to the City; and
2. Following the public hearing, adopt a resolution establishing fees to cover the costs of banking convenience fees for the use of credit card, debit card and electronic check transactions for City service, and for fees, charges or taxes due to the City.



QUESTIONS?

CITY COUNCIL OF THE CITY OF OXNARD

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OXNARD ESTABLISHING
FEES FOR THE USE OF CREDIT CARD, DEBIT CARD AND ELECTRONIC CHECKS

WHEREAS, the City Council recognizes that it is convenient for customers to pay for City services and for fees, charges or taxes (collectively, "City Services") due to the City utilizing credit cards, debit cards, or electronic checks; and

WHEREAS, Government Code section 6159(h) authorizes the acceptance of credit cards, debit cards, or electronic checks for payment of City Services; and

WHEREAS, the City accepts payment by credit and debit cards for a broad range of services, including utilities, business taxes, short term rentals, building permits, fire inspections, recreation class fees, parking citations, false alarm citations, and parking meters; and

WHEREAS, the City accepts payment by electronic checks for utility payments made by phone; and

WHEREAS, although credit, debit card and electronic check payments offer convenience to customers, the City pays fees for these transactions to the gateways, merchants, credit card companies, and the electronic check processors, each of which performs a function to complete a transaction and enables the City to collect debit card, credit card, or electronic check payments; and

WHEREAS, in recent years, the City has subsidized customers' use of credit card, debit card, and electronic checks as follows: \$492,617.64 in 2018, \$534,832.30 in 2019, and \$520,565.20 in 2020.

WHEREAS, the City has agreements with various gateways, merchants and credit card processors wherein fees for use of credit cards and debit cards to pay for City Services are passed on to customers; and

WHEREAS, for City Services where fees are not established by agreement, the City desires to establish a fee for the use of credit card, debit card, or electronic check transactions.

NOW, THEREFORE, the City Council of the City of Oxnard resolves as follows:

SECTION 1. The City Council reaffirms its authorization allowing the City to accept payments from customers using credit cards, debit cards and electronic checks.

SECTION 2. The City may impose a fee of 2.35% per transaction (the “Fee”) whenever a customer uses credit card, debit card or electronic check to pay for City Services.

SECTION 3. The City Manager is authorized to take all actions necessary to implement and collect the Fee.

SECTION 4. If any section, subsection, clause or phrase in this resolution is for any reason held invalid, the validity of the remainder of this resolution shall not be affected thereby. The City Council would have passed this resolution and each section, subsection, sentence, clause, or phrases thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases thereof be held invalid.

SECTION 5. The Fee shall be effective upon adoption of this resolution.

SECTION 6. The adoption of this resolution is exempt from CEQA because it approves the Fee for the purpose of meeting the City’s operating expenses as set forth in Public Recourse Code Section 21080(b)(8) and Section 15273 of the CEQA Guidelines.

PASSED AND ADOPTED THIS _____ day of July 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

John C. Zaragoza, Mayor

Rose Chaparro, City Clerk

APPROVED AS TO FORM:

Stephen M. Fischer, City Attorney



CITY COUNCIL AGENDA REPORT
REPORTS
AGENDA ITEM NO. M.1

DATE: July 29, 2021
TO: City Council
FROM: Vyto Adomaitis, Community Development Director, (805) 385-7882, vyto.adomaitis@oxnard.org
SUBJECT: Maulhardt Ranch South Temporary Water Connection Agreement. (0/10/10)

RECOMMENDATION

That the Oxnard City Council approve and authorize the City Manager to execute the attached Agreement to provide a single water connection to the Maulhardt Ranch South parcel, near the northeast corner of Rose Avenue and Camino Del Sol, for a limited duration of time.

(This item did not originate in Committee as it is supportive of the May 4, 2021 Council action to approve an Off-Site Improvement Agreement and thus facilitate the construction of Del Sol High School.)

Please click the following link to view the required Measure M pre-recorded presentation video: https://youtu.be/4kclhdlx0_s

BACKGROUND

The 107-acre Maulhardt Ranch property, located at the northeast corner of Rose Avenue and Camino Del Sol, was subdivided in 2020 by the Oxnard Union High School District to accommodate the construction of Del Sol High School on a 52-acre parcel. Two remaining parcels now exist under the control of the Maulhardt Ranch property owners: a 44.2 acre parcel immediately north of the Del Sol High School construction site, and a second remainder parcel of 11.3 acres immediately west of the future Del Sol High School site. The 11.3 acre remainder parcel at the southwest corner of the property, known as Maulhardt Ranch South, is the subject of this Agreement. This parcel includes the historic Maulhardt Ranch House and several smaller dwelling units.

To prevent delays in the ongoing construction of the high school, the 12" water line that serves the Maulhardt Ranch South property from an existing water well needs to be abandoned and removed. The Maulhardt property owners have transferred a portion of their groundwater pumping rights to the City for both the Del Sol High School and the Maulhardt Ranch South properties as part of the high school project conditions that City Council approved on May 4, 2021.

DISCUSSION

Plans for the new water service are under city review, and as of the writing of this report are nearing approval. The need for a city water service connection to the Maulhardt Ranch South property in order to facilitate the Del Sol High School project has been anticipated, however the Oxnard City Code (Sec 22-21) requirement for separate water meter and water service line to each of the 5 detached dwelling units was not anticipated by the Maulhardt Ranch property owners. This code requirement would necessitate multiple service connections to the city water main and extensive new on-site piping from the new water meters to each of the existing dwelling unit buildings. This requirement would also require the City to be responsible for maintenance of multiple water meters and service lines to the city main, as opposed to a single

service and meter.

Due to the temporary nature of the connection and due to the excessive on-site water piping costs that would be incurred, the Maulhardt Ranch South property is seeking an alternate metering resolution to the Oxnard City Code requirement for separate water meters. Specifically the Maulhardt Ranch property owners are seeking single water service and meter, in lieu of multiple services and meters to each detached dwelling unit. Since the proposed arrangement does not conform to City Code, a Council authorized agreement is necessary. This Agreement would allow the Maulhardt Ranch South property owners to have a single water meter and water service connection to their property for a period of 5 years, with a possible extension of an additional 5 years. The Maulhardt Ranch South property is in the early stages of development, and this Agreement is thus structured to terminate before the full term of the agreement if the property is sold, conveyed to a 3rd party, subdivided, or developed. To date the Maulhardt Ranch property owners have submitted a Tract Map and a Specific Plan Amendment for the development of their two remaining parcels, including the Maulhardt Ranch South property.

STRATEGIC PRIORITIES

This agenda item is a routine operational item and does not relate to the five strategic priorities adopted by City Council on March 16, 2021.

FINANCIAL IMPACT

There is no fiscal impact associated with this staff report. The agreement does not modify or alleviate the need for the applicant to pay the current utility connection fees as adopted.

COMMITTEE OUTCOME

This item did not originate in Committee as it is supportive of the May 4, 2021 Council action to approve an Off-Site Improvement Agreement and thus facilitate the construction of Del Sol High School.

Additionally, the underlying City Code issue generating this Council item did not emerge until June 22, 2021 and thus going through a feeder committee prior to bringing this item before City Council would have pushed this item past the Council's August recess. Postponing this agenda item until after the August recess would have caused delays to the grading operations for the Del Sol High School project.

