



Dave Wheeler
Mayor

Joshua Sweeney
Mayor Pro Tempore

Don Caskey
Council Member

Janine Heft
Council Member

Erica Pezold
Council Member

City of Laguna Hills City Council / Planning Agency

Regular Meeting Agenda
Tuesday, July 9, 2024 - 7:00 PM
(Closed Session at 6:00 p.m. when scheduled)

City Council Chamber
24035 El Toro Road
Laguna Hills, CA 92653

In Person Public Comments: Any person wishing to address the City Council/Planning Agency on any matter, whether or not it appears on this Agenda, is asked to complete a pink "Request to Speak" form available on the table at the back of the Chamber and submit the form to the City Clerk. The Request to Speak form assists the Mayor in ensuring that all persons wishing to address the City Council are recognized and ensures accurate identification of meeting participants in the City Council/Planning Agency Minutes. Completion of the form is voluntary. It is City policy to limit public testimony to up to three minutes per person, an overall time limit of twelve minutes for any one subject, and a total time limit of thirty minutes for Public Comments. If you are commenting on an Agenda item, your comments will be heard at the time that item is scheduled on the Agenda. If you are addressing the City Council on an item not listed on the Agenda, the City Council is prohibited by law from discussing or taking any action on that item.

Submission of Electronic Public Comments: Those wishing to make electronic public comments may submit their comments by [email to the City Clerk](#) by 5:00 p.m. on Tuesday, July 9, 2024. In the subject line of the email, please state your name and the item number you are commenting on. Any public comment received that does not specify a particular agenda item number will be announced during the general public comment portion of the agenda. All comments received by 5:00 p.m. on the date of the meeting will be provided to the City Council and will be provided for public inspection at the meeting. During the applicable agenda item, the City Clerk will announce the name of the sender and subject matter of all electronic comments received by 5:00 p.m. on Tuesday, July 9, 2024. Email comments will NOT be read by the City Clerk during the meeting. Electronic public comments may only be submitted via email and comments via text and social media (Facebook, X (formerly Twitter), etc.) will not be accepted.

For questions or assistance, please contact the City Clerk's Office at (949) 707-2635 or via [email](#).

General Business Convening at 7:00 PM

Call to Order

Resolution No. 96-04-09-1 established rules of decorum for public meetings held by the City of Laguna Hills. Resolution No. 96-04-09-1 is available on the table at the back of the City Council Chamber.

Invocation

Pledge of Allegiance: Council Member Caskey

Roll Call of City Council Members

1. Presentations and Proclamations

2. Schedule of Future Events

2.1 Schedule of Future Events

Recommendation: That the City Clerk announce the upcoming meetings and events.

3. Public Comments

This is the time to address the City Council on any matter not listed on this Agenda that is within the subject matter jurisdiction of the City Council. Public Comments are limited to three minutes per person, an overall time limit of twelve minutes for any one subject, and a total time limit of thirty minutes. Clarification questions from the City Council will not count against time limits. Speaker's responses are limited to one minute.

4. Consent Calendar

All matters listed under "CONSENT CALENDAR" are considered to be routine and will be enacted by one motion approving the recommendation listed on the Agenda. There will be no separate discussion unless Members of the City Council or Staff request specific items be removed from the Consent Calendar.

4.1 Waive Reading in Full of all Ordinances and Resolutions on the Agenda

Recommendation: That the City Council waive reading in full of all ordinances and resolutions on the agenda and declare that said titles which appear on the public agenda shall be determined to have been read by title and further reading waived.

4.2 Approval of Minutes for June 25, 2024, Regular Meeting

Recommendation: That the City Council approve the City Council Minutes for the June 11, 2024, Regular Meeting.

4.3 Ratification of July 9, 2024 Warrant Register

Recommendation: That the City Council ratify the accompanying Warrant Register for the periods from June 15, 2024, to June 28, 2024, in the amount of \$475,042.13.

4.4 Notice of Completion and Final Payment for the Citywide Sidewalk Repairs & Concrete Construction Project Re-Bid, CIP No. 106

Recommendation: That the City Council: 1) Certify the completion of and accept the improvements for the subject project; 2) Authorize the Public Works Director to sign the Notice of Completion; 3) Authorize the recording of the Notice of Completion with the County of Orange and to release the faithful performance and payment bonds one year and 35 days, respectively, after the date of recordation of the Notice of Completion contingent upon no claims or liens being filed with the City; and 4) Authorize payment of the final retention 35 days after the date of recordation of the Notice of Completion in the net amount of \$32,924.13, if no liens have been filed.

4.5 Agreement with Age Well Senior Services for Community Development Block Grant Funds for Fiscal Year 2024/2025

Recommendation: That the City Council: 1) Approve the Agreement between Age Well Senior Services, Inc., and the City of Laguna Hills for Community Development Block Grant Funds for Fiscal Year 2024/2025; 2) Authorize the City Manager to execute the Agreement; and 3) Authorize the Finance Director to amend the Fiscal Year 2024/2025 budget to account for the \$350,000 grant.

4.6 Proposed Civic Center Office Lease with Layla Fijany DDS MS Corp., a California corporation, for 24031 El Toro Road, Suite 205, Laguna Hills, California

Recommendation: That the City Council: 1) Approve the lease agreement with Layla Fijany DDS MS Corp., a California corporation, for 24031 El Toro Road, Suite 205, Laguna Hills, California; 2) Authorize the City Manager to make minor modifications to and negotiate the final terms of the lease agreement, as necessary; and 3) Authorize the City Manager to execute the lease agreement.

4.7 Agreement with Procure America for Cost Reduction Consulting Services

Recommendation: That the City Council approve entering into a Consultant Services Agreement with Procure America for Cost Reduction Services and authorize the City Manager to execute the Agreement on behalf of the City

4.8 Community Assistance Funding to the Laguna Hills High School Parent Teacher Student Association for Grad Nite and Scholarship Funding

Recommendation: That the City Council adopt a Resolution entitled: "A Resolution of the City Council of the City of Laguna Hills, California, authorizing annual Community Assistance Funding to the Laguna Hills High School Parent Teacher Student Association for Grad Nite and Scholarship Funding."

Items Removed from the Consent Calendar

5. Planning Agency

5.1 Roll Call of Planning Agency Members

5.2 Public Comments

This is the time to address the Planning Agency on any matter not listed on this Agenda that is within the subject matter jurisdiction of the Planning Agency. Public Comments are limited to three minutes per person, an overall time limit of ten minutes for any one subject, and a total time limit of thirty minutes.

5.3 Approval of Minutes

5.4 Administrative Reports

5.5 Planning Agency Public Hearings

5.5.1 Conditional Use Permit (CUP) No. USE-0180-2024, a Request by Brian Batista-Lopez, Project Architect with MSA Architecture and Design, on Behalf of MSA Architecture and Design, Inc., to Establish Five Self-Service Grooming Stations Within a Proposed Retail Pet Supply Store, Pet Food Express, in an Existing 5,744 Square-Foot Tenant Space Located at 24241 Avenida De La Carlota

Recommendation: That the Planning Agency:

- 1) Conduct a public hearing;
- 2) Find and determine that the project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 of Title 14, Chapter 3 of the California Code of Regulations (Class 1, Existing Facilities); and

- 3) Adopt a Resolution entitled: “A Resolution of the Planning Agency of the City of Laguna Hills, California, Approving Conditional Use Permit (CUP) No. USE-0180-2024, a Request by Brian Batista-Lopez, Project Architect with MSA Architecture and Design, on Behalf of MSA Architecture and Design, Inc., to Establish Five Self Service Grooming Stations Within a Proposed Retail Pet Supply Store, Pet Food Express, in an Existing 5,744 Square-Foot Tenant Space Located at 24241 Avenida De La Carlota, Including an Exemption from the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15301 of Title 14, Chapter 3 of the California Code of Regulations (Class 1, Existing Facilities).”

5.5.2 Parking Use Permit (PUP) No. 0130-2023, a Request by Diamond Star Associates, Inc., on Behalf of Healthcare Realty Trust, Inc., for Approval of a Joint Parking Use Permit for the Taj Mahal Medical Center Located at 23521 Paseo de Valencia

Recommendation: That the Planning Agency:

- 1) Conduct a public hearing;
- 2) Find and determine that the proposed project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 of Title 14, Chapter 3 of the California Code of Regulations (Class 1, Existing Facilities); and
- 3) Adopt a Resolution entitled: “A Resolution of the Planning Agency of the City of Laguna Hills, California, Approving Parking Use Permit (PUP) No. 0130-2023, a Request by Diamond Star Associates, Inc., on Behalf of Healthcare Realty Trust, Inc. for Approval of a Joint Parking Use Permit for the Taj Mahal Medical Center Located at 23521 Paseo de Valencia, Including an Exemption from the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15301 of Title 14, Chapter 3 of the California Code of Regulations (Class 1, Existing Facilities).”

5.5.3 Parking Use Permit (PUP) No. 0131-2023, a Request by Diamond Star Associates, Inc., on Behalf of Healthcare Realty Trust, Inc., for Approval of a Joint Parking Use Permit for the Saddleback Professional Center Located at 24012 Calle de la Plata

Recommendation: That the Planning Agency:

- 1) Conduct a public hearing;
- 2) Find and determine that the proposed project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301

of Title 14, Chapter 3 of the California Code of Regulations (Class 1, Existing Facilities); and

- 3) Adopt a Resolution entitled: "A Resolution of the Planning Agency of the City of Laguna Hills, California, Approving Parking Use Permit (PUP) No. 0131-2023, a Request by Diamond Star Associates, Inc., on Behalf of Healthcare Realty Trust, Inc. for Approval of a Joint Parking Use Permit for the Saddleback Professional Center Located at 24012 Calle de la Plata, Including an Exemption from the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15301 of Title 14, Chapter 3 of the California Code of Regulations (Class 1, Existing Facilities)."

5.6 Planning Agency Adjournment

6. City Council Public Hearings

6.1 Confirmation of 2024 Weed Abatement Cost Report

Recommendation: That the City Council That the City Council:

- 1) Conduct a public hearing regarding the 2024 Weed Abatement Cost Report; and
- 2) Adopt a Resolution entitled: "A Resolution of the City Council of the City of Laguna Hills, California, confirming the 2024 Weed Abatement Cost Report and providing for the collection of weed abatement assessments on the next regular tax bill levied against the subject parcels for municipal purposes."

7. Administrative Reports

7.1 City Manager

7.1.1 Approval of Design and Budget for 3rd Battalion, 5th Marines Darkhorse Bronze Memorial Sculpture

Recommendation: That the City Council:

- 1) Approve the 3/5 Memorial Sculpture Design;
- 2) Authorize the Mayor to execute the Amended and Restated Agreement to Commission Original Work of Art with Brittany Ryan Studio, LLC; and
- 3) Allocate all available Public Art Funds to the 3/5 Memorial Sculpture, and transfer \$48,000 from the City's unassigned General Fund balance to the Public Art Fund, and direct the Finance Director to amend the budget accordingly.

8. Matters Agendized and Presented by City Council Members

8.1 Exploring the Potential of a Digital Billboard at the Former Globe Property (APN: 616-022-04)

Recommendation: Council Members Heft and Caskey recommend that the City Council direct staff to explore the potential of a digital billboard at the former Globe Property (APN: 616-022-04).

9. City Council Member Committee Reports

9.1 Committee Assignment Reports

Recommendation: That the City Council receive reports from City Council Members on the City Council Committee Assignments listed in the staff report.

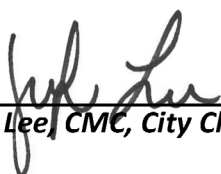
10. City Council Member Comments

Adjournment

The next Regular Meeting of the City Council/Planning Agency will be August 27, 2024, at 7:00p.m., in the City Council Chamber, located at 24035 El Toro Road, Laguna Hills, California.

CERTIFICATION

I, JENNIFER LEE, City Clerk of the City of Laguna Hills, do hereby certify that a copy of the foregoing Agenda was posted at Laguna Hills City Hall, Laguna Hills Community Center, and the Courtyard at La Paz Center by July 5, 2024, at 5:00 p.m.



Jennifer Lee, CMC, City Clerk

It is the intention of the City of Laguna Hills to comply with the Americans with Disabilities Act in all respects. If as an attendee or a participant at this meeting you will need special assistance beyond what is normally provided, the City of Laguna Hills will attempt to accommodate you in every reasonable manner. Please contact the office of the City Clerk at (949) 707 2635. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to assure accessibility to this meeting.

Materials related to an item on this Agenda submitted to the City Council after distribution of the agenda packet are available for public inspection in the City Clerk's Office at 24035 El Toro Road, Laguna Hills, California, during normal business hours. In addition, such writings or documents will be made available for public review on the City's website at: <https://www.lagunahillscsca.gov/supplementalagenda> and at the respective public meeting.

City Council Members receive no additional compensation or stipend as a result of simultaneously convening meetings of the Laguna Hills Planning Agency.



**City of Laguna Hills
City Council / Planning Agency
Staff Report**

Date: July 9, 2024
To: Mayor and Council Members
From: Jennifer Lee, City Clerk
Issue: Schedule of Future Events

Recommendation: That the City Clerk announce the upcoming meetings and events

Meetings:

City Council/Planning Agency Regular Meetings

Tuesday, August 27, 7:00 p.m., Laguna Hills Civic Center Council Chamber
Tuesday, September 10, 7:00 p.m., Laguna Hills Civic Center Council Chamber

Traffic Commission Regular Meetings

Wednesday, July 17, 7:00 p.m., Laguna Hills Civic Center Council Chamber

Events:

GHS Symphonic Ballroom POPS! Concert

Monday, July 15, 7:00 p.m. - 9:00 p.m., Laguna Hills Community Center

Summer Concert Series #2 Paperback Writer: The Beatles Experience

Saturday, July 19, 6:30 p.m. - 8:30 p.m., Laguna Hills Community Center

Summer Concert Series #3 Stone Soul

Saturday, July 26, 6:30 p.m. – 8:30 p.m., Laguna Hills Community Center

Summer Concert Series #4 Family Style

Saturday, August 2, 6:30 p.m. – 8:30 p.m., Laguna Hills Community Center

Summer Concert Series #5 Yachty by Nature

Saturday, August 9, 6:30 p.m. – 8:30 p.m., Laguna Hills Community Center

Movies in the Park- Lilo and Stitch

Friday, August 16, movie will begin 10 minutes after sunset, Costeau Park

Movies in the Park- Planes

Friday, August 23, movie will begin 10 minutes after sunset, El Conejo Park

Movies in the Park- The Little Mermaid

Friday, August 30, movie will begin 10 minutes after sunset, Santa Vittoria Park

Movies in the Park- Kung Fu Panda 4

Friday, September 6, movie will begin 10 minutes after sunset, Beckenham Park

GLOBAL HARMONY SYMPHONY

Guest Conductor
JOEY SELLERS

Music Director
VALERIE GELLER

PRESENTS

Summer Ballroom Pops!

**SPECIAL
PERFORMANCE
BY:**



**SWAY BALLROOM
AND
KEN CLEMENS,
CLARINET**

When ~

7pm, Monday July 15, 2024
Doors Open 6:30pm

Where ~

Laguna Hills Community Center
25555 Alecia Pkwy,
Laguna Hills, CA, 92653

Free Admission

Free Parking

Suggested Donation \$10

For additional info visit or contact:

<http://www.globalharmonysymphony.com>
contact@globalharmonysymphony.com

Livestream:

https://www.youtube.com/@globalharmony_symphony4666/streams

CITY OF LAGUNA HILLS

SUMMER

Concert Series

July 19 - Paperback Writer: The Beatles Experience

July 26 - Stone Soul

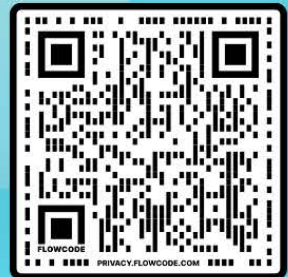
August 2 - Family Style

August 9 - Yachty by Nature

August 31 - *Symphony on the Go!* (6pm at Cabot Park)

All concerts will be held outdoors at the Laguna Hills Community Center from 6:30-8:30pm with the exception of 8/31

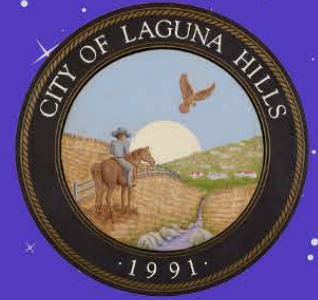
25555 Alicia Pkwy
949-707-2680



SPONSORED BY:



CITY OF LAGUNA HILLS Movies *in the* Park



August 16

Costeau
Park



August 23

El Conejo
Park



August 30

Santa Vittoria
Park



September 6

Beckenham
Park

Bring your chairs, blankets, and picnic for a family fun movie night!

Movies will begin about 10 minutes after sunset.

8/16: National Hawaiian Shirt Day: wear your best Hawaiian shirt and have a shave ice

8/23: National Ride the Wind Day: bring your kites for a kite party before the movie

8/30: National Beach Day: ice cream giveaway

9/6: End of Summer Celebration

Sponsors:



Scan QR
code for
more event
information:



**City of Laguna Hills
City Council / Planning Agency
Regular Meeting
Minutes
Tuesday, June 25, 2024**

General Business Convening at 7:00 PM

Call to Order

The meeting was called to order at 7:00 PM by Mayor Wheeler.

Invocation: Traffic Commissioner Miller

Pledge of Allegiance: Mayor Pro Tempore Sweeney

Roll Call of City Council Members

Present:

Mayor Dave Wheeler
Mayor Pro Tempore Joshua Sweeney
Council Member Don Caskey
Council Member Janine Heft
Council Member Erica Pezold

Absent

1. Presentations and Proclamations

There were no presentations or proclamations.

2. Schedule of Future Events

2.1 Schedule of Future Events

City Clerk Lee announced the upcoming meetings and events.

3. Public Comments

The following individual(s) addressed the City Council on non-agendized items:

Rigo Santana
Scott Miller, Traffic Commissioner

4. Consent Calendar

A motion to approve the Consent Calendar with Item Nos. 4.5, 4.6, 4.8, and 4.9 removed was moved by Council Member Heft, seconded by Council Member Pezold.

Result: Passed
Yes 5, No 0, Abstained 0

Ayes: Mayor Wheeler, Mayor Pro Tempore Sweeney, Council Member Caskey, Council Member Heft, Council Member Pezold
Nays: None
Abstain: None

4.1 Waive Reading in Full of all Ordinances and Resolutions on the Agenda

Recommendation: That the City Council waive reading in full of all ordinances and resolutions on the agenda and declare that said titles which appear on the public agenda shall be determined to have been read by title and further reading waived.

4.2 Approval of Minutes for June 11, 2024, Regular Meeting

Recommendation: That the City Council approve the City Council Minutes for the June 11, 2024, Regular Meeting.

4.3 Ratification of June 25, 2024 Warrant Register

Recommendation: That the City Council ratify the accompanying Warrant Register for the periods from May 20, 2024, to May 22, 2024, and May 31, 2024, to June 14, 2024, in the amount of \$785,594.16.

4.4 Treasurer's Investment Report for May 2024

Recommendation: That the City Council receive and file the Treasurer's Investment Report for the month of May 2024.

4.7 Proposed First Amendment to Civic Center Office Lease with Carno Law Group, a Professional Law Corporation, for 24031 El Toro Road, Suite 260, Laguna Hills, California

Recommendation: That the City Council: 1) Approve the first amendment to the lease agreement with Carno Law Group, a professional law corporation, for 24031 El Toro Road, Suite 260, Laguna Hills, California; and 2) Authorize the City Manager to make minor modifications, as necessary, to the first amendment to the lease agreement and to execute the first amendment to the lease agreement.

Items Removed from the Consent Calendar

4.5 Community Outreach and Engagement Services Agreement with the City of Mission Viejo

Recommendation: That the City Council approve the proposed Community Outreach and Engagement Services Agreement with the City of Mission Viejo for

homelessness outreach services and authorize the Mayor to sign the agreement.

Mayor Wheeler removed Item No. 4.5 from the Consent Calendar to request additional information on the item.

Deputy City Manager Reynolds responded to Council Member requests for additional information.

A motion to approve staff's recommendation was moved by Mayor Wheeler, seconded by Council Member Pezold.

Result: Passed

Yes 5, No 0, Abstained 0

Ayes: Mayor Wheeler, Mayor Pro Tempore Sweeney, Council Member Caskey, Council Member Heft, Council Member Pezold

Nays: None

Abstain: None

4.6 Agreement for Animal Control and Shelter Services with the City of Mission Viejo

Recommendation: That the City Council approve the Agreement for Animal Control and Shelter Services with City of Mission Viejo and authorize the Mayor to sign the agreement.

Mayor Wheeler removed Item No. 4.6 from the Consent Calendar to request additional information on the item.

City Manager Hildenbrand responded to Council Member requests for additional information.

A motion to approve staff's recommendation was moved by Council Member Pezold, seconded by Council Member Heft.

Result: Passed

Yes 5, No 0, Abstained 0

Ayes: Mayor Wheeler, Mayor Pro Tempore Sweeney, Council Member Caskey, Council Member Heft, Council Member Pezold

Nays: None

Abstain: None

4.8 Adoption of Fiscal Year 2024/2025 Civic Center Budget

Recommendation: That the City Council approve and adopt the FY2024/2025 Civic Center Budget.

Council Member Heft removed Item No. 4.8 from the Consent Calendar to request

additional information on the item.

City Manager Hildenbrand responded to Council Member requests for additional information.

A motion to approve staff's recommendation was moved by Council Member Heft, seconded by Council Member Caskey.

Result: Passed

Yes 5, No 0, Abstained 0

Ayes: Mayor Wheeler, Mayor Pro Tempore Sweeney, Council Member Caskey, Council Member Heft, Council Member Pezold

Nays: None

Abstain: None

4.9 Award of Janitorial Services Agreement for the Laguna Hills Community Center to Savoy Ritz Group, Inc. dba The Ritz Companies

Recommendation: That the City Council: 1) Award the Janitorial Services Agreement for the Laguna Hills Community Center to Savoy Ritz Group, Inc., dba The Ritz Companies, for an initial five (5) year contract term in the total maximum not-to-exceed contract amount of \$955,000; and 2) Authorize the City Manager to execute the Janitorial Services Agreement with Savoy Ritz Group, Inc.

Council Member Heft removed Item No. 4.9 from the Consent Calendar to request additional information.

City Manager Hildenbrand responded to Council Member requests for additional information.

Deputy City Manager Reynolds responded to Council Member requests for additional information.

A motion to approve staff's recommendation was moved by Council Member Heft, seconded by Council Member Pezold.

Result: Passed

Yes 5, No 0, Abstained 0

Ayes: Mayor Wheeler, Mayor Pro Tempore Sweeney, Council Member Caskey, Council Member Heft, Council Member Pezold

Nays: None

Abstain: None

5. Planning Agency

There were no separate Planning Agency Business Items for this meeting.

6. City Council Public Hearings

There were no City Council public hearings.

7. Administrative Reports

7.1 City Manager

7.2 Award Agreement for Residential and Commercial Solid Waste Collection Services

Recommendation: That the City Council:

1. Approve Agreement for the Collection, Transportation, Processing, and Diversion of Recyclable Materials, Food Scraps, Yard Trimmings, Construction and Demolition Debris and Other Materials, and for the Collection, Transportation, and Disposal of Municipal Solid Waste to CR&R, Incorporated.
2. Authorize the Mayor to sign the Solid Waste and Recycling Agreement substantially in the form attached.
3. Direct staff to set a public hearing to adopt proposed rates in accordance with Proposition 218.

Deputy City Manager Reynolds reviewed the information provided in the staff report, provided a PowerPoint presentation, and responded to Council Member requests for additional information.

William O'Toole, President, EcoNomics, Inc., reviewed the information provided in the staff report, provided a PowerPoint presentation, and responded to Council Member requests for additional information.

Chrystal Denning, CR&R Regional Vice President, responded to Council Member requests for additional information.

A motion to approve staff's recommendation was moved by Council Member Pezold, seconded by Council Member Caskey.

Result: Passed

Yes 5, No 0, Abstained 0

Ayes: Mayor Wheeler, Mayor Pro Tempore Sweeney, Council Member Caskey, Council Member Heft, Council Member Pezold

Nays: None

Abstain: None

7.3 Study and Report on Inclusionary Housing Ordinances

Recommendation: That the City Council direct staff to study and report back on the issue of Inclusionary Housing Ordinances pursuant to the 2021-2029 Adopted & Certified Housing Element Update - Implementation Program H-7.

City Manager Hildenbrand reviewed the information provided in the staff report and responded to Council Member requests for additional information.

A motion to approve staff's recommendation and direct staff to return with a preliminary report at the August 27 meeting was moved by Mayor Pro Tempore Sweeney, seconded by Council Member Pezold.

Result: Passed

Yes 5, No 0, Abstained 0

Ayes: Mayor Wheeler, Mayor Pro Tempore Sweeney, Council Member Caskey, Council Member Heft, Council Member Pezold

Nays: None

Abstain: None

7.4 Selection of a Design for the Reader Board at the Corner of La Paz Road and Paseo de Valencia

Recommendation: That the City Council: 1) Approve the conceptual design of the proposed reader board at the corner of La Paz Road and Paseo de Valencia; and 2) Authorize City staff to develop construction plans and documents.

City Manager Hildenbrand reviewed the information provided in the staff report, provided a PowerPoint presentation, and responded to Council Member requests for additional information.

The following individual(s) addressed the City Council on Item No. 7.4.:

Neel Patel, Traffic Commission Vice Chair

Larry Ryan, Principal, RJM Design Group, Inc, responded to Council Member requests for additional information.

City Attorney Simonian responded to Council Member requests for additional information.

A motion to approve staff's recommendation and direct staff to contact the property owners of other suggested locations was moved by Council Member Pezold, seconded by Council Member Heft.

A substitute motion to proceed without a designated location and direct staff to contact the property owners of other suggested locations was moved by Mayor Wheeler, seconded by Mayor Pro Tempore Sweeney.

Mayor Wheeler called for a roll call vote on the substitute motion.

Result: Failed

Yes 2, No 3, Abstained 0

Ayes: Mayor Wheeler, Mayor Pro Tempore Sweeney

Nays: Council Member Caskey, Council Member Heft, Council
Member Pezold

Abstain: None

Mayor Wheeler called for a roll call vote on the main motion.

Result: Passed

Yes 4, No 1, Abstained 0

Ayes: Mayor Pro Tempore Sweeney, Council Member Caskey, Council
Member Heft, Council Member Pezold

Nays: Mayor Wheeler

Abstain: None

8. Matters Agendized and Presented by City Council Members

8.1 Annual Donation to Laguna Hills High School PTSA for Grad Nite

Recommendation: Council Members Heft and Cakey recommend that the City Council discuss increasing the annual donation to Laguna Hills High School PTSA for their graduation night celebration.

Council Members Heft and Caskey provided information on the item.

At Council Member Heft's request, Melissa Auten, Laguna Hills High School PTSA representative, provided information on the item and responded to Council Member requests for additional information.

Katherine Welles, Laguna Hills High School PTSA president, responded to Council Member requests for additional information.

City Attorney Simonian responded to Council Member requests for additional information.

A motion to direct staff to prepare a community assistance funding resolution increasing the annual donation amount to Laguna Hills High School PTSA to \$8,000 for purposes of the Laguna Hills Grad Nite event, allocating \$6,000 to the event and \$2,000 toward scholarships and to direct staff to contact the school district superintendent for clarification on the check cutting procedures was moved by Council Member Heft, seconded by Mayor Pro Tempore Sweeney.

Result: Passed

Yes 5, No 0, Abstained 0

Ayes: Mayor Wheeler, Mayor Pro Tempore Sweeney, Council Member Caskey, Council Member Heft, Council Member Pezold
Nays: None
Abstain: None

9. City Council Member Committee Reports

9.1 Committee Assignment Reports

The City Council received reports from City Council Members on the City Council Committee Assignments listed in the staff report.

10. City Council Member Comments

Council Member Pezold

Council Member Pezold provided comments on her hopes for a shift in the focus and direction of schools.

Council Member Caskey

Council Member Caskey provided comments on a committee assignment report he would like to agendaize for the next meeting.

Council Member Caskey provided comments clarifying his thoughts on a graduation night celebration.

Mayor Pro Tempore Sweeney

Mayor Pro Tempore Sweeney reported on the 4th Annual Laguna Hills Car Show.

Adjournment

There being no further business before the City Council at this session, Mayor Wheeler declared the meeting adjourned at 10:15 p.m.

Jennifer Lee, City Clerk

ATTEST:

Dave Wheeler, Mayor

Approved at meeting of July 9, 2024.



City of Laguna Hills City Council / Planning Agency Staff Report

Date: July 9, 2024
To: Mayor and Council Members
From: Eric Hendrickson, Finance Director
Issue: Ratification of July 9, 2024 Warrant Register

Recommendation: That the City Council ratify the accompanying Warrant Register for the periods from June 15, 2024, to June 28, 2024, in the amount of \$475,042.13.

Background:

The City issues accounts payable disbursements on a regular basis and presents it to the City Council for ratification at its next regularly scheduled City Council Meeting. The attached Warrant Register containing checks and electronic funds transfers for the periods from June 15, 2024, to June 28, 2024, is being presented for ratification by the City Council. Payments have been reviewed and approved by the appropriate departmental staff. The Finance Director certifies to the accuracy of the attached register and to the availability of monies for payment thereof.

Fiscal Impact:

Ratification of the accompanying Warrant Register includes disbursements totaling \$475,042.13.

Attachments:

1. Warrant Register - July 9, 2024
2. Payables Detail Report - July 9, 2024



City of Laguna Hills, CA

Warrant Register - July 9, 2024

By Check Number

Date Range: 06/15/2024 - 06/28/2024

Check Number	Vendor Number	Vendor Name	Payment Date	Payment Amount
Payment Type: Regular				
3818	A-0388	ABTECH TECHNOLOGIES, INC.	06/28/2024	9,038.75
3819	Z-CD-0471	ALFREDO VENEGAS	06/28/2024	1,017.58
3820	A-0138	ALL CITY MANAGEMENT, INC.	06/28/2024	2,699.76
3821	A-0392	AQUATICO	06/28/2024	695.00
3822	A-0360	ARC DOCUMENT SOLUTIONS, LLC	06/28/2024	183.05
3823	A-0365	AT AND T - CALNET 3	06/28/2024	29.12
3824	B-0431	BMI	06/28/2024	435.00
3825	B-0442	BOULDER EARTHWORK INC	06/28/2024	4,265.00
3826	C-1177	CANON FINANCIAL SERVICES, INC.	06/28/2024	2,141.65
3827	C-1096	CODE PUBLISHING COMPANY, INC.	06/28/2024	122.50
3828	C-1222	COUNTS UNLIMITED, INC.	06/28/2024	2,250.00
3829	C-1190	COUNTY OF ORANGE	06/28/2024	1,116.00
3830	C-0023	COX COMMUNICATION	06/28/2024	1,514.38
3831	C-1122	CROSTOWN ELECTRICAL AND DATA, INC.	06/28/2024	27,012.05
3832	D-0578	DE NOVO PLANNING GROUP	06/28/2024	55,455.97
3833	D-0491	DELL COMPUTER CORPORATION	06/28/2024	64,646.72
3834	B-0456	DIANNE BROSKI	06/28/2024	200.00
3835	E-0554	ECONOMICS, INC.	06/28/2024	17,721.64
3836	E-0614	EMPIRE PARKING LOT SERVICES, LLC	06/28/2024	20,150.00
3837	G-0867	GAMECRAFT BREWING	06/28/2024	292.40
3838	H-0969	HAOLE BOYS SHAVE ICE OC	06/28/2024	376.16
3839	H-0829	HARTZOG AND CRABILL, INC.	06/28/2024	1,613.98
3840	H-0960	HR GREEN PACIFIC, INC.	06/28/2024	21,867.22
3841	I-0983	INTERWEST CONSULTING GROUP, INC.	06/28/2024	16,362.50
3842	I-0960	IRV SEAVER MOTORCYCLES	06/28/2024	2,883.64
3843	I-0942	IRVINE RANCH WATER DISTRICT	06/28/2024	175.80
3844	J-1057	JAMEY CLARK, INC.	06/28/2024	10,392.98
3845	B-0457	JAXSON BRASUIER	06/28/2024	200.00
3846	L-1390	LAGUNA TERRACE BEAUTIFICATION TEAM	06/28/2024	486.04
3847	M-1611	MARK THOMAS & COMPANY, INC.	06/28/2024	9,986.13
3848	A-0317	MICHAEL ABRAHAM	06/28/2024	1,237.50
3849	M-1388	MOBILE MINI, INC.	06/28/2024	526.48
3850	M-1302	MOULTON NIGUEL WATER DISTRICT	06/28/2024	15,995.71
3851	N-1493	NEXUS TECHNOLOGIES	06/28/2024	1,018.52
3852	Z-CD-0018	PREMIER POOL AND SPA	06/28/2024	500.00
3853	Q-1704	QUICK CRETE PRODUCTS CORP.	06/28/2024	4,752.69
3854	R-1977	RJ ELECTRIC	06/28/2024	7,800.00
3855	B-0447	ROBERT FRANK BROSKI	06/28/2024	200.00
3856	S-1902	SAN DIEGO GAS AND ELECTRIC	06/28/2024	39,920.26
3857	S-2332	SANTA MARGARITA PLUMBING AND AIR	06/28/2024	7,527.68
3858	P-1849	SHELLEY ANNE PETERS	06/28/2024	200.00
3859	S-2315	SHEPHERD, GEORGIA	06/28/2024	500.00
3860	S-2335	SO CAL RIDES LLC	06/28/2024	15,000.00
3861	Z-CD-0322	SOUTH, ANDREW	06/28/2024	1,500.00
3862	S-1904	SOUTHERN CALIFORNIA EDISON	06/28/2024	4,215.07
3863	S-1904	SOUTHERN CALIFORNIA EDISON	06/28/2024	110.39
3864	S-2297	SOUTHERN CALIFORNIA RADAR/LASER CERT. LAB	06/28/2024	170.00
3865	S-2295	SOUTHERN COMPUTER WAREHOUSE	06/28/2024	193.44
3866	S-2250	SPARKLETTS	06/28/2024	248.30
3867	S-2317	SWANK MOTION PICTURES, INC.	06/28/2024	2,440.00
3868	T-2714	TOP ROCK ENTERTAINMENT	06/28/2024	2,500.00
3869	T-2712	TOTAL SOURCE OFFICEWORKS	06/28/2024	899.76
3870	T-2639	TURF STAR, INC.	06/28/2024	431.50

Warrant Register - July 9, 2024

Check Number	Vendor Number	Vendor Name
3871	T-2656	TYLER TECHNOLOGIES, INC.
3872	V-2257	VITAL VALT
3873	H-0970	WAYNE HARROPSON
3874	W-2337	WEST COAST ARBORISTS, INC.
3875	Z-CD-0470	WILLIAM J BURKEN
3876	R-1801	WOODRUFF & SMART, A PROFESSIONAL CORPORATION
3877	Y-2655	YACHTY BY NATURE
3878	Z-CD-0472	ZAC REESE

Date Range: 06/15/2024 - 06/28/2024

Payment Date	Payment Amount
06/28/2024	1,400.00
06/28/2024	1,300.00
06/28/2024	200.00
06/28/2024	7,412.65
06/28/2024	390.00
06/28/2024	35,870.52
06/28/2024	2,000.00
06/28/2024	4,865.46
Total Regular:	436,656.95

Check Number	Vendor Number	Vendor Name	Payment Date	Payment Amount
Payment Type: Bank Draft				
DFT0002863	H-0966	HIGH LEVEL SECURITY SOLUTIONS, INC.	06/21/2024	7,000.00
DFT0002865	C-1007	OCSD LAW ENFORCEMENT CONTRACT, OC TREASURER-TAX	06/26/2024	31,045.61
DFT0002866	W-2450	WEX BANK	06/26/2024	339.57
Total Bank Draft:				38,385.18

Bank Code 1 - General Summary

	Payable	Payment		
Payment Type	Count	Count	Discount	Payment
Regular Checks	88	61	0.00	436,656.95
Manual Checks	0	0	0.00	0.00
Voided Checks	0	0	0.00	0.00
Bank Drafts	3	3	0.00	38,385.18
EFT's	0	0	0.00	0.00
	91	64	0.00	475,042.13

All Bank Codes Check Summary

Payment Type	Payable Count	Payment Count	Discount	Payment
Regular Checks	88	61	0.00	436,656.95
Manual Checks	0	0	0.00	0.00
Voided Checks	0	0	0.00	0.00
Bank Drafts	3	3	0.00	38,385.18
EFT's	0	0	0.00	0.00
	91	64	0.00	475,042.13

Fund Summary

Fund	Name	Period	Amount
998	Pooled Cash & Investments	6/2024	475,042.13
			475,042.13



City of Laguna Hills, CA

Payables Detail Report

By Fund

Payment Dates 06/15/2024 - 06/28/2024

Payment Date	Vendor Name	Payable Number	Description (Item)	Account Number	Amount
Fund: 100 - General Fund					
06/21/2024	HIGH LEVEL SECURITY SOLUTIONS, INC.	5781	Private Security Patrol, 6/4/24 - 6/17/24	100-420-720850	7,000.00
06/26/2024	WEX BANK	97272274	Vehicle Fuel, May '24	100-225-613100	306.58
06/26/2024	WEX BANK	97272274	Vehicle Maintenance, May '24	100-225-646100	32.99
06/26/2024	OCSO LAW ENFORCEMENT CONTRACT, OC TREASURER-TAX AT AND T - CALNET 3	SH 68799	OCSO, LEC, Memorial Day Run	100-310-695507	31,045.61
06/28/2024	VITAL VALT	000021815130	Traffic Signal, May '24	100-356-630000	29.12
06/28/2024		00011494	Virtual Label Design, Printing & Training, Jun '24	100-195-700090	1,300.00
06/28/2024	HAOLE BOYS SHAVE ICE OC	008/16/2024	Program Expense, 4th of July Event	100-000-140000	376.16
06/28/2024	YACHTY BY NATURE	022724a	Deposit, Summer Concert Series, 8/9/24	100-000-140000	2,000.00
06/28/2024	TYLER TECHNOLOGIES, INC.	025-455328	EPL Implementation Services, Jan '24	100-195-720050	900.00
06/28/2024	TYLER TECHNOLOGIES, INC.	025-464263	EPL Management Services, Apr '24	100-195-720050	500.00
06/28/2024	IRVINE RANCH WATER DISTRICT	060324	Utilities - Water, 5/1/24 - 6/1/24	100-355-635000	175.80
06/28/2024	COX COMMUNICATION	060524	T-1 Line, Jun '24	100-195-630000	845.70
06/28/2024	COX COMMUNICATION	060724	Traffic Signal, Jun '24	100-195-630000	84.00
06/28/2024	DIANNE BROSKI	061224	Program Expense, 4th of July Event	100-000-140000	200.00
06/28/2024	JAXSON BRASUIER	061224	Program Expense, 4th of July Event	100-000-140000	200.00
06/28/2024	WAYNE HARROPSON	061224	Program Expense, 4th of July Event	100-000-140000	200.00
06/28/2024	ROBERT FRANK BROSKI	061224	Program Expense, 4th of July Event	100-000-140000	200.00
06/28/2024	SHELLEY ANNE PETERS	061224	Program Expense, 4th of July Event	100-000-140000	200.00
06/28/2024	SO CAL RIDES LLC	061224	Program Expense, 4th of July Event	100-000-140000	15,000.00
06/28/2024	SAN DIEGO GAS AND ELECTRIC	061324	Utilities - Electric, 4/6/24 - 5/8/24	100-310-631100	10,972.90
06/28/2024	MOULTON NIGUEL WATER DISTRICT	061324	Utilities - Water, 5/14/24 - 6/10/24	100-310-635100	685.58
06/28/2024	SAN DIEGO GAS AND ELECTRIC	061324	Utilities - Electric, 4/6/24 - 5/8/24	100-355-631000	10,478.75
06/28/2024	MOULTON NIGUEL WATER DISTRICT	061324	Utilities - Water, 5/14/24 - 6/10/24	100-355-635000	15,221.97
06/28/2024	SAN DIEGO GAS AND ELECTRIC	061324	Utilities - Electric, 4/6/24 - 5/8/24	100-356-631400	15,104.58
06/28/2024	SAN DIEGO GAS AND ELECTRIC	061324	Utilities - Electric, 4/6/24 - 5/8/24	100-356-631900	3,364.03
06/28/2024	SOUTHERN CALIFORNIA EDISON	061324 - Acct #70016247	Utilities - Electric, 5/22/24	100-356-631900	4,215.07
06/28/2024	COX COMMUNICATION	061724	T-1 Line, Jun '24	100-195-630000	584.68
06/28/2024	LAGUNA TERRACE BEAUTIFICATION TEAM	061824	Plein Air Paint Event Supplies	100-310-695500	486.04
06/28/2024	MOULTON NIGUEL WATER DISTRICT	062024	Utilities - Water, 5/21/24 - 6/17/24	100-355-635000	88.16
06/28/2024	SOUTHERN CALIFORNIA EDISON	062024 - Acct #70007601	Utilities - Electric, 5/1/24 - 6/19/24	100-356-631400	110.39
06/28/2024	SOUTHERN CALIFORNIA RADAR/LASER CERT. LAB	0624007	Equip Maint & Repairs, Police Services, Jun '24	100-420-646000	170.00
06/28/2024	TOP ROCK ENTERTAINMENT	062624	4th of July Band, 7/4/24	100-000-140000	2,500.00
06/28/2024	DELL COMPUTER CORPORATION	10747718580	Network Upgrade Project, May '24	100-195-940000	64,646.72
06/28/2024	BMI	11437093	Music License, 7/1/24 - 5/31/25	100-000-140000	398.75
06/28/2024	BMI	11437093	Music License, 6/1/24 - 6/30/24	100-310-611500	36.25
06/28/2024	EMPIRE PARKING LOT SERVICES, LLC	12457	Seal Coat & Stripe, CIP #505	100-000-790600	20,150.00
06/28/2024	ARC DOCUMENT SOLUTIONS, LLC	12504914	Printing Services, Public Works, Jun	100-355-623000	103.72
06/28/2024	SANTA MARGARITA PLUMBING AND AIR	16609-38789	Plumbing Repairs, Jun '24	100-310-645500	7,527.68
06/28/2024	HR GREEN PACIFIC, INC.	174695	Public Works Permit Inspections, Apr '24	100-355-700255	6,921.00
06/28/2024	HR GREEN PACIFIC, INC.	175795	Public Works Permit Inspections, May '24	100-355-700255	8,474.25
06/28/2024	IRV SEAVER MOTORCYCLES	20241306	Motorcycle Maintenance, Police Svcs, Jun '24	100-420-646100	1,168.88
06/28/2024	IRV SEAVER MOTORCYCLES	20241341	Motorcycle Maintenance, Police Svcs, Jun '24	100-420-646100	488.70
06/28/2024	IRV SEAVER MOTORCYCLES	20241362	Motorcycle Maintenance, Police Svcs, Jun '24	100-420-646100	1,226.06

Payables Detail Report

Payment Dates: 06/15/2024 - 06/28/2024

Payment Date	Vendor Name	Payable Number	Description (Item)	Account Number	Amount
06/28/2024	WEST COAST ARBORISTS, INC.	215440	Tree Trimming Services, May '24	100-355-720702	7,412.65
06/28/2024	HARTZOG AND CRABILL, INC.	24-0386(HCI#3502)	Traffic Signal Mgmt Services, May '24	100-356-700101	1,613.98
06/28/2024	MICHAEL ABRAHAM	24101	VitalVault Integration Deposit	100-195-700090	1,237.50
06/28/2024	COUNTS UNLIMITED, INC.	24366	Traffic Data Collection, Jun '24	100-356-700101	1,800.00
06/28/2024	COUNTS UNLIMITED, INC.	24367	Traffic Data Collection, Jun '24	100-356-700101	450.00
06/28/2024	NEXUS TECHNOLOGIES	317971	Software Support, Jan '24	100-195-700090	925.00
06/28/2024	NEXUS TECHNOLOGIES	319969	Software Support, Feb '24	100-195-700090	93.52
06/28/2024	CANON FINANCIAL SERVICES, INC.	33157422	Copier Lease SN 2HT04285, 6/1/24 - 6/30/24	100-195-641200	253.84
06/28/2024	CANON FINANCIAL SERVICES, INC.	33157422	Copier Usage SN 2HT04285, 5/1/24 - 5/31/24	100-195-641200	1,176.20
06/28/2024	CANON FINANCIAL SERVICES, INC.	33158879	Lease - Copier SN 2KS02091, 6/1/24 - 6/30/24	100-195-641200	317.82
06/28/2024	CANON FINANCIAL SERVICES, INC.	33159187a	Copier Usage SN 2XK05658, 5/1/24 - 5/31/24	100-195-641200	89.93
06/28/2024	CANON FINANCIAL SERVICES, INC.	33159187a	Copier Lease SN 2XK05658, 6/1/24 - 6/30/24	100-195-641200	303.86
06/28/2024	TOTAL SOURCE OFFICEWORKS	36070	Operating Supplies, Jun '24	100-195-622000	155.84
06/28/2024	TOTAL SOURCE OFFICEWORKS	36139	Computer Supplies, Jun '24	100-195-621000	562.94
06/28/2024	TOTAL SOURCE OFFICEWORKS	36139	Office Supplies, Jun '24	100-310-620500	180.98
06/28/2024	AQUATICO	372-270	Fountains/Water Features Maintenance, Jun '24	100-310-645500	695.00
06/28/2024	SPARKLETTS	4228482 061424	Operating Supplies, Jun '24	100-195-622000	248.30
06/28/2024	DE NOVO PLANNING GROUP	4230	LH Housing, Rezone and ODS Program, Apr '24	100-225-700225	49,626.97
06/28/2024	DE NOVO PLANNING GROUP	4314	LH Housing, Rezone and ODS Program, Jun '24	100-225-700225	5,829.00
06/28/2024	MARK THOMAS & COMPANY, INC.	49705	OCTA CSP Grant Writing Services, Nov '23	100-355-700100	9,986.13
06/28/2024	CROSSTOWN ELECTRICAL AND DATA, INC.	5072 - 5134	Traffic Signal Maintenance, May '24	100-356-720420	27,012.05
06/28/2024	BOULDER EARTHWORK INC	6686	Parks Contract Repair, Jun '24	100-355-720701	4,265.00
06/28/2024	JAMEY CLARK, INC.	74662	Park Repairs, Public Works, Dec '23	100-355-720701	7,375.00
06/28/2024	JAMEY CLARK, INC.	74898	Park Repairs, Public Works, Mar '24	100-355-720701	1,285.50
06/28/2024	JAMEY CLARK, INC.	75203	Graffiti Removal, Public Works, May '24	100-355-720500	724.00
06/28/2024	JAMEY CLARK, INC.	75217	Graffiti Removal, Public Works, Jun '24	100-355-720500	724.00
06/28/2024	JAMEY CLARK, INC.	75230	Park Repairs, Public Works, Jun '24	100-355-720701	284.48
06/28/2024	WOODRUFF & SMART, A PROFESSIONAL CORPORATION	76084	Professional Services Legal, Apr '24	100-155-700010	17,335.82
06/28/2024	WOODRUFF & SMART, A PROFESSIONAL CORPORATION	76084	Professional Services Legal, Apr '24	100-155-700011	333.20
06/28/2024	WOODRUFF & SMART, A PROFESSIONAL CORPORATION	76093	Professional Services Legal, Apr '24, MGP	100-155-700010	1,445.50
06/28/2024	WOODRUFF & SMART, A PROFESSIONAL CORPORATION	76094	Prof Services Legal, Apr '24, USE-0147-2023	100-000-223000	1,062.00
06/28/2024	WOODRUFF & SMART, A PROFESSIONAL CORPORATION	76095	Prof Services Legal, Apr '24, USE-0165-2023	100-000-223000	11,328.00
06/28/2024	WOODRUFF & SMART, A PROFESSIONAL CORPORATION	76096	Prof Services Legal, Apr '24, USE-0166-2023	100-000-223000	4,366.00
06/28/2024	RJ ELECTRIC	78833J	Convenience Receptacle at Park, Jun '24	100-355-720701	7,800.00
06/28/2024	MOBILE MINI, INC.	9021112638	Storage Rental, Community Center, 6/5 - 7/2/24	100-310-641000	225.71
06/28/2024	MOBILE MINI, INC.	9021155504	Storage Rental, Community Center, 6/11 - 7/8/24	100-310-641000	82.97
06/28/2024	MOBILE MINI, INC.	9021166772	Storage Rental, Community Center, 6/12 - 7/9/24	100-310-641000	217.80
06/28/2024	ALL CITY MANAGEMENT, INC.	94182	Crossing Guard Services, 5/26/24 - 6/8/24	100-420-720822	2,699.76
06/28/2024	SOUTH, ANDREW	BLDR-0147-2024	BLDR-0147-2024, C&D Refund, REC-012510-2024	100-000-227001	1,500.00

Payables Detail Report
Payment Dates: 06/15/2024 - 06/28/2024

Payment Date	Vendor Name	Payable Number	Description (Item)	Account Number	Amount
06/28/2024	WILLIAM J BURKEN	BLDR-0186-2024	BLDR-0186-2024, C&D Deposit, REC-012714-2024	100-000-227001	390.00
06/28/2024	ALFREDO VENEGAS	BLDR-0211-2024	BLDR-0211-2024, Permit Fee Refund, REC-012866-2024	100-000-221011	1.00
06/28/2024	ALFREDO VENEGAS	BLDR-0211-2024	BLDR-0211-2024, Permit Fee Refund, REC-012866-2024	100-000-227001	840.00
06/28/2024	ALFREDO VENEGAS	BLDR-0211-2024	BLDR-0211-2024, Permit Fee Refund, REC-012866-2024	100-000-442000	176.58
06/28/2024	SWANK MOTION PICTURES, INC.	BO 2261418	Movies in the Park, FY 24/25	100-000-140000	2,440.00
06/28/2024	GAMECRAFT BREWING	GC-4945	Program Expense, 1/2 Marathon, May '24	100-310-695507	292.40
06/28/2024	CODE PUBLISHING COMPANY, INC.	GCI0014375	Municipal Code Update, Jun '24	100-155-700030	122.50
06/28/2024	SOUTHERN COMPUTER WAREHOUSE	INV00812103	CAT6A Cables, Jun '24	100-195-621000	193.44
06/28/2024	TURF STAR, INC.	INV023682	Maintenance Utility Cart, Comm Svcs, Jun '24	100-310-646500	431.50
06/28/2024	PREMIER POOL AND SPA	POOLR-0006-2023	POOLR-0006-2023, Pool Bond Refund, REC-010270-2023	100-000-228001	500.00
06/28/2024	COUNTY OF ORANGE	SH 68650	Fingerprint ID System Charges, Jun '24	100-420-720835	1,116.00
06/28/2024	ABTECH TECHNOLOGIES, INC.	SS19813-IN	Computer Consulting Services, May '24	100-195-700090	638.75
06/28/2024	ZAC REESE	USE-0157-2023	USE-0157-2023, Fee Refund, R #00011955	100-000-223000	4,865.46
06/28/2024	ABTECH TECHNOLOGIES, INC.	W205121-IN	Computer Consulting Services, Jun '24	100-195-700090	8,400.00
Fund 100 - General Fund Total:					429,154.00
Fund: 210 - Gas Tax (HUTA) Fund					
06/28/2024	ARC DOCUMENT SOLUTIONS, LLC	12501739	Printing Services, Public Works, CIP #104	210-000-790600	79.33
06/28/2024	HR GREEN PACIFIC, INC.	174696	La Paz Pavement Rehabilitation, CIP #109, Apr '24	210-000-790600	4,626.97
06/28/2024	HR GREEN PACIFIC, INC.	175792	La Paz Pavement Rehabilitation, CIP #109, May '24	210-000-790600	1,845.00
06/28/2024	INTERWEST CONSULTING GROUP,	407565	Engineer Services, CIP #104, May '24	210-000-790600	16,362.50
Fund 210 - Gas Tax (HUTA) Fund Total:					22,913.80
Fund: 212 - Measure M2 Fund					
06/28/2024	QUICK CRETE PRODUCTS CORP.	130409	Bus Bench, Jun '24	212-355-720400	4,752.69
Fund 212 - Measure M2 Fund Total:					4,752.69
Fund: 306 - CR&R Recycling Fee Fund					
06/28/2024	ECONOMICS, INC.	2023-11	Professional Services, Recycling Program, May '24	306-355-700000	17,721.64
Fund 306 - CR&R Recycling Fee Fund Total:					17,721.64
Fund: 600 - Capital Improvement Projects Fund					
06/28/2024	EMPIRE PARKING LOT SERVICES, LLC	12457	Seal Coat & Stripe, CIP #505	600-000-490100	(20,150.00)
06/28/2024	EMPIRE PARKING LOT SERVICES, LLC	12457	Seal Coat & Stripe, CIP #505	600-255-950505	20,150.00
06/28/2024	ARC DOCUMENT SOLUTIONS, LLC	12501739	Printing Services, Public Works, CIP #104	600-000-490210	(79.33)
06/28/2024	ARC DOCUMENT SOLUTIONS, LLC	12501739	Printing Services, Public Works, CIP #104	600-251-950104	79.33
06/28/2024	HR GREEN PACIFIC, INC.	174696	La Paz Pavement Rehabilitation, CIP #109, Apr '24	600-000-490210	(4,626.97)
06/28/2024	HR GREEN PACIFIC, INC.	174696	La Paz Pavement Rehabilitation, CIP #109, Apr '24	600-251-950109	4,626.97
06/28/2024	HR GREEN PACIFIC, INC.	175792	La Paz Pavement Rehabilitation, CIP #109, May '24	600-000-490210	(1,845.00)
06/28/2024	HR GREEN PACIFIC, INC.	175792	La Paz Pavement Rehabilitation, CIP #109, May '24	600-251-950109	1,845.00
06/28/2024	INTERWEST CONSULTING GROUP,	407565	Engineer Services, CIP #104, May '24	600-000-490210	(16,362.50)
06/28/2024	INTERWEST CONSULTING GROUP,	407565	Engineer Services, CIP #104, May '24	600-251-950104	16,362.50
Fund 600 - Capital Improvement Projects Fund Total:					-

Payables Detail Report

Payment Dates: 06/15/2024 - 06/28/2024

Payment Date	Vendor Name	Payable Number	Description (Item)	Account Number	Amount
Fund: 998 - Pooled Cash & Investments					
06/28/2024	SHEPHERD, GEORGIA	062824	July 4th, Change Boxes	998-000-100007	500.00
Fund 998 - Pooled Cash & Investments Total:					500.00
Grand Total:					475,042.13

Report Summary

Fund Summary

Fund	Payment Amount
100 - General Fund	429,154.00
210 - Gas Tax (HUTA) Fund	22,913.80
212 - Measure M2 Fund	4,752.69
306 - CR&R Recycling Fee Fund	17,721.64
600 - Capital Improvement Projects Fund	-
998 - Pooled Cash & Investments	500.00
Grand Total:	475,042.13

Account Summary

Account Number	Account Name	Payment Amount
100-000-140000	Prepaid Items	23,714.91
100-000-221011	Building Standards Fee	1.00
100-000-223000	Plan Application Deposit	21,621.46
100-000-227001	Security Deposit - Waste	2,730.00
100-000-228001	Swimming Pool Construction	500.00
100-000-442000	Building Related Permits	176.58
100-000-790600	Transfers Out to Capital	20,150.00
100-155-700010	Legal Services - General Counsel	18,781.32
100-155-700011	Legal Services - Litigation	333.20
100-155-700030	Professional Services - City Clerk	122.50
100-195-621000	Computer Supplies	756.38
100-195-622000	Operating Supplies	404.14
100-195-630000	Telephone & Communications	1,514.38
100-195-641200	Copier Leases	2,141.65
100-195-700090	Computer Consulting Services	12,594.77
100-195-720050	Contract Services - Software	1,400.00
100-195-940000	Computer Hardware & Software	64,646.72
100-225-613100	Vehicle Fuel	306.58
100-225-646100	Vehicle Maintenance & Repairs	32.99
100-225-700225	Housing Element	55,455.97
100-310-611500	Certification/License Fees	36.25
100-310-620500	Office Supplies - Community	180.98
100-310-631100	Utilities - Electric (Community	10,972.90
100-310-635100	Utilities - Water (Community	685.58
100-310-641000	Equipment Rentals & Leases	526.48
100-310-645500	Facility Maintenance & Repairs	8,222.68
100-310-646500	Equipment Maintenance &	431.50
100-310-695500	Special Events - Program Services	486.04
100-310-695507	Marathon 5k	31,338.01
100-355-623000	Printing	103.72
100-355-631000	Utilities - Electric	10,478.75
100-355-635000	Utilities - Water	15,485.93
100-355-700100	City Engineer Services	9,986.13
100-355-700255	Improvement Inspections	15,395.25
100-355-720500	Graffiti Removal	1,448.00
100-355-720701	Parks Contract Repair	21,009.98
100-355-720702	Tree Maintenance	7,412.65
100-356-630000	MOE - Telephone &	29.12
100-356-631400	MOE - Electric (Streetlights &	15,214.97
100-356-631900	MOE - Electric (On-Bill Financing)	7,579.10
100-356-700101	MOE - Traffic Engineer Services	3,863.98
100-356-720420	MOE - Traffic Signal Maintenance	27,012.05
100-420-646000	Equipment/Machinery	170.00
100-420-646100	Vehicle Maintenance & Repairs	2,883.64
100-420-720822	Crossing Guard Services	2,699.76
100-420-720835	Fingerprint Identification Services	1,116.00
100-420-720850	Private Security Patrol	7,000.00

Account Summary

Account Number	Account Name	Payment Amount
210-000-790600	Transfers Out to Capital	22,913.80
212-355-720400	Street Maintenance	4,752.69
306-355-700000	Professional Services	17,721.64
600-000-490100	Transfers In from General Fund	(20,150.00)
600-000-490210	Transfers In from Gas Tax (HUTA)	(22,913.80)
600-251-950104	Paseo De Valencia Pavement	16,441.83
600-251-950109	La Paz Road Pavement Rehab	6,471.97
600-255-950505	Civic Center Improvements	20,150.00
998-000-100007	Cash on Hand - Cashier's Float	500.00
Grand Total:		475,042.13

Project Account Summary

Project Account Key	Payment Amount
None	475,042.13
Grand Total:	475,042.13



City of Laguna Hills City Council / Planning Agency Staff Report

Date: July 9, 2024
To: Mayor and Council Members
From: Joe Ames, Public Works Director/City Engineer
Issue: Notice of Completion and Final Payment for the Citywide Sidewalk Repairs & Concrete Construction Project Re-Bid, CIP No. 106

Recommendation: That the City Council: 1) Certify the completion of and accept the improvements for the subject project; 2) Authorize the Public Works Director to sign the Notice of Completion; 3) Authorize the recording of the Notice of Completion with the County of Orange and to release the faithful performance and payment bonds one year and 35 days, respectively, after the date of recordation of the Notice of Completion contingent upon no claims or liens being filed with the City; and 4) Authorize payment of the final retention 35 days after the date of recordation of the Notice of Completion in the net amount of \$32,924.13, if no liens have been filed.

Background:

The Citywide Sidewalk Repairs & Concrete Construction Project Re-Bid, CIP No. 106, was awarded to CT&T Concrete Paving, Inc. on September 12, 2023, by the City Council in the amount of \$607,850.00. The improvements are now complete and ready for acceptance.

Procedurally, a five-percent (5%) retention is withheld from each payment to assure final performance of the work. The contractor for this project has submitted the retention progress payment in the amount of \$32,924.13.

City staff recommends that the City Council: 1) Certify the completion of and accept the improvements for the subject project; 2) Authorize the Public Works Director to sign the Notice of Completion; 3) Authorize the recording of the Notice of Completion with the County of Orange and to release the faithful performance and payment bonds

one year and 35 days, respectively, after the date of recordation of the Notice of Completion contingent upon no claims or liens being filed with the City; and
4) Authorize payment of the final retention 35 days after the date of recordation of the Notice of Completion in the net amount of \$32,924.13, if no liens have been filed.

Fiscal Impact:

CIP No. 106 has a FY2023/2024 budget of \$690,000.00, as amended by City Council on September 12, 2023.

Original Contract Amount:	\$607,850.00 (CT&T Concrete Paving, Inc.)
Contingency for Change Orders:	\$82,150.00
Total Project Budget:	\$690,000.00

Original Contract Amount:	\$607,850.00
Total Contract Change Orders:	\$50,632.50
Total Contract Cost:	\$658,482.50

Therefore, the total project cost is within the FY 2023/2024 Capital Improvement Program budget for the Citywide Sidewalk Repairs & Concrete Construction Project Re-Bid, CIP No. 106.

Included in the CIP No. 106 budget is \$150,000.00 in funding from Saddleback Valley School District for the construction of the retaining wall on La Paz Road. The District has already reimbursed the City for its share of the project. Therefore, of the \$658,482.50 spent on this project, \$508,482.50 was spent using funds from the General Fund.

Attachments:

1. Notice of Completion - CIP No. 106

Recording Requested By:
The City of Laguna Hills

When Recorded Mail To:
Jennifer Lee, City Clerk
City of Laguna Hills
24035 El Toro Road
Laguna Hills, CA 92653

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§ 6103, 27383

SPACE ABOVE THIS LINE OF FOR RECORDER'S USE

NOTICE OF COMPLETION

Notice is hereby given that the following public improvements have been completed and accepted by the City Council of the City of Laguna Hills on July 9, 2024.

Description of Improvements

- Removal and replacement of sidewalk, parkway culverts, and driveway aprons in various locations throughout the City;
- Removal of existing sidewalk, construction of a wider sidewalk and a retaining wall, and installation of landscaping and irrigation on the slope behind the retaining wall on the southerly side of La Paz Road between Paseo de Valencia and Grissom Road in front of Valencia Elementary School as a cooperative effort between the City and Saddleback Valley Unified School District;
- Removal of existing sidewalk and construction of a wider sidewalk on the northerly side of La Paz Road between Rickenbacker Road and The Hills Hotel driveway; and
- Removal of existing turf grass and soil and construction of concrete within the Community Center's service driveway.

General Location

Various location throughout City. (see Description of Improvements)

Owner of Property Address

City of Laguna Hills
24035 El Toro Road
Laguna Hills, CA 92653

Contractor

CT&T Concrete Paving, Inc.
324 S. Diamond Bar Blvd., PMB 275
Diamond Bar, CA 91765

This Notice of Completion is executed under authority of a directive from the City Council of the City of Laguna Hills.

I, Joseph J. Ames, declare under penalty of perjury that I am the City Engineer of the City of Laguna Hills, that I am familiar with the facts stated in the foregoing Notice of Completion executed for and on its behalf, and that I have read the foregoing Notice of Completion and know the contents thereof to be true.

Dated: July 10, 2024

Joseph J. Ames, P.E., T.E., Public Works Director/City Engineer City of Laguna Hills

*EXEMPT FROM NOTARY ACKNOWLEDGEMENT REQUIREMENTS
PER GOVERNMENT CODE § 27287 AND CIVIL CODE § 9208*

Jennifer Lee, CMC, City Clerk



City of Laguna Hills City Council / Planning Agency Staff Report

Date: July 9, 2024
To: Mayor and Council Members
From: Joe Ames, Public Works Director/City Engineer
Issue: Agreement with Age Well Senior Services for Community Development Block Grant Funds for Fiscal Year 2024/2025

Recommendation: That the City Council: 1) Approve the Agreement between Age Well Senior Services, Inc., and the City of Laguna Hills for Community Development Block Grant Funds for Fiscal Year 2024/2025; 2) Authorize the City Manager to execute the Agreement; and 3) Authorize the Finance Director to amend the Fiscal Year 2024/2025 budget to account for the \$350,000 grant.

Background:

On January 23, 2024, City Council adopted Resolution No. 2024-01-23-1 authorizing the submittal of the City of Laguna Hills Public Facilities and Improvements Project application for Fiscal Year 2024-2025 through the County's Urban Counties Program, and accepting the award of Community Development Block Grant (CDBG) funds, if awarded funding. The Project application consisted of curb ramp replacements on Paseo de Valencia and Alicia Parkway and, in partnership with the Florence Sylvester Memorial Senior Center, for improvements to the Center. Subsequently, Orange County Community Resources notified the City that it had been awarded the requested amount of \$350,000. Of the \$350,000 total CDBG funds, \$75,000 is to be used for the application of heat-reducing paint to the exterior of the Florence Sylvester Memorial Senior Center and the interior dining room. In accordance with the adopted Resolution, the City Manager executed Contract No. 012-24011200 between the County of Orange and the City of Laguna Hills.

However, in order for Age Well Senior Services to access the "pass-through" CDBG funds for use at the Florence Sylvester Memorial Senior Center, Age Well Senior

Services is required to enter into a “sub-recipient” agreement with the City of Laguna Hills to accept these funds.

City staff recommends that the City Council approve the Agreement between Age Well Senior Services and the City of Laguna Hills for Community Development Block Grant Funds for Fiscal Year 2024/2025, and authorize the City Manager to execute the Agreement.

CEQA Findings:

This action is not subject to the California Environmental Quality Act pursuant to Section 15301, Class 1, “Existing Facilities” of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because the contemplated activities (curb ramp replacement and painting of the exterior and interior of a building) consist of negligible or no expansion of existing or former use.

Fiscal Impact:

The proposed City of Laguna Hills Public Facilities and Improvements Fiscal Year 2024-2025 project is anticipated to cost a total of \$437,500.

The improvements at the Florence Sylvester Memorial Senior Center are estimated to cost \$75,000. The requested grant amount was \$75,000 with a \$0 match from the Senior Center for a total project component cost of \$75,000.

The removal and replacement of Americans with Disabilities Act (ADA) non-compliant curb ramps at 15 intersections on Paseo de Valencia (between Interstate 5 and Alicia Parkway) and at 4 intersections on Alicia Parkway (from Paseo de Valencia to Moulton Parkway) are estimated to cost \$362,500. The requested grant amount was \$275,000 with a \$87,500 match from CIP No. 104 for a total project component cost of \$362,500.

Therefore, the total grant request was for \$350,000 with the City contributing a 20% match of \$87,500 from CIP No. 104 for a total project cost of \$437,500.

There are sufficient funds budgeted in CIP No. 104 to provide matching funds; therefore, no new fiscal impact will be realized to the City's budget as a result of this Project.

Attachments:

1. Agreement between The City of Laguna Hills and Age Well Senior Services, Inc. for CDBG Public Facilities and Improvement Funds (Program Year 24/25)

AGREEMENT BETWEEN
THE CITY OF LAGUNA HILLS
AND
AGE WELL SENIOR SERVICES, INC.

FOR COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)
PUBLIC FACILITIES AND IMPROVEMENT FUNDS
(Program Year 2024/2025)

TITLE OF PROJECT: Public Facilities and Improvements – Florence Sylvester Senior Center (Age Well Senior Services, Inc.)

This **AGREEMENT** is made and entered into the **1st day of July, 2024**.

BY AND BETWEEN

City of Laguna Hills, a municipal corporation organized and existing under the laws of the State of California, and hereinafter referred to as "**CITY**".

AND

Age Well Senior Services, Inc., a California Non-Profit Public Benefit Corporation, hereinafter referred to as "**SUB-RECIPIENT**"

RECITALS

WHEREAS, the County of Orange (the "County") has applied for and anticipates receiving funds from the United States Department of Housing and Urban Development, hereinafter referred to as "HUD", under Title I of the Housing and Community Development Act of 1974 (Public Law 93-383, as amended) for the purpose of funding projects meeting one of the HUD national objectives; and

WHEREAS, the County of Orange and participating cities (of which the City is a member) previously entered into a Cooperation Agreement dated July 1, 2023, as amended, in which both parties agreed to cooperate in the undertaking, or assist in the undertaking, of community development and housing assistance activities; and

WHEREAS, the County of Orange adopted its 2020-2024 Consolidated Plan and Citizen Participation Plan Annual Action Plan, which includes the solicitation of community development and housing assistance activity projects that meet a "high priority need" as

defined by the programmatic requirements in 24 CFR 570 Community Development Block Grant ("CDBG"); and

WHEREAS, the County of Orange solicited community development "Public Facilities and Improvement" projects from participating cities for grant funding in conformance with 24 CFR 570 Community Development Block Grant ("CDBG"), Catalog of Federal Domestic Assistance ("CDFA") Number 14.218, which distributes formula grants to develop viable urban communities by providing decent housing, a suitable living environment, and expanding economic opportunities, principally for persons of low and moderate income; and

WHEREAS, the City is covered by the County's 2020-2024 Consolidated Plan and Citizen Participation Plan Annual Action Plan, and

WHEREAS, the City submitted to the County of Orange an application for funding of the Project described herein, and

WHEREAS, the City has entered into a separate contract for the period July 1, 2024 - June 30, 2025 with the County of Orange (Contract No. 012-24011200, entitled "Contract for Public Facilities and Improvements City of Laguna Hills PF&I ADA Ramps, and Senior Center Improvements", a copy of which is attached as **Exhibit A** and is incorporated herein by this reference) to receive Community Development Block Grant (CDBG) funds under Title I of the Housing and Community Development Act of 1974 (Public Law 93-838, as amended) for the purpose of assisting Sub-recipient with the Florence Sylvester Senior Center rehabilitation project which meets one of the HUD National Objectives, and

WHEREAS, the City is considered to be the "Subrecipient" of the CDBG funds from the County of Orange; and

WHEREAS, Contract No. 012-24011200 provides that funds to the City for qualified projects are conditional upon: County being funded by HUD and the release of funds to County; Certification of Insurance; and certification of environmental compliance by County and/or HUD in accordance with 24 CFR 58 et seq., and

WHEREAS, Age Well Senior Services, Inc. is considered to be the "Sub-recipient" (hyphenated emphasis added to differentiate the City from Age Well Senior Services, Inc.) of its portion of the CDBG funds from the City; and

WHEREAS, the Sub-recipient is a California nonprofit public benefit corporation that has been selected by the City to receive and administer CDBG funds, and to provide the rehabilitation project services at the Florence Sylvester Senior Center, located at 23721 Moulton Parkway, as described in **Exhibit B** ("Project"), in accordance with the schedule of performance included therein; and

WHEREAS, Sub-recipient represents that it is qualified and willing to administer the Project and hereby certifies that the activities carried out with funds provided under this

Agreement will meet one or more of the CDBG program's National Objectives, and

WHEREAS, the Sub-recipient agrees that it will adhere to the Project performance measurements and outcomes set forth herein; and Sub-recipient understands and agrees that its failure to follow the performance measurements and meet the stated outcomes may constitute breach of contract that could result in termination of this Agreement or serve as reason for the City to recapture the CDBG funds awarded to Sub-recipient pursuant to this Agreement.

NOW, THEREFORE, in consideration of these recitals and the mutual covenants contained herein, the City and Sub-recipient agree as follows:

I. SCOPE OF SERVICES

A. Project Description

(1) As a condition of receiving CDBG funding pursuant to this Agreement, Sub-recipient shall act as Project Manager and shall be responsible for administering the approved fiscal year 2024-2025 CDBG Project described herein in a manner satisfactory to the City and consistent with any and all applicable standards, including this Agreement, Contract No. 012-24011200, completion milestones (provided by the County), and all applicable Federal, State, and local laws, guidelines, policies, and regulations. Sub-recipient shall use CDBG funds for rehabilitation of the Florence Sylvester Senior Center, located at 23721 Moulton Parkway, as set forth in the Scope of Work described in **Exhibit B**, which is attached hereto and incorporated herein by reference (the "Project").