Prepared by: Jeff Pengilley, Assistant Community Development Director

ATTACHMENTS

1. Attachment A - Water Connection Agreement (Maulhardt) - Final Agreement #A-8365 including Exhibits A, B and C
2. Attachment B - Oxnard City Code Section 22-21
3. Presentation - Maulhardt Ranch South Temporary Water Connection Agreement

RECORDING REQUESTED BY:

City of Oxnard

AND WHEN RECORDED MAIL TO

City Clerk
City of Oxnard
300 West Third Street, 4TH Floor
Oxnard, CA 93030

*Exempt from Recording Fees Pursuant to
Government Code section 6103*

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Agreement #A-8365

**AGREEMENT AFFECTIVE REAL PROPERTY
(WATER CONNECTION AGREEMENT)**

This Agreement Affecting Real Property (Water Connection Agreement) (hereafter, the "Agreement") is made as of this _____ day of July 2021 by and between the City of Oxnard, a municipal corporation of the State of California ("City"), and Richard F. Maulhardt Jr. and Janet W. Maulhardt, Trustees of the RF and JW Maulhardt Family Trust dated January 21, 2008; Dean L. Maulhardt, Trustee of the Survivor's Trust created under the Dean L. and Toni Maulhardt Family Trust dated April 11, 2007; Gary Stiles, Trustee of The Stiles Family Trust Initially Created by Declaration of Trust on October 17, 2000; Ann Elizabeth Maulhardt Zerlaut; Donald Richard Maulhardt; Pamela Lynn Maulhardt Monestie; Terence M. Maulhardt, Trustee of the Maulhardt Family Trust dated November 18, 2011; Brian Edward Maulhardt, Trustee of the Brian Edward Maulhardt Children's Support Trust dated October 27, 2014; Jaime Maulhardt Berini; Stacy Lee Maulhardt Ire; Jessica Stiles Rogers; Jennifer Carol Stiles Matheson; Jaclyn Stiles Fujita; Erica L. Malone, Trustee of the K & E Malone Family Trust, dated February 27, 2021; Alan John Maulhardt, an married man as his sole and separate property; Lynn Edward Maulhardt, as Trustee of The Richard F. and Ruth B. Maulhardt Trust for Sean Richard Maulhardt, dated November 27, 1991; Alan Lee Maulhardt and Terry Lynn Maulhardt, Trustees of The Alan and Terry Maulhardt Family Trust, dated May 13, 1993; Lynn Edward Maulhardt and Marsha Ann Maulhardt, Trustees of The Lynn and Marsha Maulhardt Family Trust dated May 28, 1993 (collectively, the "Maulhardt Parties") on the above-referenced date regarding that certain 11.88 acre of parcel more fully described in Exhibit A and depicted in Exhibit B, both of which are incorporated herein by this reference (hereafter, "Maulhardt Parcel 2 Property" or "Property"). The City and Maulhardt Parties may be referred to herein individually as "Party" or collectively as "Parties."

RECITALS

A. The 107-acre Maulhardt Ranch property located northeast corner of Rose Avenue and Camino del Sol was annexed into the City of Oxnard in 2013.

B. After the Maulhardt Ranch property was annexed into the City, the property continued to be farmed, pending the eventual development of the property.

C. Under the threat of eminent domain, the Oxnard Union High School District ("District") acquired 52 acres of the Maulhardt Ranch property for the development of a new high school. This conveyance to the District resulted in a separation between the larger, northern portion Maulhardt Ranch adjacent to Cesar Chavez Drive ("Maulhardt Parcel 1 Property") and remaining property in the southwest corner of Maulhardt Ranch, adjacent to Camino Del Sol and Rose Avenue ("Maulhardt Parcel 2 Property"), as more particularly described on Exhibit A hereto and depicted on Exhibit B hereto.

D. The District's acquisition of the 52 acres and the District's expedited development of that property created specific special and unique issues regarding the water service to the Maulhardt Parcel 2 Property, which includes the historic Maulhardt Ranch House, several smaller dwelling units and a small orchard.

E. The District's grading of its site will necessitate the removal of a 12" water line now located on the District's property that historically provided water service to the Maulhardt Parcel 2 Property from the existing well on the Maulhardt Parcel 1 Property, near the corner of Cesar Chavez Dr. and Gibraltar Street.

F. Because the 12" water line on the Maulhardt Parcel 2 Property must be removed, and since this parcel is now located within the City's corporate boundaries, the Maulhardt Parcel 2 Property will need to connect to the City's water service.

G. While it is anticipated that the Maulhardt Parcel 2 Property will be redeveloped within the next five to ten years with affordable housing, this property is not currently slated for redevelopment at this time.

H. In the meantime, however, the Maulhardt Parties have requested that the City allow the Maulhardt Parcel 2 Property to connect to the City's water system with a single service connection until the Maulhardt Parcel 2 Property is redeveloped.

I. Pursuant to the terms and conditions of this Agreement, the City is willing to authorize a single service connection for the Maulhardt Parcel 2 Property, provided that the Maulhardt Parties acknowledge and agree that (1) all uses on the Maulhardt Parcel 2 Property must have a separate water connection upon the earlier of the development of any portion of the Maulhardt Parcel 2 Property or the expiration of the term of this Agreement; and (2) the Maulhardt Parties agree to be subject to all the specific provisions of this Agreement..

J. On behalf of themselves and their respective heirs, successors, transferees and/or assignees, the Maulhardt Parties are willing to accept the specific conditions, restrictions and prohibitions on the Maulhardt Parcel 2 Property that are imposed pursuant to this Agreement.

NOW, THEREFORE, in consideration of the foregoing Recitals which are hereby incorporated into the operative provisions of this Agreement by this reference and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the City and the Maulhardt Parties agree as follows:

1. Connection to City Water System. The City authorizes the Maulhardt Parcel 2 Property to connect to the City's water system with a single service connection, subject to the terms and conditions imposed by the City's Public Works Director or his/her designee and the provisions of this Agreement.

2. Term. The term of this Agreement shall expire upon the earlier of:

A. Five (5) years from the effective date of this Agreement;

B. The date that any portion of the Maulhardt Parcel 2 Property is subdivided or conveyed to a third party not subject to this Agreement; or

C. Upon the development of any portion of the Maulhardt Parcel 2 Property for a use that does not currently exist as of the date of this Agreement.

3. Extension of Agreement. Provided that this Agreement has not expired pursuant to Section 2, upon the written request of an authorized representative of the Maulhardt Parties, the Parties shall extend the term of this Agreement until the earlier of:

A. Ten (10) years from the original effective date of this Agreement;

B. The date that any portion of the Maulhardt Parcel 2 Property is subdivided or conveyed to a third party not subject to this Agreement; or

C. Upon the development of any portion of the Maulhardt Parcel 2 Property for a use that does not currently exist as of the date of this Agreement.

4. Separate Water Connections. On or before the expiration or termination of this Agreement, the Maulhardt Parties shall ensure that each separate use on the Maulhardt Parcel 2 Property has a separate water connection that is consistent with the rules and regulation of the City of Oxnard.

5. Appurtenant Nature. The provisions of this Agreement shall be covenants running with the land that concern and affect the Maulhardt Parcel 2 Property, and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by the City and its successors and assigns against the Maulhardt Parties and their respective heirs, successors, transferees and/or assignees, to or of the Maulhardt Parcel 2 Property or any portion

thereof or any interest therein. The City shall be deemed the beneficiaries of the provisions of this Agreement both for and in its own rights and for the purposes of protecting the interests of the community. The covenants, conditions, and restrictions shall run in favor of the City, without regard to whether the City has been, remains, or is an owner of any land or interest therein in the Maulhardt Parcel 2 Property.

6. Enforcement. If a violation of any provisions of this Agreement occurs, the City and its successors and assigns, without regard to whether the City or its respective successors and assigns is an owner of any land or interest therein to which these covenants relate, may institute and prosecute any proceedings at law or in equity to abate, prevent or enjoin any such violation or attempted violation or to compel specific performance by the Maulhardt Parties of its obligations hereunder. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the provisions hereof or to obtain relief against or recover for the continuation or repetition of such breach or violations or any similar breach or violation hereof at any later time.

7. Remedies. The City shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies, and to maintain any actions at law or suit in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant.

8. Entire Agreement. This Agreement contains the entire understanding relating to the subject matter described herein. Any oral representations or modifications concerning this Agreement shall be of no force and effect excepting a subsequent modification in writing, signed by the party to be charged.

9. Attorney's Fees. If either the Maulhardt Parties or City brings an action to enforce the terms hereof, the prevailing party in the final adjudication of any such action, trial or appeal shall be entitled to its costs and expenses of suit, including without limitation, its actual professional fees, including reasonable attorney's fees and costs of suit and judgment, to be paid by the losing party. If the City is the prevailing party in an action against the heir(s), successor(s), transferee(s) and/or assignee(s) of Maulhardt Parties as it relates to the Property or any portion thereof, then the City shall be entitled to its costs and expenses of suit, including without limitation, its actual professional fees, including reasonable attorney's fees and costs of suit and judgment from such heir(s), successor(s), transferee(s) and/or assignee(s).

8. Partial Invalidity. Any provision of this Agreement which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof, and such other provision shall remain in full force and effect. The City and Maulhardt Parties intend and desire that the remaining parts of this Agreement continue to be effective without any part or parts that have been declared invalid.

9. Time. Time is of the essence with respect to the performance of every provision of this Agreement.

10. Governing Law. The terms and provisions of this Agreement shall be governed and construed pursuant to the laws of the State of California.

11. No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the City, the Owners and their respective heirs, successors, transferees and/or assignees.

12. Section Headings. The section headings contained in this Agreement are for convenience and identification only and shall not be deemed to limit or define the contents to which they relate.

13. Counterparts. This Agreement may be executed by each party on a separate signature page, and when the executed signature pages are combined, shall constitute one single instrument.

14. Constructive Notice and Acceptance. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is, and shall be, conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Property.

15. Waiver of Claims, Actions and Proceedings Against the City. Maulhardt Parties, on behalf of themselves and their respective heirs, successors, transferees and/or assignees, agree to waive any and all claims, actions or proceeding against the City and/or its elected and appointed officials, officers, employees and agents relating to the provisions of this Agreement and the conditions, restrictions and prohibitions contained herein. Maulhardt Parties, on behalf of themselves and their respective heirs, successors, transferees and/or assignees, also agree to waive any and all legal challenges of any kind to the validity or enforceability of this Agreement. Maulhardt Parties acknowledge and agree that adequate consideration exists for the City and the Maulhardt Parties to enter into this Agreement.

16. Notices. All notices provided for herein shall be in writing and shall be effective when delivered in person or sent by registered or certified mail to City of Oxnard, attn.: City Clerk, 300 W. Third Street, Oxnard, California 93030-5738, with a copy to City Attorney, City of Oxnard, 305 W. Third Street, Oxnard, California 93030 and if to the Maulhardt Parties to:

Maulhardt Stiles Families
c/o Parkstone Companies
Attn: Chad Penrod
860 Hampshire Road, Suite U
Westlake Village, CA 91362

17. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to be one and the same agreement. A signed copy of this Agreement transmitted by email or by other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement for all purposes.

18. Construction. The provisions of this Amendment shall be liberally construed to effectuate its purpose. The language of this Amendment shall be construed simply according to

its plain meaning and shall not be construed for or against any party, as each party has participated in the drafting of this Amendment and has had its legal counsel review it. Whenever the context and construction so require, all words used in the singular shall be deemed to be used in the plural, and vice versa.

19. Granting of Temporary Easement. The Maulhardt Parties grant to the City that temporary easement more fully described in Exhibit C, which is attached hereto and incorporated herein by this reference. This temporary easement shall remain in place until the right-of-way dedication and Del Sol High School offsite improvements are completed and accepted by the City.

CITY OF OXNARD

Alexander Nguyen
City Manager

APPROVED AS TO FORM:

Stephen M. Fischer, City Attorney

MAULHARDT PARTIES

Richard F. Maulhardt Jr., Trustee of the RF and JW
Maulhardt Family Trust dated January 21, 2008

Janet W. Maulhardt, Trustee of the RF and JW
Maulhardt Family Trust dated January 21, 2008

Richard F. Maulhardt Jr., Attorney in Fact for Ann
Elizabeth Maulhardt now known as Ann Elizabeth
Maulhardt Zerlaut

Richard F. Maulhardt Jr., Attorney in Fact for
Donald Richard Maulhardt

Dean L. Maulhardt, Trustee of the Survivor's Trust
created under the Dean L. and Toni Maulhardt Family
Trust dated April 11, 2007

Dean L. Maulhardt, Attorney in Fact for
Jaime Maulhardt Berini

Dean L. Maulhardt, Attorney in Fact for
Stacy Lee Maulhardt Irely

Gary Stiles, Trustee of The Stiles Family Trust Initially
Created by Declaration of Trust on October 17, 2000

Gary Stiles, Attorney in Fact for Jessica Stiles Rogers

Gary Stiles, Attorney in Fact for Jennifer Carol Stiles
Matheson

Lynn Edward Maulhardt, as Trustee of The Richard F.
and Ruth B. Maulhardt Trust for Sean Richard
Maulhardt, dated November 27, 1991

Gary Stiles, Attorney in Fact for and Jaclyn Stiles
Fujita

Lynn Edward Maulhardt, Trustee of The Lynn and
Marsha Maulhardt Family Trust dated May 28, 1993

Marsha Ann Maulhardt, Trustee of The Lynn and
Marsha Maulhardt Family Trust dated May 28, 1993

Lynn Edward Maulhardt Attorney in Fact for
Pamela Lynn Maulhardt, now known as Pamela
Lynn Maulhardt Monestie

Terence M. Maulhardt, Trustee of the Maulhardt
Family Trust dated November 18, 2011

Brian Edward Maulhardt, Trustee of the Brian Edward
Maulhardt Children's Support Trust dated October 27,
2014

Alan Lee Maulhardt, Trustee of The Alan and Terry
Maulhardt Family Trust, dated May 13, 1993

Terry Lynn Maulhardt, Trustee of The Alan and Terry
Maulhardt Family Trust, dated May 13, 1993

Erica L. Malone, Trustee of the K & E Malone
Family Trust, dated February 27, 2021

Alan Lee Maulhardt, Attorney in Fact for Alan John
Maulhardt

EXHIBIT A

(MAULHARDT PARCELS)