(2) **The construction rehabilitation Project contemplated herein is a "public work," under California Labor Code Section 1720, and the construction contractors should be paid prevailing wages in accordance with State law. In addition, the Federal Labor Standards, including Davis-Bacon prevailing wages shall apply. A current and appropriate Davis-Bacon wage decision approved by the County shall be included in the Construction Bid Package, along with HUD – 4010 form, "Federal Labor Standards Provisions." In cases where the Davis-Bacon Act applies, Sub-recipient shall submit require payment of the highest rates, Federal, State, or local rates, for trades employed.**

(3) **Prior to advertising for bids, the Construction Bid Package for the work on the Project shall be submitted to the City for review and approval by the County's Director of Housing and Community Services. A County representative shall be invited to a pre-construction conference to review Federal Labor Standards compliance procedures with the Sub-recipient and construction contractors.**

(4) No costs shall be incurred prior to receipt of written certification of approval by County of the fulfillment of the requirements of Section XXI (Insurance) of this Agreement.

B. Budget

This Agreement is for a CDBG funding reimbursement amount not to exceed \$75,000.00 (Seventy-Five Thousand Dollars). As described further in Section III below, the Sub-recipient shall provide the funds for the Project and shall submit written proof of payment to City, whereupon after approval by City, the City shall seek reimbursement of eligible costs from the County pursuant to Contract No. 012-24011200.

C. Work Schedule

Reimbursable activities per this Agreement may begin on the effective date of this Agreement, and shall end on June 30, 2025. Progress reports and quarterly reports shall be provided by the Sub-recipient in accordance with Section VII(B) of this Agreement. The progress reports and quarterly reports shall indicate the progress of the components of the rehabilitation Project.

II. PERFORMANCE MEASURES

A. Performance Objectives

Sub-recipient hereby certifies that the Project carried out with funds provided under this Agreement will meet one or more of the CDBG program's National Objectives: 1) benefit low/moderate income persons; 2) aid in the prevention or elimination of slums or blight; or 3) meet community development needs having a particular urgency as defined in Title 24 of the Code of Federal Regulations ("24 CFR") Part 570.208. Sub-recipient agrees that the Project shall be implemented and appropriately maintained for community development purposes as defined by applicable HUD provisions to ensure maximum feasible benefit and utilization of the project by low- and moderate-income persons.

B. Goals and Performance Measures

In addition to the reasonable administrative services required as part of this Agreement, Sub-recipient agrees to accomplish the rehabilitation work on the Project as delineated in **Exhibit B**, which is attached hereto and incorporated herein by reference.

C. Performance Monitoring

The City will monitor the performance of the Sub-recipient against the goals and performance standards required by this Agreement, applicable Federal, State, and local laws, guidelines, policies, and regulations, and in accordance with Contract No. 012-24011200. The Sub-recipient shall cooperate by providing completed progress reports and Quarterly Performance Reports as delineated in Section VII(B). Substandard performance as determined by the City, in its sole discretion, shall constitute noncompliance with this Agreement. If action to correct such substandard performance is not promptly taken by Sub-recipient within a reasonable time after being notified by the City, Agreement suspension or termination procedures may be initiated.

D. Time of Performance

Eligible project activities as set forth in **Exhibit B** shall begin on the effective date of this Agreement, and shall be completed by June 30, 2025. A final invoice for eligible project costs shall be submitted within 15 days after the Agreement expiration date. The term of this Agreement and the provisions herein may be extended by the City at the City's sole discretion for up to six months from the Agreement expiration date, upon written notification to the Sub-recipient. In the event of such extension, the deadline for submittal of a final invoice shall be 15 days after the new completion date. Every effort shall be made by Sub-recipient to expend the allocated funds in their entirety by June 30, 2025. If Sub-recipient does not expend all funds by June 30, 2025, either due to costs not incurred or costs not approved by the City, the City may allocate the funds not yet drawn to another eligible CDBG project(s) within the City of Laguna Hills.

III. DISBURSEMENT OF FUNDS

A. Reimbursements

Subject to availability of funds from HUD to County, County approval of Sub-recipient's Insurance, County approval of Sub-recipients Federal Labor Standards submittals, and Sub-recipient's timely completion and submission of complete Requests for Reimbursements to City, payment shall be made by City and shall be in the form of reimbursement for eligible costs as outlined in **Exhibit B** for the period beginning on the effective date of this Agreement, and ending June 30, 2025. It is expressly agreed and understood by the parties that the total amount of CDBG funding eligible for reimbursement under this Agreement shall not exceed the amount stated in Section I(B) of this Agreement.

B. Reimbursement Schedule

Reimbursement for eligible costs shall be made on a quarterly basis in accordance with **Exhibit A** and as delineated in **Exhibit B**, both attached hereto and incorporated herein by this reference. The City shall not provide any payments/reimbursements in advance of actual expenditures by Sub-recipient. Funding is contingent upon the City receiving CDBG funds from the County and HUD.

C. Reimbursement Requests

On a quarterly basis and within fifteen (15) days of the end of a quarter, the Sub-recipient may invoice City for reimbursement of eligible costs as outlined in **Exhibit B**. Concurrently with its request for the aforementioned funds, Sub-recipient shall submit to the City the following supporting documentation: copies of paid invoices, receipts, certified payroll records, bank statements, canceled checks, attendance records, and other items adequate to document project expenditures. In addition, Sub-recipient shall also provide a Quarterly Performance Report which addresses its level of performance for each activity

undertaken relative to the scope of services set forth in Section I. Prior to reimbursing, the City will verify that Sub-recipient has met all applicable regulations for the Project. The City will not authorize reimbursement if any preceding quarter's reports or invoices are incomplete, or have not been submitted.

D. Reimbursement Records

Records shall be kept by Sub-recipient in accordance with all records maintenance requirements set forth in Contract No.012-24011200, which is attached as **Exhibit A** and is incorporated herein by reference.

IV. NOTICES

A. Communication

Communication and details concerning this Agreement shall be directed to the following representatives:

City

City of Laguna Hills
Joe Ames, Public Works Director/City Engineer
24035 El Toro Road
Laguna Hills, California 92653

Sub-recipient

Age Well Senior Services, Inc.
24300 El Toro Road, Building A
Laguna Woods, CA 92637
Attn: Steve Moyer, Chief Executive Officer

B. Certified Mail

Any notice required under this Agreement shall be sent by certified mail, postage prepaid, and shall be deemed complete on the third business day following deposit in the United States Postal Service.

V. PROGRAM REQUIREMENTS

A. Compliance

Sub-recipient shall adhere to the terms of the City's CDBG application, Contract 012-22-0004, and this Agreement, including any subsequent assurances and agreements made by the City to the County and HUD, pertaining to this Agreement. In

addition, Sub-recipient shall comply with all applicable County requirements, in particular Section 31 of Contract No. 012-24011200.

Sub-recipient shall comply with applicable *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* as described in 2 CFR Part 200, et al, and 24 CFR 85, *Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments* attached as **Exhibit C** and incorporated herein by reference.

The Sub-recipient shall carry out all activities in compliance with all Federal laws and regulations as described in Subpart K, such as labor standards (Davis Bacon Act) and fair housing requirements of the CDBG Program Regulations.

The provisions of Subpart K of Title 24 of the Code of Federal Regulations relating to CDBG Program Regulations are attached as **Exhibit D** and are incorporated as a condition of this Agreement by this reference. The Sub-recipient shall comply with all applicable Federal laws related to the use of CDBG funds by the Sub-recipient and the approved Project outlined herein.

VI. EXPENSES FOR LABOR, MATERIALS AND SUPPLIES

The Sub-recipient shall furnish all labor, materials and services and bear all expenses to carry out the Project activities as outlined in this Agreement. Under this Agreement, the City's only financial obligation to the Sub-recipient is to provide the approved CDBG funds for the maximum amount specified in Section I(B) of this Agreement, as allocated by the County of Orange and the City of Laguna Hills for CDBG Program Year 2024/2025.

VII. RECORDS AND REPORTS

A. Documentation

The Sub-recipient shall maintain all records required by the Federal regulations specified in 24 CFR 570.503 (b)(2), 570.506, 570.507 and 570.508 that are

pertinent to the activities to be funded under this Agreement. Such records and reports shall include, but not be limited, to:

- (1) Documentation providing a full description of each activity undertaken;
- (2) Documentation demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
- (3) Documentation required to determine the eligibility of activities;
- (4) Documentation required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- (5) Documentation of compliance with the fair housing and equal opportunity components of the CDBG program;
- (6) Financial records as required by 24 CFR 570.502 and OMB Circular A-87 as detailed in **Exhibit E**, which is attached hereto and incorporated herein by reference;
- (7) Other records necessary to document compliance with Subpart K of 24 CFR 570; and
- (8) Any such other related records as the City shall require.

B. Progress Reports and Quarterly Reports

The Sub-recipient shall submit “Quarterly Reports” on a City-provided Grantee Performance Report (GPR Form) during the program year beginning July 1, 2024, and ending June 30, 2025. Quarterly Reports shall be filed with the City on or before: October 8, 2024 (for activities occurring July 1 – September 30), January 8, 2025 (for activities occurring October 1 – December 31), April 8, 2025 (for activities occurring January 1 – March 31), and July 8, 2025 (for activities occurring October 1 – December 31).

In addition, the Report must include sufficient information to assist the City in monitoring the Sub-recipient’s performance. The Sub-recipient must demonstrate satisfactory performance prior to reimbursement for expenditures. If it is determined by the City that Sub-recipient’s performance or progress on performance is unsatisfactory, the City may withhold further funding on the Project pending resolution of the unsatisfactory condition(s), or may terminate this Agreement. In addition, the City may require the Sub-recipient to reimburse the City any funds that it determines to be improperly expended based on applicable CDBG Program Regulations.

C. Accounting Records

The Sub-recipient shall maintain separate accounting records for the Federal CDBG funds provided by the City. The City, County, Federal Grantor Agency, Controller General of the United States, or any of their duly authorized representatives shall have access to all books, documents, papers and records maintained by the Sub-recipient which directly pertain to the above Project for the purpose of audit, examination, excerpts and transcriptions. Unless otherwise notified by the City, the Sub-recipient shall retain all

financial records, supporting documents and statistical reports related to the Project identified under this Agreement until June 30, 2030. All records subject to an audit finding must be retained for five (5) years from the date the finding is made or until the finding has been cleared by appropriate officials and the Sub-recipient has been given official written notice.

VIII. AUDIT REQUIREMENT

A. Audit Report

Sub-recipient's records on the Project shall be maintained and available to the City for conducting an audit. If the Sub-recipient receives \$25,000 or more in total Federal financial assistance, Sub-recipient shall perform, if requested to do so by the City or County, an annual audit to be performed in accordance with OMB Circular A-133; *Audits of States, Local Governments and Non-Profit Organizations*, and a copy of the audit shall be forwarded to the City within 180 days after the end of the City's fiscal year (June 30, 2025).

B. Single Audit Report

If the Sub-recipient receives more than \$500,000 in total federal funds in one fiscal year from the City and/or any other city or agency, the Sub-recipient is required to submit a Single Audit Report. As required by the federal Single Audit Act, the Sub-recipient shall be required to submit to the City, a comprehensive financial audit prepared by an independent, neutral third-party auditor. The audit shall cover financial operation of the Sub-recipient for the period beginning July 1, 2024 and ending June 30, 2025, and is due no later than six months after expiration of this Agreement.

C. Corrective Actions

The City shall have the right to ensure that necessary corrective actions are made by the Sub-recipient for any audit findings pertinent to Sub-recipient handling of funding attributable to the CDBG Program per Federal requirements, including requiring Sub-recipient to return funds paid by City.

IX. MODIFICATIONS/TRANSFERS

The Sub-recipient shall transfer to City any CDBG funds on hand at the time of the Agreement expiration and any accounts receivable attributable to the use of CDBG funds.

X. AMENDMENTS

The City and Sub-recipient may amend this Agreement at any time provided that any such amendment makes specific reference to this Agreement, is executed in writing, is approved by the County and signed by a duly authorized representative of each

organization. Such amendment shall not invalidate this Agreement, nor relieve or release the City or Sub-recipient from their respective obligations under this Agreement. Any proposed amendment to this Agreement shall be submitted to, and approved by the City prior to commencement of any activity covered by said amendment.

The City may, at its sole discretion, amend this Agreement at any time to conform with Federal, State, County, or local government guidelines, policies, and available funding amounts. If any amendment results in a change of funding amount under this Agreement, the Scope of Work, threshold or milestone dates, or schedule of activities to be undertaken as part of this Agreement, such changes will be incorporated by written amendment between the City and Sub-recipient.

XI. SECTION 3 COVERED ASSISTANCE

A. Policies and Procedures

Where the Sub-recipient receives CDBG funds for work arising in connection with housing rehabilitation, housing construction, or other public improvements, the requirements of Section 3 of the Housing and Urban Development Act of 1968 shall apply as follows:

(1) The work to be performed under this Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

(2) The parties to this Agreement agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this Agreement, the parties certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

(3) The Sub-recipient agrees to send to each labor organization or representative of workers with which the Sub-recipient has a collective bargaining agreement or other understanding, if any, a notice of advising the labor organization or workers' representative of the Sub-recipient's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications

for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(4) The Sub-recipient agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The Sub-recipient will not subcontract with any subcontractor where the Sub-recipient has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

(5) The Sub-recipient will certify that any vacant employment positions, including training positions, that are filled (1) after the Sub-recipient is selected but before the Agreement is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the Sub-recipient's obligations under 24 CFR Part 135.

(6) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.

(7) With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (1) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises.

(8) Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b)."

B. Inclusion of Section 3 Clause

Sub-recipient shall abide by this Section 3 Clause and shall also require this Section 3 clause be inserted into any and all subcontracts executed with subcontractors for work covered by this Agreement.

XII. RELIGIOUS ACTIVITIES

The Sub-recipient agrees that funds provided under this Agreement will not be utilized for inherently religious activities or to promote religious interests. Religious

entities may use CDBG funds for secular activities only in accordance with the Federal regulations specified in 24 CFR 570.200(j).

XIII. NONDISCRIMINATION CLAUSE

The Sub-recipient shall comply with all State and Federal laws regarding nondiscrimination and the equal opportunity employment of personnel.

XIV. SUSPENSION AND TERMINATION OF AGREEMENT

In accordance with the pertinent provisions of the Code of Federal Regulations, this Agreement may be suspended or terminated if the Sub-recipient fails to comply with any term(s) of the award and/or for the City's convenience.

XV. REVERSION OF ASSETS UPON EXPIRATION OF AGREEMENT

Upon expiration of this Agreement, the Sub-recipient shall be required to use any real property under the Sub-recipient's control that was acquired or improved in whole or in part with CDBG funds in excess of \$25,000 as follows:

(1) To meet one of the National Objectives in 24 CFR 570.208 until no earlier than five (5) years after expiration of this Agreement; or

(2) To be disposed of in a manner resulting in the City being reimbursed in the amount of the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition or improvement of the property. Reimbursement is not required after the period of time specified in Section XV(1).

XVI. HOLD HARMLESS AND INDEMNITY AGREEMENT

The City, its elected and appointed officers, employees, contractors (other than Sub-recipient) and agents shall not be liable for any claims, liabilities, penalties, fines, or any damage to goods, properties, or effects of any person whatsoever, nor for personal injuries or death caused by, or claimed to have been caused by, or resulting from, any intentional or negligent acts, errors or omissions of Sub-recipient or Sub-recipient's agents, employees, subcontractors, or representatives in completion of Project outlined in the Agreement.

To the fullest extent permitted by law, the Sub-recipient agrees to defend, indemnify, and hold harmless the City and its elected and appointed officers, employees, contractors and agents against any of the foregoing liabilities or claims of any kind and any cost/and expense that is incurred by the City including attorney fees and litigation expenses on account of any of the foregoing liabilities, including liabilities or claims by

reason of alleged, errors, omissions, or defects in any plans and specifications for the Project.

XVII. ASSIGNMENT OF AGREEMENT

The Sub-recipient shall not assign this Agreement or any monies due hereunder without the prior written consent of the City.

XVIII. SUCCESSORS OR ASSIGNS

Subject to the provisions of Section XVII (Assignment of Agreement), all terms, conditions, and provisions hereof shall inure to and shall bind each of the parties hereto, and each of their respective heirs, executors, administrators, successors, and assigns as permitted by this Agreement.

XIX. INDEPENDENT SUB-RECIPIENT

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. Sub-recipient and its subcontractors shall at all times remain independent with respect to the services to be performed under this Agreement. The City shall be exempt from payment of any Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance. Sub-recipient and/or its subcontractors is/are independent contractors.

XX. ANTI-LOBBYING

Subrecipient certifies that it will comply with federal law (31 U.S.C. 1352) and regulations found at 24 CFR Part 87, which provide that:

- (1) No federal appropriated funds will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any Federal loan, the entering into of any Cooperative Agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or Cooperative Agreement; and
- (2) Subrecipient shall include subject anti-lobbying certification in award documents for all sub-Subrecipients at all tiers (including sub-subcontracts, sub-subgrants,

and contract under grants, loans, and Cooperative Agreements) and that all sub-Subrecipients shall certify and disclose accordingly.

XXI. INSURANCE

At all times during the term of this Agreement, the Sub-recipient shall maintain insurance coverage in compliance with the Insurance Requirements attached as **Exhibit F** and incorporated into this Agreement by this reference. The insurance requirements of this section shall be in addition to, and shall not modify Section XVI (Hold Harmless and Indemnity Agreement).

IN WITNESS WHEREOF, the City has caused this Agreement to be executed by its City Manager and attested by its Clerk; Sub-recipient has caused this Agreement to be executed by its President and Chief Executive Officer, all having been duly authorized by the City Council of City of Laguna Hills and the Board of Directors of Sub-recipient, respectively.

EXECUTED:

CITY OF LAGUNA HILLS

By: _____
Jarad Hildenbrand, City Manager

ATTEST:

By: _____
Jennifer Lee, City Clerk

AGE WELL SENIOR SERVICES, INC., a
California non-profit corporation

By: _____
Brent Lauer, President
Date: June 1, 2024

By: _____
Steve Moyer,
Chief Executive Officer
Date: July 1, 2024

Exhibit A

Contract No. 012-24011200, “Contract for Public Facilities and Improvements City of Laguna Hills PF&I ADA Ramps, and Senior Center Improvements”



CONTRACT # 012-24011200

FOR

PUBLIC FACILITIES AND IMPROVEMENTS
CITY OF LAGUNA HILLS PF&I ADA RAMPS, AND SENIOR CENTER IMPROVEMENTS

BETWEEN

COUNTY OF ORANGE

AND

CITY OF LAGUNA HILLS

<u>CFDA#</u>	<u>FAIN#</u>	<u>PROGRAM/SERVICE TITLE</u>	<u>FUNDING AGENCY</u>
14.218	Pending	Community Development Block Grant (CDBG)/Housing Rehabilitation, Public Facilities & Improvements, and Public Services	U.S. Housing & Urban Development (HUD)

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ATTACHMENTS

Attachment A - Scope of Services
Attachment B - Payment/Compensation
Attachment C - Budget Schedule
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Attachment E - Performance Standards

EXHIBITS

Exhibit 1– OC Community Resources Contract Reimbursement Policy
Exhibit 2 – Drug Free Workplace Certification
Exhibit 3 – Debarment and Suspension Certificate
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Exhibit 5 - Lobbying Certification

Contract #012-24011200
with
City of Laguna Hills
for
Public Facilities & Improvements

This Contract # 012-24011200 for Public Facilities & Improvements (hereinafter referred to as "Contract") is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California; hereinafter referred to as "County" and City of Laguna Hills, DUNS #798794947 and Unique Entity ID # VLC8GAPU9KF4 , a California Municipality, with a place of business at 24035 El Toro Road, Laguna Hills, CA 92653 (hereinafter referred to as "Subrecipient"), with County and Subrecipient sometimes referred to as "party" or collectively as "parties".

ATTACHMENTS

This Contract is comprised of this document and the following Attachments, which are attached hereto and incorporated by reference into this Contract:

Attachment A – Scope of Services
Attachment B – Payment/Compensation
Attachment C – Budget Schedule
Attachment D – Staffing Plan
Attachment E - Performance Standards

RECITALS

WHEREAS, Subrecipient and County are entering into this Contract for Public Facilities & Improvements under a cost reimbursement Contract; and

WHEREAS, County solicited Contract for Public Facilities & Improvements as set forth herein, and Subrecipient represented that it is qualified to provide Public Facilities & Improvements to the County as further set forth here; and

WHEREAS, Subrecipient agrees to provide Public Facilities & Improvements to the County as further set forth in the Scope of Service, attached hereto as Attachment A; and

WHEREAS, County agrees to pay Subrecipient based on the schedule of fees set forth in Payment/Compensation, attached hereto as Attachment B; and

WHEREAS, Subrecipient agrees to manage allotted funding set forth in the Budget Schedule, attached hereto as Attachment C; and

WHEREAS, Subrecipient agrees to provide staff set forth in Staffing Plan, attached hereto as Attachment D; and

WHEREAS, Subrecipient agrees to meet the Performance Standards requirements set forth in attached hereto as Attachment E; and

WHEREAS, the County Board of Supervisors has authorized the OC Community Resources Director or his designee to enter into a Contract for Public Facilities & Improvements with the Subrecipient to carry out certain program services and activities for the Fiscal Year 2024-25

NOW, THEREFORE, the Parties mutually agree as follows:

ARTICLES

General Terms and Conditions:

- A. **Governing Law and Venue:** This Contract has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for adjudication to another county.

- B. **Entire Contract:** This Contract contains the entire Contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County's Contract Administrator.

- C. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.

- D. **Intentionally left blank**

- E. **Delivery:** Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the prescribed Scope of Services. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Subrecipient's expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by County.

- F. **Acceptance Payment:** Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.

- G. **Intentionally left blank:**

- H. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Subrecipient shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Subrecipient warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Subrecipient agrees that, in accordance with the more specific requirement contained in paragraph "Z" below, it shall indemnify, defend and hold County and County Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, costs and expenses but not including attorney's fees.
- I. **Assignment:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Subrecipient without the express written consent of County. Any attempt by Subrecipient to assign the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.
- J. **Non-Discrimination:** In the performance of this Contract, Subrecipient agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Subrecipient acknowledges that a violation of this provision shall subject Subrecipient to penalties pursuant to Section 1741 of the California Labor Code.
- K. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to immediately terminate this Contract without penalty for cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of contract, any misrepresentation or fraud on the part of the Subrecipient. Exercise by County of its right to terminate the Contract shall relieve County of all further obligation.
- L. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- M. **Independent Subrecipient:** Subrecipient shall be considered an independent contractor and neither Subrecipient, its employees, nor anyone working under Subrecipient shall be considered an agent or an employee of County. Neither Subrecipient, its employees nor anyone working under Subrecipient shall qualify for workers' compensation or other fringe benefits of any kind through County.

N. Performance Warranty: Subrecipient shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Subrecipient shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Subrecipient under this Contract. Subrecipient shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work. If permitted to subcontract, Subrecipient shall be fully responsible for all work performed by subcontractors.

O. Insurance Requirements:

Prior to the provision of services under this Contract, the Subrecipient agrees to carry all required insurance at Subrecipient's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Subrecipient agrees to keep such insurance coverage current, provide Certificates of Insurance, and endorsements to the County during the entire term of this Contract.

Subrecipient shall ensure that all subcontractors performing work on behalf of Subrecipient pursuant to this Contract shall be covered under Subrecipient's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Subrecipient. Subrecipient shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Subrecipient under this Contract. It is the obligation of Subrecipient to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Subrecipient through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIR)'s shall be clearly stated on the Certificate of Insurance. Any SIR in excess of Fifty Thousand Dollars \$50,000 shall specifically be approved by the County's Risk Manager, or designee. The County reserves the right to require current audited financial reports from Subrecipient. If Subrecipient is self-insured, Subrecipient will indemnify the County for any and all claims resulting or arising from Subrecipient's services in accordance with the indemnity provision stated in this contract.

If the Subrecipient fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by

the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, CEO/ Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the Subrecipient shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers Compensation	Statutory
Employers Liability Insurance	\$1,000,000 per accident or disease
Network Security & Privacy	\$1,000,000 per claims-made Liability
Professional Liability	\$1,000,000 per claims-made or occurrence \$1,000,000 aggregate
Sexual Misconduct	\$1,000,000 per occurrence
Employee Dishonesty	\$100,000 per occurrence
Increased insurance limits may be satisfied with Excess/Umbrella policies. Excess/Umbrella policies when required must provide Follow Form coverage.	

Required Coverage Forms

The Commercial General Liability coverage shall be written on occurrence basis utilizing Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

- 1) An Additional Insured endorsement using ISO form CG 20 26 04 13, or a form at least as broad naming the County of Orange its elected and appointed officials, officers, employees, and agents as Additional Insureds, or provide blanket coverage, which will state As Required by Written Contract.
- 2) A primary non-contributory endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that the Subrecipient's insurance is primary, and any insurance or self-insurance maintained by the County shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the **County of Orange, its elected and appointed officials, officers, employees, and agents** or provide blanket coverage, which will state **As Required by Written Contract**.

The Network Security and Privacy Liability policy shall contain the following endorsements which shall accompany the Certificate of Insurance:

- 1) An Additional Insured endorsement naming the **County of Orange, its elected and appointed officials, officers, employees, and agents** as Additional Insureds for its vicarious liability.
- 2) A primary and non-contributory endorsement evidencing that the Subrecipient's insurance is primary, and any insurance or self-insurance maintained by the County shall be excess and non-contributing.

All insurance policies required by this Contract shall waive all rights of subrogation against the **County of Orange, its elected and appointed officials, officers, employees, and agents** when acting within the scope of their appointment or employment.

The County of Orange shall be the loss payee on the Employee Dishonesty coverage. A Loss Payee endorsement evidencing that the County of Orange is a Loss Payee shall accompany the Certificate of Insurance.

Subrecipient shall provide thirty (30) days prior written notice to the County of any policy cancellation or non-renewal and ten (10) days prior written notice where cancellation is due to non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a

material breach of the Contract, upon which the County may suspend or terminate this Contract.

If Subrecipient's Professional Liability, and/or Network Security & Privacy Liability are "Claims-Made" policy(ies), Subrecipient shall agree to the following:

- 1) The retroactive date must be shown and must be before the date of the Contract or the beginning of the Contract services.
- 2) Insurance must be maintained, and evidence of insurance must be provided for at least three (3) years after expiration or earlier termination of Contract services.
- 3) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the contract services, Subrecipient must purchase an extended reporting period for a minimum of three (3) years after expiration of earlier termination of the Contract.

The Commercial General Liability policy shall contain a severability of interests clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Subrecipient fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

County expressly retains the right to require Subrecipient to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Subrecipient in writing of changes in the insurance requirements. If Subrecipient does not provide acceptable Certificates of Insurance and endorsements to County incorporating such changes within thirty (30) days of receipt of such notice, this Contract may be in breach without further notice to Subrecipient, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Subrecipient's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

P. **Changes:** Subrecipient shall make no changes in the work or perform any additional work without the County's specific written approval.

Q. **Change of Ownership/Name, Litigation Status, Conflicts with County Interest:** Subrecipient agrees that if there is a change or transfer in ownership of Subrecipient's business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under terms of sale or other instruments of transfer to assume Subrecipient's duties and obligations contained in this Contract and complete them to the satisfaction of the County.

County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

In addition, Subrecipient has the duty to notify the County in writing of any change in the Subrecipient's status with respect to name changes that do not require an assignment of the Contract. The Subrecipient is also obligated to notify the County in writing if the Subrecipient becomes a party to any litigation against the County, or a party to litigation that may reasonably affect the Subrecipient's performance under the Contract, as well as any potential conflicts of interest between Subrecipient and County that may arise prior to or during the period of Contract performance. While Subrecipient will be required to provide this information without prompting from the County any time there is a change in Subrecipient's name, conflict of interest or litigation status, Subrecipient must also provide an update to the County of its status in these areas whenever requested by the County.

The Subrecipient shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to the Subrecipient, this obligation shall apply to the Subrecipient's employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. The Subrecipient's efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.

R. **Force Majeure:** Subrecipient shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Subrecipient gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Subrecipient avails himself of any available remedies.

S. **Confidentiality:** Subrecipient agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Subrecipient and Subrecipient's staff, agents and employees.

T. **Compliance with Laws:** Subrecipient represents and warrants that services to be provided under this Contract shall fully comply, at Subrecipient's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Subrecipient acknowledges that County is relying on Subrecipient to ensure such compliance, and pursuant to the requirements of paragraph "Z" below, Subrecipient agrees that it shall defend, indemnify and hold County and County Indemnitees (defined below) harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.

U. **Intentionally left blank**

V. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

W. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, each party shall bear their own attorney's fees, costs and expenses.

X. **Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party had been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to affect the purpose of the parties and this Contract.

Y. **Employee Eligibility Verification:** The Subrecipient warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Subrecipient shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Subrecipient shall retain all such documentation for all covered employees for the period prescribed by the law. The Subrecipient shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, and its County Indemnitees, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Subrecipient or the County or

County Indemnitees, any combination of the three in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

Z. Indemnification: Subrecipient agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Subrecipient pursuant to this Contract. If judgment is entered against Subrecipient and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Subrecipient and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

AA. Audits/Inspections: Subrecipient agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Subrecipient for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Subrecipient's records before final payment is made.

Subrecipient agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Subrecipient agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Subrecipient agrees to include a similar right to the County to audit records and interview staff of any subcontractor related to performance of this Contract.

Should the Subrecipient cease to exist as a legal entity, the Subrecipient's records pertaining to this Contract shall be forwarded to the County's Project Manager.

BB. Contingency of Funds: Subrecipient acknowledges that funding or portions of funding for this Contract may be contingent upon State budget approval; receipt of funds from, and/or obligation of funds by, the State of California to County; receipt of funds from the Department of Housing and Urban Development ("HUD"), and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.

CC. Expenditure Limit: The Subrecipient shall notify the County of Orange assigned Contract Administrator in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. The County will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless a written and approved change order to cover those costs has been issued. Board of Supervisor approval may be required.

Additional Terms and Conditions:

1. **Scope of Contract:** This Contract specifies the contractual terms and conditions by which the County will procure Public Facilities & Improvements from Subrecipient as further detailed in the Scope of Services, identified and incorporated herein by this reference as "Attachment A".
2. **Term of Contract:** This Contract shall commence on July 1, 2024, and continue through June 30, 2025, unless otherwise terminated by the County.
3. **Renewal:** This contract may not be renewed.
4. **Maximum Obligation:** The total Maximum Obligation of County to the Subrecipient for the cost of services provided in accordance with this Contract is \$350,000, with individual Maximum Obligation budgets for each Fiscal Year as further detailed in the Budget Schedule, identified and incorporated herein by this reference as Attachment "C".
5. **Amendments - Changes/Extra Work:** The Subrecipient shall make no changes to this Contract without the County's written consent. In the event that there are new or unforeseen requirements, the County has the discretion with the Subrecipient's concurrence, to make changes at any time without changing the scope or price of the Contract.

If County-initiated changes or changes in laws or government regulations affect price, the Subrecipient's ability to deliver services, or the project schedule, the Subrecipient will give County written notice no later ten (10) days from the date the law or regulation went into effect or the date the change was proposed and Subrecipient was notified of the change. Such changes shall be agreed to in writing and incorporated into a Contract amendment. Said amendment shall be issued by the County-assigned Contract Administrator, shall require the mutual consent of all Parties, and may be subject to approval by the County Board of Supervisors. Nothing herein shall prohibit the Subrecipient from proceeding with the work as originally set forth or as previously amended in this Contract.

6. **Breach of Contract:** The failure of the Subrecipient to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
 - a) Terminate the Contract immediately, pursuant to Section K herein;
 - b) Afford the Subrecipient written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
 - c) Discontinue payment to the Subrecipient for and during the period in which the Subrecipient is in breach; and

Offset against any monies billed by the Subrecipient but yet unpaid by the County those monies disallowed pursuant to the above.

7. Conditions Affecting Work:

The Subrecipient shall be responsible for taking all steps reasonably necessary, to ascertain the nature and location of the work to be performed under this Contract; and to know the general conditions which can affect the work or the cost thereof. Any failure by the Subrecipient to do so will not relieve Subrecipient from responsibility for successfully performing the work without additional cost to the County. The County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.

8. Civil Rights: Subrecipient attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; Title II of the Americans with Disabilities Act of 1990, and other applicable State and Federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex or disability.

9. Conflict of Interest – Subrecipient’s Personnel: The Subrecipient shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Subrecipient; the Subrecipient’s employees, agents, and subcontractors associated with accomplishing work and services hereunder. The Subrecipient’s efforts shall include, but not be limited to establishing precautions to prevent its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers from acting in the best interests of the County.

10. Conflict of Interest – County Personnel: The County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Subrecipient shall not, during the period of this Contract, employ any County employee for any purpose.

11. Consulting Contract – Follow-On Work:

No person, firm, subsidiary or subcontractor of a firm that has been awarded a consulting services contract or a contract which includes a consulting component may be awarded a Contract for the performance of services, the purchase of goods or supplies, or the provision of any other related action which arises from or can reasonably be deemed an end-product of work performed under the initial consulting to consulting-related Contract.

12. Project Manager, County:

The County shall appoint a Project Manager to act as liaison between the County and the Subrecipient during the term of this Contract. The County's Project Manager shall coordinate the activities of the County staff assigned to work with the Subrecipient.

The County's Project Manager, in consultation and agreement with the County, shall have the right to require the removal and replacement of the Subrecipient's Project Manager and key personnel. The County's Project Manager shall notify the Subrecipient in writing of such action. The Subrecipient shall accomplish the removal within three (3) business days after written notice from the County's Project Manager. The County's Project Manager shall review and approve the appointment of the replacement for the Subrecipient's Project Manager and key personnel. Said approval shall not be unreasonably withheld. The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Subrecipient's Project Manager from providing further services under the Contract.

13. Subrecipient's Project Manager and Key Personnel:

Subrecipient shall appoint a Project Manager to direct the Subrecipient's efforts in fulfilling Subrecipient's obligations under this Contract. This Project Manager shall be subject to approval by the County and shall not be changed without the written consent of the County's Project Manager, which consent shall not be unreasonably withheld.

The Subrecipient's Project Manager, in consultation and agreement with County, shall be assigned to this project for the duration of the Contract and shall diligently pursue all work and services to meet the project time lines. The County's Project Manager shall have the right to require the removal and replacement of the Subrecipient's Project Manager from providing services to the County under this Contract. The County's Project Manager shall notify the Subrecipient in writing of such action. The Subrecipient shall accomplish the removal within five (5) business days after written notice by the County's Project Manager. The County's Project Manager shall review and approve the appointment of the replacement for the Subrecipient's Project Manager. The County is not required to provide any additional information, reason or rationale in the event it The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Subrecipient's Project Manager from providing further services under the Contract.

14. Subrecipient Personnel – Reference Checks:

The Subrecipient warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to adequately perform the work under this Contract. Subrecipient's employees assigned to this project must meet character standards as demonstrated by background investigation and reference checks, coordinated by the agency/department issuing this Contract.

15. Data – Title To:

All materials, documents, data or information obtained from the County data files or any County medium furnished to the Subrecipient in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Subrecipient after completion or termination of this Contract without the express written consent of the County. All

materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.

16. Licenses: At its own expense, Subrecipient and its subcontractors, if any, shall, at all time during the term of this Contract, maintain in full force and effect such licenses or permits as may be required by the State of California or any other government entity. Subrecipient and his subcontractors, if any, shall strictly adhere to, and obey, all governmental rules and regulations now in effect or as subsequently enacted or modified, as promulgated by any local, State, or Federal governmental entity.

17. Disputes – Contract:

- A. The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Subrecipient's Project Manager and the County's Project Manager, such matter shall be brought to the attention of the Contract Administrator by way of the following process:
 - 1. The Subrecipient shall submit to the agency/department assigned Contract Administrator a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.
 - 2. The Subrecipient's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Subrecipient shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Subrecipient believes the County is liable.
- B. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Subrecipient agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Subrecipient's failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the Director. If the County fails to render a decision within 90 days after receipt of the Subrecipient's demand, it shall be deemed a final decision adverse to the Subrecipient's contentions. Nothing in this section shall be construed as affecting the County's right to terminate the Contract for cause or termination for convenience as stated in Section K herein.

18. EDD Independent Subrecipient Reporting Requirements: Effective January 1, 2001, the County of Orange is required to file in accordance with subdivision (a) of

Section 6041A of the Internal Revenue Code for services received from a “service provider” to whom the County pays \$600 or more or with whom the County enters into a contract for \$600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

The term “service provider” is defined in California Unemployment Insurance Code Section 1088.8, Subparagraph B.2 as “an individual who is not an employee of the service recipient for California purposes and who received compensation or executes a contract for services performed for that service recipient within or without the State.” The term is further defined by the California Employment Development Department to refer specifically to independent Subrecipients. An independent Subrecipient is defined as “an individual who is not an employee of the ... government entity for California purposes and who receives compensation or executes a contract for services performed for that ... government entity either in or outside of California.”

The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies.

Additional information on this reporting requirement can be found at the California Employment Development Department web site located at http://www.edd.ca.gov/Employer_Services.htm

19. **Emergency/Declared Disaster Requirements:** In the event of an emergency or if Orange County is declared a disaster area by the County, State or Federal government, this Contract may be subjected to unusual usage. The Subrecipient shall service the County during such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions. The pricing quoted by the Subrecipient shall apply to serving the County's needs regardless of the circumstances. If the Subrecipient is unable to supply the goods/services under the terms of the Contract, then the Subrecipient shall provide proof of such disruption and a copy of the invoice for the goods/services from the Subrecipient's supplier(s). Additional profit margin as a result of supplying goods/services during an emergency or a declared disaster shall not be permitted. In the event of an emergency or declared disaster, emergency purchase order numbers will be assigned. All applicable invoices from the Subrecipient shall show both the emergency purchase order number and the Contract number.
20. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Subrecipient shall be complete and shall be carefully checked by the professional(s) identified by Subrecipient as Project Manager and key personnel attached hereto, prior to submission to the County. Subrecipient agrees that County review is discretionary and Subrecipient shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Subrecipient's reports, files and other written documents, the reports, files or documents will be returned to Subrecipient for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by the Subrecipient after County approval thereof, County approval of Subrecipient's reports, files or documents shall not

be used as a defense by Subrecipient in any action between the County and Subrecipient, and the reports, files or documents will be returned to Subrecipient for correction.

21. Non-Supplantation of Funds:

Subrecipient shall not supplant any Federal, State, or County funds intended for the purposes of this Contract with any funds made available under this Contract. Subrecipient shall not claim reimbursement from County for, or apply sums received from County with respect to, that portion of its obligations which have been paid by another source of revenue. Subrecipient agrees that it shall not use funds received pursuant to this Contract, either directly or indirectly, as a contribution or compensation for the purposes of obtaining Federal, State, or County funds under any Federal, State, or County program without prior written approval from the County.

22. Satisfactory Work: Services rendered hereunder are to be performed to the written satisfaction of County. County's staff will interpret all reports and determine the quality, acceptability and progress of the services rendered.

23. Access and Records:

A. County, the State of California and the United States Government and/or their representatives, shall have access, for purposes of monitoring, auditing, and examining, to Subrecipient's activities, books, documents and papers (including computer records and emails) and to records of Subrecipient's subcontractors, consultants, contracted employees, bookkeepers, accountants, employees and participants related to this Contract. Subrecipient shall insert this condition in each Contract between Subrecipient and a subcontractor that is pursuant to this Contract shall require the subcontractor to agree to this condition. Such departments or representatives shall have the right to make excerpts, transcripts and photocopies of such records and to schedule on site monitoring at their discretion. Monitoring activities also may include, but are not limited to, questioning employees and participants and entering any premises or onto any site in which any of the services or activities funded hereunder are conducted or in which any of the records of Subrecipient are kept. Subrecipient shall make available its books, documents, papers, financial records, etc., within three (3) days after receipt of written demand by Director which shall be deemed received upon date of sending. In the event Subrecipient does not make the above referenced documents available within the County of Orange, California, Subrecipient agrees to pay all necessary and reasonable expenses incurred by County, or County's designee, in conducting any audit at the location where said records and books of account are maintained.

B. Records Retention. All accounting records and evidence pertaining to all costs of Subrecipient and all documents related to this Contract shall be kept available at Subrecipient's office or place of business for the duration of this Contract and thereafter for five (5) years after completion of an audit. Records which relate to:

(1) complaints, claims, administrative proceedings or litigation arising out of the performance of this Contract; or (2) costs and expenses of this Contract to which County or any other governmental department takes exception, shall be retained beyond the five (5) years until final resolution or disposition of such appeals, litigation, claims, or exceptions.

- C. Liability. Subrecipient shall pay to County the full amount of County's liability to the State or Federal government or any department thereof resulting from any disallowance or other audit exceptions to the extent that such liability is attributable to Subrecipient's failure to perform under this Contract.

24. Signature in Counterparts: The Parties agree that separate copies of this Contract and/or electronic signatures and handwritten signatures may be signed by each of the Parties, and this Contract will have the same force and effect as if the Original had been signed by all the Parties.

25. Reports/Meetings: The Subrecipient shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this contract. The County's Project Manager and the Subrecipient's Project Manager will meet on reasonable notice to discuss the Subrecipient's performance and progress under this Contract. If requested, the Subrecipient's Project Manager and other project personnel shall attend all meetings. The Subrecipient shall provide such information that is requested by the County for the purpose of monitoring progress under this Contract.

26. Subcontracting: No performance of this Contract or any portion thereof may be subcontracted by the Subrecipient without the express written consent of the County. Any attempt by the Subrecipient to subcontract any performance of this Contract without the express written consent of the County shall be invalid and shall constitute a breach of this Contract.

In the event that the Subrecipient is authorized by the County to subcontract, this Contract shall take precedence over the terms of the Contract between Subrecipient and subcontractor, and shall incorporate by reference the terms of this Contract. The County shall look to the Subrecipient for performance and indemnification and not deal directly with any subcontractor. All work performed by a subcontractor must meet the approval of the County of Orange.

27. Equal Employment Opportunity: The Subrecipient shall comply with U.S. Executive Order 11246 entitled, "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable State of California regulations as may now exist or be amended in the future. The Subrecipient shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, religion, sex, marital status, political affiliation or physical or mental condition.

Regarding handicapped persons, the Subrecipient will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard

to any position for which the employee or applicant for employment is qualified. The Subrecipient agrees to provide equal opportunity to handicapped persons in employment or in advancement in employment or otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicaps in all employment practices such as the following: employment, upgrading, promotions, transfers, recruitments, advertising, layoffs, terminations, rate of pay or other forms of compensation, and selection for training, including apprenticeship. The Subrecipient agrees to comply with the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, pertaining to prohibition of discrimination against qualified handicapped persons in all programs and/or activities as detailed in regulations signed by the Secretary of the Department of Health and Human Services effective June 3, 1977, and found in the Federal Register, Volume 42, No. 68 dated May 4, 1977, as may now exist or be amended in the future.

Regarding Americans with disabilities, Subrecipient agrees to comply with applicable provisions of Title 1 of the Americans with Disabilities Act enacted in 1990 as may now exist or be amended in the future.

28. **Gratuities:** The Subrecipient warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Subrecipient or any agent or representative of the Subrecipient to any officer or employee of the County with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the County shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the County in procuring on the open market any goods or services which the Subrecipient agreed to supply shall be borne and paid for by the Subrecipient. The rights and remedies of the County provided in the clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.
29. **News/Information Release:** The Subrecipient agrees that it will not issue any news releases in connection with either the award of this Contract or any subsequent amendment of or effort under this Contract without first obtaining review and written approval of said news releases from the County through the County's Project Manager.
30. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the Parties routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

For County:

County of Orange
OC Community Resources

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City of Laguna Hills
Contract # 012-24011200

OC Community Resources
Housing and Community Development
Project Manager
1501 East St. Andrew Place, 1st Floor
Santa Ana, CA 92705-4930

OC Community Resources
Contract Development and Management
Contract Administrator
601 N. Ross St., 6th Floor
Santa Ana, CA 92701

For Subrecipient:

City of Laguna Hills
24035 El Toro Road
Laguna Hills, CA 92653
Attn: Project Manager

31. **Ownership of Documents:** The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Subrecipient. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remains the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the Subrecipient without the express written consent of the County.
32. **Precedence:** The Contract documents consist of this Contract and its exhibits and attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the exhibits and attachments.
33. **Termination – Orderly:** After receipt of a termination notice from the County of Orange, the Subrecipient may submit to the County a termination claim, if applicable. Such claim shall be submitted promptly, but in no event later than 60 days from the effective date of the termination, unless one or more extensions in writing are granted by the County upon written request of the Subrecipient. Upon termination County agrees to pay the Subrecipient for all services performed prior to termination which meet the requirements of the Contract, provided, however, that such compensation combined with previously paid compensation shall not exceed the total compensation set forth in the Contract. Upon termination or other expiration of this Contract, each party shall promptly return to the other party all papers, materials, and other properties of the other held by each for purposes of performance of the Contract.
34. **County Branding Requirements – Publicity, Literature, Advertisement and Social Media:**

- A. County owns all rights to the name, logos, and symbols of County. The use and/or reproduction of County's name, logos, or symbols for any purpose, including commercial advertisement, promotional purposes, announcements, displays, or press releases, without County's prior written consent is expressly prohibited.

B. Subrecipient may develop and publish information related to this Contract where all of the following conditions are satisfied:

1. Contract Administrator/assigned Deputy Purchasing Agent provides its written approval of the content and publication of the information at least 30 days prior to Subrecipient publishing the information, unless a different timeframe for approval is agreed upon by the Contract Administrator/assigned Deputy Purchasing Agent;
2. Unless directed otherwise by Contract Administrator/assigned Deputy Purchasing Agent, the information includes a statement that the program, wholly or in part, is funded through County, State and Federal government funds [funds identified as applicable];
3. The information does not give the appearance that the County, its officers, employees, or agencies endorse:
 - a. any commercial product or service; and,
 - b. any product or service provided by Subrecipient, unless approved in writing by Contract Administrator/assigned Deputy Purchasing Agent; and,
4. If Subrecipient uses social media (such as Facebook, Twitter, YouTube or other publicly available social media sites) to publish information related to this Contract, Subrecipient shall develop social media policies and procedures and have them available to the Contract Administrator/assigned Deputy Purchasing Agent. Subrecipient shall comply with County Social Media Use Policy and Procedures as they pertain to any social media developed in support of the services described within this Contract. The policy is available on the Internet at <http://www.ocgov.com/gov/ceo/cio/govpolicies>.

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Program Specific Terms and Conditions:

35. **Debarment:** Subrecipient certifies that it is not debarred or suspended or otherwise excluded from or ineligible for participation in Federal/State assistance programs in accordance with 29 CFR Part 98.

36. **Lobbying:**

- A. Subrecipient shall complete and immediately forward to the County the "Disclosure of Lobbying Activities," a copy of which is attached hereto as Exhibit 4 and incorporated herein by this reference, if subrecipient, or any person, firm or corporation acting on Subrecipient's behalf, engaged or engages in lobbying any federal office, employee, elected official or agency with respect to this Contract or funds to be received by subrecipient pursuant to this Contract.
- B. Subrecipient agrees that the funds provided herein shall not be used to promote, directly or indirectly, any political party, political candidate or political activity, except as permitted by law.

37. **Fraud:** Subrecipient shall immediately report all suspected or known instances and facts concerning possible fraud, abuse or criminal activity under this Contract. Subrecipient shall inform staff and the general public of how to report fraud, waste or abuse through appropriate postings of incident reporting notice. The County's Anti-Fraud Program can be accessed through:
<http://ocgov.com/gov/risk/programs/antifraud>.

38. **Fiscal Accountability:**

- A. **Financial Management System:** Subrecipient shall establish and maintain a sound financial management system, based upon generally accepted accounting principles. Subrecipient's system shall provide fiscal control and accounting procedures that will include the following:
 - i. Information pertaining to the line items as identified in Attachment C to this Contract;
 - ii. Source documentation to support accounting records; and
 - iii. Proper charging of costs and cost allocation.
- B. **Subrecipient's Record:** Subrecipient's records shall be sufficient to:
 - i. Permit preparation of required reports;
 - ii. Permit tracking of funds to a level of expenditure adequate to establish that funds have not been used in violation of the applicable restrictions on the use of such funds;
 - iii. Permit the tracking of program income, or profits earned, and any costs incurred (such as stand-in costs) that are otherwise allowable except for; and
 - iv. Permit tracking and reporting of leveraging as required.

C. Costs Charged: Cost shall be charged to this Contract only in accordance with the County and other requirements as required by funding source(s).

39. **Performance Standards**: Subrecipient shall comply with and adhere to the performance accountability standards as described in this Contract and applicable regulations and the activity levels to be utilized by County for program evaluation and monitoring included, but not limited to those listed in the Attachment E-Performance Standards attached hereto and incorporated herein by reference.

40. **Budget Schedule**: Subrecipient agrees that the expenditures of any and all funds under this Contract will be in accordance with the Budget Schedule, a copy of which is attached hereto as Attachment C, and which by this reference is incorporated herein and made a part hereof as if fully set forth.

41. **Payment Requirements**:

If funding levels are significantly affected by state or federal budget and funds are not allocated and available for the continuance of the function performed by Subrecipient, the Contract may be terminated by the County at the end of the period for which funds are available. The County shall notify Subrecipient at the earliest possible time of any service, which will or may be affected by a shortage of funds. No penalty shall accrue to the County in the event this provision is exercised and the County shall not be obligated nor liable for any damages as a result of termination under this provision of this Contract, and nothing herein shall be construed as obligating the County to expend or as involving the County in any Contract or other obligation for future payment of money in excess of appropriations authorized by law.

A. **Contract Amount**: It is expressly agreed and understood that the total amount to be paid by County under this Contract shall not exceed the total County funding as set forth in Attachment B-Payment/Compensation to Subrecipient attached hereto and incorporated herein by reference.

B. **County will reclaim any unused balance of funds for reallocation to other County approved projects.**

C. **Payment of Project Activities**:

1. **Payment of Project Activities**: County will reimburse Subrecipient for eligible project-related costs only. Subrecipient shall submit requests for reimbursement to County on a monthly basis beginning on August 1, 2024, and must provide adequate documentation as required by County in accordance with the OC Community Resources Contract Reimbursement Policy, as set forth in Exhibit 1, attached hereto and incorporated herein by reference. In addition, Subrecipient will provide a progress Grantee Performance Report ("GPR Information Form") for the time period covered, as prescribed by County. Failure to provide any of the required documentation and reporting will cause County to withhold all or a portion of a request for reimbursement, or return the entire reimbursement package to Subrecipient, until such documentation and reporting has been received and approved by County.

- 2. If Subrecipient has no request for reimbursement during any quarter during the term of this Contract, a GPR Information Form, including and explanation as to why no invoices were being processed, shall be required in lieu of a request for reimbursement.
- 3. The following “Required Expenditure Threshold” criteria have been established to guide the Subrecipient in structuring and scheduling their expenditure of funds received through this Contract, through term of Contract. The criteria thresholds are consistent with the criteria used by OC Community Resources to determine performance including, but not limited to, determinations of future award of funds, additional funding requests and/or determinations for the recapture of funding.

<u>*Milestone Date</u>	<u>Minimum Required Expenditure Threshold</u>
February 15, 2025	50% of Contracted Amount Expended
March 15, 2025	70% of Contracted Amount Expended
April 15, 2025	80% of Contracted Amount Expended
June 30, 2025	100% of Contracted Amount Expended

Failure to achieve at least the aforementioned 50% drawdown, without extenuating circumstances, may cause any remaining balance in this Contract to be reclaimed by County, and will negatively affect future funding to Subrecipient. Failure to achieve the aforementioned 80% drawdown goal, without written exception approved by the Director, may cause any remaining balance in this Contract to be reclaimed by County, and will impact future funding to Subrecipient

- 4. Subrecipient will have forty-five (45) days following the expiration of the Contract to submit outstanding invoices for reimbursement of eligible costs incurred during the Contract period. After the forty-five (45) day period for submitting invoices has expired, County shall reallocate the remaining balance under this Contract for other program purposes and Subrecipient shall be ineligible for any further reimbursement.
- D. Funds shall not be disbursed for any costs incurred prior to the certification by County and/or HUD of Certificate(s) of Insurance as further defined in Paragraph O “Insurance Requirements” of this Contract.
- E. Eligible costs related to services provided by Subrecipient must be incurred during the period beginning July 1, 2024. The Project shall be completed, and all funds provided through this Contract shall be expended on eligible Project activities through and including June 30, 2025.
- a. Housing Rehabilitation Contracts and Public Facilities & Improvements Contracts.
 - i. Subrecipient may be eligible to request additional funding up to the maximum set forth as identified in County policy if Subrecipient meets or exceeds any one of the Minimum Required Expenditure Thresholds at

50%, 70% or 80% on or prior to the milestone date as set forth in Paragraph 42. C.3.

- ii. If additional funding is available for allocation to Subrecipient, and the basic goals and objectives of the program are not altered, Subrecipient and County shall amend the Subrecipient Scope of Services component of this Contract. Furthermore, Subrecipient shall demonstrate to the satisfaction of County that the required Performance Expenditure and Accomplishment Thresholds set forth in Paragraph 47.C will continue to be met before such extension and additional allocation shall be granted.
- iii. Contract Extension (No Cost Extension)
 - 1. The term of this Contract and the provisions herein may be extended to cover an additional time period as specified herein.
 - 2. The date for Project completion, the term of the Contract, and expenditure of all funds may be extended by the Director without further action by the Board as identified in County policy. Subrecipient must notify the Director in writing 45 days prior to June 30, 2024, to request an extension. For all extensions, the deadline for submittal of invoices shall be forty-five (45) days after the new expiration date.
 - 3. Contract extension provisions are not applicable to program administration activities.

b. Public Services Contracts cannot be extended.

F. County and Participating Cities previously entered into a Cooperation Agreement effective July 1, 2023 as amended, in which both Parties agreed to cooperate in the undertaking, or assist in the undertaking, of community development and housing assistance activities.

G. Metropolitan Cities with populations of over 50,000, are eligible to participate in the Community Planning and Development ("CPD") program funds directly from HUD and have opted to participate in the CPD programs through the County's Urban County Program as a metropolitan city.

42. Modification of Budget: Upon written approval of County, Subrecipient shall have the authority to transfer allocated program funds from one category of the overall program Budget to another category of the overall Budget. No such transfer may be made without the express prior written approval of County. A modification of the Budget may include the addition of any new Budget category.

- 43. Annual Audit:** If Subrecipient expends Federal funds in a fiscal year which equal or exceed \$750,000 (seven hundred fifty thousand dollars) as specified in 2 CFR Part 200.500- Subpart F-Audit Requirements, Subrecipient shall cause an audit to be prepared by a Certified Public Accountant ("CPA") who is a member in good standing with the American Institute of Certified Public Accountants ("AICPA") of the California Society of CPA's. The audit must be performed annually in accordance with Generally Accepted Auditing Standards ("GAAS") authorized by the AICPA and Federal laws and regulations governing the programs in which it participates.

Furthermore, County retains the right to require Subrecipient to submit similarly prepared audit at Subrecipient's expense even in instances when Subrecipient's expenditure is less than \$750,000. Subrecipient will be required to identify corrective action taken in response to any findings identified by CPA related to their funded activity or program.

Subrecipient will ensure an annual financial audit is performed in compliance with the Federal Single Audit Act and will submit two (2) copies of such audit report, including a copy of the management letter, to County within six (6) months of the end of each Contract year in which Subrecipient has received federal funding (i.e., July 1 – June 30). Failure to meet this requirement may result in County denying reimbursement of funds to Subrecipient, as well as future funding qualification. Subrecipients, which are exempt from statutory audit requirements, shall maintain records, which are available for review by County or Federal officials. Subrecipient acknowledges that any and all "Financial Statements" submitted to County pursuant to this Contract become public records and are subject to public inspection pursuant to the California Public Records Act (Section 6250 et seq. of the California Government).

- 44. UEI and D-U-N-S Numbers and Related Information:** UEI and D-U-N-S Numbers: A unique, non-indicative 12-and 9 digit identifiers issued and maintained by SAM.gov and the Dun & Bradstreet (D&B) that verifies the existence of a business entity. The UEI and D-U-N-S Numbers are needed to coordinate with the System for Award Management (SAM) that combines federal procurement systems and the Catalog of Federal Domestic Assistance into one new system. <https://www.SAM.gov>

The UEI and D-U-N-S Numbers must be provided to County prior to the execution of this Contract. Subrecipient shall ensure all UEI and D-U-N-S information is up to date and the UEI and D-U-N-S Numbers status is "active," prior to execution of this Contract. If County cannot access the Subrecipient's UEI and D-U-N-S information related to this federal sub award on the Federal Funding Accountability and Transparency Act Sub Award Reporting System (SAM.GOV) due to errors in the Subrecipient's data entry for its UEI and D-U-N-S Numbers, the Subrecipient must immediately update the information as required.

If County cannot access the Subrecipient's UEI and D-U-N-S information related to this federal sub award on the Federal Funding Accounting and Transparency Act Sub Award Reporting System (SAM.GOV) due to errors in the Subrecipient's data entry for its UEI and D-U-N-S Numbers, the Subrecipient must immediately update the information as required.

The County reserves the right to verify and validate any information prior to contract award and during the entire term of the Contract.

45. Program Income:

- A. Subrecipient shall comply with regulations, as well as all applicable State or County regulations concerning the reporting and payment procedures for program income.
- B. Definition: "Program Income" means, as provided by 24 CFR § 570.504, gross income received by the Subrecipient directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period.
- C. Use. The Subrecipient shall use all income received from said funds only for the same purposes for which said funds may be expended pursuant to the terms and conditions of this Contract.
- D. All Program Income accrued shall be returned to County on a quarterly basis prior to Subrecipient receiving any reimbursement from grant funds provided under this Contract.
- E. Subrecipient shall provide information of the receipt of Program Income by Subrecipient related to this Contract on all GPR Information Forms submitted with requests for reimbursement.
- F. Subrecipient shall complete and submit a Year-End Program Income letter, indicating amount of Program Income and include any reimbursement remittance necessitated therein, by July 15, after the close of the Contract fiscal year.

46. Performance:

- A. Subrecipient shall provide the oversight, administration, and project management necessary to accomplish all contracted activities in a timely manner. Subrecipient also agrees to comply with all applicable Federal, State, and local laws and regulations governing the funds provided under this Contract.
- B. Subrecipient shall comply with all applicable HUD regulations, as described in Paragraph 49 "Federal Administrative and Related Requirements" of this Contract, concerning administrative requirements and maintain records as to services provided and total number of persons served through the project, including but not limited to, population-served analysis (i.e., extremely-low income persons, very-low income persons, and low-income persons as defined by HUD). Such information shall be available for periodic monitoring by representatives of County or HUD and shall be submitted by Subrecipient in report form to County by dates specified by County.

- C. The following “Performance Threshold” criteria shall be used to assess the level of performance of the Subrecipient, including Attachment A — Scope of Services, attached hereto and incorporated herein by reference. Furthermore, the criteria will be considered by OC Community Resources when determining future funding. In order to be considered in compliance with the performance threshold criteria, the Subrecipient must, on or before the required milestone date, submit to OC Community Resources a request for reimbursement which demonstrates that Subrecipient has expended funds and met their proposed accomplishment goals at the required levels, unless exempted in writing by the County.
- D. Subrecipient shall complete and submit a Year End GPR Information Form by August 14, after the close of the Contract fiscal year.
- E. Should the activity being funded through this Contract be completed, cancelled or terminated prior to the termination date set forth herein in Paragraph 2 “Term of Contract,” or if funds allocated through this Contract are fully expended, prior to end of Contract term, Subrecipient must continue to serve its clients for the entire term of this Contract. Subrecipient shall complete and submit a Mid-Year and Year End GPR Information Form at the time of the completion, cancellation or termination.
- F. Subrecipient shall complete and submit a GPR Information Form in support of all requests for reimbursement. Said GPR Information Form shall consist of a cumulative report of project related accomplishments as set forth in Attachment A - Scope of Services, for the subject quarter. If at any time during the term of this Contract Subrecipient has no activity occurring during any quarter, Subrecipient shall prepare and submit to County a Quarterly GPR Information Form, regardless of actual activity.
- G. Subrecipient acknowledges that the GPR Information Form is a monitoring tool that will be reviewed and evaluated to determine Subrecipient’s level of performance relative to this Contract.
- H. Subrecipient shall submit all requested data necessary to complete the Consolidated Annual Performance and Evaluation Report (CAPER), and monitor program accountability and progress in accordance with HUD requirements, in the format and at the time designated by County.
- I. Readiness – for Housing Rehabilitation and Public Facilities & Improvements Projects:
Subrecipient shall be required to demonstrate to County its readiness to immediately initiate its Project upon execution of this Contract by providing to the County documentation including, but not limited to, the following: Board or Council Minutes/Resolution; Awarded bid documents with timeline requirements; and, executed Architect and Engineer (hereafter referred to as “A&E”) contracts with specific project timelines consistent with funding. By July 30 of Contract term, Subrecipient shall provide County a Project Readiness Checklist incorporating the status of all Project-phasing milestones. In the case of

milestones not yet reached, Subrecipient shall provide projected target dates for when said milestones would be met. The Project Readiness Checklist shall clearly demonstrate that Subrecipient will meet the “Minimum Required Expenditure Thresholds” as set forth in this Paragraph 47.C. Subrecipient acknowledges that said Project Readiness Checklist may be considered to evaluate the performance of the Subrecipient.

47. Performance Monitoring:

- A. Performance Monitoring of Subrecipient by County, State of California and/or HUD shall consist of requested and/or required written reporting, as well as onsite monitoring by County, State of California or HUD representatives.
- B. County shall periodically evaluate Subrecipient’s progress in complying with the terms of this Contract. Subrecipient shall cooperate fully during such monitoring. County shall report the findings of each monitoring to Subrecipient.
- C. County shall monitor the performance of Subrecipient against the goals, outcomes, milestones and performance standards required herein. Substandard performance, as determined by County, will constitute non-compliance with this Contract for which County may immediately terminate the Contract. If action to correct such substandard performance is not taken by Subrecipient within the time period specified by County, payment(s) will be denied in accordance with the provisions contained in this Paragraph 47 of this Contract.
- D. HUD in accordance with 24 CFR Part 570 Subpart O, 570.902, will annually review the performance of County to determine whether County has carried out its Community Development Block Grant (CDBG) assisted activities in a timely manner and has significantly disbursed CDBG funds and met the mandated “1.5 ratio” threshold. Subrecipient is responsible to ensure timely drawdown of funds.

48. Federal Administrative and Related Requirements: Subrecipient must comply with all federal requirements as it pertains for 24 CFR Parts 91 and 570. Subrecipient acknowledges that administration of its operation and services are subject to the requirements as established in 2 CFR Part 200, et al. Subrecipient shall procure all materials, property, or services in accordance with the requirements of 2 CFR § 200.318-326.

A. Financial Management:

1. Accounting Standards

Subrecipient agrees to comply with 24 CFR 84.21-28 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2. Cost Principles:

The Subrecipient shall administer its program in conformance with 2 CFR Part 200, et al; (and if Subrecipient is a governmental or quasi-governmental agency, the applicable sections of 24 CFR 85, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,") as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

B. Documentation and Record Keeping

1. Records to be Maintained

Subrecipient shall maintain all records required by the Federal regulations specified in 24 CFR 570.506 that are pertinent to the activities to be funded under this Contract. Such records shall include, but not be limited to:

- a. Records providing a full description of each activity undertaken;
- b. Records demonstrating that each activity undertaken meets the one of the National Objectives of the CDBG program;
- c. Records required to determine the eligibility of activities;
- d. Records required to document the acquisition, improvement, use, or disposition of real property acquired or improved with CDBG assistance;
- e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- f. Financial records as required by federal regulations 24 CFR 570.502, and 24 CFR 84.21-28; and
- g. Other records necessary to document compliance with Subpart K of 23 CFR.

2. Retention

Subrecipient shall retain all financial records, supporting documents, statistical records, and all other records pertinent to this Contract for a period of five (5) years. The retention period begins on the date of the submission of the County's annual performance and evaluation report to HUD in which the activities assisted under the Contract are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the five-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the five-year period, whichever occurs later.

3. Client Data

- a. Subrecipient shall maintain client data demonstrating client eligibility for services provided for a period of five (5) years after the termination of all activities funded under this Contract, or after the resolution of all Federal audit finding, whichever occurs later. Such

data shall be consistent and include, but not limited to, client name, address, verifiable income level (as documented by income tax returns, employee payroll records, retirement statements, etc. or other third party documentation acceptable to County, for determining eligibility), and description of service provided. Such information shall be made available to HUD representatives, County monitors, or their designees, for review upon request.

- b. Subrecipient shall develop and implement procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services under any project assisted under the subject program, including protection against the release of the address or location of any family violence shelter project, except with the written authorization of the person responsible for the operation of that shelter.
4. **Disclosure**
Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to County monitors or their designees for review upon request.
5. **Close-Outs**
Subrecipient's obligation to County shall not end until all close-out requirements are completed. Activities during this close-out period shall be completed in accordance with federal and State regulations and shall include, but are not limited to: making final payments; submitting final invoice(s), report(s), in accordance with the requirements of Paragraph 49, and documentation; disposing of program assets (including the return to County of all unused materials and equipment); remitting any program income balances and accounts receivable to County, and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Contract shall remain in effect during any period that the Subrecipient has control over CDBG funds, including Program Income.

C. Personnel & Participation Conditions

1. Civil Rights

Compliance

Subrecipient agrees to comply with California Civil Rights Act Ordinances and Title VI of the Civil Rights Act of 1964, as amended, Title VIII of the Civil Rights Act of 1968, as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974, as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246, as amended by Executive Orders 11375, 11478, 12107 and 12086.

2. **Nondiscrimination in Employment and Contracting**

Subrecipient agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279, including 24 CFR Part 8, 24 CFR 570.602 and Section 504 of Rehabilitation Act of 1973, Americans with Disabilities Act of 1990, Executive Order 11063. The applicable non-discrimination provisions in Section 109 of the Housing and Community Development Act (HCDA) are still applicable.

3. **Affirmative Action:**

Subrecipient agrees that it shall be committed to carry out an Affirmative Action Program that encompasses that principals provided in President's Executive Order 11246, as revised on January 4, 2002.

4. **Americans with Disabilities Act:**

Subrecipient agrees to comply with Section 504 of the Rehabilitation Act of 1973 as amended; Title VI and VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act, 42 USC 12101; California Code of Regulations, Title 2, Title 22: California Government Code, Sections 11135, et seq; and other federal and state laws and executive orders prohibit discrimination. All programs, activities, employment opportunities, and services must be made available to all persons, including persons with disabilities.

5. **Drug-Free Workplace:**

The Subrecipient hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace as set forth in Exhibit 2, attached hereto and incorporated herein by reference. The Subrecipient will:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
- b. Establish a drug-free awareness program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - i. The dangers of drug abuse in the workplace;
 - ii. The Subrecipient's policy of maintaining a drug free workplace;
 - iii. Any available counseling, rehabilitation, and employee assistance programs; and
 - iv. Penalties that may be imposed upon employees for drug abuse violations.
- c. Provide as required by Government Code Section 8355(c) that every employee who works under this Contract:
 - i. Will receive a copy of the company's drug-free policy statement; and

- ii. Will agree to abide by the terms of the company's statement as a condition of employment under this Contract.

Failure to comply with these requirements may result in suspension of payments under the contract or termination of the contract or both, and the Subrecipient may be ineligible for award of any future County contracts if the County determines that any of the following has occurred:

- iii. The Subrecipient has made false certification, or
- iv. The Subrecipient violates the certification by failing to carry out the requirements as noted above.

6. **Anti-Lobbying:**

Subrecipient certifies that it will comply with federal law (31 U.S.C. 1352) and regulations found at 24 CFR Part 87, which provide that:

- a. No federal appropriated funds will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any Federal loan, the entering into of any Cooperative Agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or Cooperative Agreement; and
- b. Subrecipient shall include subject anti-lobbying certification in award documents for all sub-Subrecipients at all tiers (including sub-subcontracts, sub-subgrants, and contract under grants, loans, and Cooperative Agreements) and that all sub-Subrecipients shall certify and disclose accordingly.

7. **Employment Restrictions:**

a. **Prohibited Activity:**

Subrecipient is prohibited from using funds provided herein, or personnel employed in the administration of the program, for: political activities, sectarian or religious activities, lobbying, political patronage, and nepotism activities.

b. **OSHA:**

Where employees are engaged in activities not covered under the Occupational Safety and Health Act of 1970, they shall not be required or permitted to work, be trained, or receive services in buildings or surroundings or under working conditions which are unsanitary, hazardous or dangerous to the participants' health or safety.

c. **Employee Rights**

i. **Federal Minimum Wage**

Subrecipient must follow the Fair Labor Standards Act (FLSA), as it currently exists and it may be amended, which sets basic minimum wage and overtime pay standards. These standards are enforced by The United States

Department of Wage and Hour Division under Department's Wage and Hour Division. The Federal minimum wage provisions are contained in the FLSA. Many states also have minimum wage laws. In cases where an employee is subject to both state and federal minimum wage laws, the employee is entitled to the higher minimum wage.

d. **California Minimum Wage**

- i. Subrecipient must follow the California enacted legislation signed by the Governor of California, raising the minimum wage for all industries (MW-2007). (AB 1835, CH230, Stats of 2006, adding sections 1182.12 and 1182.13 to the California Labor Code.) Pursuant to its authority under Labor Code section 1182.13, the Department of Industrial Relations amends and republishes Sections, 1, 2, 3, and 5 of the General Minimum Wage Order. MW-2001, Section 4, Separability, has not been changed. Consistent with this enactment, amendments are made to the minimum wage, and the meals and lodging credits sections of all of the IWC's industry and occupation orders. This summary must be made available to employees in accordance with the IWC's wage orders. Copies of the full text of the amended wage orders may be obtained by ordering on-line at www.dir.ca.gov/WP.asp or by contacting your local Division of Labor Standards Enforcement office.

e. **Hatch Act:**

Subrecipient agrees that no funds provided, nor personnel employed under this Contract, shall be in any way or to any extent engaged in the conduct of political activities in violation of the Hatch Act, 5 U.S.C. Section 1501 et seq. and Chapter 15 of Title V of the U.S.C.

f. **Religious Organization/Activities:**

In accordance with 24 CFR 570.200(j), Subrecipient shall not discriminate against faith-based organizations in administering its federal HUD activities. Subrecipient agrees that funds provided under this Contract will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization or to promote religious interest, or for the benefit of a religious organization.

8. **Labor Standards**

- a. Subrecipient agrees to contact County no less than fourteen (14) days prior to the Pre-Construction Meeting date to seek consultation regarding application of requirements per federal labor standards regulations or Davis-Bacon related Acts.
- b. Subrecipient will comply with Davis-Bacon Act and/or State Prevailing Wage requirements, when applicable.

- c. Subrecipient agrees to comply with all applicable requirements of the Secretary of Labor in accordance with the Davis-Bacon Act, the provisions of Contract Work Hours and Safety Standards Act, the Copeland "Anti-Kickback" Act (40 U.S.C. 276, 327-333), and all other applicable Federal, State and local laws and regulations pertaining to labor standards. Subrecipient shall maintain all applicable documentation, which demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to County for review upon request.
- d. Subrecipient agrees that, except with respect to the rehabilitation or construction of residential property designed for residential use for less than eight (8) units, all Subrecipients engaged in contracts of \$2,000.00 or more for construction, renovation or repair of any building or work financed in whole or in part with assistance provided under this Contract, shall comply with all applicable federal requirements including Department of Labor regulations, under 29 CFR, Parts 3, 1, 5, 7 and 1926 governing the payment of wages and ratio of apprentices and trainees to journeymen. Nothing hereunder is intended to relieve
- e. Subrecipient of its obligation, if any, to require payment of the higher rate under state or local laws Subrecipient shall insert provisions meeting the requirements of this Paragraph in all such Contracts.

In case where the Davis-Bacon Act applies, Subrecipient agrees to submit the Construction Bid Package for this project to County for modification, Subrecipient shall construct project in accordance with the approved Construction Bid Package.

9. **California Labor Code Compliance**

- a. Prevailing Wage laws apply, Subrecipient hereby agrees to pay, or cause its subcontractors to pay, Prevailing Wage rates at all times for all construction, improvements, or modifications to be completed for County under this Contract. Subrecipient herein agrees that Subrecipient shall post, or cause to be posted, a copy of the most current, applicable Prevailing Wage rates at the site where the construction, improvements, or modifications are performed.
- b. Payroll Records
Subrecipient agrees that:
Certified copies of all payroll records for this project shall be required pursuant to the provisions of California Labor Code "Section 1776". The reporting format and words of certification shall be as indicated in Title 8 of the California Code of Regulations, Section 16401.
Certified copies of the payroll records of all subcontractors working on this project are required. It shall be the responsibility of the prime contractor to ensure subcontractor compliance.

Certified copies of all payroll records shall be submitted on a weekly basis to County through the duration of this Contract.

Subrecipient acknowledges that failure to comply with Section 1776 may result in a forfeiture of one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated, and it should be recognized that a contractor or subcontractor, or agent or representative thereof who neglects to comply is guilty of a misdemeanor pursuant to California Labor Code Section 1777.

10. **Economic Opportunities**

Compliance

Subrecipient agrees to abide by the provisions of OMB Circulars 102 and 110, as applicable, 24 CFR 570.611 with respect to conflicts of interest, and covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Contract.

Subrecipient further covenants that in the performance of this Contract no person having such a financial interest shall be employed or retained by Subrecipient hereunder. These conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of County or Subrecipient, or any designated public agencies which are receiving funds under the CDBG Entitlement Program.

This Contract is subject to the requirements of 12 USC 1701u, the HUD regulations issued pursuant thereto at 24 CFR Part 75., and any applicable rules and orders of HUD issued Federal financial assistance shall be conditioned upon compliance with 12 USC 1701u. Failure to fulfill these requirements shall subject Subrecipient and any sub-Subrecipients, their successors and assigns, to those remedies specified herein. Subrecipient certifies and agrees that no conflict exists which would prevent compliance with requirements.

The Subrecipient agrees to abide by 24 CFR Part 75, below and will insert the following clause in any subcontracts executed with third parties for work covered by this Contract:

a. *The work to be performed under this Contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 USC §1701u) ("**Section 3**"). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted developments covered by Section 3 shall, to the greatest extent feasible, be directed to low- and very low-income persons, including persons who are recipients of HUD assistance for housing, with a preference for both targeted workers living*

in the service area or neighborhood of the Development and YouthBuild participants, as defined at 24 CFR Part 75 ("Section 3 Regulations").

b. *The Parties agree to comply with HUD's Regulations in 24 CFR, Part 75 which implement Section 3. As evidenced by their execution of this Contract, the Parties certify that they are under no contractual or other impediments that would prevent them from complying with the Section 3 Regulations.*

c. *The Sub-recipient, contractor, and subcontractor agrees to send to each labor organization or representative of workers with which the Sub-recipient, contractor, and subcontractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Sub-recipient, contractor, and subcontractor's commitments under this section of the Contract and will post copies of the notice in conspicuous places at the worksite where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference and shall set forth the following: (i) minimum number and job titles subject to hire, (ii) availability of apprenticeship and training positions, (iii) qualifications for each, (iv) name and location of the person(s) taking applications for each of the positions, and (v) the anticipated date the work shall begin.*

d. *The Sub-recipient, contractor, and subcontractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in Section 3 Regulations and agrees to take appropriate action, as provided in an applicable provision of the subcontract in this Section 3 clause, upon a finding that the subcontractor violates the regulations in Section 3 Regulations. The Sub-recipient, contractor, and subcontractor will not subcontract with any subcontractor where the Sub-recipient, contractor, and subcontractor has notice or knowledge that the subcontractor has been found in violation of the regulations 24 CFR part 75.*

e. *The Sub-recipient, contractor, and subcontractor will certify that any vacant employment positions, including training positions, that are filled (1) after a contractor is selected but before the Contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 75 require employment opportunities to be directed, were not filled to circumvent the Sub-recipient, contractor, and subcontractor's obligations under 24 CFR part 75*

f. *Noncompliance with HUD's regulations in 24 CFR part 75 may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD assisted contracts.*

11. **Environmental Conditions:**

Subrecipient shall comply with HUD Environmental Review under HUD regulations at 24 CFR 58 et seq., which implement the National Environmental Policy Act (NEPA); and, the California Environmental Quality Act (CEQA). No costs shall be incurred and no funds shall be disbursed prior to certification by County and/or HUD of environmental compliance.

Subrecipient shall incur no costs for any project-related activity defined in Subrecipient Scope of Services and County shall not disburse funds prior to certification by County and/or HUD for environmental compliance.

Subrecipient shall provide requested material to County for the Environmental Review process required by applicable regulations.

a. **Air and Water:**

Subrecipient agrees to comply with the following regulations in so far as they apply to the performance of this Contract:

Clean Air Act, 42 U.S.C., 1857, et seq.

Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq.

Environmental Protection Agency (EPA) regulations pursuant to 40 CFR 50 and 40 CFR 58.

b. **Flood Disaster Protection:**

Subrecipient agrees to comply with the requirements of the Flood Disaster Protection Act of 1973, including as applicable any regulations set forth in 24 CFR 55, (implementing Executive Order 11988) in regard to the sale, lease or other transfer of land acquired, cleared, or improved under the terms of this Contract, as it may apply to the provisions of this Contract.

c. **Lead-Based Paint:**

Subrecipient agrees that any construction or rehabilitation of residential structures with assistance provided under this Contract shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR 35, particularly, 24 CFR 35.100 through 35.175. Such regulations pertain to all HUD-assisted housing and require that all owners, prospective owners, and tenants or properties constructed prior to 1978 be properly notified with the "Protect Your Family From Lead In Your Home" publication, found at <http://www.epa.gov/lead> that such properties may include lead-based paint.

d. **Historic Preservation:**

Subrecipient agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of

1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR 800, Protection of Historic Properties, insofar as they apply to the performance of this Contract.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, State, or local historic property list.

e. **Energy Efficiency Standards:**

Subrecipient agrees to comply with the California Energy Commission Assembly Bill 970, Title 24, Part I of the California Code of Regulations (AB970: Building Efficiency Energy Standards), in regard to construction and property development, when applicable.

f. **Modifications/Transfers of Real Property:**

Any proposed modification or change in use of real property acquired or improved, in whole or in part, by CDBG funds from the use planned at the time of the acquisition or improvement, including disposition, is prohibited.

i. Subrecipient shall ensure that any real property under Subrecipient's control that was acquired or improved in whole or in part with CDBG funds in excess of \$25,000 is either:

i.i. Used to meet one of the national objectives contained in 24 CFR 570.208 for a period not less than five years, or for such period of time as determined to be appropriate by County, after expiration of the Contract and close-out of Subrecipient's participation in the CDBG Program, or, until five years after the close-out of the grant from which the assistance to the property, whichever occurs first; or,

i.ii. Disposed of in a manner which results in County being reimbursed in an amount equal to the current fair market value of the property less any portion thereof attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such reimbursement is not required after the period of time specified in accordance with this Paragraph 49.

g. **Property Records:**

Subrecipient shall maintain real property inventory records, which clearly identify properties purchased, improved, or sold. Properties retained shall continue to meet eligibility criteria, rental limitations, health, safety and building codes, etc., and shall conform to federal and State regulations.

h. **Equipment:**

Subrecipient shall use, manage and dispose of equipment in accordance with federal and State regulations.

i. **Subcontracts:**

i. Subrecipient shall submit all subcontract agreements to

County for review and consent prior to entering into such subcontracts. For construction subcontracts, Subrecipient shall submit the Construction Bid Package to County for review and written approval by Director or designee prior to advertising for bids and award for the construction contract. Subrecipient shall construct Project in accordance with the Construction Bid Package, which Director approved, unless prior written approval is received from Director for modification thereof.

- ii. Subrecipient shall assume responsibility for all subcontracted services to assure Contract compliance.
- iii. Subrecipient shall cause all of the provisions of this Contract in entirety to be included in and made a part of any subcontract executed in the performance of this Contract.
- iv. Subrecipient shall monitor all subcontracted services on a quarterly basis to assure Contract compliance. Results of said monitoring efforts shall be summarized in written form, and supported with documented evidence of follow-up actions(s) to correct any area(s) of Contract non-compliance. Documentation shall be made available for periodic monitoring by representatives of County and/or HUD.

j. **Fair Housing:**

Subrecipient shall affirmatively further fair housing in accordance with 24 CFR 570. Under section 808(e)(5) of the Fair Housing Act, HUD has a statutory duty to affirmatively further fair housing. HUD requires the same of its funded sub-recipients. The Subrecipient has a duty to affirmatively further fair housing opportunities for classes protected under the Fair Housing Act, along with all applicable State & Federal requirements.

k. **Grantor Recognition:**

Subrecipient shall insure recognition of the role of the County in providing services through this Contract. All activities, facilities and items utilized pursuant to this Contract shall be prominently labeled as to funding source. In addition, Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this Contract. Subrecipient will retain documentation of such recognition, which shall be available for periodic monitoring by representatives of County or HUD.

l. **Rehabilitation Act:**

Subrecipient agrees to comply with any federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 706) which prohibits discrimination against the handicapped in any federally assisted program. County shall provide Subrecipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Contract.

49. Definitions:

For the purposes of this Contract the following definitions shall apply:

- A. OC Community Resources (OCCR): Designated as the Lead for the development and implementation of County of Orange Urban County Program's Consolidated Plan.
- B. Director: Director of OC Community Resources, or designee.
- C. Grantee Performance Report (GPR) Information Form: A Program activity data document provided by County to Subrecipient used to monitor, track and report the performance of Subrecipient.
- D. OC Community Resources Contract Reimbursement Policy: A County document setting policies regarding types of documentation required to support the costs incurred and paid (including but not limited to copies of paid invoices, certified payroll registers, bank statements, etc.)
- E. Project: Any site or sites, including buildings, and/or activities assisted with federal program funds.
- F. OMB: Federal Office of Management and Budget.
- G. CAPER: Consolidated Annual Performance and Evaluation Report. An annual published report to HUD and the public on all housing-related activities.
- H. CDBG: 24 CFR Part 570 - Community Development Block Grant – the CDBG regulations set forth eligible activities and the national objectives that each activity must meet. The Catalog of Federal Domestic Assistance (CFDA) # 14.218 distributes formula grants (CDBG) to develop viable urban communities by providing decent housing, a suitable living environment, and expanding economic opportunities, principally for persons of low and moderate income.
- I. Continuum of Care: An Orange County group composed of representatives of relevant organizations that serve homeless and formerly homeless persons that are organized to plan for and provide, as necessary, a system of services to address the various needs of homeless persons and persons at risk of homelessness.
- J. Homeless Management Information System (HMIS): The information system designated by the Continuum of Care to comply with HUD's data collection, management, and reporting standards and used to collect client-level data and

data on the provision of housing and services to homeless individuals and families and persons at risk of homelessness. (24 CFR Part 580)

- K. Equipment: Tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.
- L. Substantial Amendment: The following criteria will be used by the County – if any one criteria applies, a substantial amendment will be required:
 - i. A new activity not previously listed and described in the Consolidated Plan/Annual Action Plan;
 - ii. When a proposal is made to amend the description of an existing activity in such a way that the newly described purpose, scope, or beneficiaries differ significantly from the original activity's purpose, scope, or beneficiaries; and/or
 - iii. An increase in the amount of Federal Community Planning Development and/or local funds allocated to an existing activity when the following apply:
 - a. An increase in funding for a public service activity in an amount that is consistent with County policy; or
 - b. An increase in the funding for public facility improvements/housing rehabilitation in an amount that is consistent with County policy.
- M. Construction Bid Package: A package of bidding documents which includes the proposal, bidding instructions, Contract documents, detailed estimated costs, and plans and specifications for a construction project, all prepared in accordance with applicable Federal regulations.
- N. Program Administration: An activity relating to the general management, oversight and coordination of community development programs. Costs directly related to carrying out eligible activities are not included.

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Signature Page

IN WITNESS WHEREOF, the Parties hereto certify that they have read and understand all the terms and conditions contained herein and have hereby cause this Contract to be executed.

*City of Laguna Hills

By:

DocuSigned by: Jarad Hildenbrand BE8220D0B71A4D6...

 By: _____

Name: Jarad Hildenbrand Name: _____

Title: City Manager Title: _____

Dated: 4/8/2024 Dated: _____

*For Subrecipients that are corporations, signature requirements are as follows: 1) One signature by the Chairman of the Board, the President or any Vice President; and 2) One signature by the secretary, any Assistant secretary, the Chief Financial Officer or an Assistant Treasurer.

For Subrecipients that are not corporations, the person who has authority to bind the Subrecipient to a contract, must sign on one of the lines above.

COUNTY OF ORANGE
A Political Subdivision of the State of California
COUNTY AUTHORIZED SIGNATURE:

DS

CF

Nina Campmas Procurement Contracts Manager

Print Name	Title
DocuSigned by: Nina Campmas A441B59B298D483...	6/5/2024
Signature	Dated

APPROVED AS TO FORM
DEPUTY County COUNSEL

By:

DocuSigned by: John Cleveland 74000D32EE65457

 Dated: 4/8/2024

Deputy County Counsel



SCOPE OF SERVICES PUBLIC FACILITIES & IMPROVEMENTS

1. **Scope of Services**

A. HUD Matrix Code / Activity:

03LSidewalks/570.208 (a) (2)

03A-Senior Centers/570.208 (a) (2)

B. Project Title:

City of Laguna Hills PF & I ADA Ramps, Senior Center Improvements

C. Program Description:

This project includes two components: Improvements to the Florence Sylvester Senior Center and sidewalk improvements on Paseo de Valencia and on Alicia Parkway

D. Project Need:

The application of heat-reducing paint products to the exterior of the building and the interior of the dining room of the Florence Sylvester Senior Center.

Curb ramp intersection corner replacements at 15 intersections to meet ADA compliance standard

E. Low/Mod Clientele

F. Program Objectives and Outcomes Chart:

Activity

Outputs

1. Construction

Exterior & interior heat reducing protective coating.

2. Construction

ADA compliant curb ramps

ATTACHMENT A

Performance Objectives

1. Suitable Living Environment

Performance Outcomes

Availability/Accessibility

CDBG National Objective: L/M Limited Clientele 570.208 (a) (2)

Outcomes

72,195 People

1. Federal Award Identification

- A. Subrecipient Name: City of Laguna Hills
- B. Subrecipient’s Unique Identifier (UEI): VLC8GAPU9KF4
- C. Federal Award Identification Number (FAIN): 14.218
- D. Federal Award Date: TBA
- E. Subaward Period of Performance: FY 2024-25
- F. Total Amount of Federal Funds Obligated by the Action: \$350,000

CFDA	FAIN	Award Date	Formula Funds	Amount
				\$
				\$
			TOTAL:	\$

- G. Total Amount of Federal Funds Obligated to the Subrecipient: \$350,000
- H. Total Amount of the Federal Award: \$ 3,402,657
- I. Federal Award Project Description: City of Laguna Hills PF&I ADA Ramps, Senior Center Improvements.
- J. Federal Awarding Agency: HUD
- K. Name of PTE: Orange County
- L. Contact Information for the Awarding Official: Julia Bidwell -Director
(714) 480-2991 Julia.Bidwell@occr.ocgov.com
- M. CFDA Number and Name: 14.218
- N. Whether Award is R&D: N/A
- O. Indirect Cost Rate for the Federal Award: N/A



**PAYMENT/COMPENSATION
PUBLIC FACILITIES & IMPROVEMENTS**

1. COMPENSATION:

This is a Contract between the County and the Subrecipient for **\$350,000** as set forth in Attachment A. Scope of Services attached hereto and incorporated herein by reference. The Subrecipient agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Subrecipient of all its duties and obligations hereunder. The County shall have no obligation to pay any sum in excess of the total Contract amount specified unless authorized by an amendment in accordance with paragraphs C and P of the County's General Terms and Conditions.

2. FIRM DISCOUNT AND PRICING STRUCTURE:

Subrecipient guarantees that prices quoted are equal to or less than prices quoted to any other local, state or federal government entity for services of equal or lesser scope. Subrecipient agrees that no price increases shall be passed along to the County during the term of this Contract not otherwise specified and provided for within this Contract.

3. PAYMENT TERMS:

An invoice for services/activities shall be submitted to the address specified below upon the completion of the services/activities and approval of the County Project Manager. Subrecipient shall reference Contract number on invoice. Payment will be net 30 days after receipt of an invoice, contingent upon availability of funds, in a format acceptable to the County of Orange, verified and approved by OC Community Resources and subject to routine processing requirements of the County. The responsibility for providing an acceptable invoice rest with the Subrecipient.

Billing shall cover services not previously invoiced. The Subrecipient shall reimburse the County of Orange for any monies paid to the Subrecipient for services not provided or when services do not meet the Contract requirements.

ATTACHMENT B

Payments made by the County shall not preclude the right of the County from thereafter disputing any items or services involved or billed under this Contract and shall not be construed as acceptance of any part of the services.

Invoice(s) are to be sent and emailed to:

OC Community Resources Accounting

601 N Ross St, 6th Floor, Santa Ana, CA 92701

einvoice@occr.ocgov.com

INVOICING INSTRUCTIONS:

Further instructions regarding invoicing/reimbursement as set forth in Exhibit 1-OC Community Resources Contract Reimbursement Policy, are attached hereto and incorporated herein by reference.

The Subrecipient will provide an invoice on Subrecipient's letterhead for services rendered. Each invoice will have a number and will include the following information:

The Demand Letter/Invoice must include Delivery Order (DO) Number, Contract Number, Service date(s) – Month of Service along with other required documentation (See Exhibit 1).

4. **OC COMMUNITY RESOURCES CONTRACT REIMBURSEMENT POLICY:**

Further instructions regarding invoicing/reimbursements as set forth in Exhibit 1 – OC Community Resources Contract Reimbursement Policy, are attached hereto and incorporated herein by reference.



BUDGET SCHEDULE PUBLIC FACILITIES & IMPROVEMENTS

1. Subrecipient's Budget Schedule

A. Administration and Program Cost

Project Budget Chart City of Laguna Hills – City of Laguna Hills PF & I ADA Ramps, Senior Center Improvements			
Project Costs/Activity	Urban County Funds	Leveraged Resources	Total
Design/Project Development	N/A	N/A	N/A
Acquisition	N/A	N/A	N/A
Construction	\$350,000	\$87,500	\$350,000
Program Administration	0	0	0
Total Project Cost	\$350,000	\$87,500	\$437,500

B. Detailed Project Budget Description

This project includes two components: Improvements to the Florence Sylvester Senior Center and Sidewalk Improvements on Paseo de Valencia and on Alicia Parkway. The Subrecipient will act as the recipient of the grant funding and will enter into a contract with Florence Sylvester Senior Center to “pass through” their portion of the CDBG funds.



**STAFFING PLAN
PUBLIC FACILITIES & IMPROVEMENTS**

1. Staffing Plan

Project Title: City of Laguna Hills ADA Ramps & Senior Center Improvements

	Classification/Title
1	Public Works Director (City Engineer)
2	City Manager

The substitution or addition of other key individuals in any given category or classification shall be allowed only with prior written pre-approval of the County Project Manager.

The Subrecipient may reserve the right to involve other personnel, as their services are required. The specific individuals will be assigned based on the need and time of the service/class required. Assignment of additional key personnel shall be subject to County approval. Subrecipient shall provide the name of the staff to the County within a time mutually agreed upon by the Parties but no event later than 30 days after the execution of the Contract.



**PERFORMANCE STANDARDS
PUBLIC FACILITIES & IMPROVEMENTS**

1. **Performance Standards**

July 1, 2024 – Contract Start Date

2. Tools to Measure Project's Effect – City of Laguna Hills PF&I ADA Ramps, Senior Center Improvements

Milestone Date	Minimum Required Expenditure/ Accomplishment Threshold	Activity Results Achieved
February 15, 2025	50% of Contracted Amount Expended	\$175,000
February 15, 2025	50% of Proposed Accomplishments Achieved	Construction and/or installation
March 15, 2025	70% of Contracted Amount Expended	\$245,000
March 15, 2025	70% of Proposed Accomplishments Achieved	Construction and/or installation
April 15, 2025	80% of Contracted Amount Expended	\$280,000
April 15, 2025	80% of Proposed Accomplishments Achieved	Construction and/or installation
June 30, 2025	100% of Contracted Amount Expended	\$350,000
June 30, 2025	100% of Proposed Accomplishments Achieved	Construction and/or installation

This project includes two components: Improvements to the Florence Sylvester Senior Center and Sidewalk Improvements on Paseo de Valencia and on Alicia Parkway. The City of Laguna Hills will act as the recipient of the grant funding and will enter into a contract with Florence Sylvester Senior Center to “pass through” their portion of the CDBG funds.



**Subject: OC Community Resources
Contract Reimbursement Policy**

Effective: July 1, 2010
Revised: January 17, 2020

PURPOSE:

This policy contains updated fiscal documentation requirements for contract reimbursement for OC Community Services and OC Housing & Community Development. The procedures provide instructions for submitting reimbursement demand letter or invoice.

REFERENCES:

Executed County Board of Supervisors approved contract
Budget included in contract or presented as an attachment
48 CFR Part 31 Contract Cost Principles and Procedures
24 CFR Parts 85, 570.502, 570.201, 576.21, 576.51 and 576.61: For OC Housing & Community Development Contracts only.
2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance)

BACKGROUND:

The executed Board of Supervisors approved contract is the authorization for all aspects of payment, including the maximum amount to be paid, the payee, and the scope of services and work. Payments are made in strict accordance with the contract terms. Allowable costs are identified in referenced Uniform Guidance and Code of Federal Regulations (CFR).

ATTACHMENTS:

Reimbursement Policy Status Form (RPS-1)

POLICY:

Contractor is responsible for the submission of accurate claims. This reimbursement policy is intended to ensure that the Contractor is reimbursed based on the code or codes that correctly describe the services provided. This information is intended to serve only as a general reference resource regarding OC Community Services' and OC Housing & Community Development's reimbursement policy for the services described and is not intended to address every aspect of a reimbursement situation. Accordingly, OC Community Services and OC Housing & Community Development may use reasonable discretion in interpreting and applying this policy to services provided in a particular case. Other factors affecting reimbursement may supplement, modify or, in some cases, supersede this policy. These factors may include, but are not limited to: legislative mandates and County directives. OC Community Services and OC Housing & Community Development may modify this reimbursement policy at any time by publishing a new version of the policy. However, the information presented in this policy is accurate and current as of the date of publication.

Cost incurred by Contractor must be substantiated and incurred during the contract period. Total of all reimbursements cannot exceed the amount of the contract. Cost must be allowable under applicable Code of Federal Regulations (CFR) or Uniform Guidance. All supporting documentation for reimbursement must be submitted with demand letter or invoice. If contract

requires matching contribution, documentation substantiating contribution match must be submitted with demand letter or invoice.

At any time, based on County's business needs and/or Contractor's performance, the County may designate Contractor to submit abbreviated or comprehensive documentation, as identified in the respective sections. Upon designation, Contractor will be notified, in writing via Reimbursement Policy Status Form, of which requirements are in full force. When Contractor is required to submit comprehensive documentation, in addition to the items identified in the Abbreviated Documentation Requirements Section, Contractor must also provide the documentation identified in the Comprehensive Documentation Requirements Section.

PROCEDURES:

Abbreviated Documentation Requirements

Compile and submit:

1. Supporting documentation includes, but is not limited to:
 - a. General ledger/expense transaction report
 - b. Payroll register or labor distribution report
 - c. Payroll allocation plan
 - d. Personnel Documentation
 - e. Benefit plan and calculation of benefit
 - f. Employer-employee contract for non-customary benefits (if applicable)
 - g. Pre-approval documentation for equipment purchases equal to or greater than \$5,000
2. The following is required with the first month's invoice only:
 - a. Cost allocation plan for rent, utilities, etc.
 - b. Indirect rate approved by cognizant agency (if applicable)
3. Summary of leveraged resources (if applicable)
4. Demand letters must contain the following certification (if required by Contract):
"By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31 Sections 3729-3730 and 3801-3812)"
5. Grantee Performance Report (if required by Contract)
6. Supporting documentation shall be on single-sided sheets
7. Please redact employees' Social Security Number from payroll reports
8. Demand letter or invoice, along with supporting documentation shall be submitted to:
 OC Community Resources Accounting
 601 N. Ross St., 6th Floor
 Santa Ana, CA 92701

Comprehensive Documentation Requirements

In addition to abbreviated documentation, compile and submit:

9. Purchase orders, invoices, and receipts
10. Cashed checks
11. Check register
12. Consultant/sub-contractor invoices (with description of services)
13. Travel expense documentation: mileage reimbursement, hotel bill, meal reimbursement

ACTION:

Distribute this policy to all appropriate staff

INQUIRIES: Inquiries may be directed to OCCR Accounts Payable at:
 OCCRAccountsPayable@occr.ocgov.com



Reimbursement Policy Status Form

Per OC Community Resources Contract Reimbursement Policy, in regards to the Contract # listed herein, Contractor is designated with the Documentation Status of Abbreviated unless Comprehensive is checked below. If the contractor's designation should change to Abbreviated, a new status form shall be approved. All related documentation requirements are in full force, until further notice.

Contractor: City of Laguna Hills

Effective Date: July 1, 2024

Contract #: 012-24011200

Documentation Status: ☒ Abbreviated ☐ Comprehensive

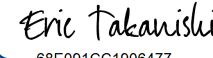
Program Authorization by:

Auditor Controller Authorization by:

Print Name: Nina Campmas

Print Name: Eliseo Garcia Eric Takanishi

Signed by: 
A441B59B298D483...

Signed by: 
68E091CC1906477

Date: 6/5/2024

Date: 6/6/2024

Two signatures are required to implement the form.

Distribution:

- Contractor
- Auditor Controller
- Contract File
- Program File

Certification for a Drug-Free Workplace

U.S. Department of Housing
and Urban Development

City of Laguna Hills

Contract # 012-24011200

Applicant Name

CDBG – Public Facilities and Improvements, Housing Rehabilitation, Public Services

Program/Activity Receiving Federal Grant Funding

Acting on behalf of the above named Applicant as its Authorized Official, I make the following certifications and agreements to the Department of Housing and Urban Development (HUD) regarding the sites listed below:

I certify that the above named Applicant will or will continue to provide a drug-free workplace by:

a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Applicant's workplace and specifying the actions that will be taken against employees for violation of such prohibition.

b. Establishing an on-going drug-free awareness program to inform employees ---

(1) The dangers of drug abuse in the workplace;

(2) The Applicant's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

c. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph a.;

d. Notifying the employee in the statement required by paragraph a. that, as a condition of employment under the grant, the employee will ---

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

e. . Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph d.(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

f. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph d.(2), with respect to any employee who is so convicted ---

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs a. thru f.

2. Sites for Work Performance. The Applicant shall list (on separate pages) the site(s) for the performance of work done in connection with the HUD funding of the program/activity shown above: Place of Performance shall include the street address, city, county, State, and zip code. Identify each sheet with the Applicant name and address and the program/activity receiving grant funding.)

Check here **O** if there are workplaces on file that are not identified on the attached sheets.

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties.

(18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Name of Authorized Official
Jarad Hildenbrand

Title
City Manager

Signature

DocuSigned by:

Jarad Hildenbrand

Date

4/8/2024

X BE8220D0B71A4D6...

**CERTIFICATION REGARDING
DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION
LOWER TIER COVERED TRANSACTIONS**

This certification is required by the regulations implementing Executive Order 12549, Debarment and suspension, 29 CFR Part 98.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211)

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS FOR CERTIFICATION)

- (1) The contractor or grant recipient of Federal assistance funds certifies, by submission of this exhibit document, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the contractor or grant recipient of Federal assistance funds is unable to certify to any of the statements in this certification, the contractor or grant recipient shall attach an explanation to this exhibit document.

Jarad Hildenbrand

Name	
City Manager	
Title	
DocuSigned by: 	4/8/2024
Authorized Signature	Date

DEBARMENT AND SUSPENSION CERTIFICATION - Instructions for Certification

1. By signing and submitting this exhibit document, the contractor or grant recipient of Federal assistance funds is providing the certification as set out below.
2. The certification in the clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the contractor or grant recipient of Federal assistance funds knowingly rendered an erroneous certification in addition to other remedies available to the Federal Government, the Department of Labor (DOL) may pursue available remedies, including suspension and/or debarment.
3. The contractor recipient of Federal assistance funds shall provide immediate written notice to the County of Orange/Workforce Investment Board to which this certification document is submitted if at any time the contractor or grant recipient of Federal assistance funds learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The contractor or grant recipient of Federal assistance funds agrees by submitting this certification document that, should the covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the DOL.
5. The contractor or grant recipient of Federal assistance funds further agrees by submitting this certification document that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. The contractor or grant recipient in a covered transaction may rely upon a certification of a contractor or grant recipient in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. The contractor or grant recipient may decide the method and frequency by which it determines the eligibility of its principals.
7. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the contractor or grant recipient is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
8. Except for transactions authorized under paragraph 5 of these instructions, if the contractor or grant recipient in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the DOL may pursue available remedies, including suspension and/or debarment.

INSTRUCTIONS FOR COMPLETION OF SF-LLL DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF LLL-A Continuation sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying is and has been secured to influence the outcome of a covered action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include congressional district, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e. g. the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report, in item 4 checks "Subawardee", then enter the full name, address, city, state, and zip code of the prime Federal recipient. Include congressional district, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e. g. Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number the contract, grant, or loan award number; the application proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP DE 90 09."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the primary entity identified in item 4 or 5.
10.
 - (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.
 - (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in kind contribution, specify the nature and value of the in kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted and the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF LLL A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348 0046) Washington D.C., 20503.

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose activities pursuant to 31 U.S.C 1352

1. Type of Federal Actions: a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Actions: a. bid/offer/application b. initial award c. post-award	3. Report Type: a. initial filing b. material change For material change only: Year: _____ Quarter: _____ Date of last report: _____
4. Name and Address of Reporting Entity Prime Subawardee Tier _____ if known Congressional District, if known: _____	5. If Reporting Entity in No. 4 is a Subawardee: Enter Name and Address of Prime: Congressional District, if known: _____	
6. Federal Department / Agency: _____	7. Federal Program Name/Description: _____	
8. Federal Action Number, if known: _____	9. Award Amount, if known: \$ _____	
10a. Name and Address of Lobbying Entity (if individual, last name, first name, MI): (attach Continuation Sheets SF-LLL-A, if necessary)	10b. Individual Performing Services (including address if different from No. 10a) (last name, first name, MI):	
11. Amount of Payment (check all that apply): \$ Actual Planned	13. Type of Payment (check all that apply) a. retainer b. one-time free c. commission d. contingent fee e. deferred f. other specify: _____	
12. Form of Payment (check all that apply): a. cash b. in-kind: specify: nature: _____ value: _____		
14. Enter Description of Services performed or to be Performed and date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated on item 11:		
15. Continuation sheet(s) SF-LLL-A attached: ☐ Yes ☒ No		
16. Information requested through this form authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semiannually and will be available for public inspection. An person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.		
Signature: <u>Jarad Hildenbrand</u> BE8220D0B71A4D6... Print Name: Jarad Hildenbrand Title: City Manager Telephone No: Date: 4/8/2024		

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET
Approved by OMS - 0348-0046

Reporting Entity:_____

Page_____of_____

BILLING CODES 3410-01 -C; 6450-01-C; 6890-01 ;6025-01-C; 7510-01-C , 35 1 0-FE-C; 8120-01 -C; 4710-24-C, 6116-01 -C,

**CERTIFICATION REGARDING LOBBYING
CERTIFICATION FOR CONTRACTS, GRANTS, LOANS,
AND COOPERATIVE AGREEMENTS**

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all* subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all* subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10, 000 and not more than \$100,000 for each such failure.

City of Laguna Hills

Grantee/Contractor Organization

Jarad Hildenbrand

Name

City Manager

Title

Signed by:
Jarad Hildenbrand

Authorized Signature

*Note: In these instances, "All," in the Final Rule is expected to be clarified to show that it applies to covered contract/grant transactions over \$100,000 (per OMB).

Exhibit B

Scope of Work and Requirements Thereto

**COMMUNITY DEVELOPMENT BLOCK GRANT
PROGRAM YEAR 2024/2025
SCOPE OF WORK**

Description of Activities

The construction project will focus on the rehabilitation of the Florence Sylvester Memorial Senior Center (Center). Eligible costs for reimbursement include the application of heat-reducing paint products to the exterior of the building and the interior of the dining room of the Florence Sylvester Senior Center.

The project shall be performed in conformance with this Scope of Work, the Agreement Between the City of Laguna Hills and Age Well Senior Services, Inc., for Community Development Block Grant (CDBG) Public Facilities and Improvement Funds (Program Year 2024/2025) (hereinafter, "Agreement"), Contract No. 012-24011200 (entitled "Contract for Public Facilities and Improvements City of Laguna Hills PF&I ADA Ramps, and Senior Center Improvements"), and required County approvals therein. The Sub-recipient shall provide the oversight, administration and project management necessary to accomplish contracted activities in accordance with this Agreement, the County approved scope of Work, completion milestones (provided by County), State and Federal laws, applicable regulations, and authorities having jurisdiction.

Prior to the start of work:

(1) The construction project contemplated is a "public work", under California Labor Code Section 1720, and the Sub-recipient is required to adhere to prevailing wages requirements in accordance with State law. In addition, the Federal Labor Standards including Davis-Bacon prevailing wages shall apply. A current and appropriate Davis-Bacon wage decision approved by the County shall be included in the Construction Bid Package, along with HUD-4010 form, "Federal Labor Standards Provisions".

(2) Prior to advertising for bids, the construction bid package for the rehabilitation work shall be submitted to the City for review and written approval by the County. A County representative shall be invited to a preconstruction conference to review Federal Labor Standards compliance procedures with the Sub-recipient and construction subcontractors.

(3) No costs shall be incurred prior to receipt of written certification of approval by County of the fulfillment of the requirements of Section XXI (Insurance) of the Agreement.

Project Budget

PROJECT COMPONENT	CDBG FUNDS
Application of heat-reducing paint products to the exterior of the building and the interior of the dining room of the Florence Sylvester Senior Center	\$75,000

Milestones

MILESTONE DATE	MINIMUM REQUIRED EXPENDITURE THRESHOLD
February 15, 2025	50% of Contracted Amount Expended
February 15, 2025	50% of Proposed Accomplishments Achieved
March 15, 2025	70% of Contracted Amount Expended
March 15, 2025	70% of Proposed Accomplishments Achieved
April 15, 2025	80% of Contracted Amount Expended
April 15, 2025	80% of Proposed Accomplishments Achieved
June 30, 2025	100% of Contracted Amount Expended
June 30, 2025	100% of Proposed Accomplishments Achieved

Failure to achieve at least the 50% drawdown milestone, without a written exemption from the City, may cause any remaining balance in this Agreement to be reclaimed by the City, and will negatively affect future funding to Sub-recipient. Failure to achieve the 80% drawdown goal, without written exemption approved by the City, may cause any remaining balance in this Agreement to be reclaimed by the City.

Sub-recipient shall be required to complete and submit a Year-End Grantee Performance Report Form by July 15, 2025.

Payment of Project Activities

On a quarterly basis and within fifteen (15) days of the end of a quarter, the Subrecipient may invoice City for reimbursement of eligible costs. Concurrently with its request for the aforementioned funds, Sub-recipient shall submit to the City the following supporting documentation: Copies of paid invoices, receipts, certified payroll records, bank statements, canceled checks, attendance records, and other items adequate to document project expenditures. Sub-recipient shall also provide a Quarterly Performance Report, on a Grantee Performance Report Form, which addresses its level of performance for each activity undertaken relative to this Scope of Work. The City will not authorize reimbursement if any preceding quarter's reports or invoices are incomplete, or have not been submitted.

In addition, if no request for reimbursement is submitted during any quarter during the term of the Agreement, a Grantee Performance Report Form shall be required from the Subrecipient explain why no invoices were processed.

Exhibit C

*Uniform Administrative Requirements, Cost Principles, and Audit Requirements for
Federal Awards as described in 2 CFR Part 200, et al,
and
24 CFR 85, Administrative Requirements for Grants and Cooperative Agreements to
State, Local, and Federally Recognized Indian Tribal Governments*

This content is from the eCFR and is authoritative but unofficial.

Title 2 — Grants and Agreements

Subtitle A — Office of Management and Budget Guidance for Grants and Agreements

Chapter II — Office of Management and Budget Guidance

Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

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§ 200.0 Acronyms.

§ 200.1 Definitions.

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§ 200.101 Applicability.

§ 200.102 Exceptions.

§ 200.103 Authorities.

§ 200.104 Supersession.

§ 200.105 Effect on other issuances.

§ 200.106 Agency implementation.

§ 200.107 OMB responsibilities.

§ 200.108 Inquiries.

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§ 200.112 Conflict of interest.

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Subpart C Pre-Federal Award Requirements and Contents of Federal Awards

§ 200.200 Purpose.

§ 200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts.

§ 200.202 Program planning and design.

§ 200.203 Requirement to provide public notice of Federal financial assistance programs.

§ 200.204 Notices of funding opportunities.

§ 200.205 Federal awarding agency review of merit of proposals.

§ 200.206 Federal awarding agency review of risk posed by applicants.

§ 200.207 Standard application requirements.

§ 200.208 Specific conditions.

§ 200.209 Certifications and representations.

- § 200.210 Pre-award costs.
- § 200.211 Information contained in a Federal award.
- § 200.212 Public access to Federal award information.
- § 200.213 Reporting a determination that a non-Federal entity is not qualified for a Federal award.
- § 200.214 Suspension and debarment.
- § 200.215 Never contract with the enemy.
- § 200.216 Prohibition on certain telecommunications and video surveillance services or equipment.

Subpart D Post Federal Award Requirements

- § 200.300 Statutory and national policy requirements.
- § 200.301 Performance measurement.
- § 200.302 Financial management.
- § 200.303 Internal controls.
- § 200.304 Bonds.
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- § 200.311 Real property.
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- § 200.319 Competition.
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§ 200.329 Monitoring and reporting program performance.

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§ 200.331 Subrecipient and contractor determinations.

§ 200.332 Requirements for pass-through entities.

§ 200.333 Fixed amount subawards.

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§ 200.335 Requests for transfer of records.

§ 200.336 Methods for collection, transmission, and storage of information.

§ 200.337 Access to records.

§ 200.338 Restrictions on public access to records.

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§ 200.339 Remedies for noncompliance.

§ 200.340 Termination.

§ 200.341 Notification of termination requirement.

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§ 200.344 Closeout.

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§ 200.418 Costs incurred by states and local governments.

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§ 200.420 Considerations for selected items of cost.

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§ 200.432 Conferences.

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§ 200.502 Basis for determining Federal awards expended.

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Appendix II to Part 200

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Appendix III to Part 200

Indirect (F&A) Costs Identification and Assignment, and Rate
Determination for Institutions of Higher Education (IHEs)

Appendix IV to Part 200

Indirect (F&A) Costs Identification and Assignment, and Rate

Determination for Nonprofit Organizations

Appendix V to Part 200

State/Local Governmentwide Central Service Cost Allocation
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Appendix VI to Part 200

Public Assistance Cost Allocation Plans

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Hospital Cost Principles

Appendix X to Part 200

Data Collection Form (Form SF-SAC)

Appendix XI to Part 200

Compliance Supplement

Appendix XII to Part 200

Award Term and Condition for Recipient Integrity and
Performance Matters

PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Authority: 31 U.S.C. 503

Link to an amendment published at 89 FR 30136, Apr. 22, 2024.

Source: 78 FR 78608, Dec. 26, 2013, unless otherwise noted.

Subpart A—Acronyms and Definitions

Link to an amendment published at 89 FR 30136, Apr. 22, 2024.

ACRONYMS

§ 200.0 Acronyms.

Acronym Term

CAS Cost Accounting Standards

CFR Code of Federal Regulations

CMIA Cash Management Improvement Act

COG Councils Of Governments

COSO Committee of Sponsoring Organizations of the Treadway Commission

EPA Environmental Protection Agency

ERISA Employee Retirement Income Security Act of 1974 (29 U.S.C. 1301-1461)

EUI Energy Usage Index

F&A Facilities and Administration

FAC Federal Audit Clearinghouse

FAIN Federal Award Identification Number

FAPIIS Federal Awardee Performance and Integrity Information System

FAR Federal Acquisition Regulation

FFATA Federal Funding Accountability and Transparency Act of 2006 or Transparency Act—Public Law 109-282, as amended by section 6202(a) of Public Law 110-252 (31 U.S.C. 6101)

FICA Federal Insurance Contributions Act

FOIA Freedom of Information Act

FR Federal Register

FTE Full-time equivalent

GAAP Generally Accepted Accounting Principles

GAGAS Generally Accepted Government Auditing Standards

GAO Government Accountability Office

GOCO Government owned, contractor operated

GSA General Services Administration

IBS Institutional Base Salary

IHE Institutions of Higher Education

IRC Internal Revenue Code

ISDEAA Indian Self-Determination and Education and Assistance Act

MTC Modified Total Cost

MTDC Modified Total Direct Cost

NFE Non-Federal Entity

OMB Office of Management and Budget

PII Personally Identifiable Information

PMS Payment Management System

PRHP Post-retirement Health Plans

PTE Pass-through Entity

REUI Relative Energy Usage Index

SAM System for Award Management

SFA Student Financial Aid

SNAP Supplemental Nutrition Assistance Program

SPOC Single Point of Contact

TANF Temporary Assistance for Needy Families

TFM Treasury Financial Manual

U.S.C. United States Code

VAT Value Added Tax

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75880, Dec. 19, 2014; 80 FR 43308, July 22, 2015; 85 FR 49529, Aug. 13, 2020]

§ 200.1 Definitions.

These are the definitions for terms used in this part. Different definitions may be found in Federal statutes or regulations that apply more specifically to particular programs or activities. These definitions could be supplemented by additional instructional information provided in governmentwide standard information collections. For purposes of this part, the following definitions apply:

Acquisition cost means the cost of the asset including the cost to ready the asset for its intended use.

Acquisition cost for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Acquisition costs for software includes those development costs capitalized in accordance with generally accepted accounting principles (GAAP). Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in or excluded from the acquisition cost in accordance with the non-Federal entity's regular accounting practices.

Advance payment means a payment that a Federal awarding agency or pass-through entity makes by any appropriate payment mechanism, including a predetermined payment schedule, before the non-Federal entity disburses the funds for program purposes.

Allocation means the process of assigning a cost, or a group of costs, to one or more cost objective(s), in reasonable proportion to the benefit provided or other equitable relationship. The process may entail assigning a cost(s) directly to a final cost objective or through one or more intermediate cost objectives.

Assistance listings refers to the publicly available listing of Federal assistance programs managed and administered by the General Services Administration, formerly known as the Catalog of Federal Domestic Assistance (CFDA).

Assistance listing number means a unique number assigned to identify a Federal Assistance Listings, formerly known as the CFDA Number.

Assistance listing program title means the title that corresponds to the Federal Assistance Listings Number, formerly known as the CFDA program title.

Audit finding means deficiencies which the auditor is required by § 200.516(a) to report in the schedule of findings and questioned costs.

Auditee means any non-Federal entity that expends Federal awards which must be audited under subpart F of this part.

Auditor means an auditor who is a public accountant or a Federal, State, local government, or Indian tribe audit organization, which meets the general standards specified for external auditors in generally accepted government auditing standards (GAGAS). The term auditor does not include internal auditors of nonprofit organizations.

Budget means the financial plan for the Federal award that the Federal awarding agency or pass-through entity approves during the Federal award process or in subsequent amendments to the Federal award. It may include the Federal and non-Federal share or only the Federal share, as determined by the Federal awarding agency or pass-through entity.

Budget period means the time interval from the start date of a funded portion of an award to the end date of that funded portion during which recipients are authorized to expend the funds awarded, including any funds carried forward or other revisions pursuant to § 200.308.

Capital assets means:

- (1) Tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with GAAP. Capital assets include:
 - (i) Land, buildings (facilities), equipment, and intellectual property (including software) whether acquired by purchase, construction, manufacture, exchange, or through a lease accounted for as financed purchase under Government Accounting Standards Board (GASB) standards or a finance lease under Financial Accounting Standards Board (FASB) standards; and
 - (ii) Additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations or alterations to capital assets that materially increase their value or useful life (not ordinary repairs and maintenance).
- (2) For purpose of this part, capital assets do not include intangible right-to-use assets (per GASB) and right-to-use operating lease assets (per FASB). For example, assets capitalized that recognize a lessee's right to control the use of property and/or equipment for a period of time under a lease contract. See also § 200.465.

Capital expenditures means expenditures to acquire capital assets or expenditures to make additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life.

Central service cost allocation plan means the documentation identifying, accumulating, and allocating or developing billing rates based on the allowable costs of services provided by a State or local government or Indian tribe on a centralized basis to its departments and agencies. The costs of these services may be allocated or billed to users.

Claim means, depending on the context, either:

- (1) A written demand or written assertion by one of the parties to a Federal award seeking as a matter of right:
 - (i) The payment of money in a sum certain;
 - (ii) The adjustment or interpretation of the terms and conditions of the Federal award; or
 - (iii) Other relief arising under or relating to a Federal award.
- (2) A request for payment that is not in dispute when submitted.

Class of Federal awards means a group of Federal awards either awarded under a specific program or group of programs or to a specific type of non-Federal entity or group of non-Federal entities to which specific provisions or exceptions may apply.

Closeout means the process by which the Federal awarding agency or pass-through entity determines that all applicable administrative actions and all required work of the Federal award have been completed and takes actions as described in § 200.344.

Cluster of programs means a grouping of closely related programs that share common compliance requirements. The types of clusters of programs are research and development (R&D), student financial aid (SFA), and other clusters. "Other clusters" are as defined by OMB in the compliance supplement or as designated by a State for Federal awards the State provides to its subrecipients that meet the definition of a cluster of programs. When designating an "other cluster," a State must identify the Federal awards included in the cluster and advise the subrecipients of compliance requirements applicable to the cluster,

consistent with § 200.332(a). A cluster of programs must be considered as one program for determining major programs, as described in § 200.518, and, with the exception of R&D as described in § 200.501(c), whether a program-specific audit may be elected.

Cognizant agency for audit means the Federal agency designated to carry out the responsibilities described in § 200.513(a). The cognizant agency for audit is not necessarily the same as the cognizant agency for indirect costs. A list of cognizant agencies for audit can be found on the Federal Audit Clearinghouse (FAC) website.

Cognizant agency for indirect costs means the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals developed under this part on behalf of all Federal agencies. The cognizant agency for indirect cost is not necessarily the same as the cognizant agency for audit. For assignments of cognizant agencies see the following:

- (1) For Institutions of Higher Education (IHEs): Appendix III to this part, paragraph C.11.
- (2) For nonprofit organizations: Appendix IV to this part, paragraph C.2.a.
- (3) For State and local governments: Appendix V to this part, paragraph F.1.
- (4) For Indian tribes: Appendix VII to this part, paragraph D.1.

Compliance supplement means an annually updated authoritative source for auditors that serves to identify existing important compliance requirements that the Federal Government expects to be considered as part of an audit. Auditors use it to understand the Federal program's objectives, procedures, and compliance requirements, as well as audit objectives and suggested audit procedures for determining compliance with the relevant Federal program.

Computing devices means machines used to acquire, store, analyze, process, and publish data and other information electronically, including accessories (or "peripherals") for printing, transmitting and receiving, or storing electronic information. See also the definitions of *supplies* and *information technology systems* in this section.

Contract means, for the purpose of Federal financial assistance, a legal instrument by which a recipient or subrecipient purchases property or services needed to carry out the project or program under a Federal award. For additional information on subrecipient and contractor determinations, see § 200.331. See also the definition of *subaward* in this section.

Contractor means an entity that receives a contract as defined in this section.

Cooperative agreement means a legal instrument of financial assistance between a Federal awarding agency and a recipient or a pass-through entity and a subrecipient that, consistent with 31 U.S.C. 6302-6305:

- (1) Is used to enter into a relationship the principal purpose of which is to transfer anything of value to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal Government or pass-through entity's direct benefit or use;
- (2) Is distinguished from a grant in that it provides for substantial involvement of the Federal awarding agency in carrying out the activity contemplated by the Federal award.
- (3) The term does not include:
 - (i) A cooperative research and development agreement as defined in 15 U.S.C. 3710a; or

- (ii) An agreement that provides only:
 - (A) Direct United States Government cash assistance to an individual;
 - (B) A subsidy;
 - (C) A loan;
 - (D) A loan guarantee; or
 - (E) Insurance.

Cooperative audit resolution means the use of audit follow-up techniques which promote prompt corrective action by improving communication, fostering collaboration, promoting trust, and developing an understanding between the Federal agency and the non-Federal entity. This approach is based upon:

- (1) A strong commitment by Federal agency and non-Federal entity leadership to program integrity;
- (2) Federal agencies strengthening partnerships and working cooperatively with non-Federal entities and their auditors; and non-Federal entities and their auditors working cooperatively with Federal agencies;
- (3) A focus on current conditions and corrective action going forward;
- (4) Federal agencies offering appropriate relief for past noncompliance when audits show prompt corrective action has occurred; and
- (5) Federal agency leadership sending a clear message that continued failure to correct conditions identified by audits which are likely to cause improper payments, fraud, waste, or abuse is unacceptable and will result in sanctions.

Corrective action means action taken by the auditee that:

- (1) Corrects identified deficiencies;
- (2) Produces recommended improvements; or
- (3) Demonstrates that audit findings are either invalid or do not warrant auditee action.

Cost allocation plan means central service cost allocation plan or public assistance cost allocation plan.

Cost objective means a program, function, activity, award, organizational subdivision, contract, or work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capital projects, etc. A cost objective may be a major function of the non-Federal entity, a particular service or project, a Federal award, or an indirect (Facilities & Administrative (F&A)) cost activity, as described in subpart E of this part. See also the definitions of *final cost objective* and *intermediate cost objective* in this section.

Cost sharing or matching means the portion of project costs not paid by Federal funds or contributions (unless otherwise authorized by Federal statute). See also § 200.306.

Cross-cutting audit finding means an audit finding where the same underlying condition or issue affects all Federal awards (including Federal awards of more than one Federal awarding agency or pass-through entity).

Disallowed costs means those charges to a Federal award that the Federal awarding agency or pass-through entity determines to be unallowable, in accordance with the applicable Federal statutes, regulations, or the terms and conditions of the Federal award.

Discretionary award means an award in which the Federal awarding agency, in keeping with specific statutory authority that enables the agency to exercise judgment (“discretion”), selects the recipient and/or the amount of Federal funding awarded through a competitive process or based on merit of proposals. A discretionary award may be selected on a non-competitive basis, as appropriate.

Equipment means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000. See also the definitions of *capital assets*, *computing devices*, *general purpose equipment*, *information technology systems*, *special purpose equipment*, and *supplies* in this section.

Expenditures means charges made by a non-Federal entity to a project or program for which a Federal award was received.

- (1) The charges may be reported on a cash or accrual basis, as long as the methodology is disclosed and is consistently applied.
- (2) For reports prepared on a cash basis, expenditures are the sum of:
 - (i) Cash disbursements for direct charges for property and services;
 - (ii) The amount of indirect expense charged;
 - (iii) The value of third-party in-kind contributions applied; and
 - (iv) The amount of cash advance payments and payments made to subrecipients.
- (3) For reports prepared on an accrual basis, expenditures are the sum of:
 - (i) Cash disbursements for direct charges for property and services;
 - (ii) The amount of indirect expense incurred;
 - (iii) The value of third-party in-kind contributions applied; and
 - (iv) The net increase or decrease in the amounts owed by the non-Federal entity for:
 - (A) Goods and other property received;
 - (B) Services performed by employees, contractors, subrecipients, and other payees; and
 - (C) Programs for which no current services or performance are required such as annuities, insurance claims, or other benefit payments.

Federal agency means an “agency” as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).

Federal Audit Clearinghouse (FAC) means the clearinghouse designated by OMB as the repository of record where non-Federal entities are required to transmit the information required by subpart F of this part.

Federal award has the meaning, depending on the context, in either paragraph (1) or (2) of this definition:

- (1)

- (i) The Federal financial assistance that a recipient receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in § 200.101; or
 - (ii) The cost-reimbursement contract under the Federal Acquisition Regulations that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in § 200.101.
- (2) The instrument setting forth the terms and conditions. The instrument is the grant agreement, cooperative agreement, other agreement for assistance covered in paragraph (2) of the definition of *Federal financial assistance* in this section, or the cost-reimbursement contract awarded under the Federal Acquisition Regulations.
- (3) Federal award does not include other contracts that a Federal agency uses to buy goods or services from a contractor or a contract to operate Federal Government owned, contractor operated facilities (GOCOs).
- (4) See also definitions of Federal financial assistance, grant agreement, and cooperative agreement.

Federal award date means the date when the Federal award is signed by the authorized official of the Federal awarding agency.

Federal awarding agency means the Federal agency that provides a Federal award directly to a non-Federal entity.

Federal financial assistance means

- (1) Assistance that non-Federal entities receive or administer in the form of:
- (i) Grants;
 - (ii) Cooperative agreements;
 - (iii) Non-cash contributions or donations of property (including donated surplus property);
 - (iv) Direct appropriations;
 - (v) Food commodities; and
 - (vi) Other financial assistance (except assistance listed in paragraph (2) of this definition).
- (2) For § 200.203 and subpart F of this part, *Federal financial assistance* also includes assistance that non-Federal entities receive or administer in the form of:
- (i) Loans;
 - (ii) Loan Guarantees;
 - (iii) Interest subsidies; and
 - (iv) Insurance.
- (3) For § 200.216, Federal financial assistance includes assistance that non-Federal entities receive or administer in the form of:
- (i) Grants;
 - (ii) Cooperative agreements;
 - (iii) Loans; and

(iv) Loan Guarantees.

- (4) Federal financial assistance does not include amounts received as reimbursement for services rendered to individuals as described in § 200.502(h) and (i).

Federal interest means, for purposes of § 200.330 or when used in connection with the acquisition or improvement of real property, equipment, or supplies under a Federal award, the dollar amount that is the product of the:

- (1) The percentage of Federal participation in the total cost of the real property, equipment, or supplies; and
- (2) Current fair market value of the property, improvements, or both, to the extent the costs of acquiring or improving the property were included as project costs.

Federal program means:

- (1) All Federal awards which are assigned a single Assistance Listings Number.
- (2) When no Assistance Listings Number is assigned, all Federal awards from the same agency made for the same purpose must be combined and considered one program.
- (3) Notwithstanding paragraphs (1) and (2) of this definition, a cluster of programs. The types of clusters of programs are:
- (i) Research and development (R&D);
- (ii) Student financial aid (SFA); and
- (iii) "Other clusters," as described in the definition of *cluster of programs* in this section.

Federal share means the portion of the Federal award costs that are paid using Federal funds.

Final cost objective means a cost objective which has allocated to it both direct and indirect costs and, in the non-Federal entity's accumulation system, is one of the final accumulation points, such as a particular award, internal project, or other direct activity of a non-Federal entity. See also the definitions of *cost objective* and *intermediate cost objective* in this section.

Financial obligations, when referencing a recipient's or subrecipient's use of funds under a Federal award, means orders placed for property and services, contracts and subawards made, and similar transactions that require payment.

Fixed amount awards means a type of grant or cooperative agreement under which the Federal awarding agency or pass-through entity provides a specific level of support without regard to actual costs incurred under the Federal award. This type of Federal award reduces some of the administrative burden and record-keeping requirements for both the non-Federal entity and Federal awarding agency or pass-through entity. Accountability is based primarily on performance and results. See §§ 200.102(c), 200.201(b), and 200.333.

Foreign organization means an entity that is:

- (1) A public or private organization located in a country other than the United States and its territories that is subject to the laws of the country in which it is located, irrespective of the citizenship of project staff or place of performance;

- (2) A private nongovernmental organization located in a country other than the United States that solicits and receives cash contributions from the general public;
- (3) A charitable organization located in a country other than the United States that is nonprofit and tax exempt under the laws of its country of domicile and operation, and is not a university, college, accredited degree-granting institution of education, private foundation, hospital, organization engaged exclusively in research or scientific activities, church, synagogue, mosque or other similar entities organized primarily for religious purposes; or
- (4) An organization located in a country other than the United States not recognized as a foreign public entity.

Foreign public entity means:

- (1) A foreign government or foreign governmental entity;
- (2) A public international organization, which is an organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (22 U.S.C. 288-288f);
- (3) An entity owned (in whole or in part) or controlled by a foreign government; or
- (4) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.

General purpose equipment means equipment which is not limited to research, medical, scientific or other technical activities. Examples include office equipment and furnishings, modular offices, telephone networks, information technology equipment and systems, air conditioning equipment, reproduction and printing equipment, and motor vehicles. See also the definitions of *equipment* and *special purpose equipment* in this section.

Generally accepted accounting principles (GAAP) has the meaning specified in accounting standards issued by the GASB and the FASB.

Generally accepted government auditing standards (GAGAS), also known as the Yellow Book, means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits.

Grant agreement means a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity that, consistent with 31 U.S.C. 6302, 6304:

- (1) Is used to enter into a relationship the principal purpose of which is to transfer anything of value to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal awarding agency or pass-through entity's direct benefit or use;
- (2) Is distinguished from a cooperative agreement in that it does not provide for substantial involvement of the Federal awarding agency in carrying out the activity contemplated by the Federal award.
- (3) Does not include an agreement that provides only:
 - (i) Direct United States Government cash assistance to an individual;
 - (ii) A subsidy;
 - (iii) A loan;

- (vi) A loan guarantee; or
- (v) Insurance.

Highest level owner means the entity that owns or controls an immediate owner of the offeror, or that owns or controls one or more entities that control an immediate owner of the offeror. No entity owns or exercises control of the highest-level owner as defined in the Federal Acquisition Regulations (FAR) (48 CFR 52.204-17).

Hospital means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state.

Improper payment means:

- (1) Any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other *legally applicable* requirements.
 - (i) Incorrect amounts are overpayments or underpayments that are made to eligible recipients (including inappropriate denials of payment or service, any payment that does not account for credit for applicable discounts, payments that are for an incorrect amount, and duplicate payments). An improper payment also includes any payment that was made to an ineligible recipient or for an ineligible good or service, or payments for goods or services not received (except for such payments authorized by law).

Note 1 to paragraph (1)(i) of this definition. Applicable discounts are only those discounts where it is both advantageous and within the agency's control to claim them.

- (ii) When an agency's review is unable to discern whether a payment was proper as a result of insufficient or lack of documentation, this payment should also be considered an improper payment. When establishing documentation requirements for payments, agencies should ensure that all documentation requirements are necessary and should refrain from imposing additional burdensome documentation requirements.
- (iii) Interest or other fees that may result from an underpayment by an agency are not considered an improper payment if the interest was paid correctly. These payments are generally separate transactions and may be necessary under certain statutory, contractual, administrative, or other legally applicable requirements.
- (iv) A "questioned cost" (as defined in this section) should not be considered an improper payment until the transaction has been completely reviewed and is confirmed to be improper.
- (v) The term "payment" in this definition means any disbursement or transfer of Federal funds (including a commitment for future payment, such as cash, securities, loans, loan guarantees, and insurance subsidies) to any non-Federal person, non-Federal entity, or Federal employee, that is made by a Federal agency, a Federal contractor, a Federal grantee, or a governmental or other organization administering a Federal program or activity.
- (vi) The term "payment" includes disbursements made pursuant to prime contracts awarded under the Federal Acquisition Regulation and Federal awards subject to this part that are expended by recipients.

- (2) See definition of improper payment in OMB Circular A-123 appendix C, part I A (1) "What is an improper payment?" Questioned costs, including those identified in audits, are not an improper payment until reviewed and confirmed to be improper as defined in OMB Circular A-123 appendix C.

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. Chapter 33), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (25 U.S.C. 450b(e)). See annually published Bureau of Indian Affairs list of Indian Entities Recognized and Eligible to Receive Services.

Institutions of Higher Education (IHEs) is defined at 20 U.S.C. 1001.

Indirect (facilities & administrative (F&A)) costs means those costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect (F&A) costs. Indirect (F&A) cost pools must be distributed to benefitted cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.

Indirect cost rate proposal means the documentation prepared by a non-Federal entity to substantiate its request for the establishment of an indirect cost rate as described in appendices III through VII and appendix IX to this part.

Information technology systems means computing devices, ancillary equipment, software, firmware, and similar procedures, services (including support services), and related resources. See also the definitions of *computing devices* and *equipment* in this section.

Intangible property means property having no physical existence, such as trademarks, copyrights, patents and patent applications and property, such as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership (whether the property is tangible or intangible).

Intermediate cost objective means a cost objective that is used to accumulate indirect costs or service center costs that are subsequently allocated to one or more indirect cost pools or final cost objectives. See also the definitions of *cost objective* and *final cost objective* in this section.

Internal controls for non-Federal entities means:

- (1) Processes designed and implemented by non-Federal entities to provide reasonable assurance regarding the achievement of objectives in the following categories:
 - (i) Effectiveness and efficiency of operations;
 - (ii) Reliability of reporting for internal and external use; and
 - (iii) Compliance with applicable laws and regulations.
- (2) Federal awarding agencies are required to follow internal control compliance requirements in OMB Circular No. A-123, Management's Responsibility for Enterprise Risk Management and Internal Control.

Loan means a Federal loan or loan guarantee received or administered by a non-Federal entity, except as used in the definition of *program income* in this section.

- (1) The term "direct loan" means a disbursement of funds by the Federal Government to a non-Federal borrower under a contract that requires the repayment of such funds with or without interest. The term includes the purchase of, or participation in, a loan made by another lender and financing

arrangements that defer payment for more than 90 days, including the sale of a Federal Government asset on credit terms. The term does not include the acquisition of a federally guaranteed loan in satisfaction of default claims or the price support loans of the Commodity Credit Corporation.

- (2) The term “direct loan obligation” means a binding agreement by a Federal awarding agency to make a direct loan when specified conditions are fulfilled by the borrower.
- (3) The term “loan guarantee” means any Federal Government guarantee, insurance, or other pledge with respect to the payment of all or a part of the principal or interest on any debt obligation of a non-Federal borrower to a non-Federal lender, but does not include the insurance of deposits, shares, or other withdrawable accounts in financial institutions.
- (4) The term “loan guarantee commitment” means a binding agreement by a Federal awarding agency to make a loan guarantee when specified conditions are fulfilled by the borrower, the lender, or any other party to the guarantee agreement.

Local government means any unit of government within a state, including a:

- (1) County;
- (2) Borough;
- (3) Municipality;
- (4) City;
- (5) Town;
- (6) Township;
- (7) Parish;
- (8) Local public authority, including any public housing agency under the United States Housing Act of 1937;
- (9) Special district;
- (10) School district;
- (11) Intrastate district;
- (12) Council of governments, whether or not incorporated as a nonprofit corporation under State law; and
- (13) Any other agency or instrumentality of a multi-, regional, or intra-State or local government.

Major program means a Federal program determined by the auditor to be a major program in accordance with § 200.518 or a program identified as a major program by a Federal awarding agency or pass-through entity in accordance with § 200.503(e).

Management decision means the Federal awarding agency's or pass-through entity's written determination, provided to the auditee, of the adequacy of the auditee's proposed corrective actions to address the findings, based on its evaluation of the audit findings and proposed corrective actions.

Micro-purchase means a purchase of supplies or services, the aggregate amount of which does not exceed the micro-purchase threshold. Micro-purchases comprise a subset of a non-Federal entity's small purchases as defined in § 200.320.

Micro-purchase threshold means the dollar amount at or below which a non-Federal entity may purchase property or services using micro-purchase procedures (see § 200.320). Generally, the micro-purchase threshold for procurement activities administered under Federal awards is not to exceed the amount set by the FAR at 48 CFR part 2, subpart 2.1, unless a higher threshold is requested by the non-Federal entity and approved by the cognizant agency for indirect costs.

Modified Total Direct Cost (MTDC) means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each subaward in excess of \$25,000. Other items may only be excluded when necessary to avoid a serious inequity in the distribution of indirect costs, and with the approval of the cognizant agency for indirect costs.

Non-discretionary award means an award made by the Federal awarding agency to specific recipients in accordance with statutory, eligibility and compliance requirements, such that in keeping with specific statutory authority the agency has no ability to exercise judgement (“discretion”). A non-discretionary award amount could be determined specifically or by formula.

Non-Federal entity (NFE) means a State, local government, Indian tribe, Institution of Higher Education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.

Nonprofit organization means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:

- (1) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
- (2) Is not organized primarily for profit; and
- (3) Uses net proceeds to maintain, improve, or expand the operations of the organization.

Notice of funding opportunity means a formal announcement of the availability of Federal funding through a financial assistance program from a Federal awarding agency. The notice of funding opportunity provides information on the award, who is eligible to apply, the evaluation criteria for selection of an awardee, required components of an application, and how to submit the application. The notice of funding opportunity is any paper or electronic issuance that an agency uses to announce a funding opportunity, whether it is called a “program announcement,” “notice of funding availability,” “broad agency announcement,” “research announcement,” “solicitation,” or some other term.

Office of Management and Budget (OMB) means the Executive Office of the President, Office of Management and Budget.

Oversight agency for audit means the Federal awarding agency that provides the predominant amount of funding directly (direct funding) (as listed on the schedule of expenditures of Federal awards, see § 200.510(b)) to a non-Federal entity unless OMB designates a specific cognizant agency for audit. When the direct funding represents less than 25 percent of the total Federal expenditures (as direct and sub-awards) by the non-Federal entity, then the Federal agency with the predominant amount of total funding is the designated oversight agency for audit. When there is no direct funding, the Federal awarding agency which is the predominant source of pass-through funding must assume the oversight responsibilities. The duties of the oversight agency for audit and the process for any reassignments are described in § 200.513(b).

Participant support costs means direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with conferences, or training projects.

Pass-through entity (PTE) means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

Performance goal means a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared, including a goal expressed as a quantitative standard, value, or rate. In some instances (e.g., discretionary research awards), this may be limited to the requirement to submit technical performance reports (to be evaluated in accordance with agency policy).

Period of performance means the total estimated time interval between the start of an initial Federal award and the planned end date, which may include one or more funded portions, or budget periods. Identification of the period of performance in the Federal award per § 200.211(b)(5) does not commit the awarding agency to fund the award beyond the currently approved budget period.

Personal property means property other than real property. It may be tangible, having physical existence, or intangible.

Personally Identifiable Information (PII) means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. Some information that is considered to be PII is available in public sources such as telephone books, public websites, and university listings. This type of information is considered to be Public PII and includes, for example, first and last name, address, work telephone number, email address, home telephone number, and general educational credentials. The definition of PII is not anchored to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified. Non-PII can become PII whenever additional information is made publicly available, in any medium and from any source, that, when combined with other available information, could be used to identify an individual.

Program income means gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance except as provided in § 200.307(f). (See the definition of *period of performance* in this section.) Program income includes but is not limited to income from fees for services performed, the use or rental of real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal statutes, regulations, or the terms and conditions of the Federal award, program income does not include rebates, credits, discounts, and interest earned on any of them. See also § 200.407. See also 35 U.S.C. 200-212 “Disposition of Rights in Educational Awards” applies to inventions made under Federal awards.

Project cost means total allowable costs incurred under a Federal award and all required cost sharing and voluntary committed cost sharing, including third-party contributions.

Property means real property or personal property. See also the definitions of *real property* and *personal property* in this section.

Protected Personally Identifiable Information (Protected PII) means an individual's first name or first initial and last name in combination with any one or more of types of information, including, but not limited to, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics, date and

place of birth, mother's maiden name, criminal, medical and financial records, educational transcripts. This does not include PII that is required by law to be disclosed. See also the definition of *Personally Identifiable Information (PII)* in this section.

Questioned cost means a cost that is questioned by the auditor because of an audit finding:

- (1) Which resulted from a violation or possible violation of a statute, regulation, or the terms and conditions of a Federal award, including for funds used to match Federal funds;
- (2) Where the costs, at the time of the audit, are not supported by adequate documentation; or
- (3) Where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.
- (4) Questioned costs are not an improper payment until reviewed and confirmed to be improper as defined in OMB Circular A-123 appendix C. (See also the definition of *Improper payment* in this section).

Real property means land, including land improvements, structures and appurtenances thereto, but excludes moveable machinery and equipment.

Recipient means an entity, usually but not limited to non-Federal entities that receives a Federal award directly from a Federal awarding agency. The term recipient does not include subrecipients or individuals that are beneficiaries of the award.

Renewal award means an award made subsequent to an expiring Federal award for which the start date is contiguous with, or closely follows, the end of the expiring Federal award. A renewal award's start date will begin a distinct period of performance.

Research and Development (R&D) means all research activities, both basic and applied, and all development activities that are performed by non-Federal entities. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function. "Research" is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. "Development" is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

Simplified acquisition threshold means the dollar amount below which a non-Federal entity may purchase property or services using small purchase methods (see § 200.320). Non-Federal entities adopt small purchase procedures in order to expedite the purchase of items at or below the simplified acquisition threshold. The simplified acquisition threshold for procurement activities administered under Federal awards is set by the FAR at 48 CFR part 2, subpart 2.1. The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. However, in no circumstances can this threshold exceed the dollar value established in the FAR (48 CFR part 2, subpart 2.1) for the simplified acquisition threshold. Recipients should determine if local government laws on purchasing apply.

Special purpose equipment means equipment which is used only for research, medical, scientific, or other technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers. See also the definitions of *equipment* and *general purpose equipment* in this section.

State means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments.

Student Financial Aid (SFA) means Federal awards under those programs of general student assistance, such as those authorized by Title IV of the Higher Education Act of 1965, as amended, (20 U.S.C. 1070-1099d), which are administered by the U.S. Department of Education, and similar programs provided by other Federal agencies. It does not include Federal awards under programs that provide fellowships or similar Federal awards to students on a competitive basis, or for specified studies or research.

Subaward means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

Subrecipient means an entity, usually but not limited to non-Federal entities, that receives a subaward from a pass-through entity to carry out part of a Federal award; but does not include an individual that is a beneficiary of such award. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

Subsidiary means an entity in which more than 50 percent of the entity is owned or controlled directly by a parent corporation or through another subsidiary of a parent corporation.

Supplies means all tangible personal property other than those described in the definition of *equipment* in this section. A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the non-Federal entity for financial statement purposes or \$5,000, regardless of the length of its useful life. See also the definitions of *computing devices* and *equipment* in this section.

Telecommunications cost means the cost of using communication and telephony technologies such as mobile phones, land lines, and internet.

Termination means the ending of a Federal award, in whole or in part at any time prior to the planned end of period of performance. A lack of available funds is not a termination.

Third-party in-kind contributions means the value of non-cash contributions (*i.e.*, property or services) that—

- (1) Benefit a federally-assisted project or program; and
- (2) Are contributed by non-Federal third parties, without charge, to a non-Federal entity under a Federal award.

Unliquidated financial obligations means, for financial reports prepared on a cash basis, financial obligations incurred by the non-Federal entity that have not been paid (liquidated). For reports prepared on an accrual expenditure basis, these are financial obligations incurred by the non-Federal entity for which an expenditure has not been recorded.

Unobligated balance means the amount of funds under a Federal award that the non-Federal entity has not obligated. The amount is computed by subtracting the cumulative amount of the non-Federal entity's unliquidated financial obligations and expenditures of funds under the Federal award from the cumulative amount of the funds that the Federal awarding agency or pass-through entity authorized the non-Federal entity to obligate.