Those portions of Subdivision 26 of the Rancho El Rio de Santa Clara O' la Colonia, in the City of Oxnard, County of Ventura, State of California, as said subdivision is designated and delineated on that certain map filed in the Office of the County Clerk of said County in that certain action entitled "Thomas A. Scott, et al, Plffs., vs. Rafael Gonzales, et al, Defts.", also being those portions of the land described in the Quitclaim Deed recorded on November 24, 2017 as Instrument No. 20171124-00152497 of Official Records in the Office of the County Recorder of said County, described by the following two (2) Parcels:

PARCEL 1

That portion of said Subdivision 26 and said Quitclaim Deed, lying northerly of the following described line:

Commencing at the intersection of the northerly line of *Colonia Road* (now called *Camino Del Sol*), 50 feet wide, as described in the Deed to Ventura County recorded on May 14, 1877 in Book 5, at Page 248 of Deeds in last said Office, with the easterly line of *Rose Avenue*, 50 feet wide, as described in the Deed to said County recorded on September 1, 1890 in Book 31, at Page 320 of Deeds in last said Office; thence along said easterly line of *Rose Avenue*, North 00°28'49" East, a distance of 1313.79 feet to the **Point of Beginning**; thence at right angles,

- 1st South 89°31'11" East, a distance of 111.36 feet to the beginning of a tangent curve concave northwesterly having a radius of 200.00 feet; thence along said curve,
- 2nd Through a central angle of 37°51'44", an arc distance of 132.16 feet; thence,
- 3rd North 52°37'05" East, a distance of 288.21 feet to the beginning of a tangent curve concave southeasterly having a radius of 200.00 feet; thence along said curve,
- 4th Through a central angle of 37°55'21", an arc distance of 132.37 feet; thence,
- 5th South 89°27'34" East, a distance of 719.60 feet to the beginning of a tangent curve concave southwesterly having a radius of 200.00 feet; thence along said curve,
- 6th Through a central angle of 50°57'48", an arc distance of 177.90 feet; thence,
- 7th South 38°29'46" East, a distance of 300.55 feet, more or less, to the beginning of a tangent curve concave northeasterly having a radius of 200.00 feet, said curve also being tangent to the westerly prolongation of the center line of *Jacinto Drive*, 66 feet wide, as shown on map of Tract No. 5136-1 recorded on April 16, 1999 in Book 137, at Page 64 of Miscellaneous Records (Maps) in last said Office; thence along said curve,

- 8th Through a central angle of $50^{\circ}57'54''$, an arc distance of 177.90 feet, more or less, to a point on said westerly prolongation; thence along said westerly prolongation,
- 9th South $89^{\circ}27'40''$ East, a distance of 130.97 feet to the easterly line of said Quitclaim Deed and the westerly line of said Tract No. 5136-1.

Contains: 44.55 Acres, more or less.

PARCEL 2

That portion of said Subdivision 26 and said Quitclaim Deed, lying southerly and westerly of the following described line:

Commencing at the intersection of the northerly line of *Colonia Road* (now called *Camino Del Sol*), 50 feet wide, as described in the Deed to Ventura County recorded on May 14, 1877 in Book 5, at Page 248 of Deeds in last said Office, with the easterly line of *Rose Avenue*, 50 feet wide, as described in the Deed to said County recorded on September 1, 1890 in Book 31, at Page 320 of Deeds in last said Office; thence along said easterly line of *Rose Avenue*, North $00^{\circ}28'49''$ East, a distance of 660.50 feet to the **Point of Beginning**; thence along a line parallel with said northerly line of *Camino Del Sol*,

- 1st South $89^{\circ}27'34''$ East a distance of 485.70 feet; thence at right angles,
- 2nd North $00^{\circ}32'26''$ East a distance of 172.00 feet; thence, at right angles
- 3rd South $89^{\circ}27'34''$ East a distance of 242.40 feet; thence at right angles,
- 4th South $00^{\circ}32'26''$ West a distance of 832.50 feet to a point on said northerly line of *Camino Del Sol*.

Contains: 11.88 Acres, more or less.

The above described parcels of land are delineated on the attached Exhibit "B".

William T. Hurdle
William T. Hurdle
PLS 5453

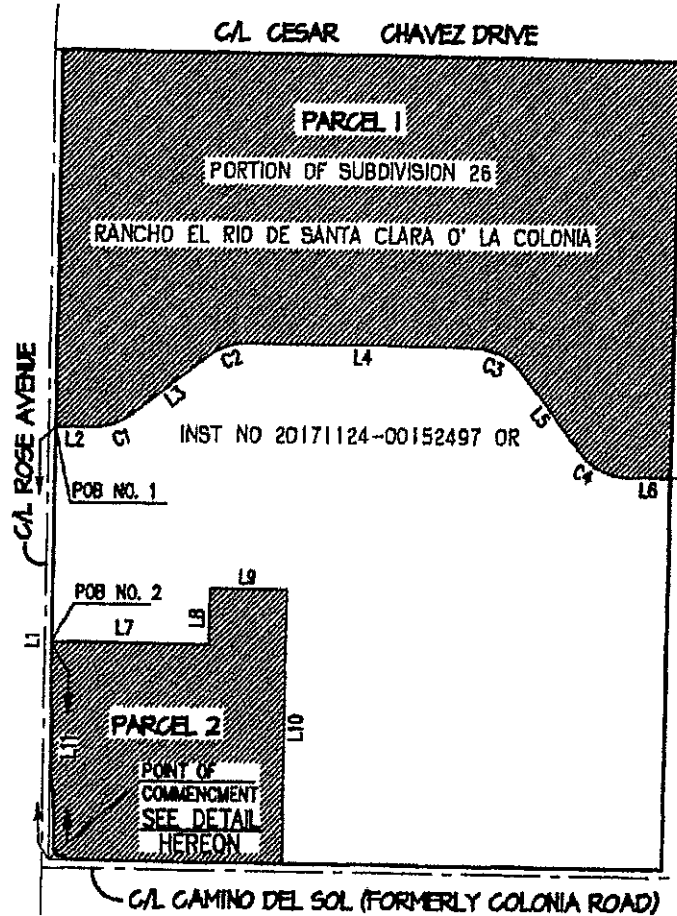
5-14-2019
Date



EXHIBIT B

SHEET 1 OF 1

(MAULHARDT PARCELS)



AREA

PARCEL 1 - 44.55 ACRES, MORE OR LESS
PARCEL 2 - 11.88 ACRES, MORE OR LESS

LINE DATA

LINE	BEARING	DISTANCE
L1	N00°28'49"E	1313.79'
L2	S89°31'11"E	111.36'
L3	N52°37'05"E	288.21'
L4	S89°27'34"E	719.80'
L5	S38°29'46"E	300.55'
L6	S89°27'40"E	130.97'
L7	S89°27'34"E	485.70'
L8	N00°32'26"E	172.00'
L9	S89°27'34"E	242.40'
L10	S00°32'26"W	832.50'
L11	N00°28'49"E	660.50'

TRACT NO. 5135-1
(137 MR 64)