Voluntary committed cost sharing means cost sharing specifically pledged on a voluntary basis in the proposal's budget on the part of the non-Federal entity and that becomes a binding requirement of Federal award. See also § 200.306.

[85 FR 49529, Aug. 13, 2020, as amended at 86 FR 10439, Feb. 22, 2021]

Subpart B—General Provisions

Link to an amendment published at 89 FR 30136, Apr. 22, 2024.

§ 200.100 Purpose.

(a) **Purpose.**

(1) This part establishes uniform administrative requirements, cost principles, and audit requirements for Federal awards to non-Federal entities, as described in § 200.101. Federal awarding agencies must not impose additional or inconsistent requirements, except as provided in §§ 200.102 and 200.211, or unless specifically required by Federal statute, regulation, or Executive order.

(2) This part provides the basis for a systematic and periodic collection and uniform submission by Federal agencies of information on all Federal financial assistance programs to the Office of Management and Budget (OMB). It also establishes Federal policies related to the delivery of this information to the public, including through the use of electronic media. It prescribes the manner in which General Services Administration (GSA), OMB, and Federal agencies that administer Federal financial assistance programs are to carry out their statutory responsibilities under the Federal Program Information Act (31 U.S.C. 6101-6106).

(b) **Administrative requirements.** Subparts B through D of this part set forth the uniform administrative requirements for grant and cooperative agreements, including the requirements for Federal awarding agency management of Federal grant programs before the Federal award has been made, and the requirements Federal awarding agencies may impose on non-Federal entities in the Federal award.

(c) **Cost principles.** Subpart E of this part establishes principles for determining the allowable costs incurred by non-Federal entities under Federal awards. The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal Government participation in the financing of a particular program or project. The principles are designed to provide that Federal awards bear their fair share of cost recognized under these principles except where restricted or prohibited by statute.

(d) **Single Audit Requirements and Audit Follow-up.** Subpart F of this part is issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). It sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards. These provisions also provide the policies and procedures for Federal awarding agencies and pass-through entities when using the results of these audits.

(e) **Guidance on challenges and prizes.** For OMB guidance to Federal awarding agencies on challenges and prizes, please see memo M-10-11 Guidance on the Use of Challenges and Prizes to Promote Open Government, issued March 8, 2010, or its successor.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49536, Aug. 13, 2020]

§ 200.101 Applicability.

- (a) *General applicability to Federal agencies.*
- (1) The requirements established in this part apply to Federal agencies that make Federal awards to non-Federal entities. These requirements are applicable to all costs related to Federal awards.

(2) Federal awarding agencies may apply subparts A through E of this part to Federal agencies, for-profit entities, foreign public entities, or foreign organizations, except where the Federal awarding agency determines that the application of these subparts would be inconsistent with the international responsibilities of the United States or the statutes or regulations of a foreign government.
- (b) *Applicability to different types of Federal awards.*
- (1) Throughout this part when the word “must” is used it indicates a requirement. Whereas, use of the word “should” or “may” indicates a best practice or recommended approach rather than a requirement and permits discretion.

(2) The following table describes what portions of this part apply to which types of Federal awards. The terms and conditions of Federal awards (including this part) flow down to subawards to subrecipients unless a particular section of this part or the terms and conditions of the Federal award specifically indicate otherwise. This means that non-Federal entities must comply with requirements in this part regardless of whether the non-Federal entity is a recipient or subrecipient of a Federal award. Pass-through entities must comply with the requirements described in subpart D of this part, §§ 200.331 through 200.333, but not any requirements in this part directed towards Federal awarding agencies unless the requirements of this part or the terms and conditions of the Federal award indicate otherwise.

Table 1 to Paragraph (b)

The following portions of this Part	Are applicable to the following types of Federal Awards and Fixed-Price Contracts and Subcontracts (except as noted in paragraphs (d) and (e) of this section):	Are NOT applicable to the following types of Federal Awards and Fixed-Price Contracts and Subcontracts:
Subpart A—Acronyms and Definitions	—All	
Subpart B—General Provisions, except for §§ 200.111 English Language, 200.112 Conflict of Interest, 200.113 Mandatory Disclosures	—All	
§§ 200.111 English Language, 200.112 Conflict of Interest, 200.113 Mandatory Disclosures	—Grant Agreements and cooperative agreements	—Agreements for loans, loan guarantees, interest subsidies and insurance. —Procurement contracts awarded by Federal Agencies under the Federal Acquisition Regulation and subcontracts under those contracts.

The following portions of this Part	Are applicable to the following types of Federal Awards and Fixed-Price Contracts and Subcontracts (except as noted in paragraphs (d) and (e) of this section):	Are NOT applicable to the following types of Federal Awards and Fixed-Price Contracts and Subcontracts:
Subparts C-D, except for §§ 200.203 Requirement to provide public notice of Federal financial assistance programs, 200.303 Internal controls, 200.331-333 Subrecipient Monitoring and Management	—Grant Agreements and cooperative agreements	—Agreements for loans, loan guarantees, interest subsidies and insurance. —Procurement contracts awarded by Federal Agencies under the Federal Acquisition Regulation and subcontracts under those contracts.
§ 200.203 Requirement to provide public notice of Federal financial assistance programs	—Grant Agreements and cooperative agreements —Agreements for loans, loan guarantees, interest subsidies and insurance	—Procurement contracts awarded by Federal Agencies under the Federal Acquisition Regulation and subcontracts under those contracts.
§§ 200.303 Internal controls, 200.331-333 Subrecipient Monitoring and Management	—All	
Subpart E—Cost Principles	—Grant Agreements and cooperative agreements, except those providing food commodities —All procurement contracts under the Federal Acquisition Regulations except those that are not negotiated	—Grant agreements and cooperative agreements providing foods commodities. —Fixed amount awards. —Agreements for loans, loans guarantees, interest subsidies and insurance. —Federal awards to hospitals (see Appendix IX Hospital Cost Principles).
Subpart F—Audit Requirements	—Grant Agreements and cooperative agreements —Contracts and subcontracts, except for fixed price contracts and subcontracts, awarded under the Federal Acquisition Regulation —Agreements for loans, loans guarantees, interest subsidies and insurance and other forms of Federal Financial Assistance as defined by the Single Audit Act Amendment of 1996	—Fixed-price contracts and subcontracts awarded under the Federal Acquisition Regulation.

- (c) **Federal award of cost-reimbursement contract under the FAR to a non-Federal entity.** When a non-Federal entity is awarded a cost-reimbursement contract, only subpart D, §§ 200.331 through 200.333, and subparts E and F of this part are incorporated by reference into the contract, but the requirements of subparts D, E, and F are supplementary to the FAR and the contract. When the Cost Accounting Standards (CAS) are applicable to the contract, they take precedence over the requirements of this part, including subpart F of this part, which are supplementary to the CAS requirements. In addition, costs that are made unallowable under 10 U.S.C. 2324(e) and 41 U.S.C. 4304(a) as described in the FAR 48 CFR part 31, subpart 31.2, and 48 CFR 31.603 are always unallowable. For requirements other than those covered in subpart D, §§ 200.331 through 200.333, and subparts E and F of this part, the terms of the contract and the FAR apply. Note that when a non-Federal entity is awarded a FAR contract, the FAR applies, and the terms and conditions of the contract shall prevail over the requirements of this part.
- (d) **Governing provisions.** With the exception of subpart F of this part, which is required by the Single Audit Act, in any circumstances where the provisions of Federal statutes or regulations differ from the provisions of this part, the provision of the Federal statutes or regulations govern. This includes, for agreements with Indian tribes, the provisions of the Indian Self-Determination and Education and Assistance Act (ISDEAA), as amended, 25 U.S.C 450-458ddd-2.
- (e) **Program applicability.** Except for §§ 200.203, 200.216, and 200.331 through 200.333, the requirements in subparts C, D, and E of this part do not apply to the following programs:
- (1) The block grant awards authorized by the Omnibus Budget Reconciliation Act of 1981 (including Community Services), except to the extent that subpart E of this part apply to subrecipients of Community Services Block Grant funds pursuant to 42 U.S.C. 9916(a)(1)(B);
 - (2) Federal awards to local education agencies under 20 U.S.C. 7702-7703b, (portions of the Impact Aid program);
 - (3) Payments under the Department of Veterans Affairs' State Home Per Diem Program (38 U.S.C. 1741); and
 - (4) Federal awards authorized under the Child Care and Development Block Grant Act of 1990, as amended:
 - (i) Child Care and Development Block Grant (42 U.S.C. 9858).
 - (ii) Child Care Mandatory and Matching Funds of the Child Care and Development Fund (42 U.S.C. 9858).
- (f) **Additional program applicability.** Except for §§ 200.203 and 200.216, the guidance in subpart C of this part does not apply to the following programs:
- (1) Entitlement Federal awards to carry out the following programs of the Social Security Act:
 - (i) Temporary Assistance for Needy Families (title IV-A of the Social Security Act, 42 U.S.C. 601-619);
 - (ii) Child Support Enforcement and Establishment of Paternity (title IV-D of the Social Security Act, 42 U.S.C. 651-669b);
 - (iii) Foster Care and Adoption Assistance (title IV-E of the Act, 42 U.S.C. 670-679c);
 - (iv) Aid to the Aged, Blind, and Disabled (titles I, X, XIV, and XVI-AABD of the Act, as amended);

- (v) Medical Assistance (Medicaid) (title XIX of the Act, 42 U.S.C. 1396-1396w-5) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B) of the Social Security Act (42 U.S.C. 1396b(a)(6)(B)); and
- (vi) Children's Health Insurance Program (title XXI of the Act, 42 U.S.C. 1397aa-1397mm).
- (2) A Federal award for an experimental, pilot, or demonstration project that is also supported by a Federal award listed in paragraph (f)(1) of this section.
- (3) Federal awards under subsection 412(e) of the Immigration and Nationality Act and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96-422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits (8 U.S.C. 1522(e)).
- (4) Entitlement awards under the following programs of The National School Lunch Act:
 - (i) National School Lunch Program (section 4 of the Act, 42 U.S.C. 1753);
 - (ii) Commodity Assistance (section 6 of the Act, 42 U.S.C. 1755);
 - (iii) Special Meal Assistance (section 11 of the Act, 42 U.S.C. 1759a);
 - (iv) Summer Food Service Program for Children (section 13 of the Act, 42 U.S.C. 1761); and
 - (v) Child and Adult Care Food Program (section 17 of the Act, 42 U.S.C. 1766).
- (5) Entitlement awards under the following programs of The Child Nutrition Act of 1966:
 - (i) Special Milk Program (section 3 of the Act, 42 U.S.C. 1772);
 - (ii) School Breakfast Program (section 4 of the Act, 42 U.S.C. 1773); and
 - (iii) State Administrative Expenses (section 7 of the Act, 42 U.S.C. 1776).
- (6) Entitlement awards for State Administrative Expenses under The Food and Nutrition Act of 2008 (section 16 of the Act, 7 U.S.C. 2025).
- (7) Non-discretionary Federal awards under the following non-entitlement programs:
 - (i) Special Supplemental Nutrition Program for Women, Infants and Children (section 17 of the Child Nutrition Act of 1966) 42 U.S.C. 1786;
 - (ii) The Emergency Food Assistance Programs (Emergency Food Assistance Act of 1983) 7 U.S.C. 7501 note; and
 - (iii) Commodity Supplemental Food Program (section 5 of the Agriculture and Consumer Protection Act of 1973) 7 U.S.C. 612c note.

[85 FR 49536, Aug. 13, 2020, as amended at 86 FR 10439, Feb. 22, 2021]

§ 200.102 Exceptions.

- (a) With the exception of subpart F of this part, OMB may allow exceptions for classes of Federal awards or non-Federal entities subject to the requirements of this part when exceptions are not prohibited by statute. In the interest of maximum uniformity, exceptions from the requirements of this part will be permitted as described in this section.

- (b) Exceptions on a case-by-case basis for individual non-Federal entities may be authorized by the Federal awarding agency or cognizant agency for indirect costs, except where otherwise required by law or where OMB or other approval is expressly required by this part.
- (c) The Federal awarding agency may adjust requirements to a class of Federal awards or non-Federal entities when approved by OMB, or when required by Federal statutes or regulations, except for the requirements in subpart F of this part. A Federal awarding agency may apply less restrictive requirements when making fixed amount awards as defined in subpart A of this part, except for those requirements imposed by statute or in subpart F of this part.
- (d) Federal awarding agencies may request exceptions in support of innovative program designs that apply a risk-based, data-driven framework to alleviate select compliance requirements and hold recipients accountable for good performance. See also § 200.206.

[85 FR 49538, Aug. 13, 2020, as amended at 86 FR 10439, Feb. 22, 2021]

§ 200.103 Authorities.

This part is issued under the following authorities.

- (a) Subparts B through D of this part are authorized under 31 U.S.C. 503 (the Chief Financial Officers Act, Functions of the Deputy Director for Management), 41 U.S.C. 1101-1131 (the Office of Federal Procurement Policy Act), Reorganization Plan No. 2 of 1970, and Executive Order 11541 ("Prescribing the Duties of the Office of Management and Budget and the Domestic Policy Council in the Executive Office of the President"), the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507), as well as The Federal Program Information Act (Pub. L. 95-220 and Pub. L. 98-169, as amended, codified at 31 U.S.C. 6101-6106).
- (b) Subpart E of this part is authorized under the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended (31 U.S.C. 1101-1125); the Chief Financial Officers Act of 1990 (31 U.S.C. 503-504); Reorganization Plan No. 2 of 1970; and Executive Order 11541, "Prescribing the Duties of the Office of Management and Budget and the Domestic Policy Council in the Executive Office of the President."
- (c) Subpart F of this part is authorized under the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507).

[85 FR 49538, Aug. 13, 2020]

§ 200.104 Supersession.

As described in § 200.110, this part supersedes the following OMB guidance documents and regulations under title 2 of the Code of Federal Regulations:

- (a) A-21, "Cost Principles for Educational Institutions" (2 CFR part 220);
- (b) A-87, "Cost Principles for State, Local and Indian Tribal Governments" (2 CFR part 225) and also FEDERAL REGISTER notice 51 FR 552 (January 6, 1986);
- (c) A-89, "Federal Domestic Assistance Program Information";
- (d) A-102, "Grant Awards and Cooperative Agreements with State and Local Governments";

- (e) A-110, "Uniform Administrative Requirements for Awards and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations" (codified at 2 CFR 215);
- (f) A-122, "Cost Principles for Non-Profit Organizations" (2 CFR part 230);
- (g) A-133, "Audits of States, Local Governments and Non-Profit Organizations"; and
- (h) Those sections of A-50 related to audits performed under subpart F of this part.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75882, Dec. 19, 2014; 85 FR 49538, Aug. 13, 2020]

§ 200.105 Effect on other issuances.

- (a) **Superseding inconsistent requirements.** For Federal awards subject to this part, all administrative requirements, program manuals, handbooks and other non-regulatory materials that are inconsistent with the requirements of this part must be superseded upon implementation of this part by the Federal agency, except to the extent they are required by statute or authorized in accordance with the provisions in § 200.102.
- (b) **Imposition of requirements on recipients.** Agencies may impose legally binding requirements on recipients only through the notice and public comment process through an approved agency process, including as authorized by this part, other statutes or regulations, or as incorporated into the terms of a Federal award.

[85 FR 49538, Aug. 13, 2020]

§ 200.106 Agency implementation.

The specific requirements and responsibilities of Federal agencies and non-Federal entities are set forth in this part. Federal agencies making Federal awards to non-Federal entities must implement the language in subparts C through F of this part in codified regulations unless different provisions are required by Federal statute or are approved by OMB.

[85 FR 49538, Aug. 13, 2020]

§ 200.107 OMB responsibilities.

OMB will review Federal agency regulations and implementation of this part, and will provide interpretations of policy requirements and assistance to ensure effective and efficient implementation. Any exceptions will be subject to approval by OMB. Exceptions will only be made in particular cases where adequate justification is presented.

§ 200.108 Inquiries.

Inquiries concerning this part may be directed to the Office of Federal Financial Management Office of Management and Budget, in Washington, DC. Non-Federal entities' inquiries should be addressed to the Federal awarding agency, cognizant agency for indirect costs, cognizant or oversight agency for audit, or pass-through entity as appropriate.

§ 200.109 Review date.

OMB will review this part at least every five years after December 26, 2013.

§ 200.110 Effective/applicability date.

- (a) The standards set forth in this part that affect the administration of Federal awards issued by Federal awarding agencies become effective once implemented by Federal awarding agencies or when any future amendment to this part becomes final.
- (b) Existing negotiated indirect cost rates (as of the publication date of the revisions to the guidance) will remain in place until they expire. The effective date of changes to indirect cost rates must be based upon the date that a newly re-negotiated rate goes into effect for a specific non-Federal entity's fiscal year. Therefore, for indirect cost rates and cost allocation plans, the revised Uniform Guidance (as of the publication date for revisions to the guidance) become effective in generating proposals and negotiating a new rate (when the rate is re-negotiated).

[85 FR 49538, Aug. 13, 2020]

§ 200.111 English language.

- (a) All Federal financial assistance announcements and Federal award information must be in the English language. Applications must be submitted in the English language and must be in the terms of U.S. dollars. If the Federal awarding agency receives applications in another currency, the Federal awarding agency will evaluate the application by converting the foreign currency to United States currency using the date specified for receipt of the application.
- (b) Non-Federal entities may translate the Federal award and other documents into another language. In the event of inconsistency between any terms and conditions of the Federal award and any translation into another language, the English language meaning will control. Where a significant portion of the non-Federal entity's employees who are working on the Federal award are not fluent in English, the non-Federal entity must provide the Federal award in English and the language(s) with which employees are more familiar.

§ 200.112 Conflict of interest.

The Federal awarding agency must establish conflict of interest policies for Federal awards. The non-Federal entity must disclose in writing any potential conflict of interest to the Federal awarding agency or pass-through entity in accordance with applicable Federal awarding agency policy.

§ 200.113 Mandatory disclosures.

The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Non-Federal entities that have received a Federal award including the term and condition outlined in appendix XII to this part are required to report certain civil, criminal, or administrative proceedings to SAM (currently FAPIIS). Failure to make required disclosures can result in any of the remedies described in § 200.339. (See also 2 CFR part 180, 31 U.S.C. 3321, and 41 U.S.C. 2313.)

[85 FR 49539, Aug. 13, 2020]

Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards

Link to an amendment published at 89 FR 30136, Apr. 22, 2024.

Source: 85 FR 49539, Aug. 13, 2020, unless otherwise noted.

§ 200.200 Purpose.

Sections 200.201 through 200.216 prescribe instructions and other pre-award matters to be used by Federal awarding agencies in the program planning, announcement, application and award processes.

§ 200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts.

- (a) **Federal award instrument.** The Federal awarding agency or pass-through entity must decide on the appropriate instrument for the Federal award (i.e., grant agreement, cooperative agreement, or contract) in accordance with the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301-08).
- (b) **Fixed amount awards.** In addition to the options described in paragraph (a) of this section, Federal awarding agencies, or pass-through entities as permitted in § 200.333, may use fixed amount awards (see *Fixed amount awards* in § 200.1) to which the following conditions apply:
 - (1) The Federal award amount is negotiated using the cost principles (or other pricing information) as a guide. The Federal awarding agency or pass-through entity may use fixed amount awards if the project scope has measurable goals and objectives and if adequate cost, historical, or unit pricing data is available to establish a fixed amount award based on a reasonable estimate of actual cost. Payments are based on meeting specific requirements of the Federal award. Accountability is based on performance and results. Except in the case of termination before completion of the Federal award, there is no governmental review of the actual costs incurred by the non-Federal entity in performance of the award. Some of the ways in which the Federal award may be paid include, but are not limited to:
 - (i) In several partial payments, the amount of each agreed upon in advance, and the “milestone” or event triggering the payment also agreed upon in advance, and set forth in the Federal award;
 - (ii) On a unit price basis, for a defined unit or units, at a defined price or prices, agreed to in advance of performance of the Federal award and set forth in the Federal award; or,
 - (iii) In one payment at Federal award completion.
 - (2) A fixed amount award cannot be used in programs which require mandatory cost sharing or match.
 - (3) The non-Federal entity must certify in writing to the Federal awarding agency or pass-through entity at the end of the Federal award that the project or activity was completed or the level of effort was expended. If the required level of activity or effort was not carried out, the amount of the Federal award must be adjusted.
 - (4) Periodic reports may be established for each Federal award.
 - (5) Changes in principal investigator, project leader, project partner, or scope of effort must receive the prior written approval of the Federal awarding agency or pass-through entity.

§ 200.202 Program planning and design.

The Federal awarding agency must design a program and create an Assistance Listing before announcing the Notice of Funding Opportunity. The program must be designed with clear goals and objectives that facilitate the delivery of meaningful results consistent with the Federal authorizing legislation of the program. Program performance shall be measured based on the goals and objectives developed during program planning and design. See § 200.301 for more information on performance measurement. Performance measures may differ depending on the type of program. The program must align with the strategic goals and objectives within the Federal awarding agency's performance plan and should support the Federal awarding agency's performance measurement, management, and reporting as required by Part 6 of OMB Circular A-11 (Preparation, Submission, and Execution of the Budget). The program must also be designed to align with the Program Management Improvement Accountability Act (Pub. L. 114-264).

§ 200.203 Requirement to provide public notice of Federal financial assistance programs.

- (a) The Federal awarding agency must notify the public of Federal programs in the Federal Assistance Listings maintained by the General Services Administration (GSA).
 - (1) The Federal Assistance Listings is the single, authoritative, governmentwide comprehensive source of Federal financial assistance program information produced by the executive branch of the Federal Government.
 - (2) The information that the Federal awarding agency must submit to GSA for approval by OMB is listed in paragraph (b) of this section. GSA must prescribe the format for the submission in coordination with OMB.
 - (3) The Federal awarding agency may not award Federal financial assistance without assigning it to a program that has been included in the Federal Assistance Listings as required in this section unless there are exigent circumstances requiring otherwise, such as timing requirements imposed by statute.
- (b) For each program that awards discretionary Federal awards, non-discretionary Federal awards, loans, insurance, or any other type of Federal financial assistance, the Federal awarding agency must, to the extent practicable, create, update, and manage Assistance Listings entries based on the authorizing statute for the program and comply with additional guidance provided by GSA in consultation with OMB to ensure consistent, accurate information is available to prospective applicants. Accordingly, Federal awarding agencies must submit the following information to GSA:
 - (1) **Program Description, Purpose, Goals, and Measurement.** A brief summary of the statutory or regulatory requirements of the program and its intended outcome. Where appropriate, the Program Description, Purpose, Goals, and Measurement should align with the strategic goals and objectives within the Federal awarding agency's performance plan and should support the Federal awarding agency's performance measurement, management, and reporting as required by Part 6 of OMB Circular A-11;
 - (2) **Identification.** Identification of whether the program makes Federal awards on a discretionary basis or the Federal awards are prescribed by Federal statute, such as in the case of formula grants.
 - (3) **Projected total amount of funds available for the program.** Estimates based on previous year funding are acceptable if current appropriations are not available at the time of the submission;

- (4) **Anticipated source of available funds.** The statutory authority for funding the program and, to the extent possible, agency, sub-agency, or, if known, the specific program unit that will issue the Federal awards, and associated funding identifier (e.g., Treasury Account Symbol(s));
- (5) **General eligibility requirements.** The statutory, regulatory or other eligibility factors or considerations that determine the applicant's qualification for Federal awards under the program (e.g., type of non-Federal entity); and
- (6) **Applicability of Single Audit Requirements.** Applicability of Single Audit Requirements as required by subpart F of this part.

§ 200.204 Notices of funding opportunities.

For discretionary grants and cooperative agreements that are competed, the Federal awarding agency must announce specific funding opportunities by providing the following information in a public notice:

- (a) **Summary information in notices of funding opportunities.** The Federal awarding agency must display the following information posted on the OMB-designated governmentwide website for funding and applying for Federal financial assistance, in a location preceding the full text of the announcement:
 - (1) Federal Awarding Agency Name;
 - (2) Funding Opportunity Title;
 - (3) Announcement Type (whether the funding opportunity is the initial announcement of this funding opportunity or a modification of a previously announced opportunity);
 - (4) Funding Opportunity Number (required, if applicable). If the Federal awarding agency has assigned or will assign a number to the funding opportunity announcement, this number must be provided;
 - (5) Assistance Listings Number(s);
 - (6) Key Dates. Key dates include due dates for applications or Executive Order 12372 submissions, as well as for any letters of intent or pre-applications. For any announcement issued before a program's application materials are available, key dates also include the date on which those materials will be released; and any other additional information, as deemed applicable by the relevant Federal awarding agency.
- (b) **Availability period.** The Federal awarding agency must generally make all funding opportunities available for application for at least 60 calendar days. The Federal awarding agency may make a determination to have a less than 60 calendar day availability period but no funding opportunity should be available for less than 30 calendar days unless exigent circumstances require as determined by the Federal awarding agency head or delegate.
- (c) **Full text of funding opportunities.** The Federal awarding agency must include the following information in the full text of each funding opportunity. For specific instructions on the content required in this section, refer to appendix I to this part.
 - (1) Full programmatic description of the funding opportunity.
 - (2) Federal award information, including sufficient information to help an applicant make an informed decision about whether to submit an application. (See also § 200.414(c)(4)).
 - (3) Specific eligibility information, including any factors or priorities that affect an applicant's or its application's eligibility for selection.

- (4) Application Preparation and Submission Information, including the applicable submission dates and time.
- (5) Application Review Information including the criteria and process to be used to evaluate applications. See also §§ 200.205 and 200.206.
- (6) Federal Award Administration Information. See also § 200.211.
- (7) Applicable terms and conditions for resulting awards, including any exceptions from these standard terms.

§ 200.205 Federal awarding agency review of merit of proposals.

For discretionary Federal awards, unless prohibited by Federal statute, the Federal awarding agency must design and execute a merit review process for applications, with the objective of selecting recipients most likely to be successful in delivering results based on the program objectives outlined in section § 200.202. A merit review is an objective process of evaluating Federal award applications in accordance with written standards set forth by the Federal awarding agency. This process must be described or incorporated by reference in the applicable funding opportunity (see appendix I to this part.). See also § 200.204. The Federal awarding agency must also periodically review its merit review process.

§ 200.206 Federal awarding agency review of risk posed by applicants.

(a) *Review of OMB-designated repositories of governmentwide data.*

- (1) Prior to making a Federal award, the Federal awarding agency is required by the Payment Integrity Information Act of 2019, 31 U.S.C. 3301 note, and 41 U.S.C. 2313 to review information available through any OMB-designated repositories of governmentwide eligibility qualification or financial integrity information as appropriate. See also suspension and debarment requirements at 2 CFR part 180 as well as individual Federal agency suspension and debarment regulations in title 2 of the Code of Federal Regulations.
- (2) In accordance 41 U.S.C. 2313, the Federal awarding agency is required to review the non-public segment of the OMB-designated integrity and performance system accessible through SAM (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) prior to making a Federal award where the Federal share is expected to exceed the simplified acquisition threshold, defined in 41 U.S.C. 134, over the period of performance. As required by Public Law 112-239, National Defense Authorization Act for Fiscal Year 2013, prior to making a Federal award, the Federal awarding agency must consider all of the information available through FAPIIS with regard to the applicant and any immediate highest level owner, predecessor (i.e.; a non-Federal entity that is replaced by a successor), or subsidiary, identified for that applicant in FAPIIS, if applicable. At a minimum, the information in the system for a prior Federal award recipient must demonstrate a satisfactory record of executing programs or activities under Federal grants, cooperative agreements, or procurement awards; and integrity and business ethics. The Federal awarding agency may make a Federal award to a recipient who does not fully meet these standards, if it is determined that the information is not relevant to the current Federal award under consideration or there are specific conditions that can appropriately mitigate the effects of the non-Federal entity's risk in accordance with § 200.208.

(b) *Risk evaluation.*

- (1) The Federal awarding agency must have in place a framework for evaluating the risks posed by applicants before they receive Federal awards. This evaluation may incorporate results of the evaluation of the applicant's eligibility or the quality of its application. If the Federal awarding agency determines that a Federal award will be made, special conditions that correspond to the degree of risk assessed may be applied to the Federal award. Criteria to be evaluated must be described in the announcement of funding opportunity described in § 200.204.
- (2) In evaluating risks posed by applicants, the Federal awarding agency may use a risk-based approach and may consider any items such as the following:
 - (i) **Financial stability.** Financial stability;
 - (ii) **Management systems and standards.** Quality of management systems and ability to meet the management standards prescribed in this part;
 - (iii) **History of performance.** The applicant's record in managing Federal awards, if it is a prior recipient of Federal awards, including timeliness of compliance with applicable reporting requirements, conformance to the terms and conditions of previous Federal awards, and if applicable, the extent to which any previously awarded amounts will be expended prior to future awards;
 - (iv) **Audit reports and findings.** Reports and findings from audits performed under subpart F of this part or the reports and findings of any other available audits; and
 - (v) **Ability to effectively implement requirements.** The applicant's ability to effectively implement statutory, regulatory, or other requirements imposed on non-Federal entities.
- (c) **Risk-based requirements adjustment.** The Federal awarding agency may adjust requirements when a risk-evaluation indicates that it may be merited either pre-award or post-award.
- (d) **Suspension and debarment compliance.**
 - (1) The Federal awarding agency must comply with the guidelines on governmentwide suspension and debarment in 2 CFR part 180, and must require non-Federal entities to comply with these provisions. These provisions restrict Federal awards, subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal programs or activities.

[85 FR 49539, Aug. 13, 2020, as amended at 86 FR 10439, Feb. 22, 2021]

§ 200.207 Standard application requirements.

- (a) **Paperwork clearances.** The Federal awarding agency may only use application information collections approved by OMB under the Paperwork Reduction Act of 1995 and OMB's implementing regulations in 5 CFR part 1320 and in alignment with OMB-approved, governmentwide data elements available from the OMB-designated standards lead. Consistent with these requirements, OMB will authorize additional information collections only on a limited basis.
- (b) **Information collection.** If applicable, the Federal awarding agency may inform applicants and recipients that they do not need to provide certain information otherwise required by the relevant information collection.

§ 200.208 Specific conditions.

- (a) Federal awarding agencies are responsible for ensuring that specific Federal award conditions are consistent with the program design reflected in § 200.202 and include clear performance expectations of recipients as required in § 200.301.
- (b) The Federal awarding agency or pass-through entity may adjust specific Federal award conditions as needed, in accordance with this section, based on an analysis of the following factors:
 - (1) Based on the criteria set forth in § 200.206;
 - (2) The applicant or recipient's history of compliance with the general or specific terms and conditions of a Federal award;
 - (3) The applicant or recipient's ability to meet expected performance goals as described in § 200.211; or
 - (4) A responsibility determination of an applicant or recipient.
- (c) Additional Federal award conditions may include items such as the following:
 - (1) Requiring payments as reimbursements rather than advance payments;
 - (2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given performance period;
 - (3) Requiring additional, more detailed financial reports;
 - (4) Requiring additional project monitoring;
 - (5) Requiring the non-Federal entity to obtain technical or management assistance; or
 - (6) Establishing additional prior approvals.
- (d) If the Federal awarding agency or pass-through entity is imposing additional requirements, they must notify the applicant or non-Federal entity as to:
 - (1) The nature of the additional requirements;
 - (2) The reason why the additional requirements are being imposed;
 - (3) The nature of the action needed to remove the additional requirement, if applicable;
 - (4) The time allowed for completing the actions if applicable; and
 - (5) The method for requesting reconsideration of the additional requirements imposed.
- (e) Any additional requirements must be promptly removed once the conditions that prompted them have been satisfied.

§ 200.209 Certifications and representations.

Unless prohibited by the U.S. Constitution, Federal statutes or regulations, each Federal awarding agency or pass-through entity is authorized to require the non-Federal entity to submit certifications and representations required by Federal statutes, or regulations on an annual basis. Submission may be required more frequently if the non-Federal entity fails to meet a requirement of a Federal award.

§ 200.210 Pre-award costs.

For requirements on costs incurred by the applicant prior to the start date of the period of performance of the Federal award, see § 200.458.

§ 200.211 Information contained in a Federal award.

A Federal award must include the following information:

- (a) **Federal award performance goals.** Performance goals, indicators, targets, and baseline data must be included in the Federal award, where applicable. The Federal awarding agency must also specify how performance will be assessed in the terms and conditions of the Federal award, including the timing and scope of expected performance. See §§ 200.202 and 200.301 for more information on Federal award performance goals.
- (b) **General Federal award information.** The Federal awarding agency must include the following general Federal award information in each Federal award:
 - (1) Recipient name (which must match the name associated with its unique entity identifier as defined at 2 CFR 25.315);
 - (2) Recipient's unique entity identifier;
 - (3) Unique Federal Award Identification Number (FAIN);
 - (4) Federal Award Date (see Federal award date in § 200.201);
 - (5) Period of Performance Start and End Date;
 - (6) Budget Period Start and End Date;
 - (7) Amount of Federal Funds Obligated by this action;
 - (8) Total Amount of Federal Funds Obligated;
 - (9) Total Approved Cost Sharing or Matching, where applicable;
 - (10) Total Amount of the Federal Award including approved Cost Sharing or Matching;
 - (11) Budget Approved by the Federal Awarding Agency;
 - (11) Federal award description, (to comply with statutory requirements (e.g., FFATA));
 - (12) Name of Federal awarding agency and contact information for awarding official,
 - (13) Assistance Listings Number and Title;
 - (14) Identification of whether the award is R&D; and
 - (15) Indirect cost rate for the Federal award (including if the de minimis rate is charged per § 200.414).
- (c) **General terms and conditions.**
 - (1) Federal awarding agencies must incorporate the following general terms and conditions either in the Federal award or by reference, as applicable:
 - (i) **Administrative requirements.** Administrative requirements implemented by the Federal awarding agency as specified in this part.

- (ii) **National policy requirements.** These include statutory, executive order, other Presidential directive, or regulatory requirements that apply by specific reference and are not program-specific. See § 200.300 Statutory and national policy requirements.
- (iii) **Recipient integrity and performance matters.** If the total Federal share of the Federal award may include more than \$500,000 over the period of performance, the Federal awarding agency must include the term and condition available in appendix XII of this part. See also § 200.113.
- (iv) **Future budget periods.** If it is anticipated that the period of performance will include multiple budget periods, the Federal awarding agency must indicate that subsequent budget periods are subject to the availability of funds, program authority, satisfactory performance, and compliance with the terms and conditions of the Federal award.
- (v) **Termination provisions.** Federal awarding agencies must make recipients aware, in a clear and unambiguous manner, of the termination provisions in § 200.340, including the applicable termination provisions in the Federal awarding agency's regulations or in each Federal award.

- (2) The Federal award must incorporate, by reference, all general terms and conditions of the award, which must be maintained on the agency's website.
- (3) If a non-Federal entity requests a copy of the full text of the general terms and conditions, the Federal awarding agency must provide it.
- (4) Wherever the general terms and conditions are publicly available, the Federal awarding agency must maintain an archive of previous versions of the general terms and conditions, with effective dates, for use by the non-Federal entity, auditors, or others.

(d) **Federal awarding agency, program, or Federal award specific terms and conditions.** The Federal awarding agency must include with each Federal award any terms and conditions necessary to communicate requirements that are in addition to the requirements outlined in the Federal awarding agency's general terms and conditions. See also § 200.208. Whenever practicable, these specific terms and conditions also should be shared on the agency's website and in notices of funding opportunities (as outlined in § 200.204) in addition to being included in a Federal award. See also § 200.207.

(e) **Federal awarding agency requirements.** Any other information required by the Federal awarding agency.

§ 200.212 Public access to Federal award information.

- (a) In accordance with statutory requirements for Federal spending transparency (e.g., FFATA), except as noted in this section, for applicable Federal awards the Federal awarding agency must announce all Federal awards publicly and publish the required information on a publicly available OMB-designated governmentwide website.
- (b) All information posted in the designated integrity and performance system accessible through SAM (currently FAPIIS) on or after April 15, 2011 will be publicly available after a waiting period of 14 calendar days, except for:
 - (1) Past performance reviews required by Federal Government contractors in accordance with the Federal Acquisition Regulation (FAR) 48 CFR part 42, subpart 42.15;
 - (2) Information that was entered prior to April 15, 2011; or
 - (3) Information that is withdrawn during the 14-calendar day waiting period by the Federal Government official.

- (c) Nothing in this section may be construed as requiring the publication of information otherwise exempt under the Freedom of Information Act (5 U.S.C 552), or controlled unclassified information pursuant to Executive Order 13556.

§ 200.213 Reporting a determination that a non-Federal entity is not qualified for a Federal award.

- (a) If a Federal awarding agency does not make a Federal award to a non-Federal entity because the official determines that the non-Federal entity does not meet either or both of the minimum qualification standards as described in § 200.206(a)(2), the Federal awarding agency must report that determination to the designated integrity and performance system accessible through SAM (currently FAPIIS), only if all of the following apply:
 - (1) The only basis for the determination described in this paragraph (a) is the non-Federal entity's prior record of executing programs or activities under Federal awards or its record of integrity and business ethics, as described in § 200.206(a)(2) (i.e., the entity was determined to be qualified based on all factors other than those two standards); and
 - (2) The total Federal share of the Federal award that otherwise would be made to the non-Federal entity is expected to exceed the simplified acquisition threshold over the period of performance.
- (b) The Federal awarding agency is not required to report a determination that a non-Federal entity is not qualified for a Federal award if they make the Federal award to the non-Federal entity and include specific award terms and conditions, as described in § 200.208.
- (c) If a Federal awarding agency reports a determination that a non-Federal entity is not qualified for a Federal award, as described in paragraph (a) of this section, the Federal awarding agency also must notify the non-Federal entity that—
 - (1) The determination was made and reported to the designated integrity and performance system accessible through SAM, and include with the notification an explanation of the basis for the determination;
 - (2) The information will be kept in the system for a period of five years from the date of the determination, as required by section 872 of Public Law 110-417, as amended (41 U.S.C. 2313), then archived;
 - (3) Each Federal awarding agency that considers making a Federal award to the non-Federal entity during that five year period must consider that information in judging whether the non-Federal entity is qualified to receive the Federal award when the total Federal share of the Federal award is expected to include an amount of Federal funding in excess of the simplified acquisition threshold over the period of performance;
 - (4) The non-Federal entity may go to the awardee integrity and performance portal accessible through SAM (currently the Contractor Performance Assessment Reporting System (CPARS)) and comment on any information the system contains about the non-Federal entity itself; and
 - (5) Federal awarding agencies will consider that non-Federal entity's comments in determining whether the non-Federal entity is qualified for a future Federal award.
- (d) If a Federal awarding agency enters information into the designated integrity and performance system accessible through SAM about a determination that a non-Federal entity is not qualified for a Federal award and subsequently:

- (1) Learns that any of that information is erroneous, the Federal awarding agency must correct the information in the system within three business days; and
 - (2) Obtains an update to that information that could be helpful to other Federal awarding agencies, the Federal awarding agency is strongly encouraged to amend the information in the system to incorporate the update in a timely way.
- (e) Federal awarding agencies must not post any information that will be made publicly available in the non-public segment of designated integrity and performance system that is covered by a disclosure exemption under the Freedom of Information Act. If the recipient asserts within seven calendar days to the Federal awarding agency that posted the information that some or all of the information made publicly available is covered by a disclosure exemption under the Freedom of Information Act, the Federal awarding agency that posted the information must remove the posting within seven calendar days of receiving the assertion. Prior to reposting the releasable information, the Federal awarding agency must resolve the issue in accordance with the agency's Freedom of Information Act procedures.

§ 200.214 Suspension and debarment.

Non-Federal entities are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. The regulations in 2 CFR part 180 restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

§ 200.215 Never contract with the enemy.

Federal awarding agencies and recipients are subject to the regulations implementing Never Contract with the Enemy in 2 CFR part 183. The regulations in 2 CFR part 183 affect covered contracts, grants and cooperative agreements that are expected to exceed \$50,000 within the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

§ 200.216 Prohibition on certain telecommunications and video surveillance services or equipment.

- (a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
 - (1) Procure or obtain;
 - (2) Extend or renew a contract to procure or obtain; or
 - (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

- (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
- (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- (b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.
- (c) See Public Law 115-232, section 889 for additional information.
- (d) See also § 200.471.

Subpart D—Post Federal Award Requirements

Link to an amendment published at 89 FR 30136, Apr. 22, 2024.

Source: 85 FR 49543, Aug. 13, 2020, unless otherwise noted.

§ 200.300 Statutory and national policy requirements.

- (a) The Federal awarding agency must manage and administer the Federal award in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with the U.S. Constitution, Federal Law, and public policy requirements: Including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination. The Federal awarding agency must communicate to the non-Federal entity all relevant public policy requirements, including those in general appropriations provisions, and incorporate them either directly or by reference in the terms and conditions of the Federal award.
- (b) The non-Federal entity is responsible for complying with all requirements of the Federal award. For all Federal awards, this includes the provisions of FFATA, which includes requirements on executive compensation, and also requirements implementing the Act for the non-Federal entity at 2 CFR parts 25 and 170. See also statutory requirements for whistleblower protections at 10 U.S.C. 2409, 41 U.S.C. 4712, and 10 U.S.C. 2324, 41 U.S.C. 4304 and 4310.

§ 200.301 Performance measurement.

- (a) The Federal awarding agency must measure the recipient's performance to show achievement of program goals and objectives, share lessons learned, improve program outcomes, and foster adoption of promising practices. Program goals and objectives should be derived from program planning and design. See § 200.202 for more information. Where appropriate, the Federal award may include specific program goals, indicators, targets, baseline data, data collection, or expected outcomes (such as outputs, or

services performance or public impacts of any of these) with an expected timeline for accomplishment. Where applicable, this should also include any performance measures or independent sources of data that may be used to measure progress. The Federal awarding agency will determine how performance progress is measured, which may differ by program. Performance measurement progress must be both measured and reported. See § 200.329 for more information on monitoring program performance. The Federal awarding agency may include program-specific requirements, as applicable. These requirements must be aligned, to the extent permitted by law, with the Federal awarding agency strategic goals, strategic objectives or performance goals that are relevant to the program. See also OMB Circular A-11, Preparation, Submission, and Execution of the Budget Part 6.

- (b) The Federal awarding agency should provide recipients with clear performance goals, indicators, targets, and baseline data as described in § 200.211. Performance reporting frequency and content should be established to not only allow the Federal awarding agency to understand the recipient progress but also to facilitate identification of promising practices among recipients and build the evidence upon which the Federal awarding agency's program and performance decisions are made. See § 200.328 for more information on reporting program performance.
- (c) This provision is designed to operate in tandem with evidence-related statutes (e.g.; The Foundations for Evidence-Based Policymaking Act of 2018, which emphasizes collaboration and coordination to advance data and evidence-building functions in the Federal government). The Federal awarding agency should also specify any requirements of award recipients' participation in a federally funded evaluation, and any evaluation activities required to be conducted by the Federal award.

§ 200.302 Financial management.

- (a) Each state must expend and account for the Federal award in accordance with state laws and procedures for expending and accounting for the state's own funds. In addition, the state's and the other non-Federal entity's financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions; and the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, regulations, and the terms and conditions of the Federal award. See also § 200.450.
- (b) The financial management system of each non-Federal entity must provide for the following (see also §§ 200.334, 200.335, 200.336, and 200.337):
 - (1) Identification, in its accounts, of all Federal awards received and expended and the Federal programs under which they were received. Federal program and Federal award identification must include, as applicable, the Assistance Listings title and number, Federal award identification number and year, name of the Federal agency, and name of the pass-through entity, if any.
 - (2) Accurate, current, and complete disclosure of the financial results of each Federal award or program in accordance with the reporting requirements set forth in §§ 200.328 and 200.329. If a Federal awarding agency requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient must not be required to establish an accrual accounting system. This recipient may develop accrual data for its reports on the basis of an analysis of the documentation on hand. Similarly, a pass-through entity must not require a subrecipient to establish an accrual accounting system and must allow the subrecipient to develop accrual data for its reports on the basis of an analysis of the documentation on hand.

- (3) Records that identify adequately the source and application of funds for federally-funded activities. These records must contain information pertaining to Federal awards, authorizations, financial obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation.
- (4) Effective control over, and accountability for, all funds, property, and other assets. The non-Federal entity must adequately safeguard all assets and assure that they are used solely for authorized purposes. See § 200.303.
- (5) Comparison of expenditures with budget amounts for each Federal award.
- (6) Written procedures to implement the requirements of § 200.305.
- (7) Written procedures for determining the allowability of costs in accordance with subpart E of this part and the terms and conditions of the Federal award.

§ 200.303 Internal controls.

The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States or the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- (b) Comply with the U.S. Constitution, Federal statutes, regulations, and the terms and conditions of the Federal awards.
- (c) Evaluate and monitor the non-Federal entity's compliance with statutes, regulations and the terms and conditions of Federal awards.
- (d) Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.
- (e) Take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive or the non-Federal entity considers sensitive consistent with applicable Federal, State, local, and tribal laws regarding privacy and responsibility over confidentiality.

§ 200.304 Bonds.

The Federal awarding agency may include a provision on bonding, insurance, or both in the following circumstances:

- (a) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, the Federal awarding agency, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the non-Federal entity are not deemed adequate to protect the interest of the Federal Government.
- (b) The Federal awarding agency may require adequate fidelity bond coverage where the non-Federal entity lacks sufficient coverage to protect the Federal Government's interest.

- (c) Where bonds are required in the situations described above, the bonds must be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223.

§ 200.305 Federal payment.

- (a) For states, payments are governed by Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at 31 CFR part 205 and Treasury Financial Manual (TFM) 4A-2000, "Overall Disbursing Rules for All Federal Agencies".
- (b) For non-Federal entities other than states, payments methods must minimize the time elapsing between the transfer of funds from the United States Treasury or the pass-through entity and the disbursement by the non-Federal entity whether the payment is made by electronic funds transfer, or issuance or redemption of checks, warrants, or payment by other means. See also § 200.302(b)(6). Except as noted elsewhere in this part, Federal agencies must require recipients to use only OMB-approved, governmentwide information collection requests to request payment.
 - (1) The non-Federal entity must be paid in advance, provided it maintains or demonstrates the willingness to maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement by the non-Federal entity, and financial management systems that meet the standards for fund control and accountability as established in this part. Advance payments to a non-Federal entity must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the non-Federal entity in carrying out the purpose of the approved program or project. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements by the non-Federal entity for direct program or project costs and the proportionate share of any allowable indirect costs. The non-Federal entity must make timely payment to contractors in accordance with the contract provisions.
 - (2) Whenever possible, advance payments must be consolidated to cover anticipated cash needs for all Federal awards made by the Federal awarding agency to the recipient.
 - (i) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer and must comply with applicable guidance in 31 CFR part 208.
 - (ii) Non-Federal entities must be authorized to submit requests for advance payments and reimbursements at least monthly when electronic fund transfers are not used, and as often as they like when electronic transfers are used, in accordance with the provisions of the Electronic Fund Transfer Act (15 U.S.C. 1693-1693r).
 - (3) Reimbursement is the preferred method when the requirements in this paragraph (b) cannot be met, when the Federal awarding agency sets a specific condition per § 200.208, or when the non-Federal entity requests payment by reimbursement. This method may be used on any Federal award for construction, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal award constitutes a minor portion of the project. When the reimbursement method is used, the Federal awarding agency or pass-through entity must make payment within 30 calendar days after receipt of the billing, unless the Federal awarding agency or pass-through entity reasonably believes the request to be improper.
 - (4) If the non-Federal entity cannot meet the criteria for advance payments and the Federal awarding agency or pass-through entity has determined that reimbursement is not feasible because the non-Federal entity lacks sufficient working capital, the Federal awarding agency or pass-through entity may provide cash on a working capital advance basis. Under this procedure, the Federal awarding

agency or pass-through entity must advance cash payments to the non-Federal entity to cover its estimated disbursement needs for an initial period generally geared to the non-Federal entity's disbursing cycle. Thereafter, the Federal awarding agency or pass-through entity must reimburse the non-Federal entity for its actual cash disbursements. Use of the working capital advance method of payment requires that the pass-through entity provide timely advance payments to any subrecipients in order to meet the subrecipient's actual cash disbursements. The working capital advance method of payment must not be used by the pass-through entity if the reason for using this method is the unwillingness or inability of the pass-through entity to provide timely advance payments to the subrecipient to meet the subrecipient's actual cash disbursements.

- (5) To the extent available, the non-Federal entity must disburse funds available from program income (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional cash payments.
- (6) Unless otherwise required by Federal statutes, payments for allowable costs by non-Federal entities must not be withheld at any time during the period of performance unless the conditions of § 200.208, subpart D of this part, including § 200.339, or one or more of the following applies:
 - (i) The non-Federal entity has failed to comply with the project objectives, Federal statutes, regulations, or the terms and conditions of the Federal award.
 - (ii) The non-Federal entity is delinquent in a debt to the United States as defined in OMB Circular A-129, "Policies for Federal Credit Programs and Non-Tax Receivables." Under such conditions, the Federal awarding agency or pass-through entity may, upon reasonable notice, inform the non-Federal entity that payments must not be made for financial obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.
 - (iii) A payment withheld for failure to comply with Federal award conditions, but without suspension of the Federal award, must be released to the non-Federal entity upon subsequent compliance. When a Federal award is suspended, payment adjustments will be made in accordance with § 200.343.
 - (iv) A payment must not be made to a non-Federal entity for amounts that are withheld by the non-Federal entity from payment to contractors to assure satisfactory completion of work. A payment must be made when the non-Federal entity actually disburses the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.
- (7) Standards governing the use of banks and other institutions as depositories of advance payments under Federal awards are as follows.
 - (i) The Federal awarding agency and pass-through entity must not require separate depository accounts for funds provided to a non-Federal entity or establish any eligibility requirements for depositories for funds provided to the non-Federal entity. However, the non-Federal entity must be able to account for funds received, obligated, and expended.
 - (ii) Advance payments of Federal funds must be deposited and maintained in insured accounts whenever possible.
- (8) The non-Federal entity must maintain advance payments of Federal awards in interest-bearing accounts, unless the following apply:
 - (i) The non-Federal entity receives less than \$250,000 in Federal awards per year.

- (ii) The best reasonably available interest-bearing account would not be expected to earn interest in excess of \$500 per year on Federal cash balances.
 - (iii) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.
 - (iv) A foreign government or banking system prohibits or precludes interest-bearing accounts.
- (9) Interest earned amounts up to \$500 per year may be retained by the non-Federal entity for administrative expense. Any additional interest earned on Federal advance payments deposited in interest-bearing accounts must be remitted annually to the Department of Health and Human Services Payment Management System (PMS) through an electronic medium using either Automated Clearing House (ACH) network or a Fedwire Funds Service payment.
 - (i) For returning interest on Federal awards paid through PMS, the refund should:
 - (A) Provide an explanation stating that the refund is for interest;
 - (B) List the PMS Payee Account Number(s) (PANs);
 - (C) List the Federal award number(s) for which the interest was earned; and
 - (D) Make returns payable to: Department of Health and Human Services.
 - (ii) For returning interest on Federal awards not paid through PMS, the refund should:
 - (A) Provide an explanation stating that the refund is for interest;
 - (B) Include the name of the awarding agency;
 - (C) List the Federal award number(s) for which the interest was earned; and
 - (D) Make returns payable to: Department of Health and Human Services.
- (10) Funds, principal, and excess cash returns must be directed to the original Federal agency payment system. The non-Federal entity should review instructions from the original Federal agency payment system. Returns should include the following information:
 - (i) Payee Account Number (PAN), if the payment originated from PMS, or Agency information to indicate whom to credit the funding if the payment originated from ASAP, NSF, or another Federal agency payment system.
 - (ii) PMS document number and subaccount(s), if the payment originated from PMS, or relevant account numbers if the payment originated from another Federal agency payment system.
 - (iii) The reason for the return (e.g., excess cash, funds not spent, interest, part interest part other, etc.)
- (11) When returning funds or interest to PMS you must include the following as applicable:
 - (i) For ACH Returns:

Routing Number: 051036706

Account number: 303000

Bank Name and Location: Credit Gateway—ACH Receiver St. Paul, MN

(ii) For Fedwire Returns¹:

Routing Number: 021030004

Account number: 75010501

Bank Name and Location: Federal Reserve Bank Treas NYC/Funds Transfer Division New York, NY

¹ Please note that the organization initiating payment is likely to incur a charge from their Financial Institution for this type of payment.

(iii) For International ACH Returns:

Beneficiary Account: Federal Reserve Bank of New York/ITS (FRBNY/ITS)

Bank: Citibank N.A. (New York)

Swift Code: CITIUS33

Account Number: 36838868

Bank Address: 388 Greenwich Street, New York, NY 10013 USA

Payment Details (Line 70): Agency Locator Code (ALC): 75010501

Name (abbreviated when possible) and ALC Agency POC

(iv) For recipients that do not have electronic remittance capability, please make check² payable to: "The Department of Health and Human Services."

Mail Check to Treasury approved lockbox:

HHS Program Support Center, P.O. Box 530231, Atlanta, GA 30353-0231

² Please allow 4-6 weeks for processing of a payment by check to be applied to the appropriate PMS account.

(v) Questions can be directed to PMS at 877-614-5533 or PMSSupport@psc.hhs.gov.

§ 200.306 Cost sharing or matching.

- (a) Under Federal research proposals, voluntary committed cost sharing is not expected. It cannot be used as a factor during the merit review of applications or proposals, but may be considered if it is both in accordance with Federal awarding agency regulations and specified in a notice of funding opportunity. Criteria for considering voluntary committed cost sharing and any other program policy factors that may be used to determine who may receive a Federal award must be explicitly described in the notice of funding opportunity. See also §§ 200.414 and 200.204 and appendix I to this part.

- (b) For all Federal awards, any shared costs or matching funds and all contributions, including cash and third-party in-kind contributions, must be accepted as part of the non-Federal entity's cost sharing or matching when such contributions meet all of the following criteria:
 - (1) Are verifiable from the non-Federal entity's records;
 - (2) Are not included as contributions for any other Federal award;
 - (3) Are necessary and reasonable for accomplishment of project or program objectives;
 - (4) Are allowable under subpart E of this part;
 - (5) Are not paid by the Federal Government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs;
 - (6) Are provided for in the approved budget when required by the Federal awarding agency; and
 - (7) Conform to other provisions of this part, as applicable.
- (c) Unrecovered indirect costs, including indirect costs on cost sharing or matching may be included as part of cost sharing or matching only with the prior approval of the Federal awarding agency. Unrecovered indirect cost means the difference between the amount charged to the Federal award and the amount which could have been charged to the Federal award under the non-Federal entity's approved negotiated indirect cost rate.
- (d) Values for non-Federal entity contributions of services and property must be established in accordance with the cost principles in subpart E of this part. If a Federal awarding agency authorizes the non-Federal entity to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching must be the lesser of paragraph (d)(1) or (2) of this section.
 - (1) The value of the remaining life of the property recorded in the non-Federal entity's accounting records at the time of donation.
 - (2) The current fair market value. However, when there is sufficient justification, the Federal awarding agency may approve the use of the current fair market value of the donated property, even if it exceeds the value described in paragraph (d)(1) of this section at the time of donation.
- (e) Volunteer services furnished by third-party professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for third-party volunteer services must be consistent with those paid for similar work by the non-Federal entity. In those instances in which the required skills are not found in the non-Federal entity, rates must be consistent with those paid for similar work in the labor market in which the non-Federal entity competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, necessary, allocable, and otherwise allowable may be included in the valuation.
- (f) When a third-party organization furnishes the services of an employee, these services must be valued at the employee's regular rate of pay plus an amount of fringe benefits that is reasonable, necessary, allocable, and otherwise allowable, and indirect costs at either the third-party organization's approved federally-negotiated indirect cost rate or, a rate in accordance with § 200.414(d) provided these services

employ the same skill(s) for which the employee is normally paid. Where donated services are treated as indirect costs, indirect cost rates will separate the value of the donated services so that reimbursement for the donated services will not be made.

- (g) Donated property from third parties may include such items as equipment, office supplies, laboratory supplies, or workshop and classroom supplies. Value assessed to donated property included in the cost sharing or matching share must not exceed the fair market value of the property at the time of the donation.
- (h) The method used for determining cost sharing or matching for third-party-donated equipment, buildings and land for which title passes to the non-Federal entity may differ according to the purpose of the Federal award, if paragraph (h)(1) or (2) of this section applies.
 - (1) If the purpose of the Federal award is to assist the non-Federal entity in the acquisition of equipment, buildings or land, the aggregate value of the donated property may be claimed as cost sharing or matching.
 - (2) If the purpose of the Federal award is to support activities that require the use of equipment, buildings or land, normally only depreciation charges for equipment and buildings may be made. However, the fair market value of equipment or other capital assets and fair rental charges for land may be allowed, provided that the Federal awarding agency has approved the charges. See also § 200.420.
- (i) The value of donated property must be determined in accordance with the usual accounting policies of the non-Federal entity, with the following qualifications:
 - (1) The value of donated land and buildings must not exceed its fair market value at the time of donation to the non-Federal entity as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the non-Federal entity as required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601-4655) (Uniform Act) except as provided in the implementing regulations at 49 CFR part 24, "Uniform Relocation Assistance And Real Property Acquisition For Federal And Federally-Assisted Programs".
 - (2) The value of donated equipment must not exceed the fair market value of equipment of the same age and condition at the time of donation.
 - (3) The value of donated space must not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.
 - (4) The value of loaned equipment must not exceed its fair rental value.
- (j) For third-party in-kind contributions, the fair market value of goods and services must be documented and to the extent feasible supported by the same methods used internally by the non-Federal entity.
- (k) For IHEs, see also OMB memorandum M-01-06, dated January 5, 2001, Clarification of OMB A-21 Treatment of Voluntary Uncommitted Cost Sharing and Tuition Remission Costs.

§ 200.307 Program income.

- (a) **General.** Non-Federal entities are encouraged to earn income to defray program costs where appropriate.

- (b) **Cost of generating program income.** If authorized by Federal regulations or the Federal award, costs incidental to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the Federal award.
- (c) **Governmental revenues.** Taxes, special assessments, levies, fines, and other such revenues raised by a non-Federal entity are not program income unless the revenues are specifically identified in the Federal award or Federal awarding agency regulations as program income.
- (d) **Property.** Proceeds from the sale of real property, equipment, or supplies are not program income; such proceeds will be handled in accordance with the requirements of the Property Standards §§ 200.311, 200.313, and 200.314, or as specifically identified in Federal statutes, regulations, or the terms and conditions of the Federal award.
- (e) **Use of program income.** If the Federal awarding agency does not specify in its regulations or the terms and conditions of the Federal award, or give prior approval for how program income is to be used, paragraph (e)(1) of this section must apply. For Federal awards made to IHEs and nonprofit research institutions, if the Federal awarding agency does not specify in its regulations or the terms and conditions of the Federal award how program income is to be used, paragraph (e)(2) of this section must apply. In specifying alternatives to paragraphs (e)(1) and (2) of this section, the Federal awarding agency may distinguish between income earned by the recipient and income earned by subrecipients and between the sources, kinds, or amounts of income. When the Federal awarding agency authorizes the approaches in paragraphs (e)(2) and (3) of this section, program income in excess of any amounts specified must also be deducted from expenditures.
 - (1) **Deduction.** Ordinarily program income must be deducted from total allowable costs to determine the net allowable costs. Program income must be used for current costs unless the Federal awarding agency authorizes otherwise. Program income that the non-Federal entity did not anticipate at the time of the Federal award must be used to reduce the Federal award and non-Federal entity contributions rather than to increase the funds committed to the project.
 - (2) **Addition.** With prior approval of the Federal awarding agency (except for IHEs and nonprofit research institutions, as described in this paragraph (e)) program income may be added to the Federal award by the Federal agency and the non-Federal entity. The program income must be used for the purposes and under the conditions of the Federal award.
 - (3) **Cost sharing or matching.** With prior approval of the Federal awarding agency, program income may be used to meet the cost sharing or matching requirement of the Federal award. The amount of the Federal award remains the same.
- (f) **Income after the period of performance.** There are no Federal requirements governing the disposition of income earned after the end of the period of performance for the Federal award, unless the Federal awarding agency regulations or the terms and conditions of the Federal award provide otherwise. The Federal awarding agency may negotiate agreements with recipients regarding appropriate uses of income earned after the period of performance as part of the grant closeout process. See also § 200.344.
- (g) **License fees and royalties.** Unless the Federal statute, regulations, or terms and conditions for the Federal award provide otherwise, the non-Federal entity is not accountable to the Federal awarding agency with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions made under a Federal award to which 37 CFR part 401 is applicable.

§ 200.308 Revision of budget and program plans.

- (a) The approved budget for the Federal award summarizes the financial aspects of the project or program as approved during the Federal award process. It may include either the Federal and non-Federal share (see definition for *Federal share* in § 200.1) or only the Federal share, depending upon Federal awarding agency requirements. The budget and program plans include considerations for performance and program evaluation purposes whenever required in accordance with the terms and conditions of the award.
- (b) Recipients are required to report deviations from budget or project scope or objective, and request prior approvals from Federal awarding agencies for budget and program plan revisions, in accordance with this section.
- (c) For non-construction Federal awards, recipients must request prior approvals from Federal awarding agencies for the following program or budget-related reasons:
 - (1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).
 - (2) Change in a key person specified in the application or the Federal award.
 - (3) The disengagement from the project for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.
 - (4) The inclusion, unless waived by the Federal awarding agency, of costs that require prior approval in accordance with subpart E of this part as applicable.
 - (5) The transfer of funds budgeted for participant support costs to other categories of expense.
 - (6) Unless described in the application and funded in the approved Federal awards, the subawarding, transferring or contracting out of any work under a Federal award, including fixed amount subawards as described in § 200.333. This provision does not apply to the acquisition of supplies, material, equipment or general support services.
 - (7) Changes in the approved cost-sharing or matching provided by the non-Federal entity.
 - (8) The need arises for additional Federal funds to complete the project.
- (d) No other prior approval requirements for specific items may be imposed unless an exception has been approved by OMB. See also §§ 200.102 and 200.407.
- (e) Except for requirements listed in paragraphs (c)(1) through (8) of this section, the Federal awarding agency is authorized, at its option, to waive other cost-related and administrative prior written approvals contained in subparts D and E of this part. Such waivers may include authorizing recipients to do any one or more of the following:
 - (1) Incur project costs 90 calendar days before the Federal awarding agency makes the Federal award. Expenses more than 90 calendar days pre-award require prior approval of the Federal awarding agency. All costs incurred before the Federal awarding agency makes the Federal award are at the recipient's risk (*i.e.*, the Federal awarding agency is not required to reimburse such costs if for any reason the recipient does not receive a Federal award or if the Federal award is less than anticipated and inadequate to cover such costs). See also § 200.458.
 - (2) Initiate a one-time extension of the period of performance by up to 12 months unless one or more of the conditions outlined in paragraphs (e)(2)(i) through (iii) of this section apply. For one-time extensions, the recipient must notify the Federal awarding agency in writing with the supporting

reasons and revised period of performance at least 10 calendar days before the end of the period of performance specified in the Federal award. This one-time extension must not be exercised merely for the purpose of using unobligated balances. Extensions require explicit prior Federal awarding agency approval when:

- (i) The terms and conditions of the Federal award prohibit the extension.
 - (ii) The extension requires additional Federal funds.
 - (iii) The extension involves any change in the approved objectives or scope of the project.
- (3) Carry forward unobligated balances to subsequent budget periods.
- (4) For Federal awards that support research, unless the Federal awarding agency provides otherwise in the Federal award or in the Federal awarding agency's regulations, the prior approval requirements described in this paragraph (e) are automatically waived (i.e., recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (e)(2) of this section applies.
- (f) The Federal awarding agency may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for Federal awards in which the Federal share of the project exceeds the simplified acquisition threshold and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the Federal awarding agency. The Federal awarding agency cannot permit a transfer that would cause any Federal appropriation to be used for purposes other than those consistent with the appropriation.
- (g) All other changes to non-construction budgets, except for the changes described in paragraph (c) of this section, do not require prior approval (see also § 200.407).
- (h) For construction Federal awards, the recipient must request prior written approval promptly from the Federal awarding agency for budget revisions whenever paragraph (h)(1), (2), or (3) of this section applies:
 - (1) The revision results from changes in the scope or the objective of the project or program.
 - (2) The need arises for additional Federal funds to complete the project.
 - (3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in subpart E.
 - (4) No other prior approval requirements for budget revisions may be imposed unless an exception has been approved by OMB.
 - (5) When a Federal awarding agency makes a Federal award that provides support for construction and non-construction work, the Federal awarding agency may require the recipient to obtain prior approval from the Federal awarding agency before making any fund or budget transfers between the two types of work supported.
- (i) When requesting approval for budget revisions, the recipient must use the same format for budget information that was used in the application, unless the Federal awarding agency indicates a letter of request suffices.
- (j) Within 30 calendar days from the date of receipt of the request for budget revisions, the Federal awarding agency must review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the Federal awarding agency must inform the recipient in writing of the date when the recipient may expect the decision.

§ 200.309 Modifications to Period of Performance.

If a Federal awarding agency or pass-through entity approves an extension, or if a recipient extends under § 200.308(e)(2), the Period of Performance will be amended to end at the completion of the extension. If a termination occurs, the Period of Performance will be amended to end upon the effective date of termination. If a renewal award is issued, a distinct Period of Performance will begin.

PROPERTY STANDARDS

§ 200.310 Insurance coverage.

The non-Federal entity must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided to property owned by the non-Federal entity. Federally-owned property need not be insured unless required by the terms and conditions of the Federal award.

§ 200.311 Real property.

- (a) **Title.** Subject to the requirements and conditions set forth in this section, title to real property acquired or improved under a Federal award will vest upon acquisition in the non-Federal entity.
- (b) **Use.** Except as otherwise provided by Federal statutes or by the Federal awarding agency, real property will be used for the originally authorized purpose as long as needed for that purpose, during which time the non-Federal entity must not dispose of or encumber its title or other interests.
- (c) **Disposition.** When real property is no longer needed for the originally authorized purpose, the non-Federal entity must obtain disposition instructions from the Federal awarding agency or pass-through entity. The instructions must provide for one of the following alternatives:
 - (1) Retain title after compensating the Federal awarding agency. The amount paid to the Federal awarding agency will be computed by applying the Federal awarding agency's percentage of participation in the cost of the original purchase (and costs of any improvements) to the fair market value of the property. However, in those situations where the non-Federal entity is disposing of real property acquired or improved with a Federal award and acquiring replacement real property under the same Federal award, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.
 - (2) Sell the property and compensate the Federal awarding agency. The amount due to the Federal awarding agency will be calculated by applying the Federal awarding agency's percentage of participation in the cost of the original purchase (and cost of any improvements) to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the Federal award has not been closed out, the net proceeds from sale may be offset against the original cost of the property. When the non-Federal entity is directed to sell property, sales procedures must be followed that provide for competition to the extent practicable and result in the highest possible return.
 - (3) Transfer title to the Federal awarding agency or to a third party designated/approved by the Federal awarding agency. The non-Federal entity is entitled to be paid an amount calculated by applying the non-Federal entity's percentage of participation in the purchase of the real property (and cost of any improvements) to the current fair market value of the property.

§ 200.312 Federally-owned and exempt property.

- (a) Title to federally-owned property remains vested in the Federal Government. The non-Federal entity must submit annually an inventory listing of federally-owned property in its custody to the Federal awarding agency. Upon completion of the Federal award or when the property is no longer needed, the non-Federal entity must report the property to the Federal awarding agency for further Federal agency utilization.
- (b) If the Federal awarding agency has no further need for the property, it must declare the property excess and report it for disposal to the appropriate Federal disposal authority, unless the Federal awarding agency has statutory authority to dispose of the property by alternative methods (e.g., the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710 (i)) to donate research equipment to educational and nonprofit organizations in accordance with Executive Order 12999, "Educational Technology: Ensuring Opportunity for All Children in the Next Century."). The Federal awarding agency must issue appropriate instructions to the non-Federal entity.
- (c) Exempt property means property acquired under a Federal award where the Federal awarding agency has chosen to vest title to the property to the non-Federal entity without further responsibility to the Federal Government, based upon the explicit terms and conditions of the Federal award. The Federal awarding agency may exercise this option when statutory authority exists. Absent statutory authority and specific terms and conditions of the Federal award, title to exempt property acquired under the Federal award remains with the Federal Government.

§ 200.313 Equipment.

See also § 200.439.

- (a) **Title.** Subject to the requirements and conditions set forth in this section, title to equipment acquired under a Federal award will vest upon acquisition in the non-Federal entity. Unless a statute specifically authorizes the Federal agency to vest title in the non-Federal entity without further responsibility to the Federal Government, and the Federal agency elects to do so, the title must be a conditional title. Title must vest in the non-Federal entity subject to the following conditions:
 - (1) Use the equipment for the authorized purposes of the project during the period of performance, or until the property is no longer needed for the purposes of the project.
 - (2) Not encumber the property without approval of the Federal awarding agency or pass-through entity.
 - (3) Use and dispose of the property in accordance with paragraphs (b), (c), and (e) of this section.
- (b) **General.** A state must use, manage and dispose of equipment acquired under a Federal award by the state in accordance with state laws and procedures. Other non-Federal entities must follow paragraphs (c) through (e) of this section.
- (c) **Use.**
 - (1) Equipment must be used by the non-Federal entity in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the Federal award, and the non-Federal entity must not encumber the property without prior approval of the Federal awarding agency. The Federal awarding agency may require the submission of the applicable common form for equipment. When no longer needed for the original program or project, the equipment may be used in other activities supported by the Federal awarding agency, in the following order of priority:

- (i) Activities under a Federal award from the Federal awarding agency which funded the original program or project, then
 - (ii) Activities under Federal awards from other Federal awarding agencies. This includes consolidated equipment for information technology systems.
- (2) During the time that equipment is used on the project or program for which it was acquired, the non-Federal entity must also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, provided that such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use must be given to other programs or projects supported by Federal awarding agency that financed the equipment and second preference must be given to programs or projects under Federal awards from other Federal awarding agencies. Use for non-federally-funded programs or projects is also permissible. User fees should be considered if appropriate.
- (3) Notwithstanding the encouragement in § 200.307 to earn program income, the non-Federal entity must not use equipment acquired with the Federal award to provide services for a fee that is less than private companies charge for equivalent services unless specifically authorized by Federal statute for as long as the Federal Government retains an interest in the equipment.
- (4) When acquiring replacement equipment, the non-Federal entity may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.
- (d) **Management requirements.** Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award, until disposition takes place will, as a minimum, meet the following requirements:
 - (1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the FAIN), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.
 - (2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.
 - (3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.
 - (4) Adequate maintenance procedures must be developed to keep the property in good condition.
 - (5) If the non-Federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.
- (e) **Disposition.** When original or replacement equipment acquired under a Federal award is no longer needed for the original project or program or for other activities currently or previously supported by a Federal awarding agency, except as otherwise provided in Federal statutes, regulations, or Federal awarding agency disposition instructions, the non-Federal entity must request disposition instructions from the Federal awarding agency if required by the terms and conditions of the Federal award. Disposition of the equipment will be made as follows, in accordance with Federal awarding agency disposition instructions:

- (1) Items of equipment with a current per unit fair market value of \$5,000 or less may be retained, sold or otherwise disposed of with no further responsibility to the Federal awarding agency.
- (2) Except as provided in § 200.312(b), or if the Federal awarding agency fails to provide requested disposition instructions within 120 days, items of equipment with a current per-unit fair market value in excess of \$5,000 may be retained by the non-Federal entity or sold. The Federal awarding agency is entitled to an amount calculated by multiplying the current market value or proceeds from sale by the Federal awarding agency's percentage of participation in the cost of the original purchase. If the equipment is sold, the Federal awarding agency may permit the non-Federal entity to deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.
- (3) The non-Federal entity may transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the non-Federal entity must be entitled to compensation for its attributable percentage of the current fair market value of the property.
- (4) In cases where a non-Federal entity fails to take appropriate disposition actions, the Federal awarding agency may direct the non-Federal entity to take disposition actions.