C/L ROSE AVENUE

L1 TO POB NO 1
L11 TO POB NO 2

POINT OF COMMENCEMENT

C/L CAMINO DEL SOL
(FORMERLY COLONIA ROAD)
DETAIL - NO SCALE

CURVE DATA

CURVE	DELTA ANGLE	RADIUS	ARC LENGTH	RADIAL BEARING-IN	RADIAL BEARING-OUT
C1	37°51'44"	200.00'	132.16'	N00°28'49"E	N37°22'55"W
C2	37°55'21"	200.00'	132.37'	S37°22'55"E	S00°32'26"W
C3	50°57'48"	200.00'	177.90'	S00°32'26"W	S51°30'14"W
C4	50°57'54"	200.00'	177.90'	N51°30'14"E	N00°32'20"E

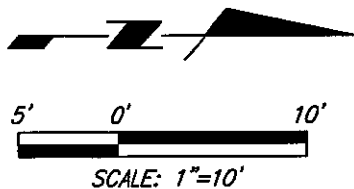
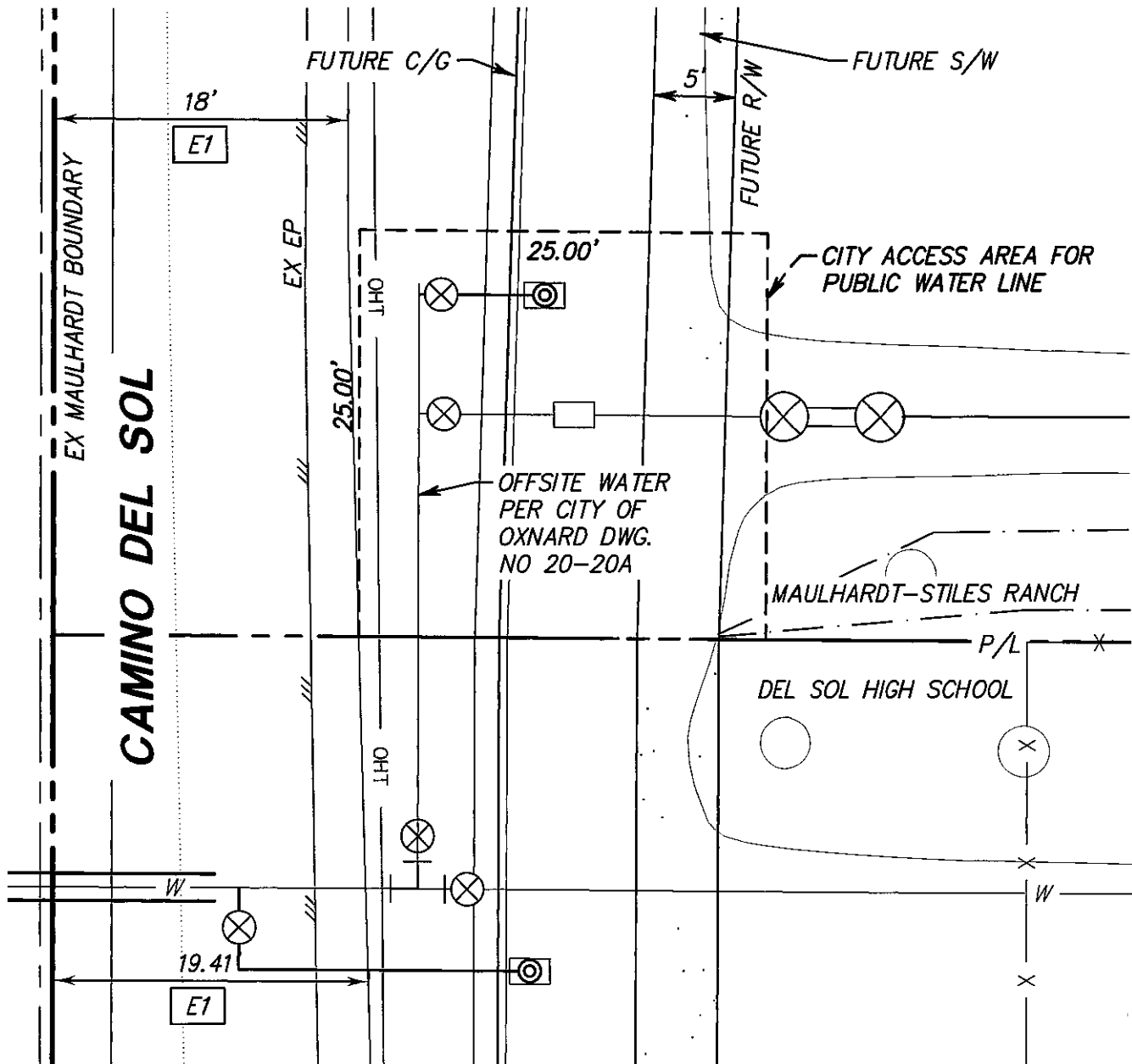
LEGEND

C/L CENTERLINE
INST INSTRUMENT
MR MISCELLANEOUS RECORDS
OR OFFICIAL RECORDS
POB POINT OF BEGINNING

HATCHED AREAS DENOTE LAND
DESCRIBED IN THE ATTACHED
EXHIBIT "A".

William T. Hurdle 5-14-2019
WILLIAM T. HURDLE DATE
PLS 5453





EASEMENT DATA

E1: PUBLIC STREETS EASEMENT GRANTED TO CITY OF OXNARD RECORDED AS INSTRUMENT NO. 2000-0139888 OF OFFICIAL RECORDS WITHIN AREA TO BE DEDICATED TO THE CITY OF OXNARD.



1672 DONLON STREET
VENTURA, CALIF. 93003
PHONE 805/654-6977
FAX 805/654-6979

CITY ACCESS EXHIBIT

MAULHARDT RANCH

SHEET

1 OF 1

Jun 29, 2021

SEC. 22-21. SERVICE CONNECTIONS.

(A) Each premises shall have a connection. No water service connection shall serve more than one premises.

(B) For purposes of this chapter, "premises" means any:

- (1) Detached single-family residence;
- (2) Apartment building; (Any building with two or more leased dwelling units held under single ownership.)
- (3) Residential condominium unit or residential stock cooperative unit;
- (4) Mobile home park, unless the spaces in that mobile home park are individually owned, in which case each space shall be a separate connection;
- (5) Office, commercial or industrial building, except office, commercial or industrial buildings with separately-owned individual condominium or stock cooperative units, in which case each unit shall be a separate premises;
- (6) Irrigation system; and
- (7) Unimproved lot or parcel.

(C) (1) The public works director may waive the requirement of a separate service connection for each unit of a condominium or stock cooperative office, commercial or industrial building, or for each individually owned space of a mobile home park, subject to such terms and conditions deemed reasonable and prudent by the public works director.

(2) At a minimum, such conditions shall protect the city from claims for damages arising from interruptions in water service or inadequate water pressure, and provide for the issuance and payment of a single bill for all sewer and water services rendered to the complex as a whole.

(D) (1) The requirement of a separate water service connection may not be waived in cases involving a restaurant or commercial laundry.

(2) The public works director may impose other requirements when the directory determines that public health and safety, system protection, maintenance costs, or liability concerns so dictate.