§ 200.314 Supplies.

See also § 200.453.

- (a) Title to supplies will vest in the non-Federal entity upon acquisition. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other Federal award, the non-Federal entity must retain the supplies for use on other activities or sell them, but must, in either case, compensate the Federal Government for its share. The amount of compensation must be computed in the same manner as for equipment. See § 200.313 (e)(2) for the calculation methodology.
- (b) As long as the Federal Government retains an interest in the supplies, the non-Federal entity must not use supplies acquired under a Federal award to provide services to other organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute.

§ 200.315 Intangible property.

- (a) Title to intangible property (see definition for *Intangible property* in § 200.1) acquired under a Federal award vests upon acquisition in the non-Federal entity. The non-Federal entity must use that property for the originally-authorized purpose, and must not encumber the property without approval of the Federal awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property must occur in accordance with the provisions in § 200.313(e).
- (b) The non-Federal entity may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under a Federal award. The Federal awarding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.
- (c) The non-Federal entity is subject to applicable regulations governing patents and inventions, including governmentwide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements."
- (d) The Federal Government has the right to:

- (1) Obtain, reproduce, publish, or otherwise use the data produced under a Federal award; and
- (2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(e)

- (1) In response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under a Federal award that were used by the Federal Government in developing an agency action that has the force and effect of law, the Federal awarding agency must request, and the non-Federal entity must provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the Federal awarding agency obtains the research data solely in response to a FOIA request, the Federal awarding agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the Federal agency and the non-Federal entity. This fee is in addition to any fees the Federal awarding agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).
- (2) Published research findings means when:
 - (i) Research findings are published in a peer-reviewed scientific or technical journal; or
 - (ii) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law. "Used by the Federal Government in developing an agency action that has the force and effect of law" is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.
- (3) Research data means the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: Preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This "recorded" material excludes physical objects (e.g., laboratory samples). Research data also do not include:
 - (i) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and
 - (ii) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

§ 200.316 Property trust relationship.

Real property, equipment, and intangible property, that are acquired or improved with a Federal award must be held in trust by the non-Federal entity as trustee for the beneficiaries of the project or program under which the property was acquired or improved. The Federal awarding agency may require the non-Federal entity to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with a Federal award and that use and disposition conditions apply to the property.

PROCUREMENT STANDARDS

§ 200.317 Procurements by states.

When procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will comply with §§ 200.321, 200.322, and 200.323 and ensure that every purchase order or other contract includes any clauses required by § 200.327. All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in §§ 200.318 through 200.327.

§ 200.318 General procurement standards.

- (a) The non-Federal entity must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in §§ 200.317 through 200.327.
- (b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- (c)
 - (1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.
 - (2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.
- (d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
- (e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or

use of common or shared goods and services. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.

- (f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- (g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.
- (h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also § 200.214.
- (i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
- (j)
 - (1) The non-Federal entity may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a non-Federal entity is the sum of:
 - (i) The actual cost of materials; and
 - (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.
 - (2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.
- (k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

[85 FR 49543, Aug. 13, 2020, as amended at 86 FR 10440, Feb. 22, 2021]

§ 200.319 Competition.

- (a) All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and § 200.320.
- (b) In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:
 - (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
 - (2) Requiring unnecessary experience and excessive bonding;
 - (3) Noncompetitive pricing practices between firms or between affiliated companies;
 - (4) Noncompetitive contracts to consultants that are on retainer contracts;
 - (5) Organizational conflicts of interest;
 - (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
 - (7) Any arbitrary action in the procurement process.
- (c) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
- (d) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:
 - (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and
 - (2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

- (e) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.
- (f) Noncompetitive procurements can only be awarded in accordance with § 200.320(c).

§ 200.320 Methods of procurement to be followed.

The non-Federal entity must have and use documented procurement procedures, consistent with the standards of this section and §§ 200.317, 200.318, and 200.319 for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or sub-award.

- (a) **Informal procurement methods.** When the value of the procurement for property or services under a Federal award does not exceed the *simplified acquisition threshold (SAT)*, as defined in § 200.1, or a lower threshold established by a non-Federal entity, formal procurement methods are not required. The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:

- (1) **Micro-purchases —**

- (i) **Distribution.** The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See the definition of *micro-purchase* in § 200.1). To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.
- (ii) **Micro-purchase awards.** Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity.
- (iii) **Micro-purchase thresholds.** The non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations. Non-Federal entities may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with paragraphs (a)(1)(iv) and (v) of this section.
- (iv) **Non-Federal entity increase to the micro-purchase threshold up to \$50,000.** Non-Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to \$50,000 on an annual basis and must maintain documentation to be made available to the Federal awarding agency and auditors in accordance with § 200.334. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:
 - (A) A qualification as a low-risk auditee, in accordance with the criteria in § 200.520 for the most recent audit;

- (B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,
- (C) For public institutions, a higher threshold consistent with State law.
- (v) **Non-Federal entity increase to the micro-purchase threshold over \$50,000.** Micro-purchase thresholds higher than \$50,000 must be approved by the cognizant agency for indirect costs. The non-federal entity must submit a request with the requirements included in paragraph (a)(1)(iv) of this section. The increased threshold is valid until there is a change in status in which the justification was approved.

(2) **Small purchases —**

- (i) **Small purchase procedures.** The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.
 - (ii) **Simplified acquisition thresholds.** The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.
- (b) **Formal procurement methods.** When the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by a non-Federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with § 200.319 or paragraph (c) of this section. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:
- (1) **Sealed bids.** A procurement method in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bids method is the preferred method for procuring construction, if the conditions.
 - (i) In order for sealed bidding to be feasible, the following conditions should be present:
 - (A) A complete, adequate, and realistic specification or purchase description is available;
 - (B) Two or more responsible bidders are willing and able to compete effectively for the business; and
 - (C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
 - (ii) If sealed bids are used, the following requirements apply:
 - (A) Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;

- (B) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
 - (C) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
 - (D) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
 - (E) Any or all bids may be rejected if there is a sound documented reason.
- (2) **Proposals.** A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:
 - (i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;
 - (ii) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;
 - (iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and
 - (iv) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services through A/E firms that are a potential source to perform the proposed effort.
- (c) **Noncompetitive procurement.** There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:
 - (1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);
 - (2) The item is available only from a single source;
 - (3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;
 - (4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or
 - (5) After solicitation of a number of sources, competition is determined inadequate.

§ 200.321 Contracting with small and minority businesses, women's business enterprises, and

labor surplus area firms.

- (a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- (b) Affirmative steps must include:
 - (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
 - (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.

§ 200.322 Domestic preferences for procurements.

- (a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.
- (b) For purposes of this section:
 - (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
- (c) Federal agencies providing Federal financial assistance for infrastructure projects must implement the Buy America preferences set forth in 2 CFR part 184.

[85 FR 49543, Aug. 13, 2020, as amended at 88 FR 57790, Aug. 23, 2023]

§ 200.323 Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable,

consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

§ 200.324 Contract cost and price.

- (a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.
- (b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
- (c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under subpart E of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.
- (d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

§ 200.325 Federal awarding agency or pass-through entity review.

- (a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.
- (b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:
 - (1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;
 - (2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
 - (3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;

- (4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
 - (5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.
- (c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.
- (1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;
 - (2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

§ 200.326 Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- (b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.
- (c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

§ 200.327 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in appendix II to this part.

PERFORMANCE AND FINANCIAL MONITORING AND REPORTING

§ 200.328 Financial reporting.

Unless otherwise approved by OMB, the Federal awarding agency must solicit only the OMB-approved governmentwide data elements for collection of financial information (at time of publication the Federal Financial Report or such future, OMB-approved, governmentwide data elements available from the OMB-designated standards lead. This information must be collected with the frequency required by the terms and conditions of the Federal award, but no less frequently than annually nor more frequently than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes, and preferably in coordination with performance reporting. The Federal awarding agency must use OMB-approved common information collections, as applicable, when providing financial and performance reporting information.

§ 200.329 Monitoring and reporting program performance.

- (a) **Monitoring by the non-Federal entity.** The non-Federal entity is responsible for oversight of the operations of the Federal award supported activities. The non-Federal entity must monitor its activities under Federal awards to assure compliance with applicable Federal requirements and performance expectations are being achieved. Monitoring by the non-Federal entity must cover each program, function or activity. See also § 200.332.
- (b) **Reporting program performance.** The Federal awarding agency must use OMB-approved common information collections, as applicable, when providing financial and performance reporting information. As appropriate and in accordance with above mentioned information collections, the Federal awarding agency must require the recipient to relate financial data and accomplishments to performance goals and objectives of the Federal award. Also, in accordance with above mentioned common information collections, and when required by the terms and conditions of the Federal award, recipients must provide cost information to demonstrate cost effective practices (e.g., through unit cost data). In some instances (e.g., discretionary research awards), this will be limited to the requirement to submit technical performance reports (to be evaluated in accordance with Federal awarding agency policy). Reporting requirements must be clearly articulated such that, where appropriate, performance during the execution of the Federal award has a standard against which non-Federal entity performance can be measured.
- (c) **Non-construction performance reports.** The Federal awarding agency must use standard, governmentwide OMB-approved data elements for collection of performance information including performance progress reports, Research Performance Progress Reports.
 - (1) The non-Federal entity must submit performance reports at the interval required by the Federal awarding agency or pass-through entity to best inform improvements in program outcomes and productivity. Intervals must be no less frequent than annually nor more frequent than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes. Reports submitted annually by the non-Federal entity and/or pass-through entity must be due no later than 90 calendar days after the reporting period. Reports submitted quarterly or semiannually must be due no later than 30 calendar days after the reporting period. Alternatively, the Federal awarding agency or pass-through entity may require annual reports before the anniversary dates of multiple year Federal awards. The final performance report submitted by the non-Federal entity and/or pass-through entity must be due no later than 120 calendar days after the period of performance end date. A subrecipient must submit to the pass-through entity, no later than 90 calendar days after the

period of performance end date, all final performance reports as required by the terms and conditions of the Federal award. See also § 200.344. If a justified request is submitted by a non-Federal entity, the Federal agency may extend the due date for any performance report.

- (2) As appropriate in accordance with above mentioned performance reporting, these reports will contain, for each Federal award, brief information on the following unless other data elements are approved by OMB in the agency information collection request:
 - (i) A comparison of actual accomplishments to the objectives of the Federal award established for the period. Where the accomplishments of the Federal award can be quantified, a computation of the cost (for example, related to units of accomplishment) may be required if that information will be useful. Where performance trend data and analysis would be informative to the Federal awarding agency program, the Federal awarding agency should include this as a performance reporting requirement.
 - (ii) The reasons why established goals were not met, if appropriate.
 - (iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.
- (d) **Construction performance reports.** For the most part, onsite technical inspections and certified percentage of completion data are relied on heavily by Federal awarding agencies and pass-through entities to monitor progress under Federal awards and subawards for construction. The Federal awarding agency may require additional performance reports only when considered necessary.
- (e) **Significant developments.** Events may occur between the scheduled performance reporting dates that have significant impact upon the supported activity. In such cases, the non-Federal entity must inform the Federal awarding agency or pass-through entity as soon as the following types of conditions become known:
 - (1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the Federal award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.
 - (2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.
- (f) **Site visits.** The Federal awarding agency may make site visits as warranted by program needs.
- (g) **Performance report requirement waiver.** The Federal awarding agency may waive any performance report required by this part if not needed.

§ 200.330 Reporting on real property.

The Federal awarding agency or pass-through entity must require a non-Federal entity to submit reports at least annually on the status of real property in which the Federal Government retains an interest, unless the Federal interest in the real property extends 15 years or longer. In those instances where the Federal interest attached is for a period of 15 years or more, the Federal awarding agency or pass-through entity, at its option, may require the non-Federal entity to report at various multi-year frequencies (e.g., every two years or every three years, not to exceed a five-year reporting period; or a Federal awarding agency or pass-through entity may require annual reporting for the first three years of a Federal award and thereafter require reporting every five years).

SUBRECIPIENT MONITORING AND MANAGEMENT

§ 200.331 Subrecipient and contractor determinations.

The non-Federal entity may concurrently receive Federal awards as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with Federal awarding agencies and pass-through entities. Therefore, a pass-through entity must make case-by-case determinations whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor. The Federal awarding agency may supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with this section.

- (a) **Subrecipients.** A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. See definition for *Subaward* in § 200.1 of this part. Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:
 - (1) Determines who is eligible to receive what Federal assistance;
 - (2) Has its performance measured in relation to whether objectives of a Federal program were met;
 - (3) Has responsibility for programmatic decision-making;
 - (4) Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and
 - (5) In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.
- (b) **Contractors.** A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the contractor. See the definition of *contract* in § 200.1 of this part. Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the contractor:
 - (1) Provides the goods and services within normal business operations;
 - (2) Provides similar goods or services to many different purchasers;
 - (3) Normally operates in a competitive environment;
 - (4) Provides goods or services that are ancillary to the operation of the Federal program; and
 - (5) Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.
- (c) **Use of judgment in making determination.** In determining whether an agreement between a pass-through entity and another non-Federal entity casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed above may not be present in all cases, and the pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract.

§ 200.332 Requirements for pass-through entities.

All pass-through entities must:

- (a) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward and if any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward. Required information includes:
- (1) Federal award identification.
 - (i) Subrecipient name (which must match the name associated with its unique entity identifier);
 - (ii) Subrecipient's unique entity identifier;
 - (iii) Federal Award Identification Number (FAIN);
 - (iv) Federal Award Date (see the definition of *Federal award date* in § 200.1 of this part) of award to the recipient by the Federal agency;
 - (v) Subaward Period of Performance Start and End Date;
 - (vi) Subaward Budget Period Start and End Date;
 - (vii) Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient;
 - (viii) Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current financial obligation;
 - (ix) Total Amount of the Federal Award committed to the subrecipient by the pass-through entity;
 - (x) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);
 - (xi) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity;
 - (xii) Assistance Listings number and Title; the pass-through entity must identify the dollar amount made available under each Federal award and the Assistance Listings Number at time of disbursement;
 - (xiii) Identification of whether the award is R&D; and
 - (xiv) Indirect cost rate for the Federal award (including if the de minimis rate is charged) per § 200.414.
 - (2) All requirements imposed by the pass-through entity on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award;
 - (3) Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the Federal awarding agency including identification of any required financial and performance reports;
 - (4)
 - (i) An approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal Government. If no approved rate exists, the pass-through entity must determine the appropriate rate in collaboration with the subrecipient, which is either:

- (A) The negotiated indirect cost rate between the pass-through entity and the subrecipient; which can be based on a prior negotiated rate between a different PTE and the same subrecipient. If basing the rate on a previously negotiated rate, the pass-through entity is not required to collect information justifying this rate, but may elect to do so;
- (B) The de minimis indirect cost rate.
- (ii) The pass-through entity must not require use of a de minimis indirect cost rate if the subrecipient has a Federally approved rate. Subrecipients can elect to use the cost allocation method to account for indirect costs in accordance with § 200.405(d).
- (5) A requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this part; and
- (6) Appropriate terms and conditions concerning closeout of the subaward.
- (b) Evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring described in paragraphs (d) and (e) of this section, which may include consideration of such factors as:
 - (1) The subrecipient's prior experience with the same or similar subawards;
 - (2) The results of previous audits including whether or not the subrecipient receives a Single Audit in accordance with Subpart F of this part, and the extent to which the same or similar subaward has been audited as a major program;
 - (3) Whether the subrecipient has new personnel or new or substantially changed systems; and
 - (4) The extent and results of Federal awarding agency monitoring (e.g., if the subrecipient also receives Federal awards directly from a Federal awarding agency).
- (c) Consider imposing specific subaward conditions upon a subrecipient if appropriate as described in § 200.208.
- (d) Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. Pass-through entity monitoring of the subrecipient must include:
 - (1) Reviewing financial and performance reports required by the pass-through entity.
 - (2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and written confirmation from the subrecipient, highlighting the status of actions planned or taken to address Single Audit findings related to the particular subaward.
 - (3) Issuing a management decision for applicable audit findings pertaining only to the Federal award provided to the subrecipient from the pass-through entity as required by § 200.521.
 - (4) The pass-through entity is responsible for resolving audit findings specifically related to the subaward and not responsible for resolving crosscutting findings. If a subrecipient has a current Single Audit report posted in the Federal Audit Clearinghouse and has not otherwise been excluded from receipt of Federal funding (e.g., has been debarred or suspended), the pass-through entity may

rely on the subrecipient's cognizant audit agency or cognizant oversight agency to perform audit follow-up and make management decisions related to cross-cutting findings in accordance with section § 200.513(a)(3)(vii). Such reliance does not eliminate the responsibility of the pass-through entity to issue subawards that conform to agency and award-specific requirements, to manage risk through ongoing subaward monitoring, and to monitor the status of the findings that are specifically related to the subaward.

- (e) Depending upon the pass-through entity's assessment of risk posed by the subrecipient (as described in paragraph (b) of this section), the following monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with program requirements and achievement of performance goals:
 - (1) Providing subrecipients with training and technical assistance on program-related matters; and
 - (2) Performing on-site reviews of the subrecipient's program operations;
 - (3) Arranging for agreed-upon-procedures engagements as described in § 200.425.
- (f) Verify that every subrecipient is audited as required by Subpart F of this part when it is expected that the subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in § 200.501.
- (g) Consider whether the results of the subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity's own records.
- (h) Consider taking enforcement action against noncompliant subrecipients as described in § 200.339 of this part and in program regulations.

[85 FR 49543, Aug. 13, 2020, as amended at 86 FR 10440, Feb. 22, 2021]

§ 200.333 Fixed amount subawards.

With prior written approval from the Federal awarding agency, a pass-through entity may provide subawards based on fixed amounts up to the Simplified Acquisition Threshold, provided that the subawards meet the requirements for fixed amount awards in § 200.201.

RECORD RETENTION AND ACCESS

§ 200.334 Retention requirements for records.

Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. The only exceptions are the following:

- (a) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

- (b) When the non-Federal entity is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.
- (c) Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition.
- (d) When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 3-year retention requirement is not applicable to the non-Federal entity.
- (e) Records for program income transactions after the period of performance. In some cases recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.
- (f) Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: Indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).
 - (1) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the pass-through entity) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.
 - (2) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the pass-through entity) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

§ 200.335 Requests for transfer of records.

The Federal awarding agency must request transfer of certain records to its custody from the non-Federal entity when it determines that the records possess long-term retention value. However, in order to avoid duplicate recordkeeping, the Federal awarding agency may make arrangements for the non-Federal entity to retain any records that are continuously needed for joint use.

§ 200.336 Methods for collection, transmission, and storage of information.

The Federal awarding agency and the non-Federal entity should, whenever practicable, collect, transmit, and store Federal award-related information in open and machine-readable formats rather than in closed formats or on paper in accordance with applicable legislative requirements. A machine-readable format is a format in a standard computer language (not English text) that can be read automatically by a web browser or computer system. The Federal awarding agency or pass-through entity must always provide or accept paper versions of Federal award-related information to and from the non-Federal entity upon request. If paper copies are submitted, the Federal awarding agency or pass-through entity must not require more than an original and two copies. When original records are electronic and cannot be altered, there is no need to create and retain paper copies. When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided that they are subject to periodic quality control reviews, provide reasonable safeguards against alteration, and remain readable.

§ 200.337 Access to records.

- (a) **Records of non-Federal entities.** The Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the non-Federal entity which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the non-Federal entity's personnel for the purpose of interview and discussion related to such documents.
- (b) **Extraordinary and rare circumstances.** Only under extraordinary and rare circumstances would such access include review of the true name of victims of a crime. Routine monitoring cannot be considered extraordinary and rare circumstances that would necessitate access to this information. When access to the true name of victims of a crime is necessary, appropriate steps to protect this sensitive information must be taken by both the non-Federal entity and the Federal awarding agency. Any such access, other than under a court order or subpoena pursuant to a bona fide confidential investigation, must be approved by the head of the Federal awarding agency or delegate.
- (c) **Expiration of right of access.** The rights of access in this section are not limited to the required retention period but last as long as the records are retained. Federal awarding agencies and pass-through entities must not impose any other access requirements upon non-Federal entities.

§ 200.338 Restrictions on public access to records.

No Federal awarding agency may place restrictions on the non-Federal entity that limit public access to the records of the non-Federal entity pertinent to a Federal award, except for protected personally identifiable information (PII) or when the Federal awarding agency can demonstrate that such records will be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) or controlled unclassified information pursuant to Executive Order 13556 if the records had belonged to the Federal awarding agency. The Freedom of Information Act (5 U.S.C. 552) (FOIA) does not apply to those records that remain under a non-Federal entity's control except as required under § 200.315. Unless required by Federal, state, local, and tribal statute, non-Federal entities are not required to permit public access to their records. The non-Federal entity's records provided to a Federal agency generally will be subject to FOIA and applicable exemptions.

REMEDIES FOR NONCOMPLIANCE

§ 200.339 Remedies for noncompliance.

If a non-Federal entity fails to comply with the U.S. Constitution, Federal statutes, regulations or the terms and conditions of a Federal award, the Federal awarding agency or pass-through entity may impose additional conditions, as described in § 200.208. If the Federal awarding agency or pass-through entity determines that noncompliance cannot be remedied by imposing additional conditions, the Federal awarding agency or pass-through entity may take one or more of the following actions, as appropriate in the circumstances:

- (a) Temporarily withhold cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the Federal awarding agency or pass-through entity.
- (b) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
- (c) Wholly or partly suspend or terminate the Federal award.

- (d) Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and Federal awarding agency regulations (or in the case of a pass-through entity, recommend such a proceeding be initiated by a Federal awarding agency).
- (e) Withhold further Federal awards for the project or program.
- (f) Take other remedies that may be legally available.

§ 200.340 Termination.

- (a) The Federal award may be terminated in whole or in part as follows:
 - (1) By the Federal awarding agency or pass-through entity, if a non-Federal entity fails to comply with the terms and conditions of a Federal award;
 - (2) By the Federal awarding agency or pass-through entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;
 - (3) By the Federal awarding agency or pass-through entity with the consent of the non-Federal entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;
 - (4) By the non-Federal entity upon sending to the Federal awarding agency or pass-through entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency or pass-through entity determines in the case of partial termination that the reduced or modified portion of the Federal award or subaward will not accomplish the purposes for which the Federal award was made, the Federal awarding agency or pass-through entity may terminate the Federal award in its entirety; or
 - (5) By the Federal awarding agency or pass-through entity pursuant to termination provisions included in the Federal award.
- (b) A Federal awarding agency should clearly and unambiguously specify termination provisions applicable to each Federal award, in applicable regulations or in the award, consistent with this section.
- (c) When a Federal awarding agency terminates a Federal award prior to the end of the period of performance due to the non-Federal entity's material failure to comply with the Federal award terms and conditions, the Federal awarding agency must report the termination to the OMB-designated integrity and performance system accessible through SAM (currently FAPIIS).
 - (1) The information required under paragraph (c) of this section is not to be reported to designated integrity and performance system until the non-Federal entity either—
 - (i) Has exhausted its opportunities to object or challenge the decision, see § 200.342; or
 - (ii) Has not, within 30 calendar days after being notified of the termination, informed the Federal awarding agency that it intends to appeal the Federal awarding agency's decision to terminate.
 - (2) If a Federal awarding agency, after entering information into the designated integrity and performance system about a termination, subsequently:
 - (i) Learns that any of that information is erroneous, the Federal awarding agency must correct the information in the system within three business days;

(ii) Obtains an update to that information that could be helpful to other Federal awarding agencies, the Federal awarding agency is strongly encouraged to amend the information in the system to incorporate the update in a timely way.

(3) Federal awarding agencies, must not post any information that will be made publicly available in the non-public segment of designated integrity and performance system that is covered by a disclosure exemption under the Freedom of Information Act. If the non-Federal entity asserts within seven calendar days to the Federal awarding agency who posted the information, that some of the information made publicly available is covered by a disclosure exemption under the Freedom of Information Act, the Federal awarding agency who posted the information must remove the posting within seven calendar days of receiving the assertion. Prior to reposting the releasable information, the Federal agency must resolve the issue in accordance with the agency's Freedom of Information Act procedures.

(d) When a Federal award is terminated or partially terminated, both the Federal awarding agency or pass-through entity and the non-Federal entity remain responsible for compliance with the requirements in §§ 200.344 and 200.345.

§ 200.341 Notification of termination requirement.

(a) The Federal agency or pass-through entity must provide to the non-Federal entity a notice of termination.

(b) If the Federal award is terminated for the non-Federal entity's material failure to comply with the U.S. Constitution, Federal statutes, regulations, or terms and conditions of the Federal award, the notification must state that—

(1) The termination decision will be reported to the OMB-designated integrity and performance system accessible through SAM (currently FAPIIS);

(2) The information will be available in the OMB-designated integrity and performance system for a period of five years from the date of the termination, then archived;

(3) Federal awarding agencies that consider making a Federal award to the non-Federal entity during that five year period must consider that information in judging whether the non-Federal entity is qualified to receive the Federal award, when the Federal share of the Federal award is expected to exceed the simplified acquisition threshold over the period of performance;

(4) The non-Federal entity may comment on any information the OMB-designated integrity and performance system contains about the non-Federal entity for future consideration by Federal awarding agencies. The non-Federal entity may submit comments to the awardee integrity and performance portal accessible through SAM (currently CPARS).

(5) Federal awarding agencies will consider non-Federal entity comments when determining whether the non-Federal entity is qualified for a future Federal award.

(c) Upon termination of a Federal award, the Federal awarding agency must provide the information required under FFATA to the Federal website established to fulfill the requirements of FFATA, and update or notify any other relevant governmentwide systems or entities of any indications of poor performance as required by 41 U.S.C. 417b and 31 U.S.C. 3321 and implementing guidance at 2 CFR part 77 (forthcoming at time of publication). See also the requirements for Suspension and Debarment at 2 CFR part 180.

§ 200.342 Opportunities to object, hearings, and appeals.

Upon taking any remedy for non-compliance, the Federal awarding agency must provide the non-Federal entity an opportunity to object and provide information and documentation challenging the suspension or termination action, in accordance with written processes and procedures published by the Federal awarding agency. The Federal awarding agency or pass-through entity must comply with any requirements for hearings, appeals or other administrative proceedings to which the non-Federal entity is entitled under any statute or regulation applicable to the action involved.

§ 200.343 Effects of suspension and termination.

Costs to the non-Federal entity resulting from financial obligations incurred by the non-Federal entity during a suspension or after termination of a Federal award or subaward are not allowable unless the Federal awarding agency or pass-through entity expressly authorizes them in the notice of suspension or termination or subsequently. However, costs during suspension or after termination are allowable if:

- (a) The costs result from financial obligations which were properly incurred by the non-Federal entity before the effective date of suspension or termination, are not in anticipation of it; and
- (b) The costs would be allowable if the Federal award was not suspended or expired normally at the end of the period of performance in which the termination takes effect.

CLOSEOUT

§ 200.344 Closeout.

The Federal awarding agency or pass-through entity will close out the Federal award when it determines that all applicable administrative actions and all required work of the Federal award have been completed by the non-Federal entity. If the non-Federal entity fails to complete the requirements, the Federal awarding agency or pass-through entity will proceed to close out the Federal award with the information available. This section specifies the actions the non-Federal entity and Federal awarding agency or pass-through entity must take to complete this process at the end of the period of performance.

- (a) The recipient must submit, no later than 120 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award. A subrecipient must submit to the pass-through entity, no later than 90 calendar days (or an earlier date as agreed upon by the pass-through entity and subrecipient) after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award. The Federal awarding agency or pass-through entity may approve extensions when requested and justified by the non-Federal entity, as applicable.
- (b) Unless the Federal awarding agency or pass-through entity authorizes an extension, a non-Federal entity must liquidate all financial obligations incurred under the Federal award no later than 120 calendar days after the end date of the period of performance as specified in the terms and conditions of the Federal award.
- (c) The Federal awarding agency or pass-through entity must make prompt payments to the non-Federal entity for costs meeting the requirements in Subpart E of this part under the Federal award being closed out.

- (d) The non-Federal entity must promptly refund any balances of unobligated cash that the Federal awarding agency or pass-through entity paid in advance or paid and that are not authorized to be retained by the non-Federal entity for use in other projects. See OMB Circular A-129 and see § 200.346, for requirements regarding unreturned amounts that become delinquent debts.
- (e) Consistent with the terms and conditions of the Federal award, the Federal awarding agency or pass-through entity must make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.
- (f) The non-Federal entity must account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§ 200.310 through 200.316 and 200.330.
- (g) When a recipient or subrecipient completes all closeout requirements, the Federal awarding agency or pass-through entity must promptly complete all closeout actions for Federal awards. The Federal awarding agency must make every effort to complete closeout actions no later than one year after the end of the period of performance unless otherwise directed by authorizing statutes. Closeout actions include Federal awarding agency actions in the grants management and payment systems.
- (h) If the non-Federal entity does not submit all reports in accordance with this section and the terms and conditions of the Federal Award, the Federal awarding agency must proceed to close out with the information available within one year of the period of performance end date.
- (i) If the non-Federal entity does not submit all reports in accordance with this section within one year of the period of performance end date, the Federal awarding agency must report the non-Federal entity's material failure to comply with the terms and conditions of the award with the OMB-designated integrity and performance system (currently FAPIIS). Federal awarding agencies may also pursue other enforcement actions per § 200.339.

POST-CLOSEOUT ADJUSTMENTS AND CONTINUING RESPONSIBILITIES

§ 200.345 Post-closeout adjustments and continuing responsibilities.

- (a) The closeout of a Federal award does not affect any of the following:
 - (1) The right of the Federal awarding agency or pass-through entity to disallow costs and recover funds on the basis of a later audit or other review. The Federal awarding agency or pass-through entity must make any cost disallowance determination and notify the non-Federal entity within the record retention period.
 - (2) The requirement for the non-Federal entity to return any funds due as a result of later refunds, corrections, or other transactions including final indirect cost rate adjustments.
 - (3) The ability of the Federal awarding agency to make financial adjustments to a previously closed award such as resolving indirect cost payments and making final payments.
 - (4) Audit requirements in subpart F of this part.
 - (5) Property management and disposition requirements in §§ 200.310 through 200.316 of this subpart.
 - (6) Records retention as required in §§ 200.334 through 200.337 of this subpart.

- (b) After closeout of the Federal award, a relationship created under the Federal award may be modified or ended in whole or in part with the consent of the Federal awarding agency or pass-through entity and the non-Federal entity, provided the responsibilities of the non-Federal entity referred to in paragraph (a) of this section, including those for property management as applicable, are considered and provisions made for continuing responsibilities of the non-Federal entity, as appropriate.

COLLECTION OF AMOUNTS DUE

§ 200.346 Collection of amounts due.

- (a) Any funds paid to the non-Federal entity in excess of the amount to which the non-Federal entity is finally determined to be entitled under the terms of the Federal award constitute a debt to the Federal Government. If not paid within 90 calendar days after demand, the Federal awarding agency may reduce the debt by:
 - (1) Making an administrative offset against other requests for reimbursements;
 - (2) Withholding advance payments otherwise due to the non-Federal entity; or
 - (3) Other action permitted by Federal statute.
- (b) Except where otherwise provided by statutes or regulations, the Federal awarding agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (31 CFR parts 900 through 999). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

Subpart E—Cost Principles

Link to an amendment published at 89 FR 30136, Apr. 22, 2024.

GENERAL PROVISIONS

§ 200.400 Policy guide.

The application of these cost principles is based on the fundamental premises that:

- (a) The non-Federal entity is responsible for the efficient and effective administration of the Federal award through the application of sound management practices.
- (b) The non-Federal entity assumes responsibility for administering Federal funds in a manner consistent with underlying agreements, program objectives, and the terms and conditions of the Federal award.
- (c) The non-Federal entity, in recognition of its own unique combination of staff, facilities, and experience, has the primary responsibility for employing whatever form of sound organization and management techniques may be necessary in order to assure proper and efficient administration of the Federal award.
- (d) The application of these cost principles should require no significant changes in the internal accounting policies and practices of the non-Federal entity. However, the accounting practices of the non-Federal entity must be consistent with these cost principles and support the accumulation of costs as required by the principles, and must provide for adequate documentation to support costs charged to the Federal award.

- (e) In reviewing, negotiating and approving cost allocation plans or indirect cost proposals, the cognizant agency for indirect costs should generally assure that the non-Federal entity is applying these cost accounting principles on a consistent basis during their review and negotiation of indirect cost proposals. Where wide variations exist in the treatment of a given cost item by the non-Federal entity, the reasonableness and equity of such treatments should be fully considered. See the definition of *indirect (facilities & administrative (F&A)) costs* in § 200.1 of this part.
- (f) For non-Federal entities that educate and engage students in research, the dual role of students as both trainees and employees (including pre- and post-doctoral staff) contributing to the completion of Federal awards for research must be recognized in the application of these principles.
- (g) The non-Federal entity may not earn or keep any profit resulting from Federal financial assistance, unless explicitly authorized by the terms and conditions of the Federal award. See also § 200.307.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 85 FR 49561, Aug. 13, 2020]

§ 200.401 Application.

- (a) **General.** These principles must be used in determining the allowable costs of work performed by the non-Federal entity under Federal awards. These principles also must be used by the non-Federal entity as a guide in the pricing of fixed-price contracts and subcontracts where costs are used in determining the appropriate price. The principles do not apply to:
 - (1) Arrangements under which Federal financing is in the form of loans, scholarships, fellowships, traineeships, or other fixed amounts based on such items as education allowance or published tuition rates and fees.
 - (2) For IHEs, capitation awards, which are awards based on case counts or number of beneficiaries according to the terms and conditions of the Federal award.
 - (3) Fixed amount awards. See also § 200.1 Definitions and 200.201.
 - (4) Federal awards to hospitals (see appendix IX to this part).
 - (5) Other awards under which the non-Federal entity is not required to account to the Federal Government for actual costs incurred.
- (b) **Federal contract.** Where a Federal contract awarded to a non-Federal entity is subject to the Cost Accounting Standards (CAS), it incorporates the applicable CAS clauses, Standards, and CAS administration requirements per the 48 CFR Chapter 99 and 48 CFR part 30 (FAR Part 30). CAS applies directly to the CAS-covered contract and the Cost Accounting Standards at 48 CFR parts 9904 or 9905 takes precedence over the cost principles in this subpart E with respect to the allocation of costs. When a contract with a non-Federal entity is subject to full CAS coverage, the allowability of certain costs under the cost principles will be affected by the allocation provisions of the Cost Accounting Standards (e.g., CAS 414—48 CFR 9904.414, Cost of Money as an Element of the Cost of Facilities Capital, and CAS 417—48 CFR 9904.417, Cost of Money as an Element of the Cost of Capital Assets Under Construction), apply rather the allowability provisions of § 200.449. In complying with those requirements, the non-Federal entity's application of cost accounting practices for estimating, accumulating, and reporting costs for other Federal awards and other cost objectives under the CAS-covered contract still must be consistent with its cost accounting practices for the CAS-covered contracts. In all cases, only one set of accounting records needs to be maintained for the allocation of costs by the non-Federal entity.

- (c) **Exemptions.** Some nonprofit organizations, because of their size and nature of operations, can be considered to be similar to for-profit entities for purpose of applicability of cost principles. Such nonprofit organizations must operate under Federal cost principles applicable to for-profit entities located at 48 CFR 31.2. A listing of these organizations is contained in appendix VIII to this part. Other organizations, as approved by the cognizant agency for indirect costs, may be added from time to time.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49562, Aug. 13, 2020]

BASIC CONSIDERATIONS

§ 200.402 Composition of costs.

Total cost. The total cost of a Federal award is the sum of the allowable direct and allocable indirect costs less any applicable credits.

§ 200.403 Factors affecting allowability of costs.

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards:

- (a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.
- (b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.
- (c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity.
- (d) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
- (e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.
- (f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also § 200.306(b).
- (g) Be adequately documented. See also §§ 200.300 through 200.309 of this part.
- (h) Cost must be incurred during the approved budget period. The Federal awarding agency is authorized, at its discretion, to waive prior written approvals to carry forward unobligated balances to subsequent budget periods pursuant to § 200.308(e)(3).

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49562, Aug. 13, 2020]

§ 200.404 Reasonable costs.

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when the non-Federal entity is predominantly federally-funded. In determining reasonableness of a given cost, consideration must be given to:

- (a) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the non-Federal entity or the proper and efficient performance of the Federal award.
- (b) The restraints or requirements imposed by such factors as: sound business practices; arm's-length bargaining; Federal, state, local, tribal, and other laws and regulations; and terms and conditions of the Federal award.
- (c) Market prices for comparable goods or services for the geographic area.
- (d) Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the non-Federal entity, its employees, where applicable its students or membership, the public at large, and the Federal Government.
- (e) Whether the non-Federal entity significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the Federal award's cost.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§ 200.405 Allocable costs.

- (a) A cost is allocable to a particular Federal award or other cost objective if the goods or services involved are chargeable or assignable to that Federal award or cost objective in accordance with relative benefits received. This standard is met if the cost:
 - (1) Is incurred specifically for the Federal award;
 - (2) Benefits both the Federal award and other work of the non-Federal entity and can be distributed in proportions that may be approximated using reasonable methods; and
 - (3) Is necessary to the overall operation of the non-Federal entity and is assignable in part to the Federal award in accordance with the principles in this subpart.
- (b) All activities which benefit from the non-Federal entity's indirect (F&A) cost, including unallowable activities and donated services by the non-Federal entity or third parties, will receive an appropriate allocation of indirect costs.
- (c) Any cost allocable to a particular Federal award under the principles provided for in this part may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by Federal statutes, regulations, or terms and conditions of the Federal awards, or for other reasons. However, this prohibition would not preclude the non-Federal entity from shifting costs that are allowable under two or more Federal awards in accordance with existing Federal statutes, regulations, or the terms and conditions of the Federal awards.
- (d) Direct cost allocation principles: If a cost benefits two or more projects or activities in proportions that can be determined without undue effort or cost, the cost must be allocated to the projects based on the proportional benefit. If a cost benefits two or more projects or activities in proportions that cannot be

determined because of the interrelationship of the work involved, then, notwithstanding paragraph (c) of this section, the costs may be allocated or transferred to benefitted projects on any reasonable documented basis. Where the purchase of equipment or other capital asset is specifically authorized under a Federal award, the costs are assignable to the Federal award regardless of the use that may be made of the equipment or other capital asset involved when no longer needed for the purpose for which it was originally required. See also §§ 200.310 through 200.316 and 200.439.

- (e) If the contract is subject to CAS, costs must be allocated to the contract pursuant to the Cost Accounting Standards. To the extent that CAS is applicable, the allocation of costs in accordance with CAS takes precedence over the allocation provisions in this part.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 85 FR 49562, Aug. 13, 2020]

§ 200.406 Applicable credits.

- (a) Applicable credits refer to those receipts or reduction-of-expenditure-type transactions that offset or reduce expense items allocable to the Federal award as direct or indirect (F&A) costs. Examples of such transactions are: purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds or rebates, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the non-Federal entity relate to allowable costs, they must be credited to the Federal award either as a cost reduction or cash refund, as appropriate.
- (b) In some instances, the amounts received from the Federal Government to finance activities or service operations of the non-Federal entity should be treated as applicable credits. Specifically, the concept of netting such credit items (including any amounts used to meet cost sharing or matching requirements) must be recognized in determining the rates or amounts to be charged to the Federal award. (See §§ 200.436 and 200.468, for areas of potential application in the matter of Federal financing of activities.)

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 85 FR 49562, Aug. 13, 2020]

§ 200.407 Prior written approval (prior approval).

Under any given Federal award, the reasonableness and allocability of certain items of costs may be difficult to determine. In order to avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, the non-Federal entity may seek the prior written approval of the cognizant agency for indirect costs or the Federal awarding agency in advance of the incurrence of special or unusual costs. Prior written approval should include the timeframe or scope of the agreement. The absence of prior written approval on any element of cost will not, in itself, affect the reasonableness or allocability of that element, unless prior approval is specifically required for allowability as described under certain circumstances in the following sections of this part:

- (a) § 200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts, paragraph (b)(5);
- (b) § 200.306 Cost sharing or matching;
- (c) § 200.307 Program income;
- (d) § 200.308 Revision of budget and program plans;
- (e) § 200.311 Real property;
- (f) § 200.313 Equipment;

- (g) § 200.333 Fixed amount subawards;
- (h) § 200.413 Direct costs, paragraph (c);
- (i) § 200.430 Compensation—personal services, paragraph (h);
- (j) § 200.431 Compensation—fringe benefits;
- (k) § 200.438 Entertainment costs;
- (l) § 200.439 Equipment and other capital expenditures;
- (m) § 200.440 Exchange rates;
- (n) § 200.441 Fines, penalties, damages and other settlements;
- (o) § 200.442 Fund raising and investment management costs;
- (p) § 200.445 Goods or services for personal use;
- (q) § 200.447 Insurance and indemnification;
- (r) § 200.454 Memberships, subscriptions, and professional activity costs, paragraph (c);
- (s) § 200.455 Organization costs;
- (t) § 200.456 Participant support costs;
- (u) § 200.458 Pre-award costs;
- (v) § 200.462 Rearrangement and reconversion costs;
- (w) § 200.467 Selling and marketing costs;
- (x) § 200.470 Taxes (including Value Added Tax); and
- (y) § 200.475 Travel costs.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 85 FR 49562, Aug. 13, 2020]

§ 200.408 Limitation on allowance of costs.

The Federal award may be subject to statutory requirements that limit the allowability of costs. When the maximum amount allowable under a limitation is less than the total amount determined in accordance with the principles in this part, the amount not recoverable under the Federal award may not be charged to the Federal award.

§ 200.409 Special considerations.

In addition to the basic considerations regarding the allowability of costs highlighted in this subtitle, other subtitles in this part describe special considerations and requirements applicable to states, local governments, Indian tribes, and IHEs. In addition, certain provisions among the items of cost in this subpart are only applicable to certain types of non-Federal entities, as specified in the following sections:

- (a) Direct and Indirect (F&A) Costs (§§ 200.412-200.415) of this subpart;
- (b) Special Considerations for States, Local Governments and Indian Tribes (§§ 200.416 and 200.417) of this subpart; and

- (c) Special Considerations for Institutions of Higher Education (§§ 200.418 and 200.419) of this subpart.

[85 FR 49562, Aug. 13, 2020]

§ 200.410 Collection of unallowable costs.

Payments made for costs determined to be unallowable by either the Federal awarding agency, cognizant agency for indirect costs, or pass-through entity, either as direct or indirect costs, must be refunded (including interest) to the Federal Government in accordance with instructions from the Federal agency that determined the costs are unallowable unless Federal statute or regulation directs otherwise. See also §§ 200.300 through 200.309 in subpart D of this part.

[85 FR 49562, Aug. 13, 2020]

§ 200.411 Adjustment of previously negotiated indirect (F&A) cost rates containing unallowable costs.

- (a) Negotiated indirect (F&A) cost rates based on a proposal later found to have included costs that:
- (1) Are unallowable as specified by Federal statutes, regulations or the terms and conditions of a Federal award; or
 - (2) Are unallowable because they are not allocable to the Federal award(s), must be adjusted, or a refund must be made, in accordance with the requirements of this section. These adjustments or refunds are designed to correct the proposals used to establish the rates and do not constitute a reopening of the rate negotiation. The adjustments or refunds will be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional).
- (b) For rates covering a future fiscal year of the non-Federal entity, the unallowable costs will be removed from the indirect (F&A) cost pools and the rates appropriately adjusted.
- (c) For rates covering a past period, the Federal share of the unallowable costs will be computed for each year involved and a cash refund (including interest chargeable in accordance with applicable regulations) will be made to the Federal Government. If cash refunds are made for past periods covered by provisional or fixed rates, appropriate adjustments will be made when the rates are finalized to avoid duplicate recovery of the unallowable costs by the Federal Government.
- (d) For rates covering the current period, either a rate adjustment or a refund, as described in paragraphs (b) and (c) of this section, must be required by the cognizant agency for indirect costs. The choice of method must be at the discretion of the cognizant agency for indirect costs, based on its judgment as to which method would be most practical.
- (e) The amount or proportion of unallowable costs included in each year's rate will be assumed to be the same as the amount or proportion of unallowable costs included in the base year proposal used to establish the rate.

DIRECT AND INDIRECT (F&A) COSTS

§ 200.412 Classification of costs.

There is no universal rule for classifying certain costs as either direct or indirect (F&A) under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the Federal award or other final cost objective. Therefore, it is essential that each item of cost incurred for the same purpose be treated consistently in like circumstances either as a direct or an indirect (F&A) cost in order to avoid possible double-charging of Federal awards. Guidelines for determining direct and indirect (F&A) costs charged to Federal awards are provided in this subpart.

§ 200.413 Direct costs.

- (a) **General.** Direct costs are those costs that can be identified specifically with a particular final cost objective, such as a Federal award, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy. Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect (F&A) costs. See also § 200.405.
- (b) **Application to Federal awards.** Identification with the Federal award rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect (F&A) costs of Federal awards. Typical costs charged directly to a Federal award are the compensation of employees who work on that award, their related fringe benefit costs, the costs of materials and other items of expense incurred for the Federal award. If directly related to a specific award, certain costs that otherwise would be treated as indirect costs may also be considered direct costs. Examples include extraordinary utility consumption, the cost of materials supplied from stock or services rendered by specialized facilities, program evaluation costs, or other institutional service operations.
- (c) The salaries of administrative and clerical staff should normally be treated as indirect (F&A) costs. Direct charging of these costs may be appropriate only if all of the following conditions are met:
 - (1) Administrative or clerical services are integral to a project or activity;
 - (2) Individuals involved can be specifically identified with the project or activity;
 - (3) Such costs are explicitly included in the budget or have the prior written approval of the Federal awarding agency; and
 - (4) The costs are not also recovered as indirect costs.
- (d) **Minor items.** Any direct cost of minor amount may be treated as an indirect (F&A) cost for reasons of practicality where such accounting treatment for that item of cost is consistently applied to all Federal and non-Federal cost objectives.
- (e) The costs of certain activities are not allowable as charges to Federal awards. However, even though these costs are unallowable for purposes of computing charges to Federal awards, they nonetheless must be treated as direct costs for purposes of determining indirect (F&A) cost rates and be allocated their equitable share of the non-Federal entity's indirect costs if they represent activities which:
 - (1) Include the salaries of personnel,
 - (2) Occupy space, and
 - (3) Benefit from the non-Federal entity's indirect (F&A) costs.

- (f) For nonprofit organizations, the costs of activities performed by the non-Federal entity primarily as a service to members, clients, or the general public when significant and necessary to the non-Federal entity's mission must be treated as direct costs whether or not allowable, and be allocated an equitable share of indirect (F&A) costs. Some examples of these types of activities include:
- (1) Maintenance of membership rolls, subscriptions, publications, and related functions. See also § 200.454.
 - (2) Providing services and information to members, legislative or administrative bodies, or the public. See also §§ 200.454 and 200.450.
 - (3) Promotion, lobbying, and other forms of public relations. See also §§ 200.421 and 200.450.
 - (4) Conferences except those held to conduct the general administration of the non-Federal entity. See also § 200.432.
 - (5) Maintenance, protection, and investment of special funds not used in operation of the non-Federal entity. See also § 200.442.
 - (6) Administration of group benefits on behalf of members or clients, including life and hospital insurance, annuity or retirement plans, and financial aid. See also § 200.431.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 85 FR 49562, Aug. 13, 2020]

§ 200.414 Indirect (F&A) costs.

- (a) **Facilities and administration classification.** For major Institutions of Higher Education (IHE) and major nonprofit organizations, indirect (F&A) costs must be classified within two broad categories: "Facilities" and "Administration." "Facilities" is defined as depreciation on buildings, equipment and capital improvement, interest on debt associated with certain buildings, equipment and capital improvements, and operations and maintenance expenses. "Administration" is defined as general administration and general expenses such as the director's office, accounting, personnel and all other types of expenditures not listed specifically under one of the subcategories of "Facilities" (including cross allocations from other pools, where applicable). For nonprofit organizations, library expenses are included in the "Administration" category; for IHEs, they are included in the "Facilities" category. Major IHEs are defined as those required to use the Standard Format for Submission as noted in appendix III to this part, and Rate Determination for Institutions of Higher Education paragraph C. 11. Major nonprofit organizations are those which receive more than \$10 million dollars in direct Federal funding.
- (b) **Diversity of nonprofit organizations.** Because of the diverse characteristics and accounting practices of nonprofit organizations, it is not possible to specify the types of cost which may be classified as indirect (F&A) cost in all situations. Identification with a Federal award rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect (F&A) costs of Federal awards. However, typical examples of indirect (F&A) cost for many nonprofit organizations may include depreciation on buildings and equipment, the costs of operating and maintaining facilities, and general administration and general expenses, such as the salaries and expenses of executive officers, personnel administration, and accounting.
- (c) **Federal Agency Acceptance of Negotiated Indirect Cost Rates.** (See also § 200.306.)

- (1) The negotiated rates must be accepted by all Federal awarding agencies. A Federal awarding agency may use a rate different from the negotiated rate for a class of Federal awards or a single Federal award only when required by Federal statute or regulation, or when approved by a Federal awarding agency head or delegate based on documented justification as described in paragraph (c)(3) of this section.
 - (2) The Federal awarding agency head or delegate must notify OMB of any approved deviations.
 - (3) The Federal awarding agency must implement, and make publicly available, the policies, procedures and general decision-making criteria that their programs will follow to seek and justify deviations from negotiated rates.
 - (4) As required under § 200.204, the Federal awarding agency must include in the notice of funding opportunity the policies relating to indirect cost rate reimbursement, matching, or cost share as approved under paragraph (e)(1) of this section. As appropriate, the Federal agency should incorporate discussion of these policies into Federal awarding agency outreach activities with non-Federal entities prior to the posting of a notice of funding opportunity.
- (d) Pass-through entities are subject to the requirements in § 200.332(a)(4).
- (e) Requirements for development and submission of indirect (F&A) cost rate proposals and cost allocation plans are contained in Appendices III-VII and Appendix IX as follows:
- (1) Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs);
 - (2) Appendix IV to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations;
 - (3) Appendix V to Part 200—State/Local Governmentwide Central Service Cost Allocation Plans;
 - (4) Appendix VI to Part 200—Public Assistance Cost Allocation Plans;
 - (5) Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals; and
 - (6) Appendix IX to Part 200—Hospital Cost Principles.
- (f) In addition to the procedures outlined in the appendices in paragraph (e) of this section, any non-Federal entity that does not have a current negotiated (including provisional) rate, except for those non-Federal entities described in appendix VII to this part, paragraph D.1.b, may elect to charge a de minimis rate of 10% of modified total direct costs (MTDC) which may be used indefinitely. No documentation is required to justify the 10% de minimis indirect cost rate. As described in § 200.403, costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both. If chosen, this methodology once elected must be used consistently for all Federal awards until such time as a non-Federal entity chooses to negotiate for a rate, which the non-Federal entity may apply to do at any time.
- (g) Any non-Federal entity that has a current federally-negotiated indirect cost rate may apply for a one-time extension of the rates in that agreement for a period of up to four years. This extension will be subject to the review and approval of the cognizant agency for indirect costs. If an extension is granted the non-Federal entity may not request a rate review until the extension period ends. At the end of the 4-year extension, the non-Federal entity must re-apply to negotiate a rate. Subsequent one-time extensions (up to four years) are permitted if a renegotiation is completed between each extension request.

- (h) The federally negotiated indirect rate, distribution base, and rate type for a non-Federal entity (except for the Indian tribes or tribal organizations, as defined in the Indian Self Determination, Education and Assistance Act, 25 U.S.C. 450b(1)) must be available publicly on an OMB-designated Federal website.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49563, Aug. 13, 2020]

§ 200.415 Required certifications.

Required certifications include:

- (a) To assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets, the annual and final fiscal reports or vouchers requesting payment under the agreements must include a certification, signed by an official who is authorized to legally bind the non-Federal entity, which reads as follows: "By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812)."
- (b) Certification of cost allocation plan or indirect (F&A) cost rate proposal. Each cost allocation plan or indirect (F&A) cost rate proposal must comply with the following:
 - (1) A proposal to establish a cost allocation plan or an indirect (F&A) cost rate, whether submitted to a Federal cognizant agency for indirect costs or maintained on file by the non-Federal entity, must be certified by the non-Federal entity using the Certificate of Cost Allocation Plan or Certificate of Indirect Costs as set forth in appendices III through VII, and IX of this part. The certificate must be signed on behalf of the non-Federal entity by an individual at a level no lower than vice president or chief financial officer of the non-Federal entity that submits the proposal.
 - (2) Unless the non-Federal entity has elected the option under § 200.414(f), the Federal Government may either disallow all indirect (F&A) costs or unilaterally establish such a plan or rate when the non-Federal entity fails to submit a certified proposal for establishing such a plan or rate in accordance with the requirements. Such a plan or rate may be based upon audited historical data or such other data that have been furnished to the cognizant agency for indirect costs and for which it can be demonstrated that all unallowable costs have been excluded. When a cost allocation plan or indirect cost rate is unilaterally established by the Federal Government because the non-Federal entity failed to submit a certified proposal, the plan or rate established will be set to ensure that potentially unallowable costs will not be reimbursed.
- (c) Certifications by nonprofit organizations as appropriate that they did not meet the definition of a major nonprofit organization as defined in § 200.414(a).
- (d) See also § 200.450 for another required certification.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49563, Aug. 13, 2020]

SPECIAL CONSIDERATIONS FOR STATES, LOCAL GOVERNMENTS AND INDIAN TRIBES

§ 200.416 Cost allocation plans and indirect cost proposals.

- (a) For states, local governments and Indian tribes, certain services, such as motor pools, computer centers, purchasing, accounting, etc., are provided to operating agencies on a centralized basis. Since Federal awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefitted activities on a reasonable and consistent basis. The central service cost allocation plan provides that process.
- (b) Individual operating agencies (governmental department or agency), normally charge Federal awards for indirect costs through an indirect cost rate. A separate indirect cost rate(s) proposal for each operating agency is usually necessary to claim indirect costs under Federal awards. Indirect costs include:
 - (1) The indirect costs originating in each department or agency of the governmental unit carrying out Federal awards and
 - (2) The costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.
- (c) The requirements for development and submission of cost allocation plans (for central service costs and public assistance programs) and indirect cost rate proposals are contained in appendices V, VI and VII to this part.

[78 FR 78608, Dec. 26, 2013, as amended at 86 FR 10440, Feb. 22, 2021]

§ 200.417 Interagency service.

The cost of services provided by one agency to another within the governmental unit may include allowable direct costs of the service plus a pro-rated share of indirect costs. A standard indirect cost allowance equal to ten percent of the direct salary and wage cost of providing the service (excluding overtime, shift premiums, and fringe benefits) may be used in lieu of determining the actual indirect costs of the service. These services do not include centralized services included in central service cost allocation plans as described in Appendix V to Part 200.

[85 FR 49564, Aug. 13, 2020]

SPECIAL CONSIDERATIONS FOR INSTITUTIONS OF HIGHER EDUCATION

§ 200.418 Costs incurred by states and local governments.

Costs incurred or paid by a state or local government on behalf of its IHEs for fringe benefit programs, such as pension costs and FICA and any other costs specifically incurred on behalf of, and in direct benefit to, the IHEs, are allowable costs of such IHEs whether or not these costs are recorded in the accounting records of the institutions, subject to the following:

- (a) The costs meet the requirements of § 200.402-411 of this subpart;
- (b) The costs are properly supported by approved cost allocation plans in accordance with applicable Federal cost accounting principles in this part; and
- (c) The costs are not otherwise borne directly or indirectly by the Federal Government.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49564, Aug. 13, 2020]

§ 200.419 Cost accounting standards and disclosure statement.

- (a) An IHE that receive an aggregate total \$50 million or more in Federal awards and instruments subject to this subpart (as specified in § 200.101) in its most recently completed fiscal year must comply with the Cost Accounting Standards Board's cost accounting standards located at 48 CFR 9905.501, 9905.502, 9905.505, and 9905.506. CAS-covered contracts and subcontracts awarded to the IHEs are subject to the broader range of CAS requirements at 48 CFR 9900 through 9999 and 48 CFR part 30 (FAR Part 30).
- (b) **Disclosure statement.** An IHE that receives an aggregate total \$50 million or more in Federal awards and instruments subject to this subpart (as specified in § 200.101) during its most recently completed fiscal year must disclose their cost accounting practices by filing a Disclosure Statement (DS-2), which is reproduced in Appendix III to Part 200. With the approval of the cognizant agency for indirect costs, an IHE may meet the DS-2 submission by submitting the DS-2 for each business unit that received \$50 million or more in Federal awards and instruments.
 - (1) The DS-2 must be submitted to the cognizant agency for indirect costs with a copy to the IHE's cognizant agency for audit. The initial DS-2 and revisions to the DS-2 must be submitted in coordination with the IHE's indirect (F&A) rate proposal, unless an earlier submission is requested by the cognizant agency for indirect costs. IHEs with CAS-covered contracts or subcontracts meeting the dollar threshold in 48 CFR 9903.202-1(f) must submit their initial DS-2 or revisions no later than prior to the award of a CAS-covered contract or subcontract.
 - (2) An IHE must maintain an accurate DS-2 and comply with disclosed cost accounting practices. An IHE must file amendments to the DS-2 to the cognizant agency for indirect costs in advance of a disclosed practice being changed to comply with a new or modified standard, or when a practice is changed for other reasons. An IHE may proceed with implementing the change after it has notified the Federal cognizant agency for indirect costs. If the change represents a variation from 2 CFR part 200, the change may require approval by the Federal cognizant agency for indirect costs, in accordance with § 200.102(b). Amendments of a DS-2 may be submitted at any time. Resubmission of a complete, updated DS-2 is discouraged except when there are extensive changes to disclosed practices.
 - (3) **Cost and funding adjustments.** Cost adjustments must be made by the cognizant agency for indirect costs if an IHE fails to comply with the cost policies in this part or fails to consistently follow its established or disclosed cost accounting practices when estimating, accumulating or reporting the costs of Federal awards, and the aggregate cost impact on Federal awards is material. The cost adjustment must normally be made on an aggregate basis for all affected Federal awards through an adjustment of the IHE's future F&A costs rates or other means considered appropriate by the cognizant agency for indirect costs. Under the terms of CAS covered contracts, adjustments in the amount of funding provided may also be required when the estimated proposal costs were not determined in accordance with established cost accounting practices.
 - (4) **Overpayments.** Excess amounts paid in the aggregate by the Federal Government under Federal awards due to a noncompliant cost accounting practice used to estimate, accumulate, or report costs must be credited or refunded, as deemed appropriate by the cognizant agency for indirect costs. Interest applicable to the excess amounts paid in the aggregate during the period of noncompliance must also be determined and collected in accordance with applicable Federal agency regulations.

- (5) **Compliant cost accounting practice changes.** Changes from one compliant cost accounting practice to another compliant practice that are approved by the cognizant agency for indirect costs may require cost adjustments if the change has a material effect on Federal awards and the changes are deemed appropriate by the cognizant agency for indirect costs.
- (6) **Responsibilities.** The cognizant agency for indirect cost must:
 - (i) Determine cost adjustments for all Federal awards in the aggregate on behalf of the Federal Government. Actions of the cognizant agency for indirect cost in making cost adjustment determinations must be coordinated with all affected Federal awarding agencies to the extent necessary.
 - (ii) Prescribe guidelines and establish internal procedures to promptly determine on behalf of the Federal Government that a DS-2 adequately discloses the IHE's cost accounting practices and that the disclosed practices are compliant with applicable CAS and the requirements of this part.
 - (iii) Distribute to all affected Federal awarding agencies any DS-2 determination of adequacy or noncompliance.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49564, Aug. 13, 2020]

GENERAL PROVISIONS FOR SELECTED ITEMS OF COST

§ 200.420 Considerations for selected items of cost.

This section provides principles to be applied in establishing the allowability of certain items involved in determining cost, in addition to the requirements of Subtitle II of this subpart. These principles apply whether or not a particular item of cost is properly treated as direct cost or indirect (F&A) cost. Failure to mention a particular item of cost is not intended to imply that it is either allowable or unallowable; rather, determination as to allowability in each case should be based on the treatment provided for similar or related items of cost, and based on the principles described in §§ 200.402 through 200.411. In case of a discrepancy between the provisions of a specific Federal award and the provisions below, the Federal award governs. Criteria outlined in § 200.403 must be applied in determining allowability. See also § 200.102.

[85 FR 49564, Aug. 13, 2020]

§ 200.421 Advertising and public relations.

- (a) The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television, direct mail, exhibits, electronic or computer transmittals, and the like.
- (b) The only allowable advertising costs are those which are solely for:
 - (1) The recruitment of personnel required by the non-Federal entity for performance of a Federal award (See also § 200.463);
 - (2) The procurement of goods and services for the performance of a Federal award;
 - (3) The disposal of scrap or surplus materials acquired in the performance of a Federal award except when non-Federal entities are reimbursed for disposal costs at a predetermined amount; or

- (4) Program outreach and other specific purposes necessary to meet the requirements of the Federal award.
- (c) The term “public relations” includes community relations and means those activities dedicated to maintaining the image of the non-Federal entity or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.
- (d) The only allowable public relations costs are:
 - (1) Costs specifically required by the Federal award;
 - (2) Costs of communicating with the public and press pertaining to specific activities or accomplishments which result from performance of the Federal award (these costs are considered necessary as part of the outreach effort for the Federal award); or
 - (3) Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern, such as notices of funding opportunities, financial matters, etc.
- (e) Unallowable advertising and public relations costs include the following:
 - (1) All advertising and public relations costs other than as specified in paragraphs (b) and (d) of this section;
 - (2) Costs of meetings, conventions, convocations, or other events related to other activities of the entity (see also § 200.432), including:
 - (i) Costs of displays, demonstrations, and exhibits;
 - (ii) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and
 - (iii) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;
 - (3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs;
 - (4) Costs of advertising and public relations designed solely to promote the non-Federal entity.

[78 FR 76808, Dec. 26, 2013, as amended at 85 FR 49564, Aug. 13, 2020]

§ 200.422 Advisory councils.

Costs incurred by advisory councils or committees are unallowable unless authorized by statute, the Federal awarding agency or as an indirect cost where allocable to Federal awards. See § 200.444, applicable to States, local governments, and Indian tribes.

[85 FR 49564, Aug. 13, 2020]

§ 200.423 Alcoholic beverages.

Costs of alcoholic beverages are unallowable.

§ 200.424 Alumni/ae activities.

Costs incurred by IHEs for, or in support of, alumni/ae activities are unallowable.

§ 200.425 Audit services.

- (a) A reasonably proportionate share of the costs of audits required by, and performed in accordance with, the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), as implemented by requirements of this part, are allowable. However, the following audit costs are unallowable:
 - (1) Any costs when audits required by the Single Audit Act and subpart F of this part have not been conducted or have been conducted but not in accordance therewith; and
 - (2) Any costs of auditing a non-Federal entity that is exempted from having an audit conducted under the Single Audit Act and subpart F of this part because its expenditures under Federal awards are less than \$750,000 during the non-Federal entity's fiscal year.
- (b) The costs of a financial statement audit of a non-Federal entity that does not currently have a Federal award may be included in the indirect cost pool for a cost allocation plan or indirect cost proposal.
- (c) Pass-through entities may charge Federal awards for the cost of agreed-upon-procedures engagements to monitor subrecipients (in accordance with subpart D, §§ 200.331-333) who are exempted from the requirements of the Single Audit Act and subpart F of this part. This cost is allowable only if the agreed-upon-procedures engagements are:
 - (1) Conducted in accordance with GAGAS attestation standards;
 - (2) Paid for and arranged by the pass-through entity; and
 - (3) Limited in scope to one or more of the following types of compliance requirements: activities allowed or unallowed; allowable costs/cost principles; eligibility; and reporting.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49564, Aug. 13, 2020]

§ 200.426 Bad debts.

Bad debts (debts which have been determined to be uncollectable), including losses (whether actual or estimated) arising from uncollectable accounts and other claims, are unallowable. Related collection costs, and related legal costs, arising from such debts after they have been determined to be uncollectable are also unallowable. See also § 200.428.

[85 FR 49565, Aug. 13, 2020]

§ 200.427 Bonding costs.

- (a) Bonding costs arise when the Federal awarding agency requires assurance against financial loss to itself or others by reason of the act or default of the non-Federal entity. They arise also in instances where the non-Federal entity requires similar assurance, including: bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds for employees and officials.
- (b) Costs of bonding required pursuant to the terms and conditions of the Federal award are allowable.

- (c) Costs of bonding required by the non-Federal entity in the general conduct of its operations are allowable as an indirect cost to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

§ 200.428 Collections of improper payments.

The costs incurred by a non-Federal entity to recover improper payments are allowable as either direct or indirect costs, as appropriate. Amounts collected may be used by the non-Federal entity in accordance with cash management standards set forth in § 200.305.

[85 FR 49565, Aug. 13, 2020]

§ 200.429 Commencement and convocation costs.

For IHEs, costs incurred for commencements and convocations are unallowable, except as provided for in (B)(9) Student Administration and Services, in appendix III to this part, as activity costs.

[85 FR 49565, Aug. 13, 2020]

§ 200.430 Compensation—personal services.

- (a) **General.** Compensation for personal services includes all remuneration, paid currently or accrued, for services of employees rendered during the period of performance under the Federal award, including but not necessarily limited to wages and salaries. Compensation for personal services may also include fringe benefits which are addressed in § 200.431. Costs of compensation are allowable to the extent that they satisfy the specific requirements of this part, and that the total compensation for individual employees:
 - (1) Is reasonable for the services rendered and conforms to the established written policy of the non-Federal entity consistently applied to both Federal and non-Federal activities;
 - (2) Follows an appointment made in accordance with a non-Federal entity's laws and/or rules or written policies and meets the requirements of Federal statute, where applicable; and
 - (3) Is determined and supported as provided in paragraph (i) of this section, when applicable.
- (b) **Reasonableness.** Compensation for employees engaged in work on Federal awards will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the non-Federal entity. In cases where the kinds of employees required for Federal awards are not found in the other activities of the non-Federal entity, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the non-Federal entity competes for the kind of employees involved.
- (c) **Professional activities outside the non-Federal entity.** Unless an arrangement is specifically authorized by a Federal awarding agency, a non-Federal entity must follow its written non-Federal entity-wide policies and practices concerning the permissible extent of professional services that can be provided outside the non-Federal entity for non-organizational compensation. Where such non-Federal entity-wide written policies do not exist or do not adequately define the permissible extent of consulting or other non-organizational activities undertaken for extra outside pay, the Federal Government may require that the effort of professional staff working on Federal awards be allocated between:
 - (1) Non-Federal entity activities, and

- (2) Non-organizational professional activities. If the Federal awarding agency considers the extent of non-organizational professional effort excessive or inconsistent with the conflicts-of-interest terms and conditions of the Federal award, appropriate arrangements governing compensation will be negotiated on a case-by-case basis.

(d) **Unallowable costs.**

- (1) Costs which are unallowable under other sections of these principles must not be allowable under this section solely on the basis that they constitute personnel compensation.
- (2) The allowable compensation for certain employees is subject to a ceiling in accordance with statute. For the amount of the ceiling for cost-reimbursement contracts, the covered compensation subject to the ceiling, the covered employees, and other relevant provisions, see 10 U.S.C. 2324(e)(1)(P), and 41 U.S.C. 1127 and 4304(a)(16). For other types of Federal awards, other statutory ceilings may apply.

- (e) **Special considerations.** Special considerations in determining allowability of compensation will be given to any change in a non-Federal entity's compensation policy resulting in a substantial increase in its employees' level of compensation (particularly when the change was concurrent with an increase in the ratio of Federal awards to other activities) or any change in the treatment of allowability of specific types of compensation due to changes in Federal policy.

- (f) **Incentive compensation.** Incentive compensation to employees based on cost reduction, or efficient performance, suggestion awards, safety awards, etc., is allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the non-Federal entity and the employees before the services were rendered, or pursuant to an established plan followed by the non-Federal entity so consistently as to imply, in effect, an agreement to make such payment.

- (g) **Nonprofit organizations.** For compensation to members of nonprofit organizations, trustees, directors, associates, officers, or the immediate families thereof, determination must be made that such compensation is reasonable for the actual personal services rendered rather than a distribution of earnings in excess of costs. This may include director's and executive committee member's fees, incentive awards, allowances for off-site pay, incentive pay, location allowances, hardship pay, and cost-of-living differentials.

(h) **Institutions of Higher Education (IHEs).**

- (1) Certain conditions require special consideration and possible limitations in determining allowable personnel compensation costs under Federal awards. Among such conditions are the following:
 - (i) Allowable activities. Charges to Federal awards may include reasonable amounts for activities contributing and directly related to work under an agreement, such as delivering special lectures about specific aspects of the ongoing activity, writing reports and articles, developing and maintaining protocols (human, animals, etc.), managing substances/chemicals, managing and securing project-specific data, coordinating research subjects, participating in appropriate seminars, consulting with colleagues and graduate students, and attending meetings and conferences.

- (ii) Incidental activities. Incidental activities for which supplemental compensation is allowable under written institutional policy (at a rate not to exceed institutional base salary) need not be included in the records described in paragraph (i) of this section to directly charge payments of incidental activities, such activities must either be specifically provided for in the Federal award budget or receive prior written approval by the Federal awarding agency.
- (2) **Salary basis.** Charges for work performed on Federal awards by faculty members during the academic year are allowable at the IBS rate. Except as noted in paragraph (h)(1)(ii) of this section, in no event will charges to Federal awards, irrespective of the basis of computation, exceed the proportionate share of the IBS for that period. This principle applies to all members of faculty at an institution. IBS is defined as the annual compensation paid by an IHE for an individual's appointment, whether that individual's time is spent on research, instruction, administration, or other activities. IBS excludes any income that an individual earns outside of duties performed for the IHE. Unless there is prior approval by the Federal awarding agency, charges of a faculty member's salary to a Federal award must not exceed the proportionate share of the IBS for the period during which the faculty member worked on the award.
- (3) **Intra-Institution of Higher Education (IHE) consulting.** Intra-IHE consulting by faculty should be undertaken as an IHE responsibility requiring no compensation in addition to IBS. However, in unusual cases where consultation is across departmental lines or involves a separate or remote operation, and the work performed by the faculty member is in addition to his or her regular responsibilities, any charges for such work representing additional compensation above IBS are allowable provided that such consulting arrangements are specifically provided for in the Federal award or approved in writing by the Federal awarding agency.
- (4) Extra Service Pay normally represents overload compensation, subject to institutional compensation policies for services above and beyond IBS. Where extra service pay is a result of Intra-IHE consulting, it is subject to the same requirements of paragraph (b) above. It is allowable if all of the following conditions are met:
 - (i) The non-Federal entity establishes consistent written policies which apply uniformly to all faculty members, not just those working on Federal awards.
 - (ii) The non-Federal entity establishes a consistent written definition of work covered by IBS which is specific enough to determine conclusively when work beyond that level has occurred. This may be described in appointment letters or other documentations.
 - (iii) The supplementation amount paid is commensurate with the IBS rate of pay and the amount of additional work performed. See paragraph (h)(2) of this section.
 - (iv) The salaries, as supplemented, fall within the salary structure and pay ranges established by and documented in writing or otherwise applicable to the non-Federal entity.
 - (v) The total salaries charged to Federal awards including extra service pay are subject to the Standards of Documentation as described in paragraph (i) of this section.
- (5) **Periods outside the academic year.**
 - (i) Except as specified for teaching activity in paragraph (h)(5)(ii) of this section, charges for work performed by faculty members on Federal awards during periods not included in the base salary period will be at a rate not in excess of the IBS.