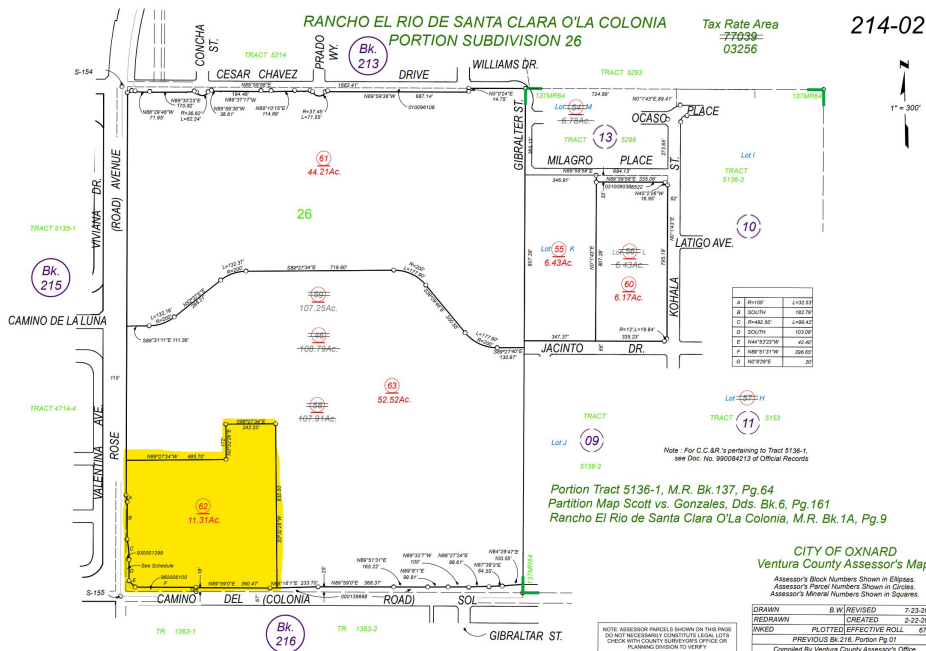
(`64 Code, Sec. 33-15) (Ord. No. 1009, 1769, 2030)

**Maulhardt Ranch South property
Northeast corner of Rose Avenue and Camino Del Sol
(APN 214-0-020-625)**

City Council
July 29, 2021



2

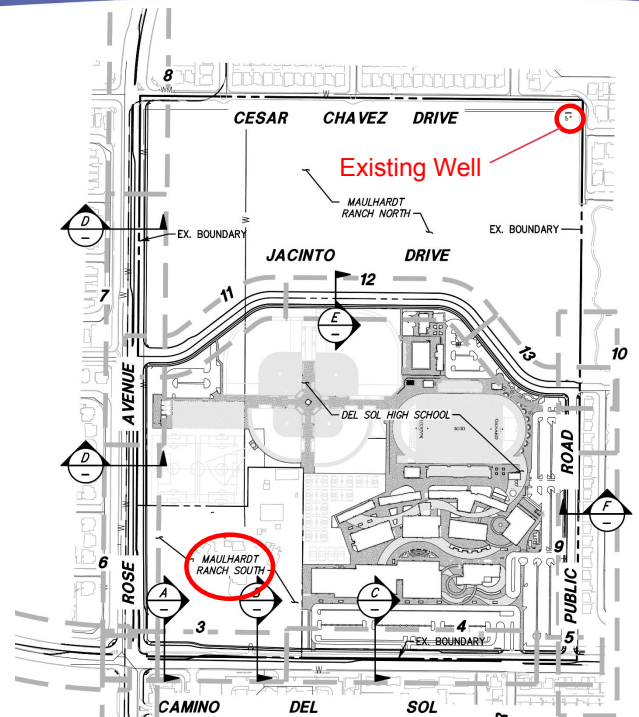




Project Description: Maulhardt Ranch South Property

Maulhardt Ranch South Property

- Currently served by a water well near the intersection of Gibraltar St. and Cesar Chavez Drive.
- Grading for the Del Sol High School requires the removal of the water pipe connecting the Maulhardt Ranch South property to the well.
- Water pumping allocations have been transferred.
- City water connection would be from Camino Del Sol



This Agreement will facilitate the construction of the Del Sol High School project by allowing for a temporary city water service connection to the Maulhardt Ranch South property and allow grading operations to continue without delays.

- The existing water line serving five dwelling units, including the historic Maulhardt Ranch House, needs to be removed so as not to delay the Del Sol High School grading operations currently underway.
- The current City Code requires a separate water meter for each detached dwelling unit. This would require multiple water meters be installed and the installation of hundreds of feet of water lines on site before the connection could be made to city water.

- This Agreement would allow a single larger water meter to be installed, minimizing on-site piping and also reducing the number of service connections to the main that the city will have to maintain.
- This Agreement is temporary in nature, having a term of 5 years, with an allowance of an extension of an additional 5 years for 10 years maximum.
- The Agreement would expire before the end of the term if the property is sold or conveyed to a 3rd party; if the property is developed; or if the property is subdivided.

That the City Council approve and authorize the City Manager to execute the attached Agreement to provide a single water service connection and meter to the Maulhardt Ranch South parcel for a limited duration of time as stipulated in the Agreement.



End of Presentation



CITY COUNCIL AGENDA REPORT
REPORTS
AGENDA ITEM NO. M.2

DATE: July 29, 2021
TO: City Council
FROM: Vyto Adomaitis, Community Development Director, (805) 385-7882, vyto.adomaitis@oxnard.org
SUBJECT: Teal Club Development Agreement Preliminary Authorization. (0/10/10)

RECOMMENDATION

That the City Council:

1. Determine if entering into a Development Agreement with Borchard Family Interests (the "Developer") is warranted and desirable for the project in the Teal Club Specific Plan Area; and 2. Direct City staff to negotiate a Development Agreement with the Developer for recommendation by the Planning Commission and consideration by the City Council. (This item did not originate in Committee.)

Please click the following link to view the required Measure M pre-recorded presentation video: https://youtu.be/1x_RwIJ3sjA

BACKGROUND

The Developer's representative has submitted a request to consider a Development Agreement for the Teal Club Specific Plan (TCSP) area to mitigate the loss of farmland. The Teal Club project area is bounded by Doris Avenue on the north, Patterson Road and a planned future site for Oxnard School District educational facilities on the west, Teal Club Road on the south, and Ventura Road on the east. The Teal Club Project area refers to the 161.12-acre project area that includes both the 149.72-acre TCSP area and the 11.4-acre area south of Teal Club Road, north and west of Little Farms Road and bisected by Mallard Way, to be Annexed into the City of Oxnard. The majority of the project area is located in the unincorporated area of Ventura County within the Oxnard Sphere of Influence (SOI) while two parcels are located in the City of Oxnard. The TCSP area is within the established City of Oxnard Urban Restriction Boundary (CURB). The entire project area is bounded on the north, south, and east by the City of Oxnard.

City Council Resolution No. 10,448, approved in 1992, outlines the process by which the City shall consider a requested Development Agreement. This resolution states: "As an early part of the land use decision-making process, City Council shall determine whether a Development Agreement is warranted for a proposed development project." In making this determination the City Council shall consider: (A) whether the developer is willing to provide significant benefits to the City that may include capital facilities, open space, environmental, educational, social, and cultural needs of the City; and (B) whether the impacts and benefits justify the use of a Development Agreement.

TCSP PROJECT DESCRIPTION

The TCSP area includes seven agricultural parcels currently in active agricultural production, two of the parcels (seven

acres) are located within the City of Oxnard and five parcels (142.72 acres) are in the County of Ventura. Therefore, the proposed project would also involve Pre-Zoning that would allow for the Annexation of a 142.72-acre collection of five agricultural parcels to the City of Oxnard (City), Annexation approval by the Ventura County Local Agency Formation Commission (LAFCo), and Annexation to the Calleguas Municipal Water District (CMWD) and Metropolitan Water District (MWD). The TCSP area is also within the land use planning area for the Oxnard Airport and would require approval by the Ventura County Airport Land Use Commission.

The TCSP would involve construction of up to 990 single and multifamily residential units (of which approximately 148 would be affordable housing units); development of up to 132,000 gross square feet (gsf) of business park; up to 60,000 gsf of Urban Village commercial space; 17.76 acres of community and neighborhood parks and open space; new and widened on- and off-site arterials and collector streets; utility infrastructure including complete recycled water irrigation; resident and visitor parking; bicycle and pedestrian paths and sidewalks; bus transit stops; various pocket parks and resident recreation areas; and landscaping within the individual residential projects. In compliance with the LAFCo policy to avoid creating unincorporated islands, the project includes Annexation of 11.4 acres (9 parcels) south of Teal Club Road that would be Pre-Zoned Light Manufacturing (M-1) with capacity for up to 347,608 gsf of manufacturing uses. The project site is entirely within the Oxnard City Urban Restriction Boundary (CURB) and, therefore, does not require voter approval to adopt the proposed TCSP, Pre-Zoning, and Annexations. Overall, the entire project area is 161.12 acres (149.72-acre TCSP area plus the 11.4-acre additional Annexation area).

DISCUSSION

The TCSP area is located on soil that has a state designation of Farmland of Statewide Importance (Attachment A). The development proposed within the TCSP area will replace the farmland with land used for non-agricultural activities. Thus, the proposed development will result in the permanent loss of farmland. Per the 2030 General Plan, the loss of farmland is a significant and unavoidable impact. The California Environmental Quality Act (CEQA) and case law directs for significant impacts to be mitigated to the maximum extent feasible, even if an impact is unavoidable after mitigation. If decision-makers are to approve a project which has a significant and unavoidable impact, decision-makers must adopt a “Statement of Overriding Consideration” which identifies economic, legal, social, technological, or other benefits of a proposed project which outweigh the unavoidable environmental effects.

To mitigate the loss of farmland the Developer is proposing to enter into a Development Agreement which would establish a project specific “Agricultural Land Conversion In-Lieu Fee” payable to the City. The fee would be established in a way that it could only be used and leveraged by the City for the acquisition, refurbishment, and or development of farmworker housing within the City of Oxnard. The proposed “Agricultural Land Conversion In-Lieu Fee” is similar in concept to the City's existing Affordable Housing In-Lieu Fee, with the distinction that this fee's use would be specific to supporting farmworker housing. The per-acre in-lieu fee would be determined as part of the Development Agreement negotiations between City staff and the applicant team.

The proposed Development Agreement would provide the following benefit to the Developer:

1. Provide specific economic, legal, social, technological, or other benefits of a proposed project which outweigh the unavoidable environmental effects to be included within the Statement of Overriding Considerations.

The proposed project, including Development Agreement, would provide the following benefits to the City:

1. Orderly development of the Project as it is constructed over time that would facilitate:

- Development of up to 990 single and multifamily residential units (of which approximately 148 would be affordable housing units); 132,000 gsf of business park; 60,000 gsf of commercial space; and 17.76 acres of community and neighborhood parks;
- Employment growth in the City resulting from both the construction and use of the Project; and

- Increase in property tax revenues from the development of the Project.

2. Payment of a fee that the City shall use and leverage for the acquisition, refurbishment, and or development of farmworker housing within the City of Oxnard.

Based upon the benefits that the Developer is willing to provide pursuant to the proposed Development Agreement, City staff recommends that the City Council make a determination that a Development Agreement is desirable for the project and direct City staff to negotiate a Development Agreement with the Developer. The negotiation would focus on the establishment of the per-acre in-lieu fee amount, which would be presented to the Planning Commission and City Council.

STRATEGIC PRIORITIES

This agenda item supports Economic Development strategy. The purpose of 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 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 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

No direct fiscal impact is anticipated by the initiation of Development Agreement negotiations. However, detailed fiscal impact analysis will be presented with the Development Agreement when it is presented to the City Council for consideration.

COMMITTEE OUTCOME

This item did not originate in Committee. Resolution No. 10,448 delegates to the Council as a whole the preliminary determination of whether a development agreement is warranted for a proposed project. If the City Council makes a preliminary determination that a development agreement is desirable for the proposed project and a development agreement is subsequently negotiated, it will be considered at public hearings before both the Planning Commission and the City Council.

Prepared by: Jay Dobrowalski, Senior Planner, Scott Kolwitz, Planning Manager

ATTACHMENTS

1. Presentation - Teal Club Development Agreement Preliminary Authorization

Teal Club Development Agreement Authorization

Jay Dobrowalski, Senior Planner
Scott Kolwitz, Planning & Environmental Services Manager
Vyto Adomaitis, Community Development Director
Community Development Department

City Council
July 29, 2021



Background

2

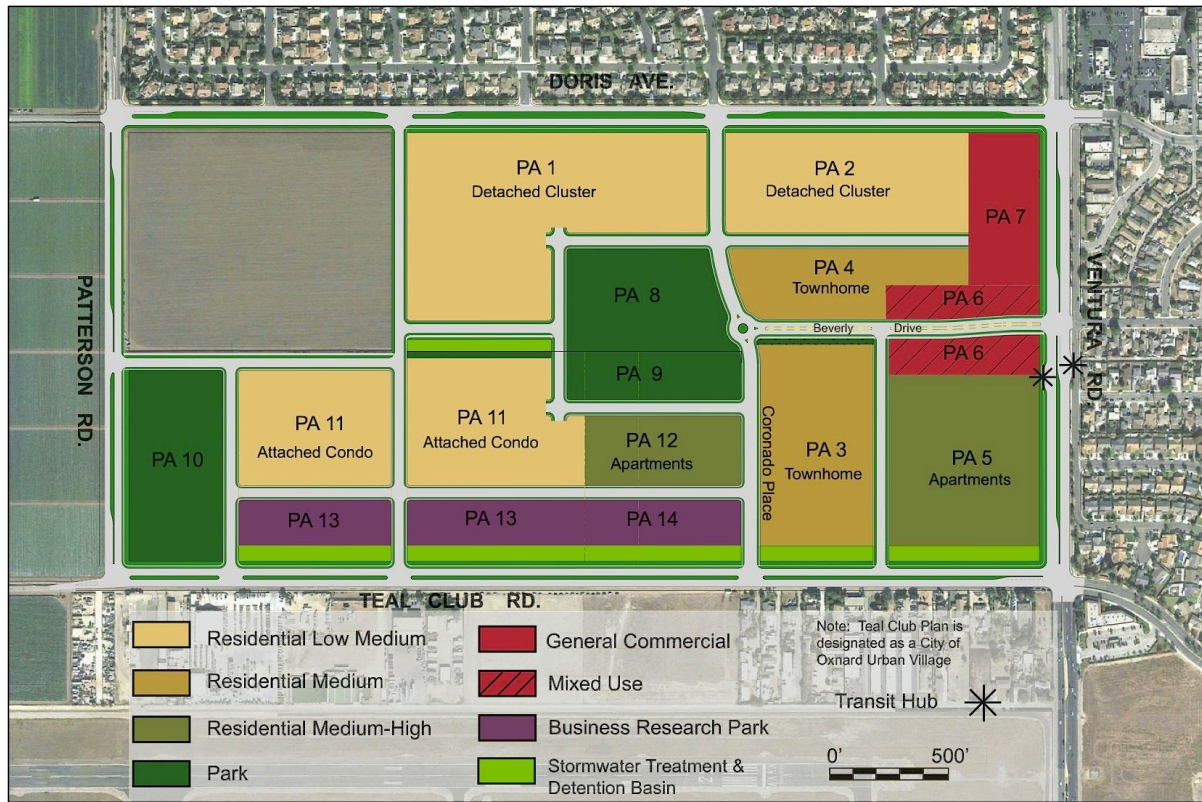
- City Council Resolution No. 10,448 approved in 1992 outlines the process by which the City shall consider a requested Development Agreement
- This Resolution states:
“As an early part of the land use decision-making process, City Council shall determine whether a Development Agreement is warranted for a proposed development project.”