- (ii) Charges for teaching activities performed by faculty members on Federal awards during periods not included in IBS period will be based on the normal written policy of the IHE governing compensation to faculty members for teaching assignments during such periods.
- (6) **Part-time faculty.** Charges for work performed on Federal awards by faculty members having only part-time appointments will be determined at a rate not in excess of that regularly paid for part-time assignments.
- (7) **Sabbatical leave costs.** Rules for sabbatical leave are as follow:
 - (i) Costs of leaves of absence by employees for performance of graduate work or sabbatical study, travel, or research are allowable provided the IHE has a uniform written policy on sabbatical leave for persons engaged in instruction and persons engaged in research. Such costs will be allocated on an equitable basis among all related activities of the IHE.
 - (ii) Where sabbatical leave is included in fringe benefits for which a cost is determined for assessment as a direct charge, the aggregate amount of such assessments applicable to all work of the institution during the base period must be reasonable in relation to the IHE's actual experience under its sabbatical leave policy.
- (8) **Salary rates for non-faculty members.** Non-faculty full-time professional personnel may also earn "extra service pay" in accordance with the non-Federal entity's written policy and consistent with paragraph (h)(1)(i) of this section.

(i) **Standards for Documentation of Personnel Expenses**

- (1) Charges to Federal awards for salaries and wages must be based on records that accurately reflect the work performed. These records must:
 - (i) Be supported by a system of internal control which provides reasonable assurance that the charges are accurate, allowable, and properly allocated;
 - (ii) Be incorporated into the official records of the non-Federal entity;
 - (iii) Reasonably reflect the total activity for which the employee is compensated by the non-Federal entity, not exceeding 100% of compensated activities (for IHE, this per the IHE's definition of IBS);
 - (iv) Encompass federally-assisted and all other activities compensated by the non-Federal entity on an integrated basis, but may include the use of subsidiary records as defined in the non-Federal entity's written policy;
 - (v) Comply with the established accounting policies and practices of the non-Federal entity (See paragraph (h)(1)(ii) above for treatment of incidental work for IHEs.); and
 - (vi) [Reserved]
 - (vii) Support the distribution of the employee's salary or wages among specific activities or cost objectives if the employee works on more than one Federal award; a Federal award and non-Federal award; an indirect cost activity and a direct cost activity; two or more indirect activities which are allocated using different allocation bases; or an unallowable activity and a direct or indirect cost activity.

- (viii) Budget estimates (i.e., estimates determined before the services are performed) alone do not qualify as support for charges to Federal awards, but may be used for interim accounting purposes, provided that:
 - (A) The system for establishing the estimates produces reasonable approximations of the activity actually performed;
 - (B) Significant changes in the corresponding work activity (as defined by the non-Federal entity's written policies) are identified and entered into the records in a timely manner. Short term (such as one or two months) fluctuation between workload categories need not be considered as long as the distribution of salaries and wages is reasonable over the longer term; and
 - (C) The non-Federal entity's system of internal controls includes processes to review after-the-fact interim charges made to a Federal award based on budget estimates. All necessary adjustment must be made such that the final amount charged to the Federal award is accurate, allowable, and properly allocated.
- (ix) Because practices vary as to the activity constituting a full workload (for IHEs, IBS), records may reflect categories of activities expressed as a percentage distribution of total activities.
- (x) It is recognized that teaching, research, service, and administration are often inextricably intermingled in an academic setting. When recording salaries and wages charged to Federal awards for IHEs, a precise assessment of factors that contribute to costs is therefore not always feasible, nor is it expected.
- (2) For records which meet the standards required in paragraph (i)(1) of this section, the non-Federal entity will not be required to provide additional support or documentation for the work performed, other than that referenced in paragraph (i)(3) of this section.
- (3) In accordance with Department of Labor regulations implementing the Fair Labor Standards Act (FLSA) (29 CFR part 516), charges for the salaries and wages of nonexempt employees, in addition to the supporting documentation described in this section, must also be supported by records indicating the total number of hours worked each day.
- (4) Salaries and wages of employees used in meeting cost sharing or matching requirements on Federal awards must be supported in the same manner as salaries and wages claimed for reimbursement from Federal awards.
- (5) For states, local governments and Indian tribes, substitute processes or systems for allocating salaries and wages to Federal awards may be used in place of or in addition to the records described in paragraph (1) if approved by the cognizant agency for indirect cost. Such systems may include, but are not limited to, random moment sampling, "rolling" time studies, case counts, or other quantifiable measures of work performed.
 - (i) Substitute systems which use sampling methods (primarily for Temporary Assistance for Needy Families (TANF), the Supplemental Nutrition Assistance Program (SNAP), Medicaid, and other public assistance programs) must meet acceptable statistical sampling standards including:
 - (A) The sampling universe must include all of the employees whose salaries and wages are to be allocated based on sample results except as provided in paragraph (i)(5)(iii) of this section;

- (B) The entire time period involved must be covered by the sample; and
 - (C) The results must be statistically valid and applied to the period being sampled.
 - (ii) Allocating charges for the sampled employees' supervisors, clerical and support staffs, based on the results of the sampled employees, will be acceptable.
 - (iii) Less than full compliance with the statistical sampling standards noted in subsection (5)(i) may be accepted by the cognizant agency for indirect costs if it concludes that the amounts to be allocated to Federal awards will be minimal, or if it concludes that the system proposed by the non-Federal entity will result in lower costs to Federal awards than a system which complies with the standards.
- (6) Cognizant agencies for indirect costs are encouraged to approve alternative proposals based on outcomes and milestones for program performance where these are clearly documented. Where approved by the Federal cognizant agency for indirect costs, these plans are acceptable as an alternative to the requirements of paragraph (i)(1) of this section.
- (7) For Federal awards of similar purpose activity or instances of approved blended funding, a non-Federal entity may submit performance plans that incorporate funds from multiple Federal awards and account for their combined use based on performance-oriented metrics, provided that such plans are approved in advance by all involved Federal awarding agencies. In these instances, the non-Federal entity must submit a request for waiver of the requirements based on documentation that describes the method of charging costs, relates the charging of costs to the specific activity that is applicable to all fund sources, and is based on quantifiable measures of the activity in relation to time charged.
- (8) For a non-Federal entity where the records do not meet the standards described in this section, the Federal Government may require personnel activity reports, including prescribed certifications, or equivalent documentation that support the records as required in this section.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49565, Aug. 13, 2020]

§ 200.431 Compensation—fringe benefits.

- (a) **General.** Fringe benefits are allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave (vacation, family-related, sick or military), employee insurance, pensions, and unemployment benefit plans. Except as provided elsewhere in these principles, the costs of fringe benefits are allowable provided that the benefits are reasonable and are required by law, non-Federal entity-employee agreement, or an established policy of the non-Federal entity.
- (b) **Leave.** The cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, family-related leave, sick leave, holidays, court leave, military leave, administrative leave, and other similar benefits, are allowable if all of the following criteria are met:
 - (1) They are provided under established written leave policies;
 - (2) The costs are equitably allocated to all related activities, including Federal awards; and
 - (3) The accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the non-Federal entity or specified grouping of employees.

- (i) When a non-Federal entity uses the cash basis of accounting, the cost of leave is recognized in the period that the leave is taken and paid for. Payments for unused leave when an employee retires or terminates employment are allowable in the year of payment.
 - (ii) The accrual basis may be only used for those types of leave for which a liability as defined by GAAP exists when the leave is earned. When a non-Federal entity uses the accrual basis of accounting, allowable leave costs are the lesser of the amount accrued or funded.
- (c) **Fringe benefits.** The cost of fringe benefits in the form of employer contributions or expenses for social security; employee life, health, unemployment, and worker's compensation insurance (except as indicated in § 200.447); pension plan costs (see paragraph (i) of this section); and other similar benefits are allowable, provided such benefits are granted under established written policies. Such benefits, must be allocated to Federal awards and all other activities in a manner consistent with the pattern of benefits attributable to the individuals or group(s) of employees whose salaries and wages are chargeable to such Federal awards and other activities, and charged as direct or indirect costs in accordance with the non-Federal entity's accounting practices.
- (d) **Cost objectives.** Fringe benefits may be assigned to cost objectives by identifying specific benefits to specific individual employees or by allocating on the basis of entity-wide salaries and wages of the employees receiving the benefits. When the allocation method is used, separate allocations must be made to selective groupings of employees, unless the non-Federal entity demonstrates that costs in relationship to salaries and wages do not differ significantly for different groups of employees.
- (e) **Insurance.** See also § 200.447(d)(1) and (2).
 - (1) Provisions for a reserve under a self-insurance program for unemployment compensation or workers' compensation are allowable to the extent that the provisions represent reasonable estimates of the liabilities for such compensation, and the types of coverage, extent of coverage, and rates and premiums would have been allowable had insurance been purchased to cover the risks. However, provisions for self-insured liabilities which do not become payable for more than one year after the provision is made must not exceed the present value of the liability.
 - (2) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibility are allowable only to the extent that the insurance represents additional compensation. The costs of such insurance when the non-Federal entity is named as beneficiary are unallowable.
 - (3) Actual claims paid to or on behalf of employees or former employees for workers' compensation, unemployment compensation, severance pay, and similar employee benefits (e.g., post-retirement health benefits), are allowable in the year of payment provided that the non-Federal entity follows a consistent costing policy.
- (f) **Automobiles.** That portion of automobile costs furnished by the non-Federal entity that relates to personal use by employees (including transportation to and from work) is unallowable as fringe benefit or indirect (F&A) costs regardless of whether the cost is reported as taxable income to the employees.
- (g) **Pension plan costs.** Pension plan costs which are incurred in accordance with the established policies of the non-Federal entity are allowable, provided that:
 - (1) Such policies meet the test of reasonableness.
 - (2) The methods of cost allocation are not discriminatory.

- (3) Except for State and Local Governments, the cost assigned to each fiscal year should be determined in accordance with GAAP.
- (4) The costs assigned to a given fiscal year are funded for all plan participants within six months after the end of that year. However, increases to normal and past service pension costs caused by a delay in funding the actuarial liability beyond 30 calendar days after each quarter of the year to which such costs are assignable are unallowable. Non-Federal entity may elect to follow the "Cost Accounting Standard for Composition and Measurement of Pension Costs" (48 CFR 9904.412).
- (5) Pension plan termination insurance premiums paid pursuant to the Employee Retirement Income Security Act (ERISA) of 1974 (29 U.S.C. 1301-1461) are allowable. Late payment charges on such premiums are unallowable. Excise taxes on accumulated funding deficiencies and other penalties imposed under ERISA are unallowable.
- (6) Pension plan costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the non-Federal entity.
 - (i) For pension plans financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.
 - (ii) Pension costs calculated using an actuarial cost-based method recognized by GAAP are allowable for a given fiscal year if they are funded for that year within six months after the end of that year. Costs funded after the six-month period (or a later period agreed to by the cognizant agency for indirect costs) are allowable in the year funded. The cognizant agency for indirect costs may agree to an extension of the six-month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursement and the non-Federal entity's contribution to the pension fund. Adjustments may be made by cash refund or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the pension fund.
 - (iii) Amounts funded by the non-Federal entity in excess of the actuarially determined amount for a fiscal year may be used as the non-Federal entity's contribution in future periods.
 - (iv) When a non-Federal entity converts to an acceptable actuarial cost method, as defined by GAAP, and funds pension costs in accordance with this method, the unfunded liability at the time of conversion is allowable if amortized over a period of years in accordance with GAAP.
 - (v) The Federal Government must receive an equitable share of any previously allowed pension costs (including earnings thereon) which revert or inure to the non-Federal entity in the form of a refund, withdrawal, or other credit.
- (h) **Post-retirement health.** Post-retirement health plans (PRHP) refers to costs of health insurance or health services not included in a pension plan covered by paragraph (g) of this section for retirees and their spouses, dependents, and survivors. PRHP costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the non-Federal entity.
 - (1) For PRHP financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

- (2) PRHP costs calculated using an actuarial cost method recognized by GAAP are allowable if they are funded for that year within six months after the end of that year. Costs funded after the six-month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The Federal cognizant agency for indirect costs may agree to an extension of the six-month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursements and the non-Federal entity's contributions to the PRHP fund. Adjustments may be made by cash refund, reduction in current year's PRHP costs, or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the PRHP fund.
- (3) Amounts funded in excess of the actuarially determined amount for a fiscal year may be used as the non-Federal entity contribution in a future period.
- (4) When a non-Federal entity converts to an acceptable actuarial cost method and funds PRHP costs in accordance with this method, the initial unfunded liability attributable to prior years is allowable if amortized over a period of years in accordance with GAAP, or, if no such GAAP period exists, over a period negotiated with the cognizant agency for indirect costs.
- (5) To be allowable in the current year, the PRHP costs must be paid either to:
 - (i) An insurer or other benefit provider as current year costs or premiums, or
 - (ii) An insurer or trustee to maintain a trust fund or reserve for the sole purpose of providing post-retirement benefits to retirees and other beneficiaries.
- (6) The Federal Government must receive an equitable share of any amounts of previously allowed post-retirement benefit costs (including earnings thereon) which revert or inure to the non-Federal entity in the form of a refund, withdrawal, or other credit.

(i) **Severance pay.**

- (1) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by non-Federal entities to workers whose employment is being terminated. Costs of severance pay are allowable only to the extent that in each case, it is required by
 - (i) Law;
 - (ii) Employer-employee agreement;
 - (iii) Established policy that constitutes, in effect, an implied agreement on the non-Federal entity's part; or
 - (iv) Circumstances of the particular employment.
- (2) Costs of severance payments are divided into two categories as follows:
 - (i) Actual normal turnover severance payments must be allocated to all activities; or, where the non-Federal entity provides for a reserve for normal severances, such method will be acceptable if the charge to current operations is reasonable in light of payments actually made for normal severances over a representative past period, and if amounts charged are allocated to all activities of the non-Federal entity.

- (ii) Measurement of costs of abnormal or mass severance pay by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Federal Government recognizes its responsibility to participate, to the extent of its fair share, in any specific payment. Prior approval by the Federal awarding agency or cognizant agency for indirect cost, as appropriate, is required.
- (3) Costs incurred in certain severance pay packages which are in an amount in excess of the normal severance pay paid by the non-Federal entity to an employee upon termination of employment and are paid to the employee contingent upon a change in management control over, or ownership of, the non-Federal entity's assets, are unallowable.
- (4) Severance payments to foreign nationals employed by the non-Federal entity outside the United States, to the extent that the amount exceeds the customary or prevailing practices for the non-Federal entity in the United States, are unallowable, unless they are necessary for the performance of Federal programs and approved by the Federal awarding agency.
- (5) Severance payments to foreign nationals employed by the non-Federal entity outside the United States due to the termination of the foreign national as a result of the closing of, or curtailment of activities by, the non-Federal entity in that country, are unallowable, unless they are necessary for the performance of Federal programs and approved by the Federal awarding agency.

(j) ***For IHEs only.***

- (1) Fringe benefits in the form of undergraduate and graduate tuition or remission of tuition for individual employees are allowable, provided such benefits are granted in accordance with established non-Federal entity policies, and are distributed to all non-Federal entity activities on an equitable basis. Tuition benefits for family members other than the employee are unallowable.
- (2) Fringe benefits in the form of tuition or remission of tuition for individual employees not employed by IHEs are limited to the tax-free amount allowed per section 127 of the Internal Revenue Code as amended.
- (3) IHEs may offer employees tuition waivers or tuition reductions, provided that the benefit does not discriminate in favor of highly compensated employees. Employees can exercise these benefits at other institutions according to institutional policy. See § 200.466, for treatment of tuition remission provided to students.

(k) ***Fringe benefit programs and other benefit costs.*** For IHEs whose costs are paid by state or local governments, fringe benefit programs (such as pension costs and FICA) and any other benefits costs specifically incurred on behalf of, and in direct benefit to, the non-Federal entity, are allowable costs of such non-Federal entities whether or not these costs are recorded in the accounting records of the non-Federal entities, subject to the following:

- (1) The costs meet the requirements of Basic Considerations in §§ 200.402 through 200.411;
- (2) The costs are properly supported by approved cost allocation plans in accordance with applicable Federal cost accounting principles; and
- (3) The costs are not otherwise borne directly or indirectly by the Federal Government.

[85 FR 49565, Aug. 13, 2020]

§ 200.432 Conferences.

A conference is defined as a meeting, retreat, seminar, symposium, workshop or event whose primary purpose is the dissemination of technical information beyond the non-Federal entity and is necessary and reasonable for successful performance under the Federal award. Allowable conference costs paid by the non-Federal entity as a sponsor or host of the conference may include rental of facilities, speakers' fees, costs of meals and refreshments, local transportation, and other items incidental to such conferences unless further restricted by the terms and conditions of the Federal award. As needed, the costs of identifying, but not providing, locally available dependent-care resources are allowable. Conference hosts/sponsors must exercise discretion and judgment in ensuring that conference costs are appropriate, necessary and managed in a manner that minimizes costs to the Federal award. The Federal awarding agency may authorize exceptions where appropriate for programs including Indian tribes, children, and the elderly. See also §§ 200.438, 200.456, and 200.475.

[85 FR 49567, Aug. 13, 2020]

§ 200.433 Contingency provisions.

- (a) Contingency is that part of a budget estimate of future costs (typically of large construction projects, IT systems, or other items as approved by the Federal awarding agency) which is associated with possible events or conditions arising from causes the precise outcome of which is indeterminable at the time of estimate, and that experience shows will likely result, in aggregate, in additional costs for the approved activity or project. Amounts for major project scope changes, unforeseen risks, or extraordinary events may not be included.
- (b) It is permissible for contingency amounts other than those excluded in paragraph (a) of this section to be explicitly included in budget estimates, to the extent they are necessary to improve the precision of those estimates. Amounts must be estimated using broadly-accepted cost estimating methodologies, specified in the budget documentation of the Federal award, and accepted by the Federal awarding agency. As such, contingency amounts are to be included in the Federal award. In order for actual costs incurred to be allowable, they must comply with the cost principles and other requirements in this part (see also §§ 200.300 and 200.403 of this part); be necessary and reasonable for proper and efficient accomplishment of project or program objectives, and be verifiable from the non-Federal entity's records.
- (c) Payments made by the Federal awarding agency to the non-Federal entity's "contingency reserve" or any similar payment made for events the occurrence of which cannot be foretold with certainty as to the time or intensity, or with an assurance of their happening, are unallowable, except as noted in §§ 200.431 and 200.447.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49567, Aug. 13, 2020]

§ 200.434 Contributions and donations.

- (a) Costs of contributions and donations, including cash, property, and services, from the non-Federal entity to other entities, are unallowable.
- (b) The value of services and property donated to the non-Federal entity may not be charged to the Federal award either as a direct or indirect (F&A) cost. The value of donated services and property may be used to meet cost sharing or matching requirements (see § 200.306). Depreciation on donated assets is permitted in accordance with § 200.436, as long as the donated property is not counted towards cost sharing or matching requirements.

- (c) Services donated or volunteered to the non-Federal entity may be furnished to a non-Federal entity by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services may not be charged to the Federal award either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with the provisions of § 200.306.
- (d) To the extent feasible, services donated to the non-Federal entity will be supported by the same methods used to support the allocability of regular personnel services.
- (e) The following provisions apply to nonprofit organizations. The value of services donated to the nonprofit organization utilized in the performance of a direct cost activity must be considered in the determination of the non-Federal entity's indirect cost rate(s) and, accordingly, must be allocated a proportionate share of applicable indirect costs when the following circumstances exist:
 - (1) The aggregate value of the services is material;
 - (2) The services are supported by a significant amount of the indirect costs incurred by the non-Federal entity;
 - (i) In those instances where there is no basis for determining the fair market value of the services rendered, the non-Federal entity and the cognizant agency for indirect costs must negotiate an appropriate allocation of indirect cost to the services.
 - (ii) Where donated services directly benefit a project supported by the Federal award, the indirect costs allocated to the services will be considered as a part of the total costs of the project. Such indirect costs may be reimbursed under the Federal award or used to meet cost sharing or matching requirements.
- (f) Fair market value of donated services must be computed as described in § 200.306.
- (g) Personal Property and Use of Space.
 - (1) Donated personal property and use of space may be furnished to a non-Federal entity. The value of the personal property and space may not be charged to the Federal award either as a direct or indirect cost.
 - (2) The value of the donations may be used to meet cost sharing or matching share requirements under the conditions described in § 200.300 of this part. The value of the donations must be determined in accordance with § 200.300. Where donations are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49567, Aug. 13, 2020]

§ 200.435 Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements.

- (a) *Definitions for the purposes of this section.*
 - (1) **Conviction** means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon verdict or a plea, including a conviction due to a plea of nolo contendere.

(2) **Costs** include the services of in-house or private counsel, accountants, consultants, or others engaged to assist the non-Federal entity before, during, and after commencement of a judicial or administrative proceeding, that bear a direct relationship to the proceeding.

(3) **Fraud** means:

- (i) Acts of fraud or corruption or attempts to defraud the Federal Government or to corrupt its agents,
- (ii) Acts that constitute a cause for debarment or suspension (as specified in agency regulations), and
- (iii) Acts which violate the False Claims Act (31 U.S.C. 3729-3732) or the Anti-kickback Act (41 U.S.C. 1320a-7b(b)).

(4) **Penalty** does not include restitution, reimbursement, or compensatory damages.

(5) **Proceeding** includes an investigation.

(b) **Costs.**

(1) Except as otherwise described herein, costs incurred in connection with any criminal, civil or administrative proceeding (including filing of a false certification) commenced by the Federal Government, a state, local government, or foreign government, or joined by the Federal Government (including a proceeding under the False Claims Act), against the non-Federal entity, (or commenced by third parties or a current or former employee of the non-Federal entity who submits a whistleblower complaint of reprisal in accordance with 10 U.S.C. 2409 or 41 U.S.C. 4712), are not allowable if the proceeding:

- (i) Relates to a violation of, or failure to comply with, a Federal, state, local or foreign statute, regulation or the terms and conditions of the Federal award, by the non-Federal entity (including its agents and employees); and
- (ii) Results in any of the following dispositions:
 - (A) In a criminal proceeding, a conviction.
 - (B) In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of non-Federal entity liability.
 - (C) In the case of any civil or administrative proceeding, the disallowance of costs or the imposition of a monetary penalty, or an order issued by the Federal awarding agency head or delegate to the non-Federal entity to take corrective action under 10 U.S.C. 2409 or 41 U.S.C. 4712.
 - (D) A final decision by an appropriate Federal official to debar or suspend the non-Federal entity, to rescind or void a Federal award, or to terminate a Federal award by reason of a violation or failure to comply with a statute, regulation, or the terms and conditions of the Federal award.
 - (E) A disposition by consent or compromise, if the action could have resulted in any of the dispositions described in paragraphs (b)(1)(ii)(A) through (D) of this section.

- (2) If more than one proceeding involves the same alleged misconduct, the costs of all such proceedings are unallowable if any results in one of the dispositions shown in paragraph (b) of this section.
- (c) If a proceeding referred to in paragraph (b) of this section is commenced by the Federal Government and is resolved by consent or compromise pursuant to an agreement by the non-Federal entity and the Federal Government, then the costs incurred may be allowed to the extent specifically provided in such agreement.
- (d) If a proceeding referred to in paragraph (b) of this section is commenced by a state, local or foreign government, the authorized Federal official may allow the costs incurred if such authorized official determines that the costs were incurred as a result of:
 - (1) A specific term or condition of the Federal award, or
 - (2) Specific written direction of an authorized official of the Federal awarding agency.
- (e) Costs incurred in connection with proceedings described in paragraph (b) of this section, which are not made unallowable by that subsection, may be allowed but only to the extent that:
 - (1) The costs are reasonable and necessary in relation to the administration of the Federal award and activities required to deal with the proceeding and the underlying cause of action;
 - (2) Payment of the reasonable, necessary, allocable and otherwise allowable costs incurred is not prohibited by any other provision(s) of the Federal award;
 - (3) The costs are not recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and,
 - (4) An authorized Federal official must determine the percentage of costs allowed considering the complexity of litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States, and such other factors as may be appropriate. Such percentage must not exceed 80 percent. However, if an agreement reached under paragraph (c) of this section has explicitly considered this 80 percent limitation and permitted a higher percentage, then the full amount of costs resulting from that agreement are allowable.
- (f) Costs incurred by the non-Federal entity in connection with the defense of suits brought by its employees or ex-employees under section 2 of the Major Fraud Act of 1988 (18 U.S.C. 1031), including the cost of all relief necessary to make such employee whole, where the non-Federal entity was found liable or settled, are unallowable.
- (g) Costs of prosecution of claims against the Federal Government, including appeals of final Federal agency decisions, are unallowable.
- (h) Costs of legal, accounting, and consultant services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the Federal award.
- (i) Costs which may be unallowable under this section, including directly associated costs, must be segregated and accounted for separately. During the pendency of any proceeding covered by paragraphs (b) and (f) of this section, the Federal Government must generally withhold payment of such costs. However, if in its best interests, the Federal Government may provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreement to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]

§ 200.436 Depreciation.

- (a) Depreciation is the method for allocating the cost of fixed assets to periods benefitting from asset use. The non-Federal entity may be compensated for the use of its buildings, capital improvements, equipment, and software projects capitalized in accordance with GAAP, provided that they are used, needed in the non-Federal entity's activities, and properly allocated to Federal awards. Such compensation must be made by computing depreciation.
- (b) The allocation for depreciation must be made in accordance with Appendices III through IX.
- (c) Depreciation is computed applying the following rules. The computation of depreciation must be based on the acquisition cost of the assets involved. For an asset donated to the non-Federal entity by a third party, its fair market value at the time of the donation must be considered as the acquisition cost. Such assets may be depreciated or claimed as matching but not both. For the computation of depreciation, the acquisition cost will exclude:
 - (1) The cost of land;
 - (2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government, irrespective of where title was originally vested or where it is presently located;
 - (3) Any portion of the cost of buildings and equipment contributed by or for the non-Federal entity that are already claimed as matching or where law or agreement prohibits recovery;
 - (4) Any asset acquired solely for the performance of a non-Federal award; and
- (d) When computing depreciation charges, the following must be observed:
 - (1) The period of useful service or useful life established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment, technological developments in the particular area, historical data, and the renewal and replacement policies followed for the individual items or classes of assets involved.
 - (2) The depreciation method used to charge the cost of an asset (or group of assets) to accounting periods must reflect the pattern of consumption of the asset during its useful life. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater in the early portions than in the later portions of its useful life, the straight-line method must be presumed to be the appropriate method. Depreciation methods once used may not be changed unless approved in advance by the cognizant agency. The depreciation methods used to calculate the depreciation amounts for indirect (F&A) rate purposes must be the same methods used by the non-Federal entity for its financial statements.
 - (3) The entire building, including the shell and all components, may be treated as a single asset and depreciated over a single useful life. A building may also be divided into multiple components. Each component item may then be depreciated over its estimated useful life. The building components must be grouped into three general components of a building: building shell (including construction and design costs), building services systems (e.g., elevators, HVAC, plumbing system and heating and air-conditioning system) and fixed equipment (e.g., sterilizers, casework, fume hoods, cold rooms and glassware/washers). In exceptional cases, a cognizant agency may authorize a non-Federal entity to use more than these three groupings. When a non-Federal entity elects to

depreciate its buildings by its components, the same depreciation methods must be used for indirect (F&A) purposes and financial statements purposes, as described in paragraphs (d)(1) and (2) of this section.

- (4) No depreciation may be allowed on any assets that have outlived their depreciable lives.
- (5) Where the depreciation method is introduced to replace the use allowance method, depreciation must be computed as if the asset had been depreciated over its entire life (i.e., from the date the asset was acquired and ready for use to the date of disposal or withdrawal from service). The total amount of use allowance and depreciation for an asset (including imputed depreciation applicable to periods prior to the conversion from the use allowance method as well as depreciation after the conversion) may not exceed the total acquisition cost of the asset.
- (e) Charges for depreciation must be supported by adequate property records, and physical inventories must be taken at least once every two years to ensure that the assets exist and are usable, used, and needed. Statistical sampling techniques may be used in taking these inventories. In addition, adequate depreciation records showing the amount of depreciation must be maintained.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49568, Aug. 13, 2020]

§ 200.437 Employee health and welfare costs.

- (a) Costs incurred in accordance with the non-Federal entity's documented policies for the improvement of working conditions, employer-employee relations, employee health, and employee performance are allowable.
- (b) Such costs will be equitably apportioned to all activities of the non-Federal entity. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably sent to employee welfare organizations.
- (c) Losses resulting from operating food services are allowable only if the non-Federal entity's objective is to operate such services on a break-even basis. Losses sustained because of operating objectives other than the above are allowable only:
 - (1) Where the non-Federal entity can demonstrate unusual circumstances; and
 - (2) With the approval of the cognizant agency for indirect costs.

§ 200.438 Entertainment costs.

Costs of entertainment, including amusement, diversion, and social activities and any associated costs are unallowable, except where specific costs that might otherwise be considered entertainment have a programmatic purpose and are authorized either in the approved budget for the Federal award or with prior written approval of the Federal awarding agency.

§ 200.439 Equipment and other capital expenditures.

- (a) See § 200.1 for the definitions of *capital expenditures*, *equipment*, *special purpose equipment*, *general purpose equipment*, *acquisition cost*, and *capital assets*.
- (b) The following rules of allowability must apply to equipment and other capital expenditures:

- (1) Capital expenditures for general purpose equipment, buildings, and land are unallowable as direct charges, except with the prior written approval of the Federal awarding agency or pass-through entity.
- (2) Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of \$5,000 or more have the prior written approval of the Federal awarding agency or pass-through entity.
- (3) Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior written approval of the Federal awarding agency, or pass-through entity. See § 200.436, for rules on the allowability of depreciation on buildings, capital improvements, and equipment. See also § 200.465.
- (4) When approved as a direct charge pursuant to paragraphs (b)(1) through (3) of this section, capital expenditures will be charged in the period in which the expenditure is incurred, or as otherwise determined appropriate and negotiated with the Federal awarding agency.
- (5) The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by continuing to claim the otherwise allowable depreciation on the equipment, or by amortizing the amount to be written off over a period of years negotiated with the Federal cognizant agency for indirect cost.
- (6) Cost of equipment disposal. If the non-Federal entity is instructed by the Federal awarding agency to otherwise dispose of or transfer the equipment the costs of such disposal or transfer are allowable.
- (7) Equipment and other capital expenditures are unallowable as indirect costs. See § 200.436.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49568, Aug. 13, 2020]

§ 200.440 Exchange rates.

- (a) Cost increases for fluctuations in exchange rates are allowable costs subject to the availability of funding. Prior approval of exchange rate fluctuations is required only when the change results in the need for additional Federal funding, or the increased costs result in the need to significantly reduce the scope of the project. The Federal awarding agency must however ensure that adequate funds are available to cover currency fluctuations in order to avoid a violation of the Anti-Deficiency Act.
- (b) The non-Federal entity is required to make reviews of local currency gains to determine the need for additional federal funding before the expiration date of the Federal award. Subsequent adjustments for currency increases may be allowable only when the non-Federal entity provides the Federal awarding agency with adequate source documentation from a commonly used source in effect at the time the expense was made, and to the extent that sufficient Federal funds are available.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]

§ 200.441 Fines, penalties, damages and other settlements.

Costs resulting from non-Federal entity violations of, alleged violations of, or failure to comply with, Federal, state, tribal, local or foreign laws and regulations are unallowable, except when incurred as a result of compliance with specific provisions of the Federal award, or with prior written approval of the Federal awarding agency. See also § 200.435.

[85 FR 49568, Aug. 13, 2020]

§ 200.442 Fund raising and investment management costs.

- (a) Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred to raise capital or obtain contributions are unallowable. Fund raising costs for the purposes of meeting the Federal program objectives are allowable with prior written approval from the Federal awarding agency. Proposal costs are covered in § 200.460.
- (b) Costs of investment counsel and staff and similar expenses incurred to enhance income from investments are unallowable except when associated with investments covering pension, self-insurance, or other funds which include Federal participation allowed by this part.
- (c) Costs related to the physical custody and control of monies and securities are allowable.
- (d) Both allowable and unallowable fund-raising and investment activities must be allocated as an appropriate share of indirect costs under the conditions described in § 200.413.

[85 FR 49568, Aug. 13, 2020]

§ 200.443 Gains and losses on disposition of depreciable assets.

- (a) Gains and losses on the sale, retirement, or other disposition of depreciable property must be included in the year in which they occur as credits or charges to the asset cost grouping(s) in which the property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate asset cost grouping(s) is the difference between the amount realized on the property and the undepreciated basis of the property.
- (b) Gains and losses from the disposition of depreciable property must not be recognized as a separate credit or charge under the following conditions:
 - (1) The gain or loss is processed through a depreciation account and is reflected in the depreciation allowable under §§ 200.436 and 200.439.
 - (2) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.
 - (3) A loss results from the failure to maintain permissible insurance, except as otherwise provided in § 200.447.
 - (4) Compensation for the use of the property was provided through use allowances in lieu of depreciation.
 - (5) Gains and losses arising from mass or extraordinary sales, retirements, or other dispositions must be considered on a case-by-case basis.
- (c) Gains or losses of any nature arising from the sale or exchange of property other than the property covered in paragraph (a) of this section, e.g., land, must be excluded in computing Federal award costs.
- (d) When assets acquired with Federal funds, in part or wholly, are disposed of, the distribution of the proceeds must be made in accordance with §§ 200.310 through 200.316 of this part.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49568, Aug. 13, 2020]

§ 200.444 General costs of government.

- (a) For states, local governments, and Indian Tribes, the general costs of government are unallowable (except as provided in § 200.475). Unallowable costs include:
 - (1) Salaries and expenses of the Office of the Governor of a state or the chief executive of a local government or the chief executive of an Indian tribe;
 - (2) Salaries and other expenses of a state legislature, tribal council, or similar local governmental body, such as a county supervisor, city council, school board, etc., whether incurred for purposes of legislation or executive direction;
 - (3) Costs of the judicial branch of a government;
 - (4) Costs of prosecutorial activities unless treated as a direct cost to a specific program if authorized by statute or regulation (however, this does not preclude the allowability of other legal activities of the Attorney General as described in § 200.435); and
 - (5) Costs of other general types of government services normally provided to the general public, such as fire and police, unless provided for as a direct cost under a program statute or regulation.
- (b) For Indian tribes and Councils of Governments (COGs) (see definition for *Local government* in § 200.1 of this part), up to 50% of salaries and expenses directly attributable to managing and operating Federal programs by the chief executive and his or her staff can be included in the indirect cost calculation without documentation.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49568, Aug. 13, 2020]

§ 200.445 Goods or services for personal use.

- (a) Costs of goods or services for personal use of the non-Federal entity's employees are unallowable regardless of whether the cost is reported as taxable income to the employees.
- (b) Costs of housing (e.g., depreciation, maintenance, utilities, furnishings, rent), housing allowances and personal living expenses are only allowable as direct costs regardless of whether reported as taxable income to the employees. In addition, to be allowable direct costs must be approved in advance by a Federal awarding agency.

§ 200.446 Idle facilities and idle capacity.

- (a) As used in this section the following terms have the meanings set forth in this section:
 - (1) Facilities means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the non-Federal entity.
 - (2) Idle facilities means completely unused facilities that are excess to the non-Federal entity's current needs.
 - (3) Idle capacity means the unused capacity of partially used facilities. It is the difference between:
 - (i) That which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays and;

- (ii) The extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis should be used if it can be shown that this amount of usage would normally be expected for the type of facility involved.
- (4) Cost of idle facilities or idle capacity means costs such as maintenance, repair, housing, rent, and other related costs, e.g., insurance, interest, and depreciation. These costs could include the costs of idle public safety emergency facilities, telecommunications, or information technology system capacity that is built to withstand major fluctuations in load, e.g., consolidated data centers.
- (b) The costs of idle facilities are unallowable except to the extent that:
 - (1) They are necessary to meet workload requirements which may fluctuate and are allocated appropriately to all benefiting programs; or
 - (2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subsection, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of such facilities.
- (c) The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided that the capacity is reasonably anticipated to be necessary to carry out the purpose of the Federal award or was originally reasonable and is not subject to reduction or elimination by use on other Federal awards, subletting, renting, or sale, in accordance with sound business, economic, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be considered idle facilities.

§ 200.447 Insurance and indemnification.

- (a) Costs of insurance required or approved and maintained, pursuant to the Federal award, are allowable.
- (b) Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:
 - (1) Types and extent and cost of coverage are in accordance with the non-Federal entity's policy and sound business practice.
 - (2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that the Federal awarding agency has specifically required or approved such costs.
 - (3) Costs allowed for business interruption or other similar insurance must exclude coverage of management fees.
 - (4) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibilities are allowable only to the extent that the insurance represents additional compensation (see § 200.431). The cost of such insurance when the non-Federal entity is identified as the beneficiary is unallowable.
 - (5) Insurance against defects. Costs of insurance with respect to any costs incurred to correct defects in the non-Federal entity's materials or workmanship are unallowable.

(6) Medical liability (malpractice) insurance. Medical liability insurance is an allowable cost of Federal research programs only to the extent that the Federal research programs involve human subjects or training of participants in research techniques. Medical liability insurance costs must be treated as a direct cost and must be assigned to individual projects based on the manner in which the insurer allocates the risk to the population covered by the insurance.

(c) Actual losses which could have been covered by permissible insurance (through a self-insurance program or otherwise) are unallowable, unless expressly provided for in the Federal award. However, costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable.

(d) Contributions to a reserve for certain self-insurance programs including workers' compensation, unemployment compensation, and severance pay are allowable subject to the following provisions:

(1) The type of coverage and the extent of coverage and the rates and premiums would have been allowed had insurance (including reinsurance) been purchased to cover the risks. However, provision for known or reasonably estimated self-insured liabilities, which do not become payable for more than one year after the provision is made, must not exceed the discounted present value of the liability. The rate used for discounting the liability must be determined by giving consideration to such factors as the non-Federal entity's settlement rate for those liabilities and its investment rate of return.

(2) Earnings or investment income on reserves must be credited to those reserves.

(3)

(i) Contributions to reserves must be based on sound actuarial principles using historical experience and reasonable assumptions. Reserve levels must be analyzed and updated at least biennially for each major risk being insured and take into account any reinsurance, coinsurance, etc. Reserve levels related to employee-related coverages will normally be limited to the value of claims:

(A) Submitted and adjudicated but not paid;

(B) Submitted but not adjudicated; and

(C) Incurred but not submitted.

(ii) Reserve levels in excess of the amounts based on the above must be identified and justified in the cost allocation plan or indirect cost rate proposal.

(4) Accounting records, actuarial studies, and cost allocations (or billings) must recognize any significant differences due to types of insured risk and losses generated by the various insured activities or agencies of the non-Federal entity. If individual departments or agencies of the non-Federal entity experience significantly different levels of claims for a particular risk, those differences are to be recognized by the use of separate allocations or other techniques resulting in an equitable allocation.

- (5) Whenever funds are transferred from a self-insurance reserve to other accounts (e.g., general fund or unrestricted account), refunds must be made to the Federal Government for its share of funds transferred, including earned or imputed interest from the date of transfer and debt interest, if applicable, chargeable in accordance with applicable Federal cognizant agency for indirect cost, claims collection regulations.
- (e) Insurance refunds must be credited against insurance costs in the year the refund is received.
- (f) Indemnification includes securing the non-Federal entity against liabilities to third persons and other losses not compensated by insurance or otherwise. The Federal Government is obligated to indemnify the non-Federal entity only to the extent expressly provided for in the Federal award, except as provided in paragraph (c) of this section.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49568, Aug. 13, 2020]

§ 200.448 Intellectual property.

(a) *Patent costs.*

- (1) The following costs related to securing patents and copyrights are allowable:
 - (i) Costs of preparing disclosures, reports, and other documents required by the Federal award, and of searching the art to the extent necessary to make such disclosures;
 - (ii) Costs of preparing documents and any other patent costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is required by the Federal Government to be conveyed to the Federal Government; and
 - (iii) General counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee intellectual property agreements (See also § 200.459).
- (2) The following costs related to securing patents and copyrights are unallowable:
 - (i) Costs of preparing disclosures, reports, and other documents, and of searching the art to make disclosures not required by the Federal award;
 - (ii) Costs in connection with filing and prosecuting any foreign patent application, or any United States patent application, where the Federal award does not require conveying title or a royalty-free license to the Federal Government.

(b) *Royalties and other costs for use of patents and copyrights.*

- (1) Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights thereto, necessary for the proper performance of the Federal award are allowable unless:
 - (i) The Federal Government already has a license or the right to free use of the patent or copyright.
 - (ii) The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid.
 - (iii) The patent or copyright is considered to be unenforceable.
 - (iv) The patent or copyright is expired.

- (2) Special care should be exercised in determining reasonableness where the royalties may have been arrived at as a result of less-than-arm's-length bargaining, such as:
 - (i) Royalties paid to persons, including corporations, affiliated with the non-Federal entity.
 - (ii) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Federal award would be made.
 - (iii) Royalties paid under an agreement entered into after a Federal award is made to a non-Federal entity.
- (3) In any case involving a patent or copyright formerly owned by the non-Federal entity, the amount of royalty allowed must not exceed the cost which would have been allowed had the non-Federal entity retained title thereto.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 85 FR 49569, Aug. 13, 2020]

§ 200.449 Interest.

- (a) **General.** Costs incurred for interest on borrowed capital, temporary use of endowment funds, or the use of the non-Federal entity's own funds, however represented, are unallowable. Financing costs (including interest) to acquire, construct, or replace capital assets are allowable, subject to the conditions in this section.
- (b) **Capital assets.**
 - (1) Capital assets is defined as noted in § 200.1 of this part. An asset cost includes (as applicable) acquisition costs, construction costs, and other costs capitalized in accordance with GAAP.
 - (2) For non-Federal entity fiscal years beginning on or after January 1, 2016, intangible assets include patents and computer software. For software development projects, only interest attributable to the portion of the project costs capitalized in accordance with GAAP is allowable.
- (c) **Conditions for all non-Federal entities.**
 - (1) The non-Federal entity uses the capital assets in support of Federal awards;
 - (2) The allowable asset costs to acquire facilities and equipment are limited to a fair market value available to the non-Federal entity from an unrelated (arm's length) third party.
 - (3) The non-Federal entity obtains the financing via an arm's-length transaction (that is, a transaction with an unrelated third party); or claims reimbursement of actual interest cost at a rate available via such a transaction.
 - (4) The non-Federal entity limits claims for Federal reimbursement of interest costs to the least expensive alternative. For example, a lease contract that transfers ownership by the end of the contract may be determined less costly than purchasing through other types of debt financing, in which case reimbursement must be limited to the amount of interest determined if leasing had been used.
 - (5) The non-Federal entity expenses or capitalizes allowable interest cost in accordance with GAAP.

- (6) Earnings generated by the investment of borrowed funds pending their disbursement for the asset costs are used to offset the current period's allowable interest cost, whether that cost is expensed or capitalized. Earnings subject to being reported to the Federal Internal Revenue Service under arbitrage requirements are excludable.
- (7) The following conditions must apply to debt arrangements over \$1 million to purchase or construct facilities, unless the non-Federal entity makes an initial equity contribution to the purchase of 25 percent or more. For this purpose, "initial equity contribution" means the amount or value of contributions made by the non-Federal entity for the acquisition of facilities prior to occupancy.
 - (i) The non-Federal entity must reduce claims for reimbursement of interest cost by an amount equal to imputed interest earnings on excess cash flow attributable to the portion of the facility used for Federal awards.
 - (ii) The non-Federal entity must impute interest on excess cash flow as follows:
 - (A) Annually, the non-Federal entity must prepare a cumulative (from the inception of the project) report of monthly cash inflows and outflows, regardless of the funding source. For this purpose, inflows consist of Federal reimbursement for depreciation, amortization of capitalized construction interest, and annual interest cost. Outflows consist of initial equity contributions, debt principal payments (less the pro-rata share attributable to the cost of land), and interest payments.
 - (B) To compute monthly cash inflows and outflows, the non-Federal entity must divide the annual amounts determined in step (i) by the number of months in the year (usually 12) that the building is in service.
 - (C) For any month in which cumulative cash inflows exceed cumulative outflows, interest must be calculated on the excess inflows for that month and be treated as a reduction to allowable interest cost. The rate of interest to be used must be the three-month Treasury bill closing rate as of the last business day of that month.
- (8) Interest attributable to a fully depreciated asset is unallowable.
- (d) Additional conditions for states, local governments and Indian tribes. For costs to be allowable, the non-Federal entity must have incurred the interest costs for buildings after October 1, 1980, or for land and equipment after September 1, 1995.
 - (1) The requirement to offset interest earned on borrowed funds against current allowable interest cost (paragraph (c)(5), above) also applies to earnings on debt service reserve funds.
 - (2) The non-Federal entity will negotiate the amount of allowable interest cost related to the acquisition of facilities with asset costs of \$1 million or more, as outlined in paragraph (c)(7) of this section. For this purpose, a non-Federal entity must consider only cash inflows and outflows attributable to that portion of the real property used for Federal awards.
- (e) Additional conditions for IHEs. For costs to be allowable, the IHE must have incurred the interest costs after July 1, 1982, in connection with acquisitions of capital assets that occurred after that date.
- (f) Additional condition for nonprofit organizations. For costs to be allowable, the nonprofit organization incurred the interest costs after September 29, 1995, in connection with acquisitions of capital assets that occurred after that date.

- (g) The interest allowability provisions of this section do not apply to a nonprofit organization subject to “full coverage” under the Cost Accounting Standards (CAS), as defined at 48 CFR 9903.201-2(a). The non-Federal entity's Federal awards are instead subject to CAS 414 (48 CFR 9904.414), “Cost of Money as an Element of the Cost of Facilities Capital”, and CAS 417 (48 CFR 9904.417), “Cost of Money as an Element of the Cost of Capital Assets Under Construction”.

[78 FR 78608, Dec. 26, 2013, as amended at 80 FR 54409, Sept. 10, 2015; 85 FR 49569, Aug. 13, 2020]

§ 200.450 Lobbying.

- (a) The cost of certain influencing activities associated with obtaining grants, contracts, or cooperative agreements, or loans is an unallowable cost. Lobbying with respect to certain grants, contracts, cooperative agreements, and loans is governed by relevant statutes, including among others, the provisions of 31 U.S.C. 1352, as well as the common rule, “New Restrictions on Lobbying” published on February 26, 1990, including definitions, and the Office of Management and Budget “Governmentwide Guidance for New Restrictions on Lobbying” and notices published on December 20, 1989, June 15, 1990, January 15, 1992, and January 19, 1996.
- (b) **Executive lobbying costs.** Costs incurred in attempting to improperly influence either directly or indirectly, an employee or officer of the executive branch of the Federal Government to give consideration or to act regarding a Federal award or a regulatory matter are unallowable. Improper influence means any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a Federal award or regulatory matter on any basis other than the merits of the matter.
- (c) In addition to the above, the following restrictions are applicable to nonprofit organizations and IHEs:
 - (1) Costs associated with the following activities are unallowable:
 - (i) Attempts to influence the outcomes of any Federal, state, or local election, referendum, initiative, or similar procedure, through in-kind or cash contributions, endorsements, publicity, or similar activity;
 - (ii) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections in the United States;
 - (iii) Any attempt to influence:
 - (A) The introduction of Federal or state legislation;
 - (B) The enactment or modification of any pending Federal or state legislation through communication with any member or employee of the Congress or state legislature (including efforts to influence state or local officials to engage in similar lobbying activity);
 - (C) The enactment or modification of any pending Federal or state legislation by preparing, distributing, or using publicity or propaganda, or by urging members of the general public, or any segment thereof, to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign; or
 - (D) Any government official or employee in connection with a decision to sign or veto enrolled legislation;

- (iv) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable lobbying.

(2) The following activities are excepted from the coverage of paragraph (c)(1) of this section:

- (i) Technical and factual presentations on topics directly related to the performance of a grant, contract, or other agreement (through hearing testimony, statements, or letters to the Congress or a state legislature, or subdivision, member, or cognizant staff member thereof), in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) made by the non-Federal entity's member of congress, legislative body or a subdivision, or a cognizant staff member thereof, provided such information is readily obtainable and can be readily put in deliverable form, and further provided that costs under this section for travel, lodging or meals are unallowable unless incurred to offer testimony at a regularly scheduled Congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearings;
- (ii) Any lobbying made unallowable by paragraph (c)(1)(iii) of this section to influence state legislation in order to directly reduce the cost, or to avoid material impairment of the non-Federal entity's authority to perform the grant, contract, or other agreement; or
- (iii) Any activity specifically authorized by statute to be undertaken with funds from the Federal award.
- (iv) Any activity excepted from the definitions of "lobbying" or "influencing legislation" by the Internal Revenue Code provisions that require nonprofit organizations to limit their participation in direct and "grass roots" lobbying activities in order to retain their charitable deduction status and avoid punitive excise taxes, I.R.C. §§ 501(c)(3), 501(h), 4911(a), including:
 - (A) Nonpartisan analysis, study, or research reports;
 - (B) Examinations and discussions of broad social, economic, and similar problems; and
 - (C) Information provided upon request by a legislator for technical advice and assistance, as defined by I.R.C. § 4911(d)(2) and 26 CFR 56.4911-2(c)(1)-(c)(3).
- (v) When a non-Federal entity seeks reimbursement for indirect (F&A) costs, total lobbying costs must be separately identified in the indirect (F&A) cost rate proposal, and thereafter treated as other unallowable activity costs in accordance with the procedures of § 200.413.
- (vi) The non-Federal entity must submit as part of its annual indirect (F&A) cost rate proposal a certification that the requirements and standards of this section have been complied with. (See also § 200.415.)
- (vii)
 - (A) Time logs, calendars, or similar records are not required to be created for purposes of complying with the record keeping requirements in § 200.302 with respect to lobbying costs during any particular calendar month when:

- (1) The employee engages in lobbying (as defined in paragraphs (c)(1) and (c)(2) of this section) 25 percent or less of the employee's compensated hours of employment during that calendar month; and
 - (2) Within the preceding five-year period, the non-Federal entity has not materially misstated allowable or unallowable costs of any nature, including legislative lobbying costs.
- (B) When conditions in paragraph (c)(2)(vii)(A)(1) and (2) of this section are met, non-Federal entities are not required to establish records to support the allowability of claimed costs in addition to records already required or maintained. Also, when conditions in paragraphs (c)(2)(vii)(A)(1) and (2) of this section are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of lobbying time spent by employees during a calendar month.
- (viii) The Federal awarding agency must establish procedures for resolving in advance, in consultation with OMB, any significant questions or disagreements concerning the interpretation or application of this section. Any such advance resolutions must be binding in any subsequent settlements, audits, or investigations with respect to that grant or contract for purposes of interpretation of this part, provided, however, that this must not be construed to prevent a contractor or non-Federal entity from contesting the lawfulness of such a determination.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49569, Aug. 13, 2020]

§ 200.451 Losses on other awards or contracts.

Any excess of costs over income under any other award or contract of any nature is unallowable. This includes, but is not limited to, the non-Federal entity's contributed portion by reason of cost-sharing agreements or any under-recoveries through negotiation of flat amounts for indirect (F&A) costs. Also, any excess of costs over authorized funding levels transferred from any award or contract to another award or contract is unallowable. All losses are not allowable indirect (F&A) costs and are required to be included in the appropriate indirect cost rate base for allocation of indirect costs.

§ 200.452 Maintenance and repair costs.

Costs incurred for utilities, insurance, security, necessary maintenance, janitorial services, repair, or upkeep of buildings and equipment (including Federal property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable. Costs incurred for improvements which add to the permanent value of the buildings and equipment or appreciably prolong their intended life must be treated as capital expenditures (see § 200.439). These costs are only allowable to the extent not paid through rental or other agreements.

[85 FR 49569, Aug. 13, 2020]

§ 200.453 Materials and supplies costs, including costs of computing devices.

- (a) Costs incurred for materials, supplies, and fabricated parts necessary to carry out a Federal award are allowable.

- (b) Purchased materials and supplies must be charged at their actual prices, net of applicable credits. Withdrawals from general stores or stockrooms must be charged at their actual net cost under any recognized method of pricing inventory withdrawals, consistently applied. Incoming transportation charges are a proper part of materials and supplies costs.
- (c) Materials and supplies used for the performance of a Federal award may be charged as direct costs. In the specific case of computing devices, charging as direct costs is allowable for devices that are essential and allocable, but not solely dedicated, to the performance of a Federal award.
- (d) Where federally-donated or furnished materials are used in performing the Federal award, such materials will be used without charge.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014]

§ 200.454 Memberships, subscriptions, and professional activity costs.

- (a) Costs of the non-Federal entity's membership in business, technical, and professional organizations are allowable.
- (b) Costs of the non-Federal entity's subscriptions to business, professional, and technical periodicals are allowable.
- (c) Costs of membership in any civic or community organization are allowable with prior approval by the Federal awarding agency or pass-through entity.
- (d) Costs of membership in any country club or social or dining club or organization are unallowable.
- (e) Costs of membership in organizations whose primary purpose is lobbying are unallowable. See also § 200.450.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49569, Aug. 13, 2020]

§ 200.455 Organization costs.

Costs such as incorporation fees, brokers' fees, fees to promoters, organizers or management consultants, attorneys, accountants, or investment counselor, whether or not employees of the non-Federal entity in connection with establishment or reorganization of an organization, are unallowable except with prior approval of the Federal awarding agency.

§ 200.456 Participant support costs.

Participant support costs as defined in § 200.1 are allowable with the prior approval of the Federal awarding agency.

[85 FR 49569, Aug. 13, 2020]

§ 200.457 Plant and security costs.

Necessary and reasonable expenses incurred for protection and security of facilities, personnel, and work products are allowable. Such costs include, but are not limited to, wages and uniforms of personnel engaged in security activities; equipment; barriers; protective (non-military) gear, devices, and equipment; contractual security services; and consultants. Capital expenditures for plant security purposes are subject to § 200.439.

[85 FR 49569, Aug. 13, 2020]

§ 200.458 Pre-award costs.

Pre-award costs are those incurred prior to the effective date of the Federal award or subaward directly pursuant to the negotiation and in anticipation of the Federal award where such costs are necessary for efficient and timely performance of the scope of work. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the Federal award and only with the written approval of the Federal awarding agency. If charged to the award, these costs must be charged to the initial budget period of the award, unless otherwise specified by the Federal awarding agency or pass-through entity.

[85 FR 49569, Aug. 13, 2020]

§ 200.459 Professional service costs.

- (a) Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the non-Federal entity, are allowable, subject to paragraphs (b) and (c) of this section when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government. In addition, legal and related services are limited under § 200.435.
- (b) In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors are relevant:
 - (1) The nature and scope of the service rendered in relation to the service required.
 - (2) The necessity of contracting for the service, considering the non-Federal entity's capability in the particular area.
 - (3) The past pattern of such costs, particularly in the years prior to Federal awards.
 - (4) The impact of Federal awards on the non-Federal entity's business (i.e., what new problems have arisen).
 - (5) Whether the proportion of Federal work to the non-Federal entity's total business is such as to influence the non-Federal entity in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Federal awards.
 - (6) Whether the service can be performed more economically by direct employment rather than contracting.
 - (7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-federally funded activities.
 - (8) Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, and termination provisions).
- (c) In addition to the factors in paragraph (b) of this section, to be allowable, retainer fees must be supported by evidence of bona fide services available or rendered.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49569, Aug. 13, 2020]

§ 200.460 Proposal costs.

Proposal costs are the costs of preparing bids, proposals, or applications on potential Federal and non-Federal awards or projects, including the development of data necessary to support the non-Federal entity's bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect (F&A) costs and allocated currently to all activities of the non-Federal entity. No proposal costs of past accounting periods will be allocable to the current period.

§ 200.461 Publication and printing costs.

- (a) Publication costs for electronic and print media, including distribution, promotion, and general handling are allowable. If these costs are not identifiable with a particular cost objective, they should be allocated as indirect costs to all benefiting activities of the non-Federal entity.
- (b) Page charges for professional journal publications are allowable where:
 - (1) The publications report work supported by the Federal Government; and
 - (2) The charges are levied impartially on all items published by the journal, whether or not under a Federal award.
 - (3) The non-Federal entity may charge the Federal award during closeout for the costs of publication or sharing of research results if the costs are not incurred during the period of performance of the Federal award. If charged to the award, these costs must be charged to the final budget period of the award, unless otherwise specified by the Federal awarding agency.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49569, Aug. 13, 2020]

§ 200.462 Rearrangement and reconversion costs.

- (a) Costs incurred for ordinary and normal rearrangement and alteration of facilities are allowable as indirect costs. Special arrangements and alterations costs incurred specifically for a Federal award are allowable as a direct cost with the prior approval of the Federal awarding agency or pass-through entity.
- (b) Costs incurred in the restoration or rehabilitation of the non-Federal entity's facilities to approximately the same condition existing immediately prior to commencement of Federal awards, less costs related to normal wear and tear, are allowable.

§ 200.463 Recruiting costs.

- (a) Subject to paragraphs (b) and (c) of this section, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of "help wanted" advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees, are allowable to the extent that such costs are incurred pursuant to the non-Federal entity's standard recruitment program. Where the non-Federal entity uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

- (b) Special emoluments, fringe benefits, and salary allowances incurred to attract professional personnel that do not meet the test of reasonableness or do not conform with the established practices of the non-Federal entity, are unallowable.
- (c) Where relocation costs incurred incident to recruitment of a new employee have been funded in whole or in part to a Federal award, and the newly hired employee resigns for reasons within the employee's control within 12 months after hire, the non-Federal entity will be required to refund or credit the Federal share of such relocation costs to the Federal Government. See also § 200.464.
- (d) Short-term, travel visa costs (as opposed to longer-term, immigration visas) are generally allowable expenses that may be proposed as a direct cost. Since short-term visas are issued for a specific period and purpose, they can be clearly identified as directly connected to work performed on a Federal award. For these costs to be directly charged to a Federal award, they must:
 - (1) Be critical and necessary for the conduct of the project;
 - (2) Be allowable under the applicable cost principles;
 - (3) Be consistent with the non-Federal entity's cost accounting practices and non-Federal entity policy; and
 - (4) Meet the definition of "direct cost" as described in the applicable cost principles.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49569, Aug. 13, 2020]

§ 200.464 Relocation costs of employees.

- (a) Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or for a stated period of not less than 12 months) of an existing employee or upon recruitment of a new employee. Relocation costs are allowable, subject to the limitations described in paragraphs (b), (c), and (d) of this section, provided that:
 - (1) The move is for the benefit of the employer.
 - (2) Reimbursement to the employee is in accordance with an established written policy consistently followed by the employer.
 - (3) The reimbursement does not exceed the employee's actual (or reasonably estimated) expenses.
- (b) Allowable relocation costs for current employees are limited to the following:
 - (1) The costs of transportation of the employee, members of his or her immediate family and his household, and personal effects to the new location.
 - (2) The costs of finding a new home, such as advance trips by employees and spouses to locate living quarters and temporary lodging during the transition period, up to maximum period of 30 calendar days.
 - (3) Closing costs, such as brokerage, legal, and appraisal fees, incident to the disposition of the employee's former home. These costs, together with those described in (4), are limited to 8 per cent of the sales price of the employee's former home.
 - (4) The continuing costs of ownership (for up to six months) of the vacant former home after the settlement or lease date of the employee's new permanent home, such as maintenance of buildings and grounds (exclusive of fixing-up expenses), utilities, taxes, and property insurance.

- (5) Other necessary and reasonable expenses normally incident to relocation, such as the costs of canceling an unexpired lease, transportation of personal property, and purchasing insurance against loss of or damages to personal property. The cost of canceling an unexpired lease is limited to three times the monthly rental.
- (c) Allowable relocation costs for new employees are limited to those described in paragraphs (b)(1) and (2) of this section. When relocation costs incurred incident to the recruitment of new employees have been charged to a Federal award and the employee resigns for reasons within the employee's control within 12 months after hire, the non-Federal entity must refund or credit the Federal Government for its share of the cost. If dependents are not permitted at the location for any reason and the costs do not include costs of transporting household goods, the costs of travel to an overseas location must be considered travel costs in accordance with § 200.474 Travel costs, and not this relocations costs of employees (See also § 200.464).
- (d) The following costs related to relocation are unallowable:
 - (1) Fees and other costs associated with acquiring a new home.
 - (2) A loss on the sale of a former home.
 - (3) Continuing mortgage principal and interest payments on a home being sold.
 - (4) Income taxes paid by an employee related to reimbursed relocation costs.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49570, Aug. 13, 2020]

§ 200.465 Rental costs of real property and equipment.

- (a) Subject to the limitations described in paragraphs (b) through (d) of this section, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased. Rental arrangements should be reviewed periodically to determine if circumstances have changed and other options are available.
- (b) Rental costs under “sale and lease back” arrangements are allowable only up to the amount that would be allowed had the non-Federal entity continued to own the property. This amount would include expenses such as depreciation, maintenance, taxes, and insurance.
- (c) Rental costs under “less-than-arm's-length” leases are allowable only up to the amount (as explained in paragraph (b) of this section). For this purpose, a less-than-arm's-length lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to those between:
 - (1) Divisions of the non-Federal entity;
 - (2) The non-Federal entity under common control through common officers, directors, or members; and
 - (3) The non-Federal entity and a director, trustee, officer, or key employee of the non-Federal entity or an immediate family member, either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. For example, the non-Federal entity may establish a separate corporation for the sole purpose of owning property and leasing it back to the non-Federal entity.
 - (4) Family members include one party with any of the following relationships to another party:

- (i) Spouse, and parents thereof;
- (ii) Children, and spouses thereof;
- (iii) Parents, and spouses thereof;
- (iv) Siblings, and spouses thereof;
- (v) Grandparents and grandchildren, and spouses thereof;
- (vi) Domestic partner and parents thereof, including domestic partners of any individual in 2 through 5 of this definition; and
- (vii) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

(5) Rental costs under leases which are required to be treated as capital leases under GAAP are allowable only up to the amount (as explained in paragraph (b) of this section) that would be allowed had the non-Federal entity purchased the property on the date the lease agreement was executed. The provisions of GAAP must be used to determine whether a lease is a capital lease. Interest costs related to capital leases are allowable to the extent they meet the criteria in § 200.449 Interest. Unallowable costs include amounts paid for profit, management fees, and taxes that would not have been incurred had the non-Federal entity purchased the property.

(6) The rental of any property owned by any individuals or entities affiliated with the non-Federal entity, to include commercial or residential real estate, for purposes such as the home office workspace is unallowable.

(d) Rental costs under leases which are required to be accounted for as a financed purchase under GASB standards or a finance lease under FASB standards under GAAP are allowable only up to the amount (as explained in paragraph (b) of this section) that would be allowed had the non-Federal entity purchased the property on the date the lease agreement was executed. Interest costs related to these leases are allowable to the extent they meet the criteria in § 200.449. Unallowable costs include amounts paid for profit, management fees, and taxes that would not have been incurred had the non-Federal entity purchased the property.

(e) Rental or lease payments are allowable under lease contracts where the non-Federal entity is required to recognize an intangible right-to-use lease asset (per GASB) or right of use operating lease asset (per FASB) for purposes of financial reporting in accordance with GAAP.

(f) The rental of any property owned by any individuals or entities affiliated with the non-Federal entity, to include commercial or residential real estate, for purposes such as the home office workspace is unallowable.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49569, Aug. 13, 2020]

§ 200.466 Scholarships and student aid costs.

(a) Costs of scholarships, fellowships, and other programs of student aid at IHEs are allowable only when the purpose of the Federal award is to provide training to selected participants and the charge is approved by the Federal awarding agency. However, tuition remission and other forms of compensation paid as, or in lieu of, wages to students performing necessary work are allowable provided that:

- (1) The individual is conducting activities necessary to the Federal award;

- (2) Tuition remission and other support are provided in accordance with established policy of the IHE and consistently provided in a like manner to students in return for similar activities conducted under Federal awards as well as other activities; and
 - (3) During the academic period, the student is enrolled in an advanced degree program at a non-Federal entity or affiliated institution and the activities of the student in relation to the Federal award are related to the degree program;
 - (4) The tuition or other payments are reasonable compensation for the work performed and are conditioned explicitly upon the performance of necessary work; and
 - (5) It is the IHE's practice to similarly compensate students under Federal awards as well as other activities.
- (b) Charges for tuition remission and other forms of compensation paid to students as, or in lieu of, salaries and wages must be subject to the reporting requirements in § 200.430, and must be treated as direct or indirect cost in accordance with the actual work being performed. Tuition remission may be charged on an average rate basis. See also § 200.431.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49569, Aug. 13, 2020]

§ 200.467 Selling and marketing costs.

Costs of selling and marketing any products or services of the non-Federal entity (unless allowed under § 200.421) are unallowable, except as direct costs, with prior approval by the Federal awarding agency when necessary for the performance of the Federal award.

[85 FR 49570, Aug. 13, 2020]

§ 200.468 Specialized service facilities.

- (a) The costs of services provided by highly complex or specialized facilities operated by the non-Federal entity, such as computing facilities, wind tunnels, and reactors are allowable, provided the charges for the services meet the conditions of either paragraph (b) or (c) of this section, and, in addition, take into account any items of income or Federal financing that qualify as applicable credits under § 200.406.
- (b) The costs of such services, when material, must be charged directly to applicable awards based on actual usage of the services on the basis of a schedule of rates or established methodology that:
 - (1) Does not discriminate between activities under Federal awards and other activities of the non-Federal entity, including usage by the non-Federal entity for internal purposes, and
 - (2) Is designed to recover only the aggregate costs of the services. The costs of each service must consist normally of both its direct costs and its allocable share of all indirect (F&A) costs. Rates must be adjusted at least biennially, and must take into consideration over/under-applied costs of the previous period(s).
- (c) Where the costs incurred for a service are not material, they may be allocated as indirect (F&A) costs.
- (d) Under some extraordinary circumstances, where it is in the best interest of the Federal Government and the non-Federal entity to establish alternative costing arrangements, such arrangements may be worked out with the Federal cognizant agency for indirect costs.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49569, Aug. 13, 2020]

§ 200.469 Student activity costs.

Costs incurred for intramural activities, student publications, student clubs, and other student activities, are unallowable, unless specifically provided for in the Federal award.

§ 200.470 Taxes (including Value Added Tax).

(a) For states, local governments and Indian tribes:

- (1) Taxes that a governmental unit is legally required to pay are allowable, except for self-assessed taxes that disproportionately affect Federal programs or changes in tax policies that disproportionately affect Federal programs.
- (2) Gasoline taxes, motor vehicle fees, and other taxes that are in effect user fees for benefits provided to the Federal Government are allowable.
- (3) This provision does not restrict the authority of the Federal awarding agency to identify taxes where Federal participation is inappropriate. Where the identification of the amount of unallowable taxes would require an inordinate amount of effort, the cognizant agency for indirect costs may accept a reasonable approximation thereof.

(b) For nonprofit organizations and IHEs:

- (1) In general, taxes which the non-Federal entity is required to pay and which are paid or accrued in accordance with GAAP, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for:
 - (i) Taxes from which exemptions are available to the non-Federal entity directly or which are available to the non-Federal entity based on an exemption afforded the Federal Government and, in the latter case, when the Federal awarding agency makes available the necessary exemption certificates,
 - (ii) Special assessments on land which represent capital improvements, and
 - (iii) Federal income taxes.
- (2) Any refund of taxes, and any payment to the non-Federal entity of interest thereon, which were allowed as Federal award costs, will be credited either as a cost reduction or cash refund, as appropriate, to the Federal Government. However, any interest actually paid or credited to a non-Federal entity incident to a refund of tax, interest, and penalty will be paid or credited to the Federal Government only to the extent that such interest accrued over the period during which the non-Federal entity has been reimbursed by the Federal Government for the taxes, interest, and penalties.

(c) Value Added Tax (VAT) Foreign taxes charged for the purchase of goods or services that a non-Federal entity is legally required to pay in country is an allowable expense under Federal awards. Foreign tax refunds or applicable credits under Federal awards refer to receipts, or reduction of expenditures, which operate to offset or reduce expense items that are allocable to Federal awards as direct or indirect costs. To the extent that such credits accrued or received by the non-Federal entity relate to allowable cost, these costs must be credited to the Federal awarding agency either as costs or cash refunds. If the costs are credited back to the Federal award, the non-Federal entity may reduce the Federal share of costs by

the amount of the foreign tax reimbursement, or where Federal award has not expired, use the foreign government tax refund for approved activities under the Federal award with prior approval of the Federal awarding agency.

§ 200.471 Telecommunication costs and video surveillance costs.

- (a) Costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, cloud servers are allowable except for the following circumstances:
- (b) Obligating or expending covered telecommunications and video surveillance services or equipment or services as described in § 200.216 to:
 - (1) Procure or obtain, extend or renew a contract to procure or obtain;
 - (2) Enter into a contract (or extend or renew a contract) to procure; or
 - (3) Obtain the equipment, services, or systems.

[85 FR 49570, Aug. 13, 2020]

§ 200.472 Termination costs.

Termination of a Federal award generally gives rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the Federal award not been terminated. Cost principles covering these items are set forth in this section. They are to be used in conjunction with the other provisions of this part in termination situations.

- (a) The cost of items reasonably usable on the non-Federal entity's other work must not be allowable unless the non-Federal entity submits evidence that it would not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the non-Federal entity, the Federal awarding agency should consider the non-Federal entity's plans and orders for current and scheduled activity. Contemporaneous purchases of common items by the non-Federal entity must be regarded as evidence that such items are reasonably usable on the non-Federal entity's other work. Any acceptance of common items as allocable to the terminated portion of the Federal award must be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.
- (b) If in a particular case, despite all reasonable efforts by the non-Federal entity, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this part, except that any such costs continuing after termination due to the negligent or willful failure of the non-Federal entity to discontinue such costs must be unallowable.
- (c) Loss of useful value of special tooling, machinery, and equipment is generally allowable if:
 - (1) Such special tooling, special machinery, or equipment is not reasonably capable of use in the other work of the non-Federal entity,
 - (2) The interest of the Federal Government is protected by transfer of title or by other means deemed appropriate by the Federal awarding agency (see also § 200.313 (d)), and

- (3) The loss of useful value for any one terminated Federal award is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the Federal award bears to the entire terminated Federal award and other Federal awards for which the special tooling, machinery, or equipment was acquired.
- (d) Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated Federal award less the residual value of such leases, if:
 - (1) The amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the Federal award and such further period as may be reasonable, and
 - (2) The non-Federal entity makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the Federal award, and of reasonable restoration required by the provisions of the lease.
- (e) Settlement expenses including the following are generally allowable:
 - (1) Accounting, legal, clerical, and similar costs reasonably necessary for:
 - (i) The preparation and presentation to the Federal awarding agency of settlement claims and supporting data with respect to the terminated portion of the Federal award, unless the termination is for cause (see subpart D, including §§ 200.339-200.343); and
 - (ii) The termination and settlement of subawards.
 - (2) Reasonable costs for the storage, transportation, protection, and disposition of property provided by the Federal Government or acquired or produced for the Federal award.
- (f) Claims under subawards, including the allocable portion of claims which are common to the Federal award and to other work of the non-Federal entity, are generally allowable. An appropriate share of the non-Federal entity's indirect costs may be allocated to the amount of settlements with contractors and/or subrecipients, provided that the amount allocated is otherwise consistent with the basic guidelines contained in § 200.414. The indirect costs so allocated must exclude the same and similar costs claimed directly or indirectly as settlement expenses.

[78 FR 78608, Dec. 26, 2013. Redesignated and amended at 85 FR 49570, Aug. 13, 2020]

§ 200.473 Training and education costs.

The cost of training and education provided for employee development is allowable.

[78 FR 78608, Dec. 26, 2013. Redesignated at 85 FR 49570, Aug. 13, 2020]

§ 200.474 Transportation costs.