City Council consideration:

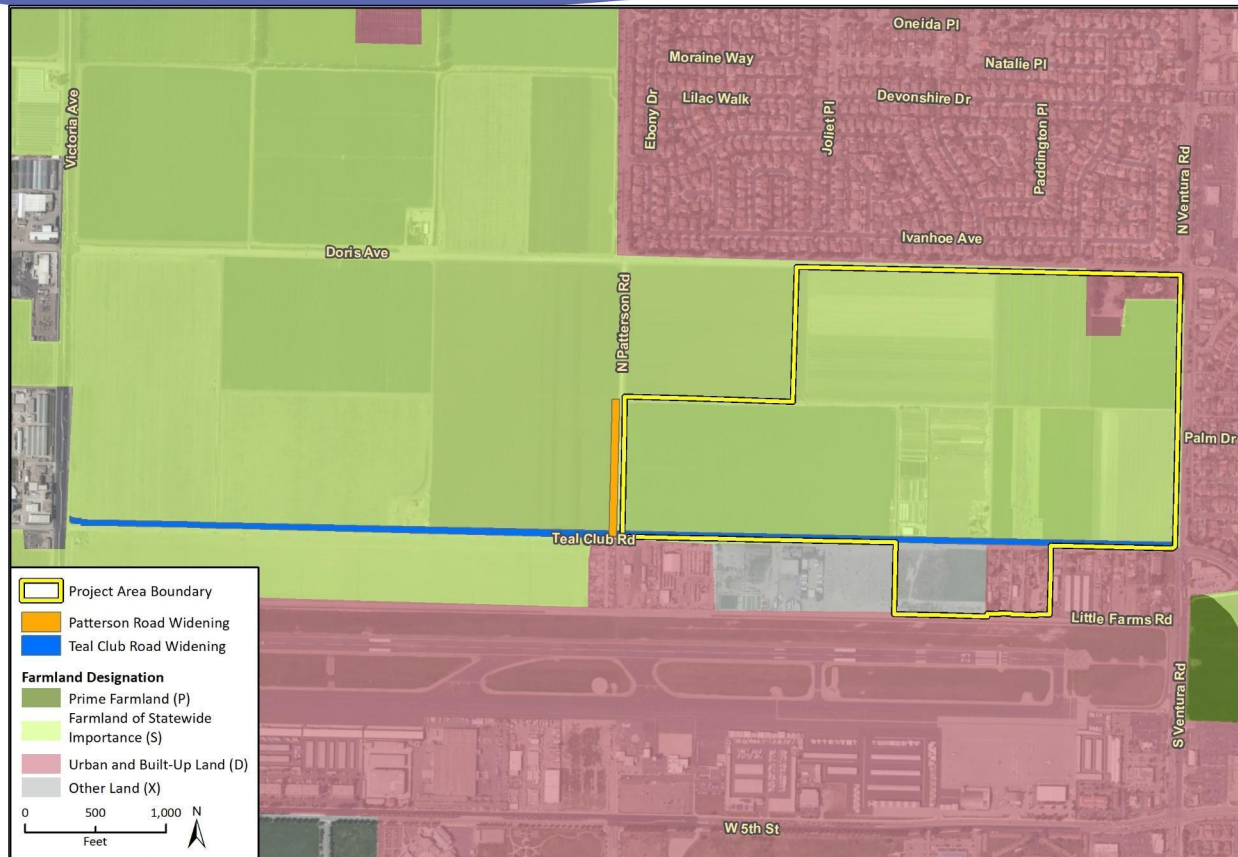
- Whether the developer is willing to provide significant benefits to the City including capital facilities, open space, environmental, educational, social, and cultural needs of the City and
- Whether the impacts and benefits justify the use of a Development Agreement.

Project Description

- Proposed Teal Club Specific Plan would involve up to:
 - 990 single and multifamily residential units;
 - ~148 would be affordable housing units;
 - 132,000 sf of business park;
 - 60,000 sf of commercial space;
 - 17.76 acres of parks and open space; and
 - Infrastructure improvements
- Proposed Teal Club Specific Plan would require:
 - Conversion of approximately 150 acres from Farmland of Statewide Importance to non-agricultural uses.



Agricultural Lands



1. The proposed development will result in the permanent loss of farmland.
2. Per the 2030 General Plan, the loss of farmland is a significant and unavoidable impact.
3. CEQA and case law directs for significant impacts to be mitigated to the maximum extent feasible, even if an impact is unavoidable after mitigation.
4. A “Statement of Overriding Consideration” would need to be adopted which identifies economic, legal, social, technological, or other benefits of a proposed project which outweigh the unavoidable environmental effects.

Developer Proposal

To mitigate the loss of farmland conversion enter into a Development Agreement which would:

1. Establish a project specific “Agricultural Land Conversion In-Lieu Fee” payable to the City.
2. Only be used and leveraged for the acquisition, refurbishment, and or development of farmworker housing within the City of Oxnard.
3. The per-acre in-lieu fee would be determined as part of the Development Agreement negotiations between City staff and the applicant team.

The proposed Development Agreement would:

- Provide specific economic, legal, social, technological, or other benefits of a proposed project which outweigh the unavoidable environmental effects to be included within the Statement of Overriding Considerations.

Community Benefits

The proposed project / Development Agreement would provide:

1. Orderly development of
 - Up to 990 residential units, up to 132,000 square-feet of business park, up to 60,000 square-feet of commercial space, 17.76 acres of parks and open space, new and widened streets, infrastructure, and landscaping.
 - Employment growth in the City resulting from both the construction and use of the Project;
 - Increase in tax revenues from the development of the Project
2. Payment of a fee that the City shall use and leverage for the acquisition, refurbishment, and or development of farmworker housing within the City of Oxnard.

- Negotiate Development Agreement
- Process Development Agreement along with the Specific Plan, Pre-Zoning, Annexation by LAFCo, and Annexation by (Calleguas Municipal and Metropolitan) Water Districts.
 - Complete CEQA determination
 - Planning Commission public hearing and recommendation to City Council
 - City Council Housing and Economic Development Committee discussion and recommendation
 - City Council public hearing

Recommendation

That the City Council:

1. Determine if entering into a Development Agreement with Borchard Family Interests (the “Developer”) is warranted and desirable for the project; and
2. Direct City staff to negotiate a Development Agreement with the Developer for recommendation by the Planning Commission and consideration by the City Council.



End of Presentation