Costs incurred for freight, express, cartage, postage, and other transportation services relating either to goods purchased, in process, or delivered, are allowable. When such costs can readily be identified with the items involved, they may be charged directly as transportation costs or added to the cost of such items. Where identification with the materials received cannot readily be made, inbound transportation cost may be charged to the appropriate indirect (F&A) cost accounts if the non-Federal entity follows a consistent, equitable procedure in this respect. Outbound freight, if reimbursable under the terms and conditions of the Federal award, should be treated as a direct cost.

[78 FR 78608, Dec. 26, 2013. Redesignated at 85 FR 49570, Aug. 13, 2020]

§ 200.475 Travel costs.

- (a) **General.** Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the non-Federal entity. Such costs may be charged on an actual cost basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed in like circumstances in the non-Federal entity's non-federally-funded activities and in accordance with non-Federal entity's written travel reimbursement policies. Notwithstanding the provisions of § 200.444, travel costs of officials covered by that section are allowable with the prior written approval of the Federal awarding agency or pass-through entity when they are specifically related to the Federal award.
- (b) **Lodging and subsistence.** Costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, must be considered reasonable and otherwise allowable only to the extent such costs do not exceed charges normally allowed by the non-Federal entity in its regular operations as the result of the non-Federal entity's written travel policy. In addition, if these costs are charged directly to the Federal award documentation must justify that:
 - (1) Participation of the individual is necessary to the Federal award; and
 - (2) The costs are reasonable and consistent with non-Federal entity's established travel policy.
- (c)
 - (1) Temporary dependent care costs (as dependent is defined in 26 U.S.C. 152) above and beyond regular dependent care that directly results from travel to conferences is allowable provided that:
 - (i) The costs are a direct result of the individual's travel for the Federal award;
 - (ii) The costs are consistent with the non-Federal entity's documented travel policy for all entity travel; and
 - (iii) Are only temporary during the travel period.
 - (2) Travel costs for dependents are unallowable, except for travel of duration of six months or more with prior approval of the Federal awarding agency. See also § 200.432.
- (d) In the absence of an acceptable, written non-Federal entity policy regarding travel costs, the rates and amounts established under 5 U.S.C. 5701-11, ("Travel and Subsistence Expenses; Mileage Allowances"), or by the Administrator of General Services, or by the President (or his or her designee) pursuant to any provisions of such subchapter must apply to travel under Federal awards (48 CFR 31.205-46(a)).
- (e) **Commercial air travel.**
 - (1) Airfare costs in excess of the basic least expensive unrestricted accommodations class offered by commercial airlines are unallowable except when such accommodations would:
 - (i) Require circuitous routing;
 - (ii) Require travel during unreasonable hours;
 - (iii) Excessively prolong travel;
 - (iv) Result in additional costs that would offset the transportation savings; or

- (v) Offer accommodations not reasonably adequate for the traveler's medical needs. The non-Federal entity must justify and document these conditions on a case-by-case basis in order for the use of first-class or business-class airfare to be allowable in such cases.
- (2) Unless a pattern of avoidance is detected, the Federal Government will generally not question a non-Federal entity's determinations that customary standard airfare or other discount airfare is unavailable for specific trips if the non-Federal entity can demonstrate that such airfare was not available in the specific case.
- (f) **Air travel by other than commercial carrier.** Costs of travel by non-Federal entity-owned, -leased, or -chartered aircraft include the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, insurance, and other related costs. The portion of such costs that exceeds the cost of airfare as provided for in paragraph (d) of this section, is unallowable.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014. Redesignated and amended at 85 FR 49570, Aug. 13, 2020]

§ 200.476 Trustees.

Travel and subsistence costs of trustees (or directors) at IHEs and nonprofit organizations are allowable. See also § 200.475.

[85 FR 49571, Aug. 13, 2020]

Subpart F—Audit Requirements

Link to an amendment published at 89 FR 30136, Apr. 22, 2024.

GENERAL

§ 200.500 Purpose.

This part sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards.

AUDITS

§ 200.501 Audit requirements.

- (a) **Audit required.** A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part.
- (b) **Single audit.** A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single audit conducted in accordance with § 200.514 except when it elects to have a program-specific audit conducted in accordance with paragraph (c) of this section.
- (c) **Program-specific audit election.** When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of the auditee, the auditee may elect to have a

program-specific audit conducted in accordance with § 200.507. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.

- (d) **Exemption when Federal awards expended are less than \$750,000.** A non-Federal entity that expends less than \$750,000 during the non-Federal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in § 200.503, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).
- (e) **Federally Funded Research and Development Centers (FFRDC).** Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.
- (f) **Subrecipients and contractors.** An auditee may simultaneously be a recipient, a subrecipient, and a contractor. Federal awards expended as a recipient or a subrecipient are subject to audit under this part. The payments received for goods or services provided as a contractor are not Federal awards. Section § 200.331 sets forth the considerations in determining whether payments constitute a Federal award or a payment for goods or services provided as a contractor.
- (g) **Compliance responsibility for contractors.** In most cases, the auditee's compliance responsibility for contractors is only to ensure that the procurement, receipt, and payment for goods and services comply with Federal statutes, regulations, and the terms and conditions of Federal awards. Federal award compliance requirements normally do not pass through to contractors. However, the auditee is responsible for ensuring compliance for procurement transactions which are structured such that the contractor is responsible for program compliance or the contractor's records must be reviewed to determine program compliance. Also, when these procurement transactions relate to a major program, the scope of the audit must include determining whether these transactions are in compliance with Federal statutes, regulations, and the terms and conditions of Federal awards.
- (h) **For-profit subrecipient.** Since this part does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. The agreement with the for-profit subrecipient must describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the agreement, and post-award audits. See also § 200.332.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49571, Aug. 13, 2020]

§ 200.502 Basis for determining Federal awards expended.

- (a) **Determining Federal awards expended.** The determination of when a Federal award is expended must be based on when the activity related to the Federal award occurs. Generally, the activity pertains to events that require the non-Federal entity to comply with Federal statutes, regulations, and the terms and conditions of Federal awards, such as: expenditure/expense transactions associated with awards including grants, cost-reimbursement contracts under the FAR, compacts with Indian Tribes, cooperative agreements, and direct appropriations; the disbursement of funds to subrecipients; the use of loan proceeds under loan and loan guarantee programs; the receipt of property; the receipt of surplus property; the receipt or use of program income; the distribution or use of food commodities; the disbursement of amounts entitling the non-Federal entity to an interest subsidy; and the period when insurance is in force.

- (b) **Loan and loan guarantees (loans).** Since the Federal Government is at risk for loans until the debt is repaid, the following guidelines must be used to calculate the value of Federal awards expended under loan programs, except as noted in paragraphs (c) and (d) of this section:
 - (1) Value of new loans made or received during the audit period; plus
 - (2) Beginning of the audit period balance of loans from previous years for which the Federal Government imposes continuing compliance requirements; plus
 - (3) Any interest subsidy, cash, or administrative cost allowance received.
- (c) **Loan and loan guarantees (loans) at IHEs.** When loans are made to students of an IHE but the IHE does not make the loans, then only the value of loans made during the audit period must be considered Federal awards expended in that audit period. The balance of loans for previous audit periods is not included as Federal awards expended because the lender accounts for the prior balances.
- (d) **Prior loan and loan guarantees (loans).** Loans, the proceeds of which were received and expended in prior years, are not considered Federal awards expended under this part when the Federal statutes, regulations, and the terms and conditions of Federal awards pertaining to such loans impose no continuing compliance requirements other than to repay the loans.
- (e) **Endowment funds.** The cumulative balance of Federal awards for endowment funds that are federally restricted are considered Federal awards expended in each audit period in which the funds are still restricted.
- (f) **Free rent.** Free rent received by itself is not considered a Federal award expended under this part. However, free rent received as part of a Federal award to carry out a Federal program must be included in determining Federal awards expended and subject to audit under this part.
- (g) **Valuing non-cash assistance.** Federal non-cash assistance, such as free rent, food commodities, donated property, or donated surplus property, must be valued at fair market value at the time of receipt or the assessed value provided by the Federal agency.
- (h) **Medicare.** Medicare payments to a non-Federal entity for providing patient care services to Medicare-eligible individuals are not considered Federal awards expended under this part.
- (i) **Medicaid.** Medicaid payments to a subrecipient for providing patient care services to Medicaid-eligible individuals are not considered Federal awards expended under this part unless a state requires the funds to be treated as Federal awards expended because reimbursement is on a cost-reimbursement basis.
- (j) **Certain loans provided by the National Credit Union Administration.** For purposes of this part, loans made from the National Credit Union Share Insurance Fund and the Central Liquidity Facility that are funded by contributions from insured non-Federal entities are not considered Federal awards expended.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014]

§ 200.503 Relation to other audit requirements.

- (a) An audit conducted in accordance with this part must be in lieu of any financial audit of Federal awards which a non-Federal entity is required to undergo under any other Federal statute or regulation. To the extent that such audit provides a Federal agency with the information it requires to carry out its responsibilities under Federal statute or regulation, a Federal agency must rely upon and use that information.

- (b) Notwithstanding subsection (a), a Federal agency, Inspectors General, or GAO may conduct or arrange for additional audits which are necessary to carry out its responsibilities under Federal statute or regulation. The provisions of this part do not authorize any non-Federal entity to constrain, in any manner, such Federal agency from carrying out or arranging for such additional audits, except that the Federal agency must plan such audits to not be duplicative of other audits of Federal awards. Prior to commencing such an audit, the Federal agency or pass-through entity must review the FAC for recent audits submitted by the non-Federal entity, and to the extent such audits meet a Federal agency or pass-through entity's needs, the Federal agency or pass-through entity must rely upon and use such audits. Any additional audits must be planned and performed in such a way as to build upon work performed, including the audit documentation, sampling, and testing already performed, by other auditors.
- (c) The provisions of this part do not limit the authority of Federal agencies to conduct, or arrange for the conduct of, audits and evaluations of Federal awards, nor limit the authority of any Federal agency Inspector General or other Federal official. For example, requirements that may be applicable under the FAR or CAS and the terms and conditions of a cost-reimbursement contract may include additional applicable audits to be conducted or arranged for by Federal agencies.
- (d) **Federal agency to pay for additional audits.** A Federal agency that conducts or arranges for additional audits must, consistent with other applicable Federal statutes and regulations, arrange for funding the full cost of such additional audits.
- (e) **Request for a program to be audited as a major program.** A Federal awarding agency may request that an auditee have a particular Federal program audited as a major program in lieu of the Federal awarding agency conducting or arranging for the additional audits. To allow for planning, such requests should be made at least 180 calendar days prior to the end of the fiscal year to be audited. The auditee, after consultation with its auditor, should promptly respond to such a request by informing the Federal awarding agency whether the program would otherwise be audited as a major program using the risk-based audit approach described in § 200.518 and, if not, the estimated incremental cost. The Federal awarding agency must then promptly confirm to the auditee whether it wants the program audited as a major program. If the program is to be audited as a major program based upon this Federal awarding agency request, and the Federal awarding agency agrees to pay the full incremental costs, then the auditee must have the program audited as a major program. A pass-through entity may use the provisions of this paragraph for a subrecipient.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49570, Aug. 13, 2020]

§ 200.504 Frequency of audits.

Except for the provisions for biennial audits provided in paragraphs (a) and (b) of this section, audits required by this part must be performed annually. Any biennial audit must cover both years within the biennial period.

- (a) A state, local government, or Indian tribe that is required by constitution or statute, in effect on January 1, 1987, to undergo its audits less frequently than annually, is permitted to undergo its audits pursuant to this part biennially. This requirement must still be in effect for the biennial period.
- (b) Any nonprofit organization that had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, is permitted to undergo its audits pursuant to this part biennially.

§ 200.505 Sanctions.

In cases of continued inability or unwillingness to have an audit conducted in accordance with this part, Federal agencies and pass-through entities must take appropriate action as provided in § 200.339.

[85 FR 49571, Aug. 13, 2020]

§ 200.506 Audit costs.

See § 200.425.

[85 FR 49571, Aug. 13, 2020]

§ 200.507 Program-specific audits.

- (a) **Program-specific audit guide available.** In some cases, a program-specific audit guide will be available to provide specific guidance to the auditor with respect to internal controls, compliance requirements, suggested audit procedures, and audit reporting requirements. A listing of current program-specific audit guides can be found in the compliance supplement, Part 8, Appendix VI, Program-Specific Audit Guides, which includes a website where a copy of the guide can be obtained. When a current program-specific audit guide is available, the auditor must follow GAGAS and the guide when performing a program-specific audit.
- (b) **Program-specific audit guide not available.**
 - (1) When a current program-specific audit guide is not available, the auditee and auditor must have basically the same responsibilities for the Federal program as they would have for an audit of a major program in a single audit.
 - (2) The auditee must prepare the financial statement(s) for the Federal program that includes, at a minimum, a schedule of expenditures of Federal awards for the program and notes that describe the significant accounting policies used in preparing the schedule, a summary schedule of prior audit findings consistent with the requirements of § 200.511(b), and a corrective action plan consistent with the requirements of § 200.511(c).
 - (3) The auditor must:
 - (i) Perform an audit of the financial statement(s) for the Federal program in accordance with GAGAS;
 - (ii) Obtain an understanding of internal controls and perform tests of internal controls over the Federal program consistent with the requirements of § 200.514(c) for a major program;
 - (iii) Perform procedures to determine whether the auditee has complied with Federal statutes, regulations, and the terms and conditions of Federal awards that could have a direct and material effect on the Federal program consistent with the requirements of § 200.514(d) for a major program;

- (iv) Follow up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with the requirements of § 200.511, and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding; and
 - (v) Report any audit findings consistent with the requirements of § 200.516.
- (4) The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) must state that the audit was conducted in accordance with this part and include the following:
- (i) An opinion (or disclaimer of opinion) as to whether the financial statement(s) of the Federal program is presented fairly in all material respects in accordance with the stated accounting policies;
 - (ii) A report on internal control related to the Federal program, which must describe the scope of testing of internal control and the results of the tests;
 - (iii) A report on compliance which includes an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the terms and conditions of Federal awards which could have a direct and material effect on the Federal program; and
 - (iv) A schedule of findings and questioned costs for the Federal program that includes a summary of the auditor's results relative to the Federal program in a format consistent with § 200.515(d)(1) and findings and questioned costs consistent with the requirements of § 200.515(d)(3).

(c) Report submission for program-specific audits.

- (1) The audit must be completed and the reporting required by paragraph (c)(2) or (c)(3) of this section submitted within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a different period is specified in a program-specific audit guide. Unless restricted by Federal law or regulation, the auditee must make report copies available for public inspection. Auditees and auditors must ensure that their respective parts of the reporting package do not include protected personally identifiable information.
- (2) When a program-specific audit guide is available, the auditee must electronically submit to the FAC the data collection form prepared in accordance with § 200.512(b), as applicable to a program-specific audit, and the reporting required by the program-specific audit guide.
- (3) When a program-specific audit guide is not available, the reporting package for a program-specific audit must consist of the financial statement(s) of the Federal program, a summary schedule of prior audit findings, and a corrective action plan as described in paragraph (b)(2) of this section, and the auditor's report(s) described in paragraph (b)(4) of this section. The data collection form prepared in accordance with § 200.512(b), as applicable to a program-specific audit, and one copy of this reporting package must be electronically submitted to the FAC.

(d) Other sections of this part may apply. Program-specific audits are subject to:

- (1) 200.500 Purpose through 200.503 Relation to other audit requirements, paragraph (d);
- (2) 200.504 Frequency of audits through 200.506 Audit costs;

- (3) 200.508 Auditee responsibilities through 200.509 Auditor selection;
- (4) 200.511 Audit findings follow-up;
- (5) 200.512 Report submission, paragraphs (e) through (h);
- (6) 200.513 Responsibilities;
- (7) 200.516 Audit findings through 200.517 Audit documentation;
- (8) 200.521 Management decision; and
- (9) Other referenced provisions of this part unless contrary to the provisions of this section, a program-specific audit guide, or program statutes and regulations.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49571, Aug. 13, 2020]

AUDITEES

§ 200.508 Auditee responsibilities.

The auditee must:

- (a) Procure or otherwise arrange for the audit required by this part in accordance with § 200.509, and ensure it is properly performed and submitted when due in accordance with § 200.512.
- (b) Prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with § 200.510.
- (c) Promptly follow up and take corrective action on audit findings, including preparation of a summary schedule of prior audit findings and a corrective action plan in accordance with § 200.511(b) and (c), respectively.
- (d) Provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by this part.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49572, Aug. 13, 2020]

§ 200.509 Auditor selection.

- (a) **Auditor procurement.** In procuring audit services, the auditee must follow the procurement standards prescribed by the Procurement Standards in §§ 200.317 through 200.327 of subpart D of this part or the FAR (48 CFR part 42), as applicable. In requesting proposals for audit services, the objectives and scope of the audit must be made clear and the non-Federal entity must request a copy of the audit organization's peer review report which the auditor is required to provide under GAGAS. Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the results of peer and external quality control reviews, and price. Whenever possible, the auditee must make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises, in procuring audit services as stated in § 200.321, or the FAR (48 CFR part 42), as applicable.

- (b) **Restriction on auditor preparing indirect cost proposals.** An auditor who prepares the indirect cost proposal or cost allocation plan may not also be selected to perform the audit required by this part when the indirect costs recovered by the auditee during the prior year exceeded \$1 million. This restriction applies to the base year used in the preparation of the indirect cost proposal or cost allocation plan and any subsequent years in which the resulting indirect cost agreement or cost allocation plan is used to recover costs.
- (c) **Use of Federal auditors.** Federal auditors may perform all or part of the work required under this part if they comply fully with the requirements of this part.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49572, Aug. 13, 2020; 86 FR 10440, Feb. 22, 2021]

§ 200.510 Financial statements.

- (a) **Financial statements.** The auditee must prepare financial statements that reflect its financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited. The financial statements must be for the same organizational unit and fiscal year that is chosen to meet the requirements of this part. However, non-Federal entity-wide financial statements may also include departments, agencies, and other organizational units that have separate audits in accordance with § 200.514(a) and prepare separate financial statements.
- (b) **Schedule of expenditures of Federal awards.** The auditee must also prepare a schedule of expenditures of Federal awards for the period covered by the auditee's financial statements which must include the total Federal awards expended as determined in accordance with § 200.502. While not required, the auditee may choose to provide information requested by Federal awarding agencies and pass-through entities to make the schedule easier to use. For example, when a Federal program has multiple Federal award years, the auditee may list the amount of Federal awards expended for each Federal award year separately. At a minimum, the schedule must:
 - (1) List individual Federal programs by Federal agency. For a cluster of programs, provide the cluster name, list individual Federal programs within the cluster of programs, and provide the applicable Federal agency name. For R&D, total Federal awards expended must be shown either by individual Federal award or by Federal agency and major subdivision within the Federal agency. For example, the National Institutes of Health is a major subdivision in the Department of Health and Human Services.
 - (2) For Federal awards received as a subrecipient, the name of the pass-through entity and identifying number assigned by the pass-through entity must be included.
 - (3) Provide total Federal awards expended for each individual Federal program and the Assistance Listings Number or other identifying number when the Assistance Listings information is not available. For a cluster of programs also provide the total for the cluster.
 - (4) Include the total amount provided to subrecipients from each Federal program.
 - (5) For loan or loan guarantee programs described in § 200.502(b), identify in the notes to the schedule the balances outstanding at the end of the audit period. This is in addition to including the total Federal awards expended for loan or loan guarantee programs in the schedule.
 - (6) Include notes that describe that significant accounting policies used in preparing the schedule, and note whether or not the auditee elected to use the 10% de minimis cost rate as covered in § 200.414.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49572, Aug. 13, 2020]

§ 200.511 Audit findings follow-up.

- (a) **General.** The auditee is responsible for follow-up and corrective action on all audit findings. As part of this responsibility, the auditee must prepare a summary schedule of prior audit findings. The auditee must also prepare a corrective action plan for current year audit findings. The summary schedule of prior audit findings and the corrective action plan must include the reference numbers the auditor assigns to audit findings under § 200.516(c). Since the summary schedule may include audit findings from multiple years, it must include the fiscal year in which the finding initially occurred. The corrective action plan and summary schedule of prior audit findings must include findings relating to the financial statements which are required to be reported in accordance with GAGAS.
- (b) **Summary schedule of prior audit findings.** The summary schedule of prior audit findings must report the status of all audit findings included in the prior audit's schedule of findings and questioned costs. The summary schedule must also include audit findings reported in the prior audit's summary schedule of prior audit findings except audit findings listed as corrected in accordance with paragraph (b)(1) of this section, or no longer valid or not warranting further action in accordance with paragraph (b)(3) of this section.
 - (1) When audit findings were fully corrected, the summary schedule need only list the audit findings and state that corrective action was taken.
 - (2) When audit findings were not corrected or were only partially corrected, the summary schedule must describe the reasons for the finding's recurrence and planned corrective action, and any partial corrective action taken. When corrective action taken is significantly different from corrective action previously reported in a corrective action plan or in the Federal agency's or pass-through entity's management decision, the summary schedule must provide an explanation.
 - (3) When the auditee believes the audit findings are no longer valid or do not warrant further action, the reasons for this position must be described in the summary schedule. A valid reason for considering an audit finding as not warranting further action is that all of the following have occurred:
 - (i) Two years have passed since the audit report in which the finding occurred was submitted to the FAC;
 - (ii) The Federal agency or pass-through entity is not currently following up with the auditee on the audit finding; and
 - (iii) A management decision was not issued.
- (c) **Corrective action plan.** At the completion of the audit, the auditee must prepare, in a document separate from the auditor's findings described in § 200.516, a corrective action plan to address each audit finding included in the current year auditor's reports. The corrective action plan must provide the name(s) of the contact person(s) responsible for corrective action, the corrective action planned, and the anticipated completion date. If the auditee does not agree with the audit findings or believes corrective action is not required, then the corrective action plan must include an explanation and specific reasons.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49572, Aug. 13, 2020]

§ 200.512 Report submission.

(a) *General.*

- (1) The audit must be completed and the data collection form described in paragraph (b) of this section and reporting package described in paragraph (c) of this section must be submitted within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period. If the due date falls on a Saturday, Sunday, or Federal holiday, the reporting package is due the next business day.
- (2) Unless restricted by Federal statutes or regulations, the auditee must make copies available for public inspection. Auditees and auditors must ensure that their respective parts of the reporting package do not include protected personally identifiable information.

(b) *Data collection.* The FAC is the repository of record for subpart F of this part reporting packages and the data collection form. All Federal agencies, pass-through entities and others interested in a reporting package and data collection form must obtain it by accessing the FAC.

- (1) The auditee must submit required data elements described in Appendix X to Part 200, which state whether the audit was completed in accordance with this part and provides information about the auditee, its Federal programs, and the results of the audit. The data must include information available from the audit required by this part that is necessary for Federal agencies to use the audit to ensure integrity for Federal programs. The data elements and format must be approved by OMB, available from the FAC, and include collections of information from the reporting package described in paragraph (c) of this section. A senior level representative of the auditee (e.g., state controller, director of finance, chief executive officer, or chief financial officer) must sign a statement to be included as part of the data collection that says that the auditee complied with the requirements of this part, the data were prepared in accordance with this part (and the instructions accompanying the form), the reporting package does not include protected personally identifiable information, the information included in its entirety is accurate and complete, and that the FAC is authorized to make the reporting package and the form publicly available on a website.
- (2) *Exception for Indian Tribes and Tribal Organizations.* An auditee that is an Indian tribe or a tribal organization (as defined in the Indian Self-Determination, Education and Assistance Act (ISDEAA), 25 U.S.C. 450b(l)) may opt not to authorize the FAC to make the reporting package publicly available on a Web site, by excluding the authorization for the FAC publication in the statement described in paragraph (b)(1) of this section. If this option is exercised, the auditee becomes responsible for submitting the reporting package directly to any pass-through entities through which it has received a Federal award and to pass-through entities for which the summary schedule of prior audit findings reported the status of any findings related to Federal awards that the pass-through entity provided. Unless restricted by Federal statute or regulation, if the auditee opts not to authorize publication, it must make copies of the reporting package available for public inspection.
- (3) Using the information included in the reporting package described in paragraph (c) of this section, the auditor must complete the applicable data elements of the data collection form. The auditor must sign a statement to be included as part of the data collection form that indicates, at a minimum, the source of the information included in the form, the auditor's responsibility for the information, that the form is not a substitute for the reporting package described in paragraph (c) of this section, and that the content of the form is limited to the collection of information prescribed by OMB.

- (c) **Reporting package.** The reporting package must include the:
 - (1) Financial statements and schedule of expenditures of Federal awards discussed in § 200.510(a) and (b), respectively;
 - (2) Summary schedule of prior audit findings discussed in § 200.511(b);
 - (3) Auditor's report(s) discussed in § 200.515; and
 - (4) Corrective action plan discussed in § 200.511(c).
- (d) **Submission to FAC.** The auditee must electronically submit to the FAC the data collection form described in paragraph (b) of this section and the reporting package described in paragraph (c) of this section.
- (e) **Requests for management letters issued by the auditor.** In response to requests by a Federal agency or pass-through entity, auditees must submit a copy of any management letters issued by the auditor.
- (f) **Report retention requirements.** Auditees must keep one copy of the data collection form described in paragraph (b) of this section and one copy of the reporting package described in paragraph (c) of this section on file for three years from the date of submission to the FAC.
- (g) **FAC responsibilities.** The FAC must make available the reporting packages received in accordance with paragraph (c) of this section and § 200.507(c) to the public, except for Indian tribes exercising the option in (b)(2) of this section, and maintain a data base of completed audits, provide appropriate information to Federal agencies, and follow up with known auditees that have not submitted the required data collection forms and reporting packages.
- (h) **Electronic filing.** Nothing in this part must preclude electronic submissions to the FAC in such manner as may be approved by OMB.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49573, Aug. 13, 2020]

FEDERAL AGENCIES

§ 200.513 Responsibilities.

- (a)
 - (1) **Cognizant agency for audit responsibilities.** A non-Federal entity expending more than \$50 million a year in Federal awards must have a cognizant agency for audit. The designated cognizant agency for audit must be the Federal awarding agency that provides the predominant amount of funding directly (direct funding) (as listed on the Schedule of expenditures of Federal awards, see § 200.510(b)) to a non-Federal entity unless OMB designates a specific cognizant agency for audit. When the direct funding represents less than 25 percent of the total expenditures (as direct and subawards) by the non-Federal entity, then the Federal agency with the predominant amount of total funding is the designated cognizant agency for audit.
 - (2) To provide for continuity of cognizance, the determination of the predominant amount of direct funding must be based upon direct Federal awards expended in the non-Federal entity's fiscal years ending in 2019, and every fifth year thereafter.

- (3) Notwithstanding the manner in which audit cognizance is determined, a Federal awarding agency with cognizance for an auditee may reassign cognizance to another Federal awarding agency that provides substantial funding and agrees to be the cognizant agency for audit. Within 30 calendar days after any reassignment, both the old and the new cognizant agency for audit must provide notice of the change to the FAC, the auditee, and, if known, the auditor. The cognizant agency for audit must:
- (i) Provide technical audit advice and liaison assistance to auditees and auditors.
 - (ii) Obtain or conduct quality control reviews on selected audits made by non-Federal auditors, and provide the results to other interested organizations. Cooperate and provide support to the Federal agency designated by OMB to lead a governmentwide project to determine the quality of single audits by providing a reliable estimate of the extent that single audits conform to applicable requirements, standards, and procedures; and to make recommendations to address noted audit quality issues, including recommendations for any changes to applicable requirements, standards and procedures indicated by the results of the project. The governmentwide project can rely on the current and on-going quality control review work performed by the agencies, State auditors, and professional audit associations. This governmentwide audit quality project must be performed once every 6 years (or at such other interval as determined by OMB), and the results must be public.
 - (iii) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any direct reporting by the auditee or its auditor required by GAGAS or statutes and regulations.
 - (iv) Advise the community of independent auditors of any noteworthy or important factual trends related to the quality of audits stemming from quality control reviews. Significant problems or quality issues consistently identified through quality control reviews of audit reports must be referred to appropriate state licensing agencies and professional bodies.
 - (v) Advise the auditor, Federal awarding agencies, and, where appropriate, the auditee of any deficiencies found in the audits when the deficiencies require corrective action by the auditor. When advised of deficiencies, the auditee must work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency for audit must notify the auditor, the auditee, and applicable Federal awarding agencies and pass-through entities of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance by auditors must be referred to appropriate state licensing agencies and professional bodies for disciplinary action.
 - (vi) Coordinate, to the extent practical, audits or reviews made by or for Federal agencies that are in addition to the audits made pursuant to this part, so that the additional audits or reviews build upon rather than duplicate audits performed in accordance with this part.
 - (vii) Coordinate a management decision for cross-cutting audit findings (see in § 200.1 of this part) that affect the Federal programs of more than one agency when requested by any Federal awarding agency whose awards are included in the audit finding of the auditee.
 - (viii) Coordinate the audit work and reporting responsibilities among auditors to achieve the most cost-effective audit.
 - (ix) Provide advice to auditees as to how to handle changes in fiscal years.

- (b) ***Oversight agency for audit responsibilities.*** An auditee who does not have a designated cognizant agency for audit will be under the general oversight of the Federal agency determined in accordance with § 200.1 *oversight agency for audit*. A Federal agency with oversight for an auditee may reassign oversight to another Federal agency that agrees to be the oversight agency for audit. Within 30 calendar days after any reassignment, both the old and the new oversight agency for audit must provide notice of the change to the FAC, the auditee, and, if known, the auditor. The oversight agency for audit:
- (1) Must provide technical advice to auditees and auditors as requested.
 - (2) May assume all or some of the responsibilities normally performed by a cognizant agency for audit.
- (c) ***Federal awarding agency responsibilities.*** The Federal awarding agency must perform the following for the Federal awards it makes (See also the requirements of § 200.211):
- (1) Ensure that audits are completed and reports are received in a timely manner and in accordance with the requirements of this part.
 - (2) Provide technical advice and counsel to auditees and auditors as requested.
 - (3) Follow-up on audit findings to ensure that the recipient takes appropriate and timely corrective action. As part of audit follow-up, the Federal awarding agency must:
 - (i) Issue a management decision as prescribed in § 200.521;
 - (ii) Monitor the recipient taking appropriate and timely corrective action;
 - (iii) Use cooperative audit resolution mechanisms (see the definition of *cooperative audit resolution* in § 200.1 of this part) to improve Federal program outcomes through better audit resolution, follow-up, and corrective action; and
 - (iv) Develop a baseline, metrics, and targets to track, over time, the effectiveness of the Federal agency's process to follow-up on audit findings and on the effectiveness of Single Audits in improving non-Federal entity accountability and their use by Federal awarding agencies in making award decisions.
 - (4) Provide OMB annual updates to the compliance supplement and work with OMB to ensure that the compliance supplement focuses the auditor to test the compliance requirements most likely to cause improper payments, fraud, waste, abuse or generate audit finding for which the Federal awarding agency will take sanctions.
 - (5) Provide OMB with the name of a single audit accountable official from among the senior policy officials of the Federal awarding agency who must be:
 - (i) Responsible for ensuring that the agency fulfills all the requirements of paragraph (c) of this section and effectively uses the single audit process to reduce improper payments and improve Federal program outcomes.
 - (ii) Held accountable to improve the effectiveness of the single audit process based upon metrics as described in paragraph (c)(3)(iv) of this section.
 - (iii) Responsible for designating the Federal agency's key management single audit liaison.
 - (6) Provide OMB with the name of a key management single audit liaison who must:
 - (i) Serve as the Federal awarding agency's management point of contact for the single audit process both within and outside the Federal Government.

- (ii) Promote interagency coordination, consistency, and sharing in areas such as coordinating audit follow-up; identifying higher-risk non-Federal entities; providing input on single audit and follow-up policy; enhancing the utility of the FAC; and studying ways to use single audit results to improve Federal award accountability and best practices.
- (iii) Oversee training for the Federal awarding agency's program management personnel related to the single audit process.
- (iv) Promote the Federal awarding agency's use of cooperative audit resolution mechanisms.
- (v) Coordinate the Federal awarding agency's activities to ensure appropriate and timely follow-up and corrective action on audit findings.
- (vi) Organize the Federal cognizant agency for audit's follow-up on cross-cutting audit findings that affect the Federal programs of more than one Federal awarding agency.
- (vii) Ensure the Federal awarding agency provides annual updates of the compliance supplement to OMB.
- (viii) Support the Federal awarding agency's single audit accountable official's mission.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49573, Aug. 13, 2020]

AUDITORS

§ 200.514 Scope of audit.

- (a) **General.** The audit must be conducted in accordance with GAGAS. The audit must cover the entire operations of the auditee, or, at the option of the auditee, such audit must include a series of audits that cover departments, agencies, and other organizational units that expended or otherwise administered Federal awards during such audit period, provided that each such audit must encompass the financial statements and schedule of expenditures of Federal awards for each such department, agency, and other organizational unit, which must be considered to be a non-Federal entity. The financial statements and schedule of expenditures of Federal awards must be for the same audit period.
- (b) **Financial statements.** The auditor must determine whether the financial statements of the auditee are presented fairly in all material respects in accordance with generally accepted accounting principles. The auditor must also determine whether the schedule of expenditures of Federal awards is stated fairly in all material respects in relation to the auditee's financial statements as a whole.
- (c) **Internal control.**
 - (1) The compliance supplement provides guidance on internal controls over Federal programs based upon the guidance in Standards for Internal Control in the Federal Government issued by the Comptroller General of the United States and the Internal Control—Integrated Framework, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
 - (2) In addition to the requirements of GAGAS, the auditor must perform procedures to obtain an understanding of internal control over Federal programs sufficient to plan the audit to support a low assessed level of control risk of noncompliance for major programs.
 - (3) Except as provided in paragraph (c)(4) of this section, the auditor must:

- (i) Plan the testing of internal control over compliance for major programs to support a low assessed level of control risk for the assertions relevant to the compliance requirements for each major program; and
- (ii) Perform testing of internal control as planned in paragraph (c)(3)(i) of this section.

(4) When internal control over some or all of the compliance requirements for a major program are likely to be ineffective in preventing or detecting noncompliance, the planning and performing of testing described in paragraph (c)(3) of this section are not required for those compliance requirements. However, the auditor must report a significant deficiency or material weakness in accordance with § 200.516, assess the related control risk at the maximum, and consider whether additional compliance tests are required because of ineffective internal control.

(d) **Compliance.**

- (1) In addition to the requirements of GAGAS, the auditor must determine whether the auditee has complied with Federal statutes, regulations, and the terms and conditions of Federal awards that may have a direct and material effect on each of its major programs.
- (2) The principal compliance requirements applicable to most Federal programs and the compliance requirements of the largest Federal programs are included in the compliance supplement.
- (3) For the compliance requirements related to Federal programs contained in the compliance supplement, an audit of these compliance requirements will meet the requirements of this part. Where there have been changes to the compliance requirements and the changes are not reflected in the compliance supplement, the auditor must determine the current compliance requirements and modify the audit procedures accordingly. For those Federal programs not covered in the compliance supplement, the auditor must follow the compliance supplement's guidance for programs not included in the supplement.
- (4) When internal control over some or all of the compliance requirements for a major program are likely to be ineffective in preventing or detecting noncompliance, the planning and performing of testing described in paragraph (c)(3) of this section are not required for those compliance requirements. However, the auditor must report a significant deficiency or material weakness in accordance with § 200.516, assess the related control risk at the

(e) **Audit follow-up.** The auditor must follow-up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with § 200.511(b), and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding. The auditor must perform audit follow-up procedures regardless of whether a prior audit finding relates to a major program in the current year.

(f) **Data collection form.** As required in § 200.512(b)(3), the auditor must complete and sign specified sections of the data collection form.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49574, Aug. 13, 2020; 86 FR 10440, Feb. 22, 2021]

§ 200.515 Audit reporting.

The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) must state that the audit was conducted in accordance with this part and include the following:

- (a) **Financial statements.** The auditor must determine and provide an opinion (or disclaimer of opinion) whether the financial statements of the auditee are presented fairly in all materials respects in accordance with generally accepted accounting principles (or a special purpose framework such as cash, modified cash, or regulatory as required by state law). The auditor must also decide whether the schedule of expenditures of Federal awards is stated fairly in all material respects in relation to the auditee's financial statements as a whole.
- (b) A report on internal control over financial reporting and compliance with provisions of laws, regulations, contracts, and award agreements, noncompliance with which could have a material effect on the financial statements. This report must describe the scope of testing of internal control and compliance and the results of the tests, and, where applicable, it will refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.
- (c) A report on compliance for each major program and a report on internal control over compliance. This report must describe the scope of testing of internal control over compliance, include an opinion or disclaimer of opinion as to whether the auditee complied with Federal statutes, regulations, and the terms and conditions of Federal awards which could have a direct and material effect on each major program and refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.
- (d) A schedule of findings and questioned costs which must include the following three components:
 - (1) A summary of the auditor's results, which must include:
 - (i) The type of report the auditor issued on whether the financial statements audited were prepared in accordance with GAAP (i.e., unmodified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);
 - (ii) Where applicable, a statement about whether significant deficiencies or material weaknesses in internal control were disclosed by the audit of the financial statements;
 - (iii) A statement as to whether the audit disclosed any noncompliance that is material to the financial statements of the auditee;
 - (iv) Where applicable, a statement about whether significant deficiencies or material weaknesses in internal control over major programs were disclosed by the audit;
 - (v) The type of report the auditor issued on compliance for major programs (i.e., unmodified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);
 - (vi) A statement as to whether the audit disclosed any audit findings that the auditor is required to report under § 200.516(a);
 - (vii) An identification of major programs by listing each individual major program; however, in the case of a cluster of programs, only the cluster name as shown on the Schedule of Expenditures of Federal Awards is required;

(viii) The dollar threshold used to distinguish between Type A and Type B programs, as described in § 200.518(b)(1) or (3) when a recalculation of the Type A threshold is required for large loan or loan guarantees; and

(ix) A statement as to whether the auditee qualified as a low-risk auditee under § 200.520.

(2) Findings relating to the financial statements which are required to be reported in accordance with GAGAS.

(3) Findings and questioned costs for Federal awards which must include audit findings as defined in § 200.516(a).

(i) Audit findings (e.g., internal control findings, compliance findings, questioned costs, or fraud) that relate to the same issue must be presented as a single audit finding. Where practical, audit findings should be organized by Federal agency or pass-through entity.

(ii) Audit findings that relate to both the financial statements and Federal awards, as reported under paragraphs (d)(2) and (d)(3) of this section, respectively, must be reported in both sections of the schedule. However, the reporting in one section of the schedule may be in summary form with a reference to a detailed reporting in the other section of the schedule.

(e) Nothing in this part precludes combining of the audit reporting required by this section with the reporting required by § 200.512(b) when allowed by GAGAS and appendix X to this part.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49574, Aug. 13, 2020]

§ 200.516 Audit findings.

(a) **Audit findings reported.** The auditor must report the following as audit findings in a schedule of findings and questioned costs:

(1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor's determination of whether a deficiency in internal control is a significant deficiency or a material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.

(2) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program. The auditor's determination of whether a noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.

(3) Known questioned costs that are greater than \$25,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor must also report known questioned costs when likely questioned costs are greater than \$25,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor must include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

- (4) Known questioned costs that are greater than \$25,000 for a Federal program which is not audited as a major program. Except for audit follow-up, the auditor is not required under this part to perform audit procedures for such a Federal program; therefore, the auditor will normally not find questioned costs for a program that is not audited as a major program. However, if the auditor does become aware of questioned costs for a Federal program that is not audited as a major program (e.g., as part of audit follow-up or other audit procedures) and the known questioned costs are greater than \$25,000, then the auditor must report this as an audit finding.
 - (5) The circumstances concerning why the auditor's report on compliance for each major program is other than an unmodified opinion, unless such circumstances are otherwise reported as audit findings in the schedule of findings and questioned costs for Federal awards.
 - (6) Known or likely fraud affecting a Federal award, unless such fraud is otherwise reported as an audit finding in the schedule of findings and questioned costs for Federal awards. This paragraph does not require the auditor to report publicly information which could compromise investigative or legal proceedings or to make an additional reporting when the auditor confirms that the fraud was reported outside the auditor's reports under the direct reporting requirements of GAGAS.
 - (7) Instances where the results of audit follow-up procedures disclosed that the summary schedule of prior audit findings prepared by the auditee in accordance with § 200.511(b) materially misrepresents the status of any prior audit finding.
- (b) ***Audit finding detail and clarity.*** Audit findings must be presented in sufficient detail and clarity for the auditee to prepare a corrective action plan and take corrective action, and for Federal agencies and pass-through entities to arrive at a management decision. The following specific information must be included, as applicable, in audit findings:
- (1) Federal program and specific Federal award identification including the Assistance Listings title and number, Federal award identification number and year, name of Federal agency, and name of the applicable pass-through entity. When information, such as the Assistance Listings title and number or Federal award identification number, is not available, the auditor must provide the best information available to describe the Federal award.
 - (2) The criteria or specific requirement upon which the audit finding is based, including the Federal statutes, regulations, or the terms and conditions of the Federal awards. Criteria generally identify the required or desired state or expectation with respect to the program or operation. Criteria provide a context for evaluating evidence and understanding findings.
 - (3) The condition found, including facts that support the deficiency identified in the audit finding.
 - (4) A statement of cause that identifies the reason or explanation for the condition or the factors responsible for the difference between the situation that exists (condition) and the required or desired state (criteria), which may also serve as a basis for recommendations for corrective action.
 - (5) The possible asserted effect to provide sufficient information to the auditee and Federal agency, or pass-through entity in the case of a subrecipient, to permit them to determine the cause and effect to facilitate prompt and proper corrective action. A statement of the effect or potential effect should provide a clear, logical link to establish the impact or potential impact of the difference between the condition and the criteria.

- (6) Identification of questioned costs and how they were computed. Known questioned costs must be identified by applicable Assistance Listings number(s) and applicable Federal award identification number(s).
 - (7) Information to provide proper perspective for judging the prevalence and consequences of the audit findings, such as whether the audit findings represent an isolated instance or a systemic problem. Where appropriate, instances identified must be related to the universe and the number of cases examined and be quantified in terms of dollar value. The auditor should report whether the sampling was a statistically valid sample.
 - (8) Identification of whether the audit finding was a repeat of a finding in the immediately prior audit and if so any applicable prior year audit finding numbers.
 - (9) Recommendations to prevent future occurrences of the deficiency identified in the audit finding.
 - (10) Views of responsible officials of the auditee.
- (c) **Reference numbers.** Each audit finding in the schedule of findings and questioned costs must include a reference number in the format meeting the requirements of the data collection form submission required by § 200.512(b) to allow for easy referencing of the audit findings during follow-up.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49574, Aug. 13, 2020]

§ 200.517 Audit documentation.

- (a) **Retention of audit documentation.** The auditor must retain audit documentation and reports for a minimum of three years after the date of issuance of the auditor's report(s) to the auditee, unless the auditor is notified in writing by the cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period. When the auditor is aware that the Federal agency, pass-through entity, or auditee is contesting an audit finding, the auditor must contact the parties contesting the audit finding for guidance prior to destruction of the audit documentation and reports.
- (b) **Access to audit documentation.** Audit documentation must be made available upon request to the cognizant or oversight agency for audit or its designee, cognizant agency for indirect cost, a Federal agency, or GAO at the completion of the audit, as part of a quality review, to resolve audit findings, or to carry out oversight responsibilities consistent with the purposes of this part. Access to audit documentation includes the right of Federal agencies to obtain copies of audit documentation, as is reasonable and necessary.

§ 200.518 Major program determination.

- (a) **General.** The auditor must use a risk-based approach to determine which Federal programs are major programs. This risk-based approach must include consideration of: current and prior audit experience, oversight by Federal agencies and pass-through entities, and the inherent risk of the Federal program. The process in paragraphs (b) through (h) of this section must be followed.
- (b) **Step one.**

- (1) The auditor must identify the larger Federal programs, which must be labeled Type A programs. Type A programs are defined as Federal programs with Federal awards expended during the audit period exceeding the levels outlined in the table in this paragraph (b)(1):

Total Federal awards expended	Type A/B threshold
Equal to or exceed \$750,000 but less than or equal to \$25 million	\$750,000.
Exceed \$25 million but less than or equal to \$100 million	Total Federal awards expended times .03.
Exceed \$100 million but less than or equal to \$1 billion	\$3 million.
Exceed \$1 billion but less than or equal to \$10 billion	Total Federal awards expended times .003.
Exceed \$10 billion but less than or equal to \$20 billion	\$30 million.
Exceed \$20 billion	Total Federal awards expended times .0015.

- (2) Federal programs not labeled Type A under paragraph (b)(1) of this section must be labeled Type B programs.
- (3) The inclusion of large loan and loan guarantees (loans) must not result in the exclusion of other programs as Type A programs. When a Federal program providing loans exceeds four times the largest non-loan program it is considered a large loan program, and the auditor must consider this Federal program as a Type A program and exclude its values in determining other Type A programs. This recalculation of the Type A program is performed after removing the total of all large loan programs. For the purposes of this paragraph a program is only considered to be a Federal program providing loans if the value of Federal awards expended for loans within the program comprises fifty percent or more of the total Federal awards expended for the program. A cluster of programs is treated as one program and the value of Federal awards expended under a loan program is determined as described in § 200.502.
- (4) For biennial audits permitted under § 200.504, the determination of Type A and Type B programs must be based upon the Federal awards expended during the two-year period.

(c) **Step two.**

- (1) The auditor must identify Type A programs which are low-risk. In making this determination, the auditor must consider whether the requirements in § 200.519(c), the results of audit follow-up, or any changes in personnel or systems affecting the program indicate significantly increased risk and preclude the program from being low risk. For a Type A program to be considered low-risk, it must have been audited as a major program in at least one of the two most recent audit periods (in the most recent audit period in the case of a biennial audit), and, in the most recent audit period, the program must have not had:
- (i) Internal control deficiencies which were identified as material weaknesses in the auditor's report on internal control for major programs as required under § 200.515(c);
 - (ii) A modified opinion on the program in the auditor's report on major programs as required under § 200.515(c); or
 - (iii) Known or likely questioned costs that exceed five percent of the total Federal awards expended for the program.

- (2) Notwithstanding paragraph (c)(1) of this section, OMB may approve a Federal awarding agency's request that a Type A program may not be considered low risk for a certain recipient. For example, it may be necessary for a large Type A program to be audited as a major program each year at a particular recipient to allow the Federal awarding agency to comply with 31 U.S.C. 3515. The Federal awarding agency must notify the recipient and, if known, the auditor of OMB's approval at least 180 calendar days prior to the end of the fiscal year to be audited.

(d) **Step three.**

- (1) The auditor must identify Type B programs which are high-risk using professional judgment and the criteria in § 200.519. However, the auditor is not required to identify more high-risk Type B programs than at least one fourth the number of low-risk Type A programs identified as low-risk under Step 2 (paragraph (c) of this section). Except for known material weakness in internal control or compliance problems as discussed in § 200.519(b)(1) and (2) and (c)(1), a single criterion in risk would seldom cause a Type B program to be considered high-risk. When identifying which Type B programs to risk assess, the auditor is encouraged to use an approach which provides an opportunity for different high-risk Type B programs to be audited as major over a period of time.
- (2) The auditor is not expected to perform risk assessments on relatively small Federal programs. Therefore, the auditor is only required to perform risk assessments on Type B programs that exceed twenty-five percent (0.25) of the Type A threshold determined in Step 1 (paragraph (b) of this section).

(e) **Step four.** At a minimum, the auditor must audit all of the following as major programs:

- (1) All Type A programs not identified as low risk under step two (paragraph (c)(1) of this section).
- (2) All Type B programs identified as high-risk under step three (paragraph (d) of this section).
- (3) Such additional programs as may be necessary to comply with the percentage of coverage rule discussed in paragraph (f) of this section. This may require the auditor to audit more programs as major programs than the number of Type A programs.

(f) **Percentage of coverage rule.** If the auditee meets the criteria in § 200.520, the auditor need only audit the major programs identified in Step 4 (paragraphs (e)(1) and (2) of this section) and such additional Federal programs with Federal awards expended that, in aggregate, all major programs encompass at least 20 percent (0.20) of total Federal awards expended. Otherwise, the auditor must audit the major programs identified in Step 4 (paragraphs (e)(1) and (2) of this section) and such additional Federal programs with Federal awards expended that, in aggregate, all major programs encompass at least 40 percent (0.40) of total Federal awards expended.

(g) **Documentation of risk.** The auditor must include in the audit documentation the risk analysis process used in determining major programs.

(h) **Auditor's judgment.** When the major program determination was performed and documented in accordance with this Subpart, the auditor's judgment in applying the risk-based approach to determine major programs must be presumed correct. Challenges by Federal agencies and pass-through entities must only be for clearly improper use of the requirements in this part. However, Federal agencies and pass-through entities may provide auditors guidance about the risk of a particular Federal program and the auditor must consider this guidance in determining major programs in audits not yet completed.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49574, Aug. 13, 2020]

§ 200.519 Criteria for Federal program risk.

- (a) **General.** The auditor's determination should be based on an overall evaluation of the risk of noncompliance occurring that could be material to the Federal program. The auditor must consider criteria, such as described in paragraphs (b), (c), and (d) of this section, to identify risk in Federal programs. Also, as part of the risk analysis, the auditor may wish to discuss a particular Federal program with auditee management and the Federal agency or pass-through entity.
- (b) **Current and prior audit experience.**
 - (1) Weaknesses in internal control over Federal programs would indicate higher risk. Consideration should be given to the control environment over Federal programs and such factors as the expectation of management's adherence to Federal statutes, regulations, and the terms and conditions of Federal awards and the competence and experience of personnel who administer the Federal programs.
 - (i) A Federal program administered under multiple internal control structures may have higher risk. When assessing risk in a large single audit, the auditor must consider whether weaknesses are isolated in a single operating unit (e.g., one college campus) or pervasive throughout the entity.
 - (ii) When significant parts of a Federal program are passed through to subrecipients, a weak system for monitoring subrecipients would indicate higher risk.
 - (2) Prior audit findings would indicate higher risk, particularly when the situations identified in the audit findings could have a significant impact on a Federal program or have not been corrected.
 - (3) Federal programs not recently audited as major programs may be of higher risk than Federal programs recently audited as major programs without audit findings.
- (c) **Oversight exercised by Federal agencies and pass-through entities.**
 - (1) Oversight exercised by Federal agencies or pass-through entities could be used to assess risk. For example, recent monitoring or other reviews performed by an oversight entity that disclosed no significant problems would indicate lower risk, whereas monitoring that disclosed significant problems would indicate higher risk.
 - (2) Federal agencies, with the concurrence of OMB, may identify Federal programs that are higher risk. OMB will provide this identification in the compliance supplement.
- (d) **Inherent risk of the Federal program.**
 - (1) The nature of a Federal program may indicate risk. Consideration should be given to the complexity of the program and the extent to which the Federal program contracts for goods and services. For example, Federal programs that disburse funds through third-party contracts or have eligibility criteria may be of higher risk. Federal programs primarily involving staff payroll costs may have high risk for noncompliance with requirements of § 200.430, but otherwise be at low risk.
 - (2) The phase of a Federal program in its life cycle at the Federal agency may indicate risk. For example, a new Federal program with new or interim regulations may have higher risk than an established program with time-tested regulations. Also, significant changes in Federal programs, statutes, regulations, or the terms and conditions of Federal awards may increase risk.

- (3) The phase of a Federal program in its life cycle at the auditee may indicate risk. For example, during the first and last years that an auditee participates in a Federal program, the risk may be higher due to start-up or closeout of program activities and staff.
- (4) Type B programs with larger Federal awards expended would be of higher risk than programs with substantially smaller Federal awards expended.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49575, Aug. 13, 2020]

§ 200.520 Criteria for a low-risk auditee.

An auditee that meets all of the following conditions for each of the preceding two audit periods must qualify as a low-risk auditee and be eligible for reduced audit coverage in accordance with § 200.518.

- (a) Single audits were performed on an annual basis in accordance with the provisions of this Subpart, including submitting the data collection form and the reporting package to the FAC within the timeframe specified in § 200.512. A non-Federal entity that has biennial audits does not qualify as a low-risk auditee.
- (b) The auditor's opinion on whether the financial statements were prepared in accordance with GAAP, or a basis of accounting required by state law, and the auditor's in relation to opinion on the schedule of expenditures of Federal awards were unmodified.
- (c) There were no deficiencies in internal control which were identified as material weaknesses under the requirements of GAGAS.
- (d) The auditor did not report a substantial doubt about the auditee's ability to continue as a going concern.
- (e) None of the Federal programs had audit findings from any of the following in either of the preceding two audit periods in which they were classified as Type A programs:
 - (1) Internal control deficiencies that were identified as material weaknesses in the auditor's report on internal control for major programs as required under § 200.515(c);
 - (2) A modified opinion on a major program in the auditor's report on major programs as required under § 200.515(c); or
 - (3) Known or likely questioned costs that exceeded five percent of the total Federal awards expended for a Type A program during the audit period.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49575, Aug. 13, 2020]

MANAGEMENT DECISIONS

§ 200.521 Management decision.

- (a) **General.** The management decision must clearly state whether or not the audit finding is sustained, the reasons for the decision, and the expected auditee action to repay disallowed costs, make financial adjustments, or take other action. If the auditee has not completed corrective action, a timetable for follow-up should be given. Prior to issuing the management decision, the Federal agency or pass-through entity may request additional information or documentation from the auditee, including a request for auditor assurance related to the documentation, as a way of mitigating disallowed costs. The

management decision should describe any appeal process available to the auditee. While not required, the Federal agency or pass-through entity may also issue a management decision on findings relating to the financial statements which are required to be reported in accordance with GAGAS.

- (b) **Federal agency.** As provided in § 200.513(a)(3)(vii), the cognizant agency for audit must be responsible for coordinating a management decision for audit findings that affect the programs of more than one Federal agency. As provided in § 200.513(c)(3)(i), a Federal awarding agency is responsible for issuing a management decision for findings that relate to Federal awards it makes to non-Federal entities.
- (c) **Pass-through entity.** As provided in § 200.332(d), the pass-through entity must be responsible for issuing a management decision for audit findings that relate to Federal awards it makes to subrecipients.
- (d) **Time requirements.** The Federal awarding agency or pass-through entity responsible for issuing a management decision must do so within six months of acceptance of the audit report by the FAC. The auditee must initiate and proceed with corrective action as rapidly as possible and corrective action should begin no later than upon receipt of the audit report.
- (e) **Reference numbers.** Management decisions must include the reference numbers the auditor assigned to each audit finding in accordance with § 200.516(c).

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49575, Aug. 13, 2020]

Appendix I to Part 200—Full Text of Notice of Funding Opportunity

Link to an amendment published at 89 FR 30204, Apr. 22, 2024.

The full text of the notice of funding opportunity is organized in sections. The required format outlined in this appendix indicates immediately following the title of each section whether that section is required in every announcement or is a Federal awarding agency option. The format is designed so that similar types of information will appear in the same sections in announcements of different Federal funding opportunities. Toward that end, there is text in each of the following sections to describe the types of information that a Federal awarding agency would include in that section of an actual announcement.

A Federal awarding agency that wishes to include information that the format does not specifically discuss may address that subject in whatever section(s) is most appropriate. For example, if a Federal awarding agency chooses to address performance goals in the announcement, it might do so in the funding opportunity description, the application content, or the reporting requirements.

Similarly, when this format calls for a type of information to be in a particular section, a Federal awarding agency wishing to address that subject in other sections may elect to repeat the information in those sections or use cross references between the sections (there should be hyperlinks for cross-references in any electronic versions of the announcement). For example, a Federal awarding agency may want to include Section A information about the types of non-Federal entities who are eligible to apply. The format specifies a standard location for that information in Section C.1 but does not preclude repeating the information in Section A or creating a cross reference between Section A and C.1, as long as a potential applicant can find the information quickly and easily from the standard location.

The sections of the full text of the announcement are described in the following paragraphs.

A. Program Description—Required

This section contains the full program description of the funding opportunity. It may be as long as needed to adequately communicate to potential applicants the areas in which funding may be provided. It describes the Federal awarding agency's funding priorities or the technical or focus areas in which the Federal awarding agency intends to provide assistance. As appropriate, it may include any program history (e.g., whether this is a new program or a new or changed area of program emphasis). This section must include program goals and objectives, a reference to the relevant Assistance Listings, a description of how the award will contribute to the achievement of the program's goals and objectives, and the expected performance goals, indicators, targets, baseline data, data collection, and other outcomes such Federal awarding agency expects to achieve, and may include examples of successful projects that have been funded previously. This section also may include other information the Federal awarding agency deems necessary, and must at a minimum include citations for authorizing statutes and regulations for the funding opportunity.

B. Federal Award Information—Required

This section provides sufficient information to help an applicant make an informed decision about whether to submit a proposal. Relevant information could include the total amount of funding that the Federal awarding agency expects to award through the announcement; the expected performance indicators, targets, baseline data, and data collection; the anticipated number of Federal awards; the expected amounts of individual Federal awards (which may be a range); the amount of funding per Federal award, on average, experienced in previous years; and the anticipated start dates and periods of performance for new Federal awards. This section also should address whether applications for renewal or supplementation of existing projects are eligible to compete with applications for new Federal awards.

This section also must indicate the type(s) of assistance instrument (e.g., grant, cooperative agreement) that may be awarded if applications are successful. If cooperative agreements may be awarded, this section either should describe the “substantial involvement” that the Federal awarding agency expects to have or should reference where the potential applicant can find that information (e.g., in the funding opportunity description in Section A. or Federal award administration information in Section D. If procurement contracts also may be awarded, this must be stated.

C. Eligibility Information

This section addresses the considerations or factors that determine applicant or application eligibility. This includes the eligibility of particular types of applicant organizations, any factors affecting the eligibility of the principal investigator or project director, and any criteria that make particular projects ineligible. Federal agencies should make clear whether an applicant's failure to meet an eligibility criterion by the time of an application deadline will result in the Federal awarding agency returning the application without review or, even though an application may be reviewed, will preclude the Federal awarding agency from making a Federal award. Key elements to be addressed are:

1. **Eligible Applicants—Required.** Announcements must clearly identify the types of entities that are eligible to apply. If there are no restrictions on eligibility, this section may simply indicate that all potential applicants are eligible. If there are restrictions on eligibility, it is important to be clear about the specific types of entities that are eligible, not just the types that are ineligible. For example, if the program is limited to nonprofit organizations subject to 26 U.S.C. 501(c)(3) of the tax code (26 U.S.C.

501(c)(3)), the announcement should say so. Similarly, it is better to state explicitly that Native American tribal organizations are eligible than to assume that they can unambiguously infer that from a statement that nonprofit organizations may apply. Eligibility also can be expressed by exception, (e.g., open to all types of domestic applicants other than individuals). This section should refer to any portion of Section D specifying documentation that must be submitted to support an eligibility determination (e.g., proof of 501(c)(3) status as determined by the Internal Revenue Service or an authorizing tribal resolution). To the extent that any funding restriction in Section D.6 could affect the eligibility of an applicant or project, the announcement must either restate that restriction in this section or provide a cross-reference to its description in Section D.6.

2. **Cost Sharing or Matching—Required.** Announcements must state whether there is required cost sharing, matching, or cost participation without which an application would be ineligible (if cost sharing is not required, the announcement must explicitly say so). Required cost sharing may be a certain percentage or amount, or may be in the form of contributions of specified items or activities (e.g., provision of equipment). It is important that the announcement be clear about any restrictions on the types of cost (e.g., in-kind contributions) that are acceptable as cost sharing. Cost sharing as an eligibility criterion includes requirements based in statute or regulation, as described in § 200.306 of this Part. This section should refer to the appropriate portion(s) of section D. stating any pre-award requirements for submission of letters or other documentation to verify commitments to meet cost-sharing requirements if a Federal award is made.
3. **Other—Required, if applicable.** If there are other eligibility criteria (i.e., criteria that have the effect of making an application or project ineligible for Federal awards, whether referred to as “responsiveness” criteria, “go-no go” criteria, “threshold” criteria, or in other ways), must be clearly stated and must include a reference to the regulation of requirement that describes the restriction, as applicable. For example, if entities that have been found to be in violation of a particular Federal statute are ineligible, it is important to say so. This section must also state any limit on the number of applications an applicant may submit under the announcement and make clear whether the limitation is on the submitting organization, individual investigator/program director, or both. This section should also address any eligibility criteria for beneficiaries or for program participants other than Federal award recipients.

D. Application and Submission Information

1. **Address to Request Application Package—Required.** Potential applicants must be told how to get application forms, kits, or other materials needed to apply (if this announcement contains everything needed, this section need only say so). An Internet address where the materials can be accessed is acceptable. However, since high-speed Internet access is not yet universally available for downloading documents, and applicants may have additional accessibility requirements, there also should be a way for potential applicants to request paper copies of materials, such as a U.S. Postal Service mailing address, telephone or FAX number, Telephone Device for the Deaf (TDD), Text Telephone (TTY) number, and/or Federal Information Relay Service (FIRS) number.
2. **Content and Form of Application Submission—Required.** This section must identify the required content of an application and the forms or formats that an applicant must use to submit it. If any requirements are stated elsewhere because they are general requirements that apply to multiple programs or funding opportunities, this section should refer to where those requirements may be found. This section also should include required forms or formats as part of the announcement or state where the applicant may obtain them.

This section should specifically address content and form or format requirements for:

- i. Pre-applications, letters of intent, or white papers required or encouraged (see Section D.4), including any limitations on the number of pages or other formatting requirements similar to those for full applications.
 - ii. The application as a whole. For all submissions, this would include any limitations on the number of pages, font size and typeface, margins, paper size, number of copies, and sequence or assembly requirements. If electronic submission is permitted or required, this could include special requirements for formatting or signatures.
 - iii. Component pieces of the application (e.g., if all copies of the application must bear original signatures on the face page or the program narrative may not exceed 10 pages). This includes any pieces that may be submitted separately by third parties (e.g., references or letters confirming commitments from third parties that will be contributing a portion of any required cost sharing).
 - iv. Information that successful applicants must submit after notification of intent to make a Federal award, but prior to a Federal award. This could include evidence of compliance with requirements relating to human subjects or information needed to comply with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321-4370h).
3. **Unique entity identifier and System for Award Management (SAM) – Required.** This paragraph must state clearly that each applicant (unless the applicant is an individual or Federal awarding agency that is excepted from those requirements under 2 CFR 25.110(b) or (c), or has an exception approved by the Federal awarding agency under 2 CFR 25.110(d)) is required to:
 - (i) Be registered in SAM before submitting its application;
 - (ii) Provide a valid unique entity identifier in its application; and
 - (iii) Continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency. It also must state that the Federal awarding agency may not make a Federal award to an applicant until the applicant has complied with all applicable unique entity identifier and SAM requirements and, if an applicant has not fully complied with the requirements by the time the Federal awarding agency is ready to make a Federal award, the Federal awarding agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.
4. **Submission Dates and Times—Required.** Announcements must identify due dates and times for all submissions. This includes not only the full applications but also any preliminary submissions (e.g., letters of intent, white papers, or pre-applications). It also includes any other submissions of information before Federal award that are separate from the full application. If the funding opportunity is a general announcement that is open for a period of time with no specific due dates for applications, this section should say so. Note that the information on dates that is included in this section also must appear with other overview information in a location preceding the full text of the announcement (see § 200.204 of this part).
5. **Intergovernmental Review—Required, if applicable.** If the funding opportunity is subject to Executive Order 12372, “Intergovernmental Review of Federal Programs,” the notice must say so and applicants must contact their state's Single Point of Contact (SPOC) to find out about and comply

with the state's process under Executive Order 12372, it may be useful to inform potential applicants that the names and addresses of the SPOCs are listed in the Office of Management and Budget's website.

6. **Funding Restrictions—Required.** Notices must include information on funding restrictions in order to allow an applicant to develop an application and budget consistent with program requirements. Examples are whether construction is an allowable activity, if there are any limitations on direct costs such as foreign travel or equipment purchases, and if there are any limits on indirect costs (or facilities and administrative costs). Applicants must be advised if Federal awards will not allow reimbursement of pre-Federal award costs.
7. **Other Submission Requirements— Required.** This section must address any other submission requirements not included in the other paragraphs of this section. This might include the format of submission, i.e., paper or electronic, for each type of required submission. Applicants should not be required to submit in more than one format and this section should indicate whether they may choose whether to submit applications in hard copy or electronically, may submit only in hard copy, or may submit only electronically.

This section also must indicate where applications (and any pre-applications) must be submitted if sent by postal mail, electronic means, or hand-delivery. For postal mail submission, this must include the name of an office, official, individual or function (e.g., application receipt center) and a complete mailing address. For electronic submission, this must include the URL or email address; whether a password(s) is required; whether particular software or other electronic capabilities are required; what to do in the event of system problems and a point of contact who will be available in the event the applicant experiences technical difficulties.^[1]

E. Application Review Information

1. **Criteria—Required.** This section must address the criteria that the Federal awarding agency will use to evaluate applications. This includes the merit and other review criteria that evaluators will use to judge applications, including any statutory, regulatory, or other preferences (e.g., minority status or Native American tribal preferences) that will be applied in the review process. These criteria are distinct from eligibility criteria that are addressed before an application is accepted for review and any program policy or other factors that are applied during the selection process, after the review process is completed. The intent is to make the application process transparent so applicants can make informed decisions when preparing their applications to maximize fairness of the process. The announcement should clearly describe all criteria, including any sub-criteria. If criteria vary in importance, the announcement should specify the relative percentages, weights, or other means used to distinguish among them. For statutory, regulatory, or other preferences, the announcement should provide a detailed explanation of those preferences with an explicit indication of their effect (e.g., whether they result in additional points being assigned).

^[1] With respect to electronic methods for providing information about funding opportunities or accepting applicants' submissions of information, each Federal awarding agency is responsible for compliance with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

If an applicant's proposed cost sharing will be considered in the review process (as opposed to being an eligibility criterion described in Section C.2), the announcement must specifically address how it will be considered (e.g., to assign a certain number of additional points to applicants who offer cost sharing, or to break ties among applications with equivalent scores after evaluation against all other factors). If cost sharing will not be considered in the evaluation, the announcement should say so, so that there is no ambiguity for potential applicants. Vague statements that cost sharing is encouraged, without clarification as to what that means, are unhelpful to applicants. It also is important that the announcement be clear about any restrictions on the types of cost (e.g., in-kind contributions) that are acceptable as cost sharing.

2. **Review and Selection Process—Required.** This section may vary in the level of detail provided. The announcement must list any program policy or other factors or elements, other than merit criteria, that the selecting official may use in selecting applications for Federal award (e.g., geographical dispersion, program balance, or diversity). The Federal awarding agency may also include other appropriate details. For example, this section may indicate who is responsible for evaluation against the merit criteria (e.g., peers external to the Federal awarding agency or Federal awarding agency personnel) and/or who makes the final selections for Federal awards. If there is a multi-phase review process (e.g., an external panel advising internal Federal awarding agency personnel who make final recommendations to the deciding official), the announcement may describe the phases. It also may include: the number of people on an evaluation panel and how it operates, the way reviewers are selected, reviewer qualifications, and the way that conflicts of interest are avoided. With respect to electronic methods for providing information about funding opportunities or accepting applicants' submissions of information, each Federal awarding agency is responsible for compliance with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

In addition, if the Federal awarding agency permits applicants to nominate suggested reviewers of their applications or suggest those they feel may be inappropriate due to a conflict of interest, that information should be included in this section.

3. For any Federal award under a notice of funding opportunity, if the Federal awarding agency anticipates that the total Federal share will be greater than the simplified acquisition threshold on any Federal award under a notice of funding opportunity may include, over the period of performance, this section must also inform applicants:
 - i. That the Federal awarding agency, prior to making a Federal award with a total amount of Federal share greater than the simplified acquisition threshold, is required to review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently FAPIIS) (see 41 U.S.C. 2313);
 - ii. That an applicant, at its option, may review information in the designated integrity and performance systems accessible through SAM and comment on any information about itself that a Federal awarding agency previously entered and is currently in the designated integrity and performance system accessible through SAM;
 - iii. That the Federal awarding agency will consider any comments by the applicant, in addition to the other information in the designated integrity and performance system, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in § 200.206.

4. ***Anticipated Announcement and Federal Award Dates—Optional.*** This section is intended to provide applicants with information they can use for planning purposes. If there is a single application deadline followed by the simultaneous review of all applications, the Federal awarding agency can include in this section information about the anticipated dates for announcing or notifying successful and unsuccessful applicants and for having Federal awards in place. If applications are received and evaluated on a “rolling” basis at different times during an extended period, it may be appropriate to give applicants an estimate of the time needed to process an application and notify the applicant of the Federal awarding agency's decision.

F. Federal Award Administration Information

1. ***Federal Award Notices—Required.*** This section must address what a successful applicant can expect to receive following selection. If the Federal awarding agency's practice is to provide a separate notice stating that an application has been selected before it actually makes the Federal award, this section would be the place to indicate that the letter is not an authorization to begin performance (to the extent that it allows charging to Federal awards of pre-award costs at the non-Federal entity's own risk). This section should indicate that the notice of Federal award signed by the grants officer (or equivalent) is the authorizing document, and whether it is provided through postal mail or by electronic means and to whom. It also may address the timing, form, and content of notifications to unsuccessful applicants. See also § 200.211.
2. ***Administrative and National Policy Requirements—Required.*** This section must identify the usual administrative and national policy requirements the Federal awarding agency's Federal awards may include. Providing this information lets a potential applicant identify any requirements with which it would have difficulty complying if its application is successful. In those cases, early notification about the requirements allows the potential applicant to decide not to apply or to take needed actions before receiving the Federal award. The announcement need not include all of the terms and conditions of the Federal award, but may refer to a document (with information about how to obtain it) or Internet site where applicants can see the terms and conditions. If this funding opportunity will lead to Federal awards with some special terms and conditions that differ from the Federal awarding agency's usual (sometimes called “general”) terms and conditions, this section should highlight those special terms and conditions. Doing so will alert applicants that have received Federal awards from the Federal awarding agency previously and might not otherwise expect different terms and conditions. For the same reason, the announcement should inform potential applicants about special requirements that could apply to particular Federal awards after the review of applications and other information, based on the particular circumstances of the effort to be supported (e.g., if human subjects were to be involved or if some situations may justify special terms on intellectual property, data sharing or security requirements).
3. ***Reporting—Required.*** This section must include general information about the type (e.g., financial or performance), frequency, and means of submission (paper or electronic) of post-Federal award reporting requirements. Highlight any special reporting requirements for Federal awards under this funding opportunity that differ (e.g., by report type, frequency, form/format, or circumstances for use) from what the Federal awarding agency's Federal awards usually require. Federal awarding agencies must also describe in this section all relevant requirements such as those at 2 CFR 180.335 and 180.350.

If the Federal share of any Federal award may include more than \$500,000 over the period of performance, this section must inform potential applicants about the post award reporting requirements reflected in appendix XII to this part.

G. Federal Awarding Agency Contact(s)—Required

The announcement must give potential applicants a point(s) of contact for answering questions or helping with problems while the funding opportunity is open. The intent of this requirement is to be as helpful as possible to potential applicants, so the Federal awarding agency should consider approaches such as giving:

- i. Points of contact who may be reached in multiple ways (e.g., by telephone, FAX, and/or email, as well as regular mail).
- ii. A fax or email address that multiple people access, so that someone will respond even if others are unexpectedly absent during critical periods.
- iii. Different contacts for distinct kinds of help (e.g., one for questions of programmatic content and a second for administrative questions).

H. Other Information—Optional

This section may include any additional information that will assist a potential applicant. For example, the section might:

- i. Indicate whether this is a new program or a one-time initiative.
- ii. Mention related programs or other upcoming or ongoing Federal awarding agency funding opportunities for similar activities.
- iii. Include current Internet addresses for Federal awarding agency Web sites that may be useful to an applicant in understanding the program.
- iv. Alert applicants to the need to identify proprietary information and inform them about the way the Federal awarding agency will handle it.
- v. Include certain routine notices to applicants (e.g., that the Federal Government is not obligated to make any Federal award as a result of the announcement or that only grants officers can bind the Federal Government to the expenditure of funds).

[78 FR 78608, Dec. 26, 2013, as amended at 80 FR 43310, July 22, 2015; 85 FR 49575, Aug. 13, 2020]

Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

- (A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- (B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
- (C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
- (D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- (E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- (F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- (G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- (H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- (I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- (J) See § 200.323.
- (K) See § 200.216.
- (L) See § 200.322.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014; 85 FR 49577, Aug. 13, 2020]

Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs)

Link to an amendment published at 89 FR 30206, Apr. 22, 2024.

A. General

This appendix provides criteria for identifying and computing indirect (or indirect (F&A)) rates at IHEs (institutions). Indirect (F&A) costs are those that are incurred for common or joint objectives and therefore cannot be identified readily and specifically with a particular sponsored project, an instructional activity, or any other institutional activity. See subsection B.1 for a discussion of the components of indirect (F&A) costs.

1. Major Functions of an Institution

Refers to instruction, organized research, other sponsored activities and other institutional activities as defined in this section:

- a. **Instruction** means the teaching and training activities of an institution. Except for research training as provided in subsection b, this term includes all teaching and training activities, whether they are offered for credits toward a degree or certificate or on a non-credit basis, and whether they are offered through regular academic departments or separate divisions, such as a summer school division or an extension division. Also considered part of this major function are departmental research, and, where agreed to, university research.
 - (1) **Sponsored instruction and training** means specific instructional or training activity established by grant, contract, or cooperative agreement. For purposes of the cost principles, this activity may be considered a major function even though an institution's accounting treatment may include it in the instruction function.
 - (2) **Departmental research** means research, development and scholarly activities that are not organized research and, consequently, are not separately budgeted and accounted for. Departmental research, for purposes of this document, is not considered as a major function, but as a part of the instruction function of the institution.
 - (3) Only mandatory cost sharing or cost sharing specifically committed in the project budget must be included in the organized research base for computing the indirect (F&A) cost rate or reflected in any allocation of indirect costs. Salary costs above statutory limits are not considered cost sharing.
- b. **Organized research** means all research and development activities of an institution that are separately budgeted and accounted for. It includes:
 - (1) **Sponsored research** means all research and development activities that are sponsored by Federal and non-Federal agencies and organizations. This term includes activities involving the training of individuals in research techniques (commonly called research training) where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.
 - (2) **University research** means all research and development activities that are separately budgeted and accounted for by the institution under an internal application of institutional funds. University research, for purposes of this document, must be combined with sponsored research under the function of organized research.

- c. **Other sponsored activities** means programs and projects financed by Federal and non-Federal agencies and organizations which involve the performance of work other than instruction and organized research. Examples of such programs and projects are health service projects and community service programs. However, when any of these activities are undertaken by the institution without outside support, they may be classified as other institutional activities.
- d. **Other institutional activities** means all activities of an institution except for instruction, departmental research, organized research, and other sponsored activities, as defined in this section; indirect (F&A) cost activities identified in this Appendix paragraph B, Identification and assignment of indirect (F&A) costs; and specialized services facilities described in § 200.468 of this part.

2. Criteria for Distribution

- a. **Base period.** A base period for distribution of indirect (F&A) costs is the period during which the costs are incurred. The base period normally should coincide with the fiscal year established by the institution, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.
- b. **Need for cost groupings.** The overall objective of the indirect (F&A) cost allocation process is to distribute the indirect (F&A) costs described in Section B, Identification and assignment of indirect (F&A) costs, to the major functions of the institution in proportions reasonably consistent with the nature and extent of their use of the institution's resources. In order to achieve this objective, it may be necessary to provide for selective distribution by establishing separate groupings of cost within one or more of the indirect (F&A) cost categories referred to in subsection B.1. In general, the cost groupings established within a category should constitute, in each case, a pool of those items of expense that are considered to be of like nature in terms of their relative contribution to (or degree of remoteness from) the particular cost objectives to which distribution is appropriate. Cost groupings should be established considering the general guides provided in subsection c of this section. Each such pool or cost grouping should then be distributed individually to the related cost objectives, using the distribution base or method most appropriate in light of the guidelines set forth in subsection d of this section.
- c. **General considerations on cost groupings.** The extent to which separate cost groupings and selective distribution would be appropriate at an institution is a matter of judgment to be determined on a case-by-case basis. Typical situations which may warrant the establishment of two or more separate cost groupings (based on account classification or analysis) within an indirect (F&A) cost category include but are not limited to the following:
 - (1) If certain items or categories of expense relate solely to one of the major functions of the institution or to less than all functions, such expenses should be set aside as a separate cost grouping for direct assignment or selective allocation in accordance with the guides provided in subsections b and d.
 - (2) If any types of expense ordinarily treated as general administration or departmental administration are charged to Federal awards as direct costs, expenses applicable to other activities of the institution when incurred for the same purposes in like

circumstances must, through separate cost groupings, be excluded from the indirect (F&A) costs allocable to those Federal awards and included in the direct cost of other activities for cost allocation purposes.

- (3) If it is determined that certain expenses are for the support of a service unit or facility whose output is susceptible of measurement on a workload or other quantitative basis, such expenses should be set aside as a separate cost grouping for distribution on such basis to organized research, instructional, and other activities at the institution or within the department.
- (4) If activities provide their own purchasing, personnel administration, building maintenance or similar service, the distribution of general administration and general expenses, or operation and maintenance expenses to such activities should be accomplished through cost groupings which include only that portion of central indirect (F&A) costs (such as for overall management) which are properly allocable to such activities.
- (5) If the institution elects to treat fringe benefits as indirect (F&A) charges, such costs should be set aside as a separate cost grouping for selective distribution to related cost objectives.
- (6) The number of separate cost groupings within a category should be held within practical limits, after taking into consideration the materiality of the amounts involved and the degree of precision attainable through less selective methods of distribution.

d. Selection of distribution method.

- (1) Actual conditions must be taken into account in selecting the method or base to be used in distributing individual cost groupings. The essential consideration in selecting a base is that it be the one best suited for assigning the pool of costs to cost objectives in accordance with benefits derived; with a traceable cause-and-effect relationship; or with logic and reason, where neither benefit nor a cause-and-effect relationship is determinable.
- (2) If a cost grouping can be identified directly with the cost objective benefitted, it should be assigned to that cost objective.
- (3) If the expenses in a cost grouping are more general in nature, the distribution may be based on a cost analysis study which results in an equitable distribution of the costs. Such cost analysis studies may take into consideration weighting factors, population, or space occupied if appropriate. Cost analysis studies, however, must
 - (a) be appropriately documented in sufficient detail for subsequent review by the cognizant agency for indirect costs,
 - (b) distribute the costs to the related cost objectives in accordance with the relative benefits derived,
 - (c) be statistically sound,
 - (d) be performed specifically at the institution at which the results are to be used, and

- (e) be reviewed periodically, but not less frequently than rate negotiations, updated if necessary, and used consistently. Any assumptions made in the study must be stated and explained. The use of cost analysis studies and periodic changes in the method of cost distribution must be fully justified.
 - (4) If a cost analysis study is not performed, or if the study does not result in an equitable distribution of the costs, the distribution must be made in accordance with the appropriate base cited in Section B, unless one of the following conditions is met:
 - (a) It can be demonstrated that the use of a different base would result in a more equitable allocation of the costs, or that a more readily available base would not increase the costs charged to Federal awards, or
 - (b) The institution qualifies for, and elects to use, the simplified method for computing indirect (F&A) cost rates described in Section D.
 - (5) Notwithstanding subsection (3), effective July 1, 1998, a cost analysis or base other than that in Section B must not be used to distribute utility or student services costs. Instead, subsection B.4.c, may be used in the recovery of utility costs.
- e. Order of distribution.
- (1) Indirect (F&A) costs are the broad categories of costs discussed in Section B.1.
 - (2) Depreciation, interest expenses, operation and maintenance expenses, and general administrative and general expenses should be allocated in that order to the remaining indirect (F&A) cost categories as well as to the major functions and specialized service facilities of the institution. Other cost categories may be allocated in the order determined to be most appropriate by the institutions. When cross allocation of costs is made as provided in subsection (3), this order of allocation does not apply.
 - (3) Normally an indirect (F&A) cost category will be considered closed once it has been allocated to other cost objectives, and costs may not be subsequently allocated to it. However, a cross allocation of costs between two or more indirect (F&A) cost categories may be used if such allocation will result in a more equitable allocation of costs. If a cross allocation is used, an appropriate modification to the composition of the indirect (F&A) cost categories described in Section B is required.

B. Identification and Assignment of Indirect (F&A) Costs

1. Definition of Facilities and Administration

See § 200.414 which provides the basis for these indirect cost requirements.

2. Depreciation

- a. The expenses under this heading are the portion of the costs of the institution's buildings, capital improvements to land and buildings, and equipment which are computed in accordance with § 200.436.

- b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated in the following manner:
 - (1) Depreciation on buildings used exclusively in the conduct of a single function, and on capital improvements and equipment used in such buildings, must be assigned to that function.
 - (2) Depreciation on buildings used for more than one function, and on capital improvements and equipment used in such buildings, must be allocated to the individual functions performed in each building on the basis of usable square feet of space, excluding common areas such as hallways, stairwells, and rest rooms.
 - (3) Depreciation on buildings, capital improvements and equipment related to space (e.g., individual rooms, laboratories) used jointly by more than one function (as determined by the users of the space) must be treated as follows. The cost of each jointly used unit of space must be allocated to benefitting functions on the basis of:
 - (a) The employee full-time equivalents (FTEs) or salaries and wages of those individual functions benefitting from the use of that space; or
 - (b) Institution-wide employee FTEs or salaries and wages applicable to the benefitting major functions (see Section A.1) of the institution.
 - (4) Depreciation on certain capital improvements to land, such as paved parking areas, fences, sidewalks, and the like, not included in the cost of buildings, must be allocated to user categories of students and employees on a full-time equivalent basis. The amount allocated to the student category must be assigned to the instruction function of the institution. The amount allocated to the employee category must be further allocated to the major functions of the institution in proportion to the salaries and wages of all employees applicable to those functions.

3. Interest

Interest on debt associated with certain buildings, equipment and capital improvements, as defined in § 200.449, must be classified as an expenditure under the category Facilities. These costs must be allocated in the same manner as the depreciation on the buildings, equipment and capital improvements to which the interest relates.

4. Operation and Maintenance Expenses

- a. The expenses under this heading are those that have been incurred for the administration, supervision, operation, maintenance, preservation, and protection of the institution's physical plant. They include expenses normally incurred for such items as janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; care of grounds; maintenance and operation of buildings and other plant facilities; security; earthquake and disaster preparedness; environmental safety; hazardous waste disposal; property, liability and all other insurance relating to property; space and capital leasing; facility planning and management; and central receiving. The operation and maintenance expense category should also include its allocable share of fringe benefit costs, depreciation, and interest costs.
- b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated in the same manner as described in subsection 2.b for depreciation.

- c. A utility cost adjustment of up to 1.3 percentage points may be included in the negotiated indirect cost rate of the IHE for organized research, per the computation alternatives in paragraphs (c)(1) and (2) of this section:
 - (1) Where space is devoted to a single function and metering allows unambiguous measurement of usage related to that space, costs must be assigned to the function located in that space.
 - (2) Where space is allocated to different functions and metering does not allow unambiguous measurement of usage by function, costs must be allocated as follows:
 - (i) Utilities costs should be apportioned to functions in the same manner as depreciation, based on the calculated difference between the site or building actual square footage for monitored research laboratory space (site, building, floor, or room), and a separate calculation prepared by the IHE using the “effective square footage” described in subsection (c)(2)(ii) of this section.
 - (ii) **“Effective square footage”** allocated to research laboratory space must be calculated as the actual square footage times the relative energy utilization index (REUI) posted on the OMB Web site at the time of a rate determination.
 - A. This index is the ratio of a laboratory energy use index (lab EUI) to the corresponding index for overall average college or university space (college EUI).
 - B. In July 2012, values for these two indices (taken respectively from the Lawrence Berkeley Laboratory “Labs for the 21st Century” benchmarking tool and the US Department of Energy “Buildings Energy Databook” and were 310 kBtu/sq ft-yr. and 155 kBtu/sq ft-yr., so that the adjustment ratio is 2.0 by this methodology. To retain currency, OMB will adjust the EUI numbers from time to time (no more often than annually nor less often than every 5 years), using reliable and publicly disclosed data. Current values of both the EUIs and the REUI will be posted on the OMB website.

5. General Administration and General Expenses

- a. The expenses under this heading are those that have been incurred for the general executive and administrative offices of educational institutions and other expenses of a general character which do not relate solely to any major function of the institution; *i.e.*, solely to
 - (1) instruction,
 - (2) organized research,
 - (3) other sponsored activities, or
 - (4) other institutional activities. The general administration and general expense category should also include its allocable share of fringe benefit costs, operation and maintenance expense, depreciation, and interest costs. Examples of general administration and general expenses include: Those expenses incurred by administrative offices that serve the entire university system of which the institution is a part; central offices of the institution such as the President's or Chancellor's office, the offices for institution-wide financial management, business services, budget and planning, personnel management, and safety and risk management; the office of the General Counsel; and the operations of the central administrative management information

systems. General administration and general expenses must not include expenses incurred within non-university-wide deans' offices, academic departments, organized research units, or similar organizational units. (See subsection 6.)

- b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be grouped first according to common major functions of the institution to which they render services or provide benefits. The aggregate expenses of each group must then be allocated to serviced or benefitted functions on the modified total cost basis. Modified total costs consist of the same elements as those in Section C.2. When an activity included in this indirect (F&A) cost category provides a service or product to another institution or organization, an appropriate adjustment must be made to either the expenses or the basis of allocation or both, to assure a proper allocation of costs.

6. Departmental Administration Expenses

- a. The expenses under this heading are those that have been incurred for administrative and supporting services that benefit common or joint departmental activities or objectives in academic deans' offices, academic departments and divisions, and organized research units. Organized research units include such units as institutes, study centers, and research centers. Departmental administration expenses are subject to the following limitations.
 - (1) Academic deans' offices. Salaries and operating expenses are limited to those attributable to administrative functions.
 - (2) Academic departments:
 - (a) Salaries and fringe benefits attributable to the administrative work (including bid and proposal preparation) of faculty (including department heads) and other professional personnel conducting research and/or instruction, must be allowed at a rate of 3.6 percent of modified total direct costs. This category does not include professional business or professional administrative officers. This allowance must be added to the computation of the indirect (F&A) cost rate for major functions in Section C; the expenses covered by the allowance must be excluded from the departmental administration cost pool. No documentation is required to support this allowance.
 - (b) Other administrative and supporting expenses incurred within academic departments are allowable provided they are treated consistently in like circumstances. This would include expenses such as the salaries of secretarial and clerical staffs, the salaries of administrative officers and assistants, travel, office supplies, stockrooms, and the like.
 - (3) Other fringe benefit costs applicable to the salaries and wages included in subsections (1) and (2) are allowable, as well as an appropriate share of general administration and general expenses, operation and maintenance expenses, and depreciation.
 - (4) Federal agencies may authorize reimbursement of additional costs for department heads and faculty only in exceptional cases where an institution can demonstrate undue hardship or detriment to project performance.
- b. The following guidelines apply to the determination of departmental administrative costs as direct or indirect (F&A) costs.

- (1) In developing the departmental administration cost pool, special care should be exercised to ensure that costs incurred for the same purpose in like circumstances are treated consistently as either direct or indirect (F&A) costs. For example, salaries of technical staff, laboratory supplies (e.g., chemicals), telephone toll charges, animals, animal care costs, computer costs, travel costs, and specialized shop costs must be treated as direct costs wherever identifiable to a particular cost objective. Direct charging of these costs may be accomplished through specific identification of individual costs to benefitting cost objectives, or through recharge centers or specialized service facilities, as appropriate under the circumstances. See §§ 200.413(c) and 200.468.
 - (2) Items such as office supplies, postage, local telephone costs, and memberships must normally be treated as indirect (F&A) costs.
- c. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated as follows:
- (1) The administrative expenses of the dean's office of each college and school must be allocated to the academic departments within that college or school on the modified total cost basis.
 - (2) The administrative expenses of each academic department, and the department's share of the expenses allocated in subsection (1) must be allocated to the appropriate functions of the department on the modified total cost basis.

7. Sponsored Projects Administration

- a. The expenses under this heading are limited to those incurred by a separate organization(s) established primarily to administer sponsored projects, including such functions as grant and contract administration (Federal and non-Federal), special security, purchasing, personnel, administration, and editing and publishing of research and other reports. They include the salaries and expenses of the head of such organization, assistants, and immediate staff, together with the salaries and expenses of personnel engaged in supporting activities maintained by the organization, such as stock rooms, print shops, and the like. This category also includes an allocable share of fringe benefit costs, general administration and general expenses, operation and maintenance expenses, and depreciation. Appropriate adjustments will be made for services provided to other functions or organizations.
- b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated to the major functions of the institution under which the sponsored projects are conducted on the basis of the modified total cost of sponsored projects.
- c. An appropriate adjustment must be made to eliminate any duplicate charges to Federal awards when this category includes similar or identical activities as those included in the general administration and general expense category or other indirect (F&A) cost items, such as accounting, procurement, or personnel administration.

8. Library Expenses

- a. The expenses under this heading are those that have been incurred for the operation of the library, including the cost of books and library materials purchased for the library, less any items of library income that qualify as applicable credits under § 200.406. The library expense category should also include the fringe benefits applicable to the salaries and wages included therein, an appropriate

share of general administration and general expense, operation and maintenance expense, and depreciation. Costs incurred in the purchases of rare books (museum-type books) with no value to Federal awards should not be allocated to them.

- b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated first on the basis of primary categories of users, including students, professional employees, and other users.
 - (1) The student category must consist of full-time equivalent students enrolled at the institution, regardless of whether they earn credits toward a degree or certificate.
 - (2) The professional employee category must consist of all faculty members and other professional employees of the institution, on a full-time equivalent basis. This category may also include post-doctorate fellows and graduate students.
 - (3) The other users category must consist of a reasonable factor as determined by institutional records to account for all other users of library facilities.
- c. Amount allocated in paragraph b of this section must be assigned further as follows:
 - (1) The amount in the student category must be assigned to the instruction function of the institution.
 - (2) The amount in the professional employee category must be assigned to the major functions of the institution in proportion to the salaries and wages of all faculty members and other professional employees applicable to those functions.
 - (3) The amount in the other users category must be assigned to the other institutional activities function of the institution.

9. Student Administration and Services

- a. The expenses under this heading are those that have been incurred for the administration of student affairs and for services to students, including expenses of such activities as deans of students, admissions, registrar, counseling and placement services, student advisers, student health and infirmary services, catalogs, and commencements and convocations. The salaries of members of the academic staff whose responsibilities to the institution require administrative work that benefits sponsored projects may also be included to the extent that the portion charged to student administration is determined in accordance with subpart E of this Part. This expense category also includes the fringe benefit costs applicable to the salaries and wages included therein, an appropriate share of general administration and general expenses, operation and maintenance, interest expense, and depreciation.
- b. In the absence of the alternatives provided for in Section A.2.d, the expenses in this category must be allocated to the instruction function, and subsequently to Federal awards in that function.

10. Offset for Indirect (F&A) Expenses Otherwise Provided for by the Federal Government

- a. The items to be accumulated under this heading are the reimbursements and other payments from the Federal Government which are made to the institution to support solely, specifically, and directly, in whole or in part, any of the administrative or service activities described in subsections 2 through 9.

- b. The items in this group must be treated as a credit to the affected individual indirect (F&A) cost category before that category is allocated to benefitting functions.

C. Determination and Application of Indirect (F&A) Cost Rate or Rates

1. Indirect (F&A) Cost Pools

a.

- (1) Subject to subsection b, the separate categories of indirect (F&A) costs allocated to each major function of the institution as prescribed in Section B, must be aggregated and treated as a common pool for that function. The amount in each pool must be divided by the distribution base described in subsection 2 to arrive at a single indirect (F&A) cost rate for each function.
- (2) The rate for each function is used to distribute indirect (F&A) costs to individual Federal awards of that function. Since a common pool is established for each major function of the institution, a separate indirect (F&A) cost rate would be established for each of the major functions described in Section A.1 under which Federal awards are carried out.
- (3) Each institution's indirect (F&A) cost rate process must be appropriately designed to ensure that Federal sponsors do not in any way subsidize the indirect (F&A) costs of other sponsors, specifically activities sponsored by industry and foreign governments. Accordingly, each allocation method used to identify and allocate the indirect (F&A) cost pools, as described in Sections A.2 and B.2 through B.9, must contain the full amount of the institution's modified total costs or other appropriate units of measurement used to make the computations. In addition, the final rate distribution base (as defined in subsection 2) for each major function (organized research, instruction, etc., as described in Section A.1 functions of an institution) must contain all the programs or activities which utilize the indirect (F&A) costs allocated to that major function. At the time an indirect (F&A) cost proposal is submitted to a cognizant agency for indirect costs, each institution must describe the process it uses to ensure that Federal funds are not used to subsidize industry and foreign government funded programs.

2. The Distribution Basis

Indirect (F&A) costs must be distributed to applicable Federal awards and other benefitting activities within each major function (see section A.1) on the basis of modified total direct costs (MTDC), consisting of all salaries and wages, fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward (regardless of the period covered by the subaward). MTDC is defined in § 200.1. For this purpose, an indirect (F&A) cost rate should be determined for each of the separate indirect (F&A) cost pools developed pursuant to subsection 1. The rate in each case should be stated as the percentage which the amount of the particular indirect (F&A) cost pool is of the modified total direct costs identified with such pool.

3. Negotiated Lump Sum for Indirect (F&A) Costs

A negotiated fixed amount in lieu of indirect (F&A) costs may be appropriate for self-contained, off-campus, or primarily subcontracted activities where the benefits derived from an institution's indirect (F&A) services cannot be readily determined. Such negotiated indirect (F&A) costs will be treated as an

offset before allocation to instruction, organized research, other sponsored activities, and other institutional activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

4. Predetermined Rates for Indirect (F&A) Costs

Public Law 87-638 (76 Stat. 437) as amended (41 U.S.C. 4708) authorizes the use of predetermined rates in determining the "indirect costs" (indirect (F&A) costs) applicable under research agreements with educational institutions. The stated objectives of the law are to simplify the administration of cost-type research and development contracts (including grants) with educational institutions, to facilitate the preparation of their budgets, and to permit more expeditious closeout of such contracts when the work is completed. In view of the potential advantages offered by this procedure, negotiation of predetermined rates for indirect (F&A) costs for a period of two to four years should be the norm in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of indirect (F&A) costs during the ensuing accounting periods.

5. Negotiated Fixed Rates and Carry-Forward Provisions

When a fixed rate is negotiated in advance for a fiscal year (or other time period), the over- or under-recovery for that year may be included as an adjustment to the indirect (F&A) cost for the next rate negotiation. When the rate is negotiated before the carry-forward adjustment is determined, the carry-forward amount may be applied to the next subsequent rate negotiation. When such adjustments are to be made, each fixed rate negotiated in advance for a given period will be computed by applying the expected indirect (F&A) costs allocable to Federal awards for the forecast period plus or minus the carry-forward adjustment (over- or under-recovery) from the prior period, to the forecast distribution base. Unrecovered amounts under lump-sum agreements or cost-sharing provisions of prior years must not be carried forward for consideration in the new rate negotiation. There must, however, be an advance understanding in each case between the institution and the cognizant agency for indirect costs as to whether these differences will be considered in the rate negotiation rather than making the determination after the differences are known. Further, institutions electing to use this carry-forward provision may not subsequently change without prior approval of the cognizant agency for indirect costs. In the event that an institution returns to a post-determined rate, any over- or under-recovery during the period in which negotiated fixed rates and carry-forward provisions were followed will be included in the subsequent post-determined rates. Where multiple rates are used, the same procedure will be applicable for determining each rate.

6. Provisional and Final Rates for Indirect (F&A) Costs

Where the cognizant agency for indirect costs determines that cost experience and other pertinent facts do not justify the use of predetermined rates, or a fixed rate with a carry-forward, or if the parties cannot agree on an equitable rate, a provisional rate must be established. To prevent substantial overpayment or underpayment, the provisional rate may be adjusted by the cognizant agency for indirect costs during the institution's fiscal year. Predetermined or fixed rates may replace provisional rates at any time prior to the

close of the institution's fiscal year. If a provisional rate is not replaced by a predetermined or fixed rate prior to the end of the institution's fiscal year, a final rate will be established and upward or downward adjustments will be made based on the actual allowable costs incurred for the period involved.

7. Fixed Rates for the Life of the Sponsored Agreement

- a. Except as provided in paragraph (c)(1) of § 200.414, Federal agencies must use the negotiated rates in effect at the time of the initial award throughout the life of the Federal award. Award levels for Federal awards may not be adjusted in future years as a result of changes in negotiated rates. "Negotiated rates" per the rate agreement include final, fixed, and predetermined rates and exclude provisional rates. "Life" for the purpose of this subsection means each competitive segment of a project. A competitive segment is a period of years approved by the Federal awarding agency at the time of the Federal award. If negotiated rate agreements do not extend through the life of the Federal award at the time of the initial award, then the negotiated rate for the last year of the Federal award must be extended through the end of the life of the Federal award.
- b. Except as provided in § 200.414, when an educational institution does not have a negotiated rate with the Federal Government at the time of an award (because the educational institution is a new recipient or the parties cannot reach agreement on a rate), the provisional rate used at the time of the award must be adjusted once a rate is negotiated and approved by the cognizant agency for indirect costs.

8. Limitation on Reimbursement of Administrative Costs

- a. Notwithstanding the provisions of subsection C.1.a, the administrative costs charged to Federal awards awarded or amended (including continuation and renewal awards) with effective dates beginning on or after the start of the institution's first fiscal year which begins on or after October 1, 1991, must be limited to 26% of modified total direct costs (as defined in subsection 2) for the total of General Administration and General Expenses, Departmental Administration, Sponsored Projects Administration, and Student Administration and Services (including their allocable share of depreciation, interest costs, operation and maintenance expenses, and fringe benefits costs, as provided by Section B, and all other types of expenditures not listed specifically under one of the subcategories of facilities in Section B.
- b. Institutions should not change their accounting or cost allocation methods if the effect is to change the charging of a particular type of cost from F&A to direct, or to reclassify costs, or increase allocations from the administrative pools identified in paragraph B.1 of this Appendix to the other F&A cost pools or fringe benefits. Cognizant agencies for indirect cost are authorized to allow changes where an institution's charging practices are at variance with acceptable practices followed by a substantial majority of other institutions.

9. Alternative Method for Administrative Costs

- a. Notwithstanding the provisions of subsection C.1.a, an institution may elect to claim a fixed allowance for the "Administration" portion of indirect (F&A) costs. The allowance could be either 24% of modified total direct costs or a percentage equal to 95% of the most recently negotiated fixed or predetermined rate for the cost pools included under "Administration" as defined in Section B.1, whichever is less. Under this alternative, no cost proposal need be prepared for the "Administration"

portion of the indirect (F&A) cost rate nor is further identification or documentation of these costs required (see subsection c). Where a negotiated indirect (F&A) cost agreement includes this alternative, an institution must make no further charges for the expenditure categories described in Section B.5, Section B.6, Section B.7, and Section B.9.

- b. In negotiations of rates for subsequent periods, an institution that has elected the option of subsection a may continue to exercise it at the same rate without further identification or documentation of costs.
- c. If an institution elects to accept a threshold rate as defined in subsection a of this section, it is not required to perform a detailed analysis of its administrative costs. However, in order to compute the facilities components of its indirect (F&A) cost rate, the institution must reconcile its indirect (F&A) cost proposal to its financial statements and make appropriate adjustments and reclassifications to identify the costs of each major function as defined in Section A.1, as well as to identify and allocate the facilities components. Administrative costs that are not identified as such by the institution's accounting system (such as those incurred in academic departments) will be classified as instructional costs for purposes of reconciling indirect (F&A) cost proposals to financial statements and allocating facilities costs.

10. Individual Rate Components

In order to provide mutually agreed-upon information for management purposes, each indirect (F&A) cost rate negotiation or determination must include development of a rate for each indirect (F&A) cost pool as well as the overall indirect (F&A) cost rate.

11. Negotiation and Approval of Indirect (F&A) Rate

- a. Cognizant agency for indirect costs is defined in Subpart A.
 - (1) Cost negotiation cognizance is assigned to the Department of Health and Human Services (HHS) or the Department of Defense's Office of Naval Research (DOD), normally depending on which of the two agencies (HHS or DOD) provides more funds directly to the educational institution for the most recent three years. Information on funding must be derived from relevant data gathered by the National Science Foundation. In cases where neither HHS nor DOD provides Federal funding directly to an educational institution, the cognizant agency for indirect costs assignment must default to HHS. Notwithstanding the method for cognizance determination described in this section, other arrangements for cognizance of a particular educational institution may also be based in part on the types of research performed at the educational institution and must be decided based on mutual agreement between HHS and DOD. Where a non-Federal entity only receives funds as a subrecipient, see § 200.332.
 - (2) After cognizance is established, it must continue for a five-year period.
- b. Acceptance of rates. See § 200.414.
- c. Correcting deficiencies. The cognizant agency for indirect costs must negotiate changes needed to correct systems deficiencies relating to accountability for Federal awards. Cognizant agencies for indirect costs must address the concerns of other affected agencies, as appropriate, and must negotiate special rates for Federal agencies that are required to limit recovery of indirect costs by statute.

- d. Resolving questioned costs. The cognizant agency for indirect costs must conduct any necessary negotiations with an educational institution regarding amounts questioned by audit that are due the Federal Government related to costs covered by a negotiated agreement.
- e. Reimbursement. Reimbursement to cognizant agencies for indirect costs for work performed under this Part may be made by reimbursement billing under the Economy Act, 31 U.S.C. 1535.
- f. Procedure for establishing facilities and administrative rates must be established by one of the following methods:
 - (1) Formal negotiation. The cognizant agency for indirect costs is responsible for negotiating and approving rates for an educational institution on behalf of all Federal agencies. Federal awarding agencies that do not have cognizance for indirect costs must notify the cognizant agency for indirect costs of specific concerns (i.e., a need to establish special cost rates) which could affect the negotiation process. The cognizant agency for indirect costs must address the concerns of all interested agencies, as appropriate. A pre-negotiation conference may be scheduled among all interested agencies, if necessary. The cognizant agency for indirect costs must then arrange a negotiation conference with the educational institution.
 - (2) Other than formal negotiation. The cognizant agency for indirect costs and educational institution may reach an agreement on rates without a formal negotiation conference; for example, through correspondence or use of the simplified method described in this section D of this Appendix.
- g. Formalizing determinations and agreements. The cognizant agency for indirect costs must formalize all determinations or agreements reached with an educational institution and provide copies to other agencies having an interest. Determinations should include a description of any adjustments, the actual amount, both dollar and percentage adjusted, and the reason for making adjustments.
- h. Disputes and disagreements. Where the cognizant agency for indirect costs is unable to reach agreement with an educational institution with regard to rates or audit resolution, the appeal system of the cognizant agency for indirect costs must be followed for resolution of the disagreement.

12. Standard Format for Submission

For facilities and administrative (indirect (F&A)) rate proposals, educational institutions must use the standard format, shown in section E of this appendix, to submit their indirect (F&A) rate proposal to the cognizant agency for indirect costs. The cognizant agency for indirect costs may, on an institution-by-institution basis, grant exceptions from all or portions of Part II of the standard format requirement. This requirement does not apply to educational institutions that use the simplified method for calculating indirect (F&A) rates, as described in Section D of this Appendix.

As provided in section C.10 of this appendix, each F&A cost rate negotiation or determination must include development of a rate for each F&A cost pool as well as the overall F&A rate.

D. Simplified Method for Small Institutions

1. General

- a. Where the total direct cost of work covered by this Part at an institution does not exceed \$10 million in a fiscal year, the simplified procedure described in subsections 2 or 3 may be used in determining allowable indirect (F&A) costs. Under this simplified procedure, the institution's most recent annual financial report and immediately available supporting information must be utilized as a basis for determining the indirect (F&A) cost rate applicable to all Federal awards. The institution may use either the salaries and wages (see subsection 2) or modified total direct costs (see subsection 3) as the distribution basis.
- b. The simplified procedure should not be used where it produces results which appear inequitable to the Federal Government or the institution. In any such case, indirect (F&A) costs should be determined through use of the regular procedure.

2. Simplified Procedure—Salaries and Wages Base

- a. Establish the total amount of salaries and wages paid to all employees of the institution.
- b. Establish an indirect (F&A) cost pool consisting of the expenditures (exclusive of capital items and other costs specifically identified as unallowable) which customarily are classified under the following titles or their equivalents:
 - (1) General administration and general expenses (exclusive of costs of student administration and services, student activities, student aid, and scholarships).
 - (2) Operation and maintenance of physical plant and depreciation (after appropriate adjustment for costs applicable to other institutional activities).
 - (3) Library.
 - (4) Department administration expenses, which will be computed as 20 percent of the salaries and expenses of deans and heads of departments.

In those cases where expenditures classified under subsection (1) have previously been allocated to other institutional activities, they may be included in the indirect (F&A) cost pool. The total amount of salaries and wages included in the indirect (F&A) cost pool must be separately identified.

- c. Establish a salary and wage distribution base, determined by deducting from the total of salaries and wages as established in subsection a from the amount of salaries and wages included under subsection b.
- d. Establish the indirect (F&A) cost rate, determined by dividing the amount in the indirect (F&A) cost pool, subsection b, by the amount of the distribution base, subsection c.
- e. Apply the indirect (F&A) cost rate to direct salaries and wages for individual agreements to determine the amount of indirect (F&A) costs allocable to such agreements.

3. Simplified Procedure—Modified Total Direct Cost Base

- a. Establish the total costs incurred by the institution for the base period.
- b. Establish an indirect (F&A) cost pool consisting of the expenditures (exclusive of capital items and other costs specifically identified as unallowable) which customarily are classified under the following titles or their equivalents:

- (1) General administration and general expenses (exclusive of costs of student administration and services, student activities, student aid, and scholarships).
 - (2) Operation and maintenance of physical plant and depreciation (after appropriate adjustment for costs applicable to other institutional activities).
 - (3) Library.
 - (4) Department administration expenses, which will be computed as 20 percent of the salaries and expenses of deans and heads of departments. In those cases where expenditures classified under subsection (1) have previously been allocated to other institutional activities, they may be included in the indirect (F&A) cost pool. The modified total direct costs amount included in the indirect (F&A) cost pool must be separately identified.
- c. Establish a modified total direct cost distribution base, as defined in Section C.2, The distribution basis, that consists of all institution's direct functions.
 - d. Establish the indirect (F&A) cost rate, determined by dividing the amount in the indirect (F&A) cost pool, subsection b, by the amount of the distribution base, subsection c.
 - e. Apply the indirect (F&A) cost rate to the modified total direct costs for individual agreements to determine the amount of indirect (F&A) costs allocable to such agreements.

E. Documentation Requirements

The standard format for documentation requirements for indirect (indirect (F&A)) rate proposals for claiming costs under the regular method is available on the OMB website.

F. Certification

1. Certification of Charges

To assure that expenditures for Federal awards are proper and in accordance with the agreement documents and approved project budgets, the annual and/or final fiscal reports or vouchers requesting payment under the agreements will include a certification, signed by an authorized official of the university, which reads "By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and intent set forth in the award documents. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code, Title 18, Section 1001 and Title 31, Sections 3729-3733 and 3801-3812)".

2. Certification of Indirect (F&A) Costs

- a. **Policy.** Cognizant agencies must not accept a proposed indirect cost rate unless such costs have been certified by the educational institution using the Certificate of indirect (F&A) Costs set forth in subsection F.2.c
- b. The certificate must be signed on behalf of the institution by the chief financial officer or an individual designated by an individual at a level no lower than vice president or chief financial officer.

An indirect (F&A) cost rate is not binding upon the Federal Government if the most recent required proposal from the institution has not been certified. Where it is necessary to establish indirect (F&A) cost rates, and the institution has not submitted a certified proposal for establishing such rates in accordance with the requirements of this section, the Federal Government must unilaterally establish such rates. Such rates may be based upon audited historical data or such other data that have been furnished to the cognizant agency for indirect costs and for which it can be demonstrated that all unallowable costs have been excluded. When indirect (F&A) cost rates are unilaterally established by the Federal Government because of failure of the institution to submit a certified proposal for establishing such rates in accordance with this section, the rates established will be set at a level low enough to ensure that potentially unallowable costs will not be reimbursed.

c. **Certificate.** The certificate required by this section must be in the following form:

Certificate of Indirect (F&A) Costs

This is to certify that to the best of my knowledge and belief:

- (1) I have reviewed the indirect (F&A) cost proposal submitted herewith;
- (2) All costs included in this proposal [identify date] to establish billing or final indirect (F&A) costs rate for [identify period covered by rate] are allowable in accordance with the requirements of the Federal agreement(s) to which they apply and with the cost principles applicable to those agreements.
- (3) This proposal does not include any costs which are unallowable under subpart E of this part such as (without limitation): Public relations costs, contributions and donations, entertainment costs, fines and penalties, lobbying costs, and defense of fraud proceedings; and
- (4) All costs included in this proposal are properly allocable to Federal agreements on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements.

I declare that the foregoing is true and correct.

Institution of Higher Education:

Signature: _____

Name of Official: _____

Title: _____

Date of Execution: _____

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014; 80 FR 54409, Sept. 10, 2015; 85 FR 49577, Aug. 13, 2020]

Appendix IV to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations

Link to an amendment published at 89 FR 30206, Apr. 22, 2024.

A. General

1. Indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. Direct cost of minor amounts may be treated as indirect costs under the conditions described in § 200.413(d). After direct costs have been determined and assigned directly to awards or other work as appropriate, indirect costs are those remaining to be allocated to benefitting cost objectives. A cost may not be allocated to a Federal award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to a Federal award as a direct cost.
2. *“Major nonprofit organizations”* are defined in paragraph (a) of § 200.414. See indirect cost rate reporting requirements in sections B.2.e and B.3.g of this Appendix.

B. Allocation of Indirect Costs and Determination of Indirect Cost Rates

1. General

- a. If a nonprofit organization has only one major function, or where all its major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures, as described in section B.2 of this Appendix.
- b. If an organization has several major functions which benefit from its indirect costs in varying degrees, allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefitting functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual Federal awards and other activities included in that function by means of an indirect cost rate(s).
- c. The determination of what constitutes an organization's major functions will depend on its purpose in being; the types of services it renders to the public, its clients, and its members; and the amount of effort it devotes to such activities as fundraising, public information and membership activities.
- d. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in section B.2 through B.5 of this Appendix.
- e. The base period for the allocation of indirect costs is the period in which such costs are incurred and accumulated for allocation to work performed in that period. The base period normally should coincide with the organization's fiscal year but, in any event, must be so selected as to avoid inequities in the allocation of the costs.

2. Simplified Allocation Method

- a. Where an organization's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by
 - (i) separating the organization's total costs for the base period as either direct or indirect, and
 - (ii) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual Federal awards. The rate should be expressed as the percentage which the total amount of allowable indirect costs bears to the base selected. This method should also be used where an organization has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal awards to an organization is relatively small.
- b. Both the direct costs and the indirect costs must exclude capital expenditures and unallowable costs. However, unallowable costs which represent activities must be included in the direct costs under the conditions described in § 200.413(e).
- c. The distribution base may be total direct costs (excluding capital expenditures and other distorting items, such as subawards for \$25,000 or more), direct salaries and wages, or other base which results in an equitable distribution. The distribution base must exclude participant support costs as defined in § 200.1.
- d. Except where a special rate(s) is required in accordance with section B.5 of this Appendix, the indirect cost rate developed under the above principles is applicable to all Federal awards of the organization. If a special rate(s) is required, appropriate modifications must be made in order to develop the special rate(s).
- e. For an organization that receives more than \$10 million in direct Federal funding in a fiscal year, a breakout of the indirect cost component into two broad categories, Facilities and Administration as defined in paragraph (a) of § 200.414, is required. The rate in each case must be stated as the percentage which the amount of the particular indirect cost category (*i.e.*, Facilities or Administration) is of the distribution base identified with that category.

3. Multiple Allocation Base Method

- a. General. Where an organization's indirect costs benefit its major functions in varying degrees, indirect costs must be accumulated into separate cost groupings, as described in subparagraph b. Each grouping must then be allocated individually to benefitting functions by means of a base which best measures the relative benefits. The default allocation bases by cost pool are described in section B.3.c of this Appendix.
- b. Identification of indirect costs. Cost groupings must be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping must constitute a pool of expenses that are of like character in terms of functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The groupings are classified within the two broad categories: "Facilities" and "Administration," as described in section A.3 of this Appendix. The indirect cost pools are defined as follows:

- (1) Depreciation. The expenses under this heading are the portion of the costs of the organization's buildings, capital improvements to land and buildings, and equipment which are computed in accordance with § 200.436.
- (2) Interest. Interest on debt associated with certain buildings, equipment and capital improvements are computed in accordance with § 200.449.
- (3) Operation and maintenance expenses. The expenses under this heading are those that have been incurred for the administration, operation, maintenance, preservation, and protection of the organization's physical plant. They include expenses normally incurred for such items as: janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; care of grounds; maintenance and operation of buildings and other plant facilities; security; earthquake and disaster preparedness; environmental safety; hazardous waste disposal; property, liability and other insurance relating to property; space and capital leasing; facility planning and management; and central receiving. The operation and maintenance expenses category must also include its allocable share of fringe benefit costs, depreciation, and interest costs.
- (4) General administration and general expenses. The expenses under this heading are those that have been incurred for the overall general executive and administrative offices of the organization and other expenses of a general nature which do not relate solely to any major function of the organization. This category must also include its allocable share of fringe benefit costs, operation and maintenance expense, depreciation, and interest costs. Examples of this category include central offices, such as the director's office, the office of finance, business services, budget and planning, personnel, safety and risk management, general counsel, management information systems, and library costs.

In developing this cost pool, special care should be exercised to ensure that costs incurred for the same purpose in like circumstances are treated consistently as either direct or indirect costs. For example, salaries of technical staff, project supplies, project publication, telephone toll charges, computer costs, travel costs, and specialized services costs must be treated as direct costs wherever identifiable to a particular program. The salaries and wages of administrative and pooled clerical staff should normally be treated as indirect costs. Direct charging of these costs may be appropriate as described in § 200.413. Items such as office supplies, postage, local telephone costs, periodicals and memberships should normally be treated as indirect costs.

- c. Allocation bases. Actual conditions must be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefitting functions. The essential consideration in selecting a method or a base is that it is the one best suited for assigning the pool of costs to cost objectives in accordance with benefits derived; a traceable cause and effect relationship; or logic and reason, where neither the cause nor the effect of the relationship is determinable. When an allocation can be made by assignment of a cost grouping directly to the function benefitted, the allocation must be made in that manner. When the expenses in a cost grouping are more general in nature, the allocation must be made through the use of a selected base which produces results that are equitable to both the Federal Government and the organization. The distribution must be made in accordance with the bases described herein unless it can be demonstrated that the use of a different base would result in a more equitable allocation of the costs, or that a more readily available base

would not increase the costs charged to Federal awards. The results of special cost studies (such as an engineering utility study) must not be used to determine and allocate the indirect costs to Federal awards.

(1) Depreciation. Depreciation expenses must be allocated in the following manner:

- (a) Depreciation on buildings used exclusively in the conduct of a single function, and on capital improvements and equipment used in such buildings, must be assigned to that function.
- (b) Depreciation on buildings used for more than one function, and on capital improvements and equipment used in such buildings, must be allocated to the individual functions performed in each building on the basis of usable square feet of space, excluding common areas, such as hallways, stairwells, and restrooms.
- (c) Depreciation on buildings, capital improvements and equipment related space (e.g., individual rooms, and laboratories) used jointly by more than one function (as determined by the users of the space) must be treated as follows. The cost of each jointly used unit of space must be allocated to the benefitting functions on the basis of:
 - (i) the employees and other users on a full-time equivalent (FTE) basis or salaries and wages of those individual functions benefitting from the use of that space; or
 - (ii) organization-wide employee FTEs or salaries and wages applicable to the benefitting functions of the organization.
- (d) Depreciation on certain capital improvements to land, such as paved parking areas, fences, sidewalks, and the like, not included in the cost of buildings, must be allocated to user categories on a FTE basis and distributed to major functions in proportion to the salaries and wages of all employees applicable to the functions.

(2) Interest. Interest costs must be allocated in the same manner as the depreciation on the buildings, equipment and capital equipment to which the interest relates.

(3) Operation and maintenance expenses. Operation and maintenance expenses must be allocated in the same manner as the depreciation.

(4) General administration and general expenses. General administration and general expenses must be allocated to benefitting functions based on modified total costs (MTC). The MTC is the modified total direct costs (MTDC), as described in § 200.1, plus the allocated indirect cost proportion. The expenses included in this category could be grouped first according to major functions of the organization to which they render services or provide benefits. The aggregate expenses of each group must then be allocated to benefitting functions based on MTC.

d. Order of distribution.

- (1) Indirect cost categories consisting of depreciation, interest, operation and maintenance, and general administration and general expenses must be allocated in that order to the remaining indirect cost categories as well as to the major functions of the organization.

Other cost categories should be allocated in the order determined to be most appropriate by the organization. This order of allocation does not apply if cross allocation of costs is made as provided in section B.3.d.2 of this Appendix.

- (2) Normally, an indirect cost category will be considered closed once it has been allocated to other cost objectives, and costs must not be subsequently allocated to it. However, a cross allocation of costs between two or more indirect costs categories could be used if such allocation will result in a more equitable allocation of costs. If a cross allocation is used, an appropriate modification to the composition of the indirect cost categories is required.
- e. Application of indirect cost rate or rates. Except where a special indirect cost rate(s) is required in accordance with section B.5 of this Appendix, the separate groupings of indirect costs allocated to each major function must be aggregated and treated as a common pool for that function. The costs in the common pool must then be distributed to individual Federal awards included in that function by use of a single indirect cost rate.
- f. Distribution basis. Indirect costs must be distributed to applicable Federal awards and other benefitting activities within each major function on the basis of MTDC (see definition in § 200.1).
- g. Individual Rate Components. An indirect cost rate must be determined for each separate indirect cost pool developed. The rate in each case must be stated as the percentage which the amount of the particular indirect cost pool is of the distribution base identified with that pool. Each indirect cost rate negotiation or determination agreement must include development of the rate for each indirect cost pool as well as the overall indirect cost rate. The indirect cost pools must be classified within two broad categories: "Facilities" and "Administration," as described in § 200.414(a).

4. Direct Allocation Method

- a. Some nonprofit organizations treat all costs as direct costs except general administration and general expenses. These organizations generally separate their costs into three basic categories:
 - (i) General administration and general expenses,
 - (ii) fundraising, and
 - (iii) other direct functions (including projects performed under Federal awards). Joint costs, such as depreciation, rental costs, operation and maintenance of facilities, telephone expenses, and the like are prorated individually as direct costs to each category and to each Federal award or other activity using a base most appropriate to the particular cost being prorated.
- b. This method is acceptable, provided each joint cost is prorated using a base which accurately measures the benefits provided to each Federal award or other activity. The bases must be established in accordance with reasonable criteria and be supported by current data. This method is compatible with the Standards of Accounting and Financial Reporting for Voluntary

Health and Welfare Organizations issued jointly by the National Health Council, Inc., the National Assembly of Voluntary Health and Social Welfare Organizations, and the United Way of America.

- c. Under this method, indirect costs consist exclusively of general administration and general expenses. In all other respects, the organization's indirect cost rates must be computed in the same manner as that described in section B.2 of this Appendix.

5. Special Indirect Cost Rates

In some instances, a single indirect cost rate for all activities of an organization or for each major function of the organization may not be appropriate, since it would not take into account those different factors which may substantially affect the indirect costs applicable to a particular segment of work. For this purpose, a particular segment of work may be that performed under a single Federal award or it may consist of work under a group of Federal awards performed in a common environment. These factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. When a particular segment of work is performed in an environment which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to such work. The separate indirect cost pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom should be used, provided it is determined that (i) the rate differs significantly from that which would have been obtained under sections B.2, B.3, and B.4 of this Appendix, and (ii) the volume of work to which the rate would apply is material.

C. Negotiation and Approval of Indirect Cost Rates

1. Definitions

As used in this section, the following terms have the meanings set forth in this section:

- a. **Cognizant agency for indirect costs** means the Federal agency responsible for negotiating and approving indirect cost rates for a nonprofit organization on behalf of all Federal agencies.
- b. **Predetermined rate** means an indirect cost rate, applicable to a specified current or future period, usually the organization's fiscal year. The rate is based on an estimate of the costs to be incurred during the period. A predetermined rate is not subject to adjustment.
- c. **Fixed rate** means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.
- d. **Final rate** means an indirect cost rate applicable to a specified past period which is based on the actual costs of the period. A final rate is not subject to adjustment.

- e. **Provisional rate or billing rate** means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on Federal awards pending the establishment of a final rate for the period.
- f. **Indirect cost proposal** means the documentation prepared by an organization to substantiate its claim for the reimbursement of indirect costs. This proposal provides the basis for the review and negotiation leading to the establishment of an organization's indirect cost rate.
- g. **Cost objective** means a function, organizational subdivision, contract, Federal award, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, projects, jobs and capitalized projects.

2. Negotiation and Approval of Rates

- a. Unless different arrangements are agreed to by the Federal agencies concerned, the Federal agency with the largest dollar value of Federal awards directly funded to an organization will be designated as the cognizant agency for indirect costs for the negotiation and approval of the indirect cost rates and, where necessary, other rates such as fringe benefit and computer charge-out rates. Once an agency is assigned cognizance for a particular nonprofit organization, the assignment will not be changed unless there is a shift in the dollar volume of the Federal awards directly funded to the organization for at least three years. All concerned Federal agencies must be given the opportunity to participate in the negotiation process but, after a rate has been agreed upon, it will be accepted by all Federal agencies. When a Federal agency has reason to believe that special operating factors affecting its Federal awards necessitate special indirect cost rates in accordance with section B.5 of this Appendix, it will, prior to the time the rates are negotiated, notify the cognizant agency for indirect costs. (See also § 200.414.) If the nonprofit does not receive any funding from any Federal agency, the pass-through entity is responsible for the negotiation of the indirect cost rates in accordance with § 200.332(a)(4).
- b. Except as otherwise provided in § 200.414(f), a nonprofit organization which has not previously established an indirect cost rate with a Federal agency must submit its initial indirect cost proposal immediately after the organization is advised that a Federal award will be made and, in no event, later than three months after the effective date of the Federal award.
- c. Unless approved by the cognizant agency for indirect costs in accordance with § 200.414(g), organizations that have previously established indirect cost rates must submit a new indirect cost proposal to the cognizant agency for indirect costs within six months after the close of each fiscal year.
- d. A predetermined rate may be negotiated for use on Federal awards where there is reasonable assurance, based on past experience and reliable projection of the organization's costs, that the rate is not likely to exceed a rate based on the organization's actual costs.
- e. Fixed rates may be negotiated where predetermined rates are not considered appropriate. A fixed rate, however, must not be negotiated if
 - (i) all or a substantial portion of the organization's Federal awards are expected to expire before the carry-forward adjustment can be made;

- (ii) the mix of Federal and non-Federal work at the organization is too erratic to permit an equitable carry-forward adjustment; or
 - (iii) the organization's operations fluctuate significantly from year to year.
- f. Provisional and final rates must be negotiated where neither predetermined nor fixed rates are appropriate. Predetermined or fixed rates may replace provisional rates at any time prior to the close of the organization's fiscal year. If that event does not occur, a final rate will be established and upward or downward adjustments will be made based on the actual allowable costs incurred for the period involved.
- g. The results of each negotiation must be formalized in a written agreement between the cognizant agency for indirect costs and the nonprofit organization. The cognizant agency for indirect costs must make available copies of the agreement to all concerned Federal agencies.
- h. If a dispute arises in a negotiation of an indirect cost rate between the cognizant agency for indirect costs and the nonprofit organization, the dispute must be resolved in accordance with the appeals procedures of the cognizant agency for indirect costs.
- i. To the extent that problems are encountered among the Federal agencies in connection with the negotiation and approval process, OMB will lend assistance as required to resolve such problems in a timely manner.

D. Certification of Indirect (F&A) Costs

- (1) Required Certification. No proposal to establish indirect (F&A) cost rates must be acceptable unless such costs have been certified by the nonprofit organization using the Certificate of Indirect (F&A) Costs set forth in section j. of this appendix. The certificate must be signed on behalf of the organization by an individual at a level no lower than vice president or chief financial officer for the organization.
- (2) Each indirect cost rate proposal must be accompanied by a certification in the following form:

Certificate of Indirect (F&A) Costs

This is to certify that to the best of my knowledge and belief:

- (1) I have reviewed the indirect (F&A) cost proposal submitted herewith;
- (2) All costs included in this proposal [identify date] to establish billing or final indirect (F&A) costs rate for [identify period covered by rate] are allowable in accordance with the requirements of the Federal awards to which they apply and with subpart E of this part.
- (3) This proposal does not include any costs which are unallowable under subpart E of this part such as (without limitation): Public relations costs, contributions and donations, entertainment costs, fines and penalties, lobbying costs, and defense of fraud proceedings; and
- (4) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the Federal awards to which they are allocated in accordance with applicable requirements.

I declare that the foregoing is true and correct.

Nonprofit Organization: _____

Signature: _____

Name of Official: _____

Title: _____

Date of Execution: _____

[78 FR 78608, Dec. 26, 2013, as amended at 80 FR 54410, Sept. 10, 2015; 85 FR 49579, Aug. 13, 2020]

Appendix V to Part 200—State/Local Governmentwide Central Service Cost Allocation Plans

A. General

1. Most governmental units provide certain services, such as motor pools, computer centers, purchasing, accounting, etc., to operating agencies on a centralized basis. Since federally-supported awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefitted activities on a reasonable and consistent basis. The central service cost allocation plan provides that process. All costs and other data used to distribute the costs included in the plan should be supported by formal accounting and other records that will support the propriety of the costs assigned to Federal awards.
2. Guidelines and illustrations of central service cost allocation plans are provided in a brochure published by the Department of Health and Human Services entitled "*A Guide for State, Local and Indian Tribal Governments: Cost Principles and Procedures for Developing Cost Allocation Plans and Indirect Cost Rates for Agreements with the Federal Government.*" A copy of this brochure may be obtained from the HHS Cost Allocation Services or at their website.

B. Definitions

1. **Agency or operating agency** means an organizational unit or sub-division within a governmental unit that is responsible for the performance or administration of Federal awards or activities of the governmental unit.
2. **Allocated central services** means central services that benefit operating agencies but are not billed to the agencies on a fee-for-service or similar basis. These costs are allocated to benefitted agencies on some reasonable basis. Examples of such services might include general accounting, personnel administration, purchasing, etc.
3. **Billed central services** means central services that are billed to benefitted agencies or programs on an individual fee-for-service or similar basis. Typical examples of billed central services include computer services, transportation services, insurance, and fringe benefits.
4. **Cognizant agency for indirect costs** is defined in § 200.1. The determination of cognizant agency for indirect costs for states and local governments is described in section F.1.

5. **Major local government** means local government that receives more than \$100 million in direct Federal awards subject to this Part.

C. Scope of the Central Service Cost Allocation Plans

The central service cost allocation plan will include all central service costs that will be claimed (either as a billed or an allocated cost) under Federal awards and will be documented as described in section E. omitted from the plan will not be reimbursed.

D. Submission Requirements

1. Each state will submit a plan to the Department of Health and Human Services for each year in which it claims central service costs under Federal awards. The plan should include
 - (a) a projection of the next year's allocated central service cost (based either on actual costs for the most recently completed year or the budget projection for the coming year), and
 - (b) a reconciliation of actual allocated central service costs to the estimated costs used for either the most recently completed year or the year immediately preceding the most recently completed year.
2. Each major local government is also required to submit a plan to its cognizant agency for indirect costs annually.
3. All other local governments claiming central service costs must develop a plan in accordance with the requirements described in this Part and maintain the plan and related supporting documentation for audit. These local governments are not required to submit their plans for Federal approval unless they are specifically requested to do so by the cognizant agency for indirect costs. Where a local government only receives funds as a subrecipient, the pass-through entity will be responsible for monitoring the subrecipient's plan.
4. All central service cost allocation plans will be prepared and, when required, submitted within six months prior to the beginning of each of the governmental unit's fiscal years in which it proposes to claim central service costs. Extensions may be granted by the cognizant agency for indirect costs on a case-by-case basis.

E. Documentation Requirements for Submitted Plans

The documentation requirements described in this section may be modified, expanded, or reduced by the cognizant agency for indirect costs on a case-by-case basis. For example, the requirements may be reduced for those central services which have little or no impact on Federal awards. Conversely, if a review of a plan indicates that certain additional information is needed, and will likely be needed in future years, it may be routinely requested in future plan submissions. Items marked with an asterisk (*) should be submitted only once; subsequent plans should merely indicate any changes since the last plan.

1. General

All proposed plans must be accompanied by the following: an organization chart sufficiently detailed to show operations including the central service activities of the state/local government whether or not they are shown as benefitting from central service functions; a copy of the Comprehensive Annual Financial Report (or a copy of the Executive Budget if budgeted costs are being proposed) to support the allowable costs of each central service activity included in the plan; and, a certification (see subsection 4.) that the plan was prepared in accordance with this Part, contains only allowable costs, and was prepared in a manner that treated similar costs consistently among the various Federal awards and between Federal and non-Federal awards/activities.

2. Allocated Central Services

For each allocated central service*, the plan must also include the following: a brief description of the service, an identification of the unit rendering the service and the operating agencies receiving the service, the items of expense included in the cost of the service, the method used to distribute the cost of the service to benefitted agencies, and a summary schedule showing the allocation of each service to the specific benefitted agencies. If any self-insurance funds or fringe benefits costs are treated as allocated (rather than billed) central services, documentation discussed in subsections 3.b. and c. must also be included.

3. Billed Services

- a. **General.** The information described in this section must be provided for all billed central services, including internal service funds, self-insurance funds, and fringe benefit funds.
- b. Internal service funds.
 - (1) For each internal service fund or similar activity with an operating budget of \$5 million or more, the plan must include: A brief description of each service; a balance sheet for each fund based on individual accounts contained in the governmental unit's accounting system; a revenue/expenses statement, with revenues broken out by source, e.g., regular billings, interest earned, etc.; a listing of all non-operating transfers (as defined by GAAP) into and out of the fund; a description of the procedures (methodology) used to charge the costs of each service to users, including how billing rates are determined; a schedule of current rates; and, a schedule comparing total revenues (including imputed revenues) generated by the service to the allowable costs of the service, as determined under this part, with an explanation of how variances will be handled.
 - (2) Revenues must consist of all revenues generated by the service, including unbilled and uncollected revenues. If some users were not billed for the services (or were not billed at the full rate for that class of users), a schedule showing the full imputed revenues associated with these users must be provided. Expenses must be broken out by object cost categories (e.g., salaries, supplies, etc.).
- c. **Self-insurance funds.** For each self-insurance fund, the plan must include: the fund balance sheet; a statement of revenue and expenses including a summary of billings and claims paid by agency; a listing of all non-operating transfers into and out of the fund; the type(s) of risk(s) covered by the fund (e.g., automobile liability, workers' compensation, etc.); an explanation of how the level of fund contributions are determined, including a copy of the current actuarial

report (with the actuarial assumptions used) if the contributions are determined on an actuarial basis; and, a description of the procedures used to charge or allocate fund contributions to benefitted activities. Reserve levels in excess of claims

- (1) submitted and adjudicated but not paid,
- (2) submitted but not adjudicated, and
- (3) incurred but not submitted must be identified and explained.

- d. **Fringe benefits.** For fringe benefit costs, the plan must include: a listing of fringe benefits provided to covered employees, and the overall annual cost of each type of benefit; current fringe benefit policies; and procedures used to charge or allocate the costs of the benefits to benefitted activities. In addition, for pension and post-retirement health insurance plans, the following information must be provided: the governmental unit's funding policies, e.g., legislative bills, trust agreements, or state-mandated contribution rules, if different from actuarially determined rates; the pension plan's costs accrued for the year; the amount funded, and date(s) of funding; a copy of the current actuarial report (including the actuarial assumptions); the plan trustee's report; and, a schedule from the activity showing the value of the interest cost associated with late funding.

4. Required Certification

Each central service cost allocation plan will be accompanied by a certification in the following form:

CERTIFICATE OF COST ALLOCATION PLAN

This is to certify that I have reviewed the cost allocation plan submitted herewith and to the best of my knowledge and belief:

- (1) All costs included in this proposal [identify date] to establish cost allocations or billings for [identify period covered by plan] are allowable in accordance with the requirements of this Part and the Federal award(s) to which they apply. Unallowable costs have been adjusted for in allocating costs as indicated in the cost allocation plan.
- (2) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the Federal awards to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently.

I declare that the foregoing is true and correct.

Governmental Unit: _____

Signature: _____

Name of Official: _____

Title: _____

Date of Execution: _____

F. Negotiation and Approval of Central Service Plans

1. Federal Cognizant Agency for Indirect Costs Assignments for Cost Negotiation

In general, unless different arrangements are agreed to by the concerned Federal agencies, for central service cost allocation plans, the cognizant agency responsible for review and approval is the Federal agency with the largest dollar value of total Federal awards with a governmental unit. For indirect cost rates and departmental indirect cost allocation plans, the cognizant agency is the Federal agency with the largest dollar value of direct Federal awards with a governmental unit or component, as appropriate. Once designated as the cognizant agency for indirect costs, the Federal agency must remain so for a period of five years. In addition, the following Federal agencies continue to be responsible for the indicated governmental entities:

Department of Health and Human Services —Public assistance and state-wide cost allocation plans for all states (including the District of Columbia and Puerto Rico), state and local hospitals, libraries and health districts.

Department of the Interior —Indian tribal governments, territorial governments, and state and local park and recreational districts.

Department of Labor —State and local labor departments.

Department of Education —School districts and state and local education agencies.

Department of Agriculture —State and local agriculture departments.

Department of Transportation —State and local airport and port authorities and transit districts.

Department of Commerce —State and local economic development districts.

Department of Housing and Urban Development —State and local housing and development districts.

Environmental Protection Agency —State and local water and sewer districts.

2. Review

All proposed central service cost allocation plans that are required to be submitted will be reviewed, negotiated, and approved by the cognizant agency for indirect costs on a timely basis. The cognizant agency for indirect costs will review the proposal within six months of receipt of the proposal and either negotiate/approve the proposal or advise the governmental unit of the additional documentation needed to support/evaluate the proposed plan or the changes required to make the proposal acceptable. Once an agreement with the governmental unit has been reached, the agreement will be accepted and used by all Federal agencies, unless prohibited or limited by statute. Where a Federal awarding agency has reason to believe that special operating factors affecting its Federal awards necessitate special consideration, the funding agency will, prior to the time the plans are negotiated, notify the cognizant agency for indirect costs.

3. Agreement

The results of each negotiation must be formalized in a written agreement between the cognizant agency for indirect costs and the governmental unit. This agreement will be subject to re-opening if the agreement is subsequently found to violate a statute or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. The results of the negotiation must be made available to all Federal agencies for their use.

4. Adjustments

Negotiated cost allocation plans based on a proposal later found to have included costs that: (a) are unallowable (i) as specified by law or regulation, (ii) as identified in subpart F, General Provisions for selected Items of Cost of this Part, or (iii) by the terms and conditions of Federal awards, or (b) are unallowable because they are clearly not allocable to Federal awards, must be adjusted, or a refund must be made at the option of the cognizant agency for indirect costs, including earned or imputed interest from the date of transfer and debt interest, if applicable, chargeable in accordance with applicable Federal cognizant agency for indirect costs regulations. Adjustments or cash refunds may include, at the option of the cognizant agency for indirect costs, earned or imputed interest from the date of expenditure and delinquent debt interest, if applicable, chargeable in accordance with applicable cognizant agency claims collection regulations. These adjustments or refunds are designed to correct the plans and do not constitute a reopening of the negotiation.

G. Other Policies

1. Billed Central Service Activities

Each billed central service activity must separately account for all revenues (including imputed revenues) generated by the service, expenses incurred to furnish the service, and profit/loss.

2. Working Capital Reserves

Internal service funds are dependent upon a reasonable level of working capital reserve to operate from one billing cycle to the next. Charges by an internal service activity to provide for the establishment and maintenance of a reasonable level of working capital reserve, in addition to the full recovery of costs, are allowable. A working capital reserve as part of retained earnings of up to 60 calendar days cash expenses for normal operating purposes is considered reasonable. A working capital reserve exceeding 60 calendar days may be approved by the cognizant agency for indirect costs in exceptional cases.

3. Carry-Forward Adjustments of Allocated Central Service Costs

Allocated central service costs are usually negotiated and approved for a future fiscal year on a "fixed with carry-forward" basis. Under this procedure, the fixed amounts for the future year covered by agreement are not subject to adjustment for that year. However, when the actual costs of the year involved become known, the differences between the fixed amounts previously approved and the

actual costs will be carried forward and used as an adjustment to the fixed amounts established for a later year. This "carry-forward" procedure applies to all central services whose costs were fixed in the approved plan. However, a carry-forward adjustment is not permitted, for a central service activity that was not included in the approved plan, or for unallowable costs that must be reimbursed immediately.

4. Adjustments of Billed Central Services

Billing rates used to charge Federal awards must be based on the estimated costs of providing the services, including an estimate of the allocable central service costs. A comparison of the revenue generated by each billed service (including total revenues whether or not billed or collected) to the actual allowable costs of the service will be made at least annually, and an adjustment will be made for the difference between the revenue and the allowable costs. These adjustments will be made through one of the following adjustment methods: (a) a cash refund including earned or imputed interest from the date of transfer and debt interest, if applicable, chargeable in accordance with applicable Federal cognizant agency for indirect costs regulations to the Federal Government for the Federal share of the adjustment, (b) credits to the amounts charged to the individual programs, (c) adjustments to future billing rates, or (d) adjustments to allocated central service costs.

Adjustments to allocated central services will not be permitted where the total amount of the adjustment for a particular service (Federal share and non-Federal) share exceeds \$500,000.

Adjustment methods may include, at the option of the cognizant agency, earned or imputed interest from the date of expenditure and delinquent debt interest, if applicable, chargeable in accordance with applicable cognizant agency claims collection regulations.

5. Records Retention

All central service cost allocation plans and related documentation used as a basis for claiming costs under Federal awards must be retained for audit in accordance with the records retention requirements contained in subpart D of this part.

6. Appeals

If a dispute arises in the negotiation of a plan between the cognizant agency for indirect costs and the governmental unit, the dispute must be resolved in accordance with the appeals procedures of the cognizant agency for indirect costs.

7. OMB Assistance

To the extent that problems are encountered among the Federal agencies or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

[78 FR 78608, Dec. 26, 2013, as amended at 80 FR 54410, Sept. 10, 2015; 85 FR 49581, Aug. 13, 2020]

Appendix VI to Part 200—Public Assistance Cost Allocation Plans

A. General

Federally-financed programs administered by state public assistance agencies are funded predominately by the Department of Health and Human Services (HHS). In support of its stewardship requirements, HHS has published requirements for the development, documentation, submission, negotiation, and approval of public assistance cost allocation plans in Subpart E of 45 CFR Part 95. All administrative costs (direct and indirect) are normally charged to Federal awards by implementing the public assistance cost allocation plan. This Appendix extends these requirements to all Federal awarding agencies whose programs are administered by a state public assistance agency. Major federally-financed programs typically administered by state public assistance agencies include: Temporary Aid to Needy Families (TANF), Medicaid, Food Stamps, Child Support Enforcement, Adoption Assistance and Foster Care, and Social Services Block Grant.

B. Definitions

1. **State public assistance agency** means a state agency administering or supervising the administration of one or more public assistance programs operated by the state as identified in Subpart E of 45 CFR Part 95. For the purpose of this Appendix, these programs include all programs administered by the state public assistance agency.
2. **State public assistance agency costs** means all costs incurred by, or allocable to, the state public assistance agency, except expenditures for financial assistance, medical contractor payments, food stamps, and payments for services and goods provided directly to program recipients.

C. Policy

State public assistance agencies will develop, document and implement, and the Federal Government will review, negotiate, and approve, public assistance cost allocation plans in accordance with Subpart E of 45 CFR Part 95. The plan will include all programs administered by the state public assistance agency. Where a letter of approval or disapproval is transmitted to a state public assistance agency in accordance with Subpart E, the letter will apply to all Federal agencies and programs. The remaining sections of this Appendix (except for the requirement for certification) summarize the provisions of Subpart E of 45 CFR Part 95.

D. Submission, Documentation, and Approval of Public Assistance Cost Allocation Plans

1. State public assistance agencies are required to promptly submit amendments to the cost allocation plan to HHS for review and approval.
2. Under the coordination process outlined in section E, affected Federal agencies will review all new plans and plan amendments and provide comments, as appropriate, to HHS. The effective date of the plan or plan amendment will be the first day of the calendar quarter following the event that required the amendment, unless another date is specifically approved by HHS. HHS, as the cognizant agency for indirect costs acting on behalf of all affected Federal agencies, will, as necessary, conduct negotiations with the state public assistance agency and will inform the state agency of the action taken on the plan or plan amendment.

E. Review of Implementation of Approved Plans

1. Since public assistance cost allocation plans are of a narrative nature, the review during the plan approval process consists of evaluating the appropriateness of the proposed groupings of costs (cost centers) and the related allocation bases. As such, the Federal Government needs some assurance that the cost allocation plan has been implemented as approved. This is accomplished by reviews by the Federal awarding agencies, single audits, or audits conducted by the cognizant agency for indirect costs.
2. Where inappropriate charges affecting more than one Federal awarding agency are identified, the cognizant HHS cost negotiation office will be advised and will take the lead in resolving the issue(s) as provided for in Subpart E of 45 CFR Part 95.
3. If a dispute arises in the negotiation of a plan or from a disallowance involving two or more Federal awarding agencies, the dispute must be resolved in accordance with the appeals procedures set out in 45 CFR Part 16. Disputes involving only one Federal awarding agency will be resolved in accordance with the Federal awarding agency's appeal process.
4. To the extent that problems are encountered among the Federal awarding agencies or governmental units in connection with the negotiation and approval process, the Office of Management and Budget will lend assistance, as required, to resolve such problems in a timely manner.

F. Unallowable Costs

Claims developed under approved cost allocation plans will be based on allowable costs as identified in this Part. Where unallowable costs have been claimed and reimbursed, they will be refunded to the program that reimbursed the unallowable cost using one of the following methods: (a) a cash refund, (b) offset to a subsequent claim, or (c) credits to the amounts charged to individual Federal awards. Cash refunds, offsets, and credits may include at the option of the cognizant agency for indirect cost, earned or imputed interest from the date of expenditure and delinquent debt interest, if applicable, chargeable in accordance with applicable cognizant agency for indirect cost claims collection regulations.

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49581, Aug. 13, 2020]

Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals

Link to an amendment published at 89 FR 30207, Apr. 22, 2024.

A. General

1. Indirect costs are those that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned directly to Federal awards and other activities as appropriate, indirect costs are those remaining to be allocated to benefitted cost objectives. A cost may not be allocated to a Federal award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to a Federal award as a direct cost.

2. Indirect costs include
 - (a) the indirect costs originating in each department or agency of the governmental unit carrying out Federal awards and
 - (b) the costs of central governmental services distributed through the central service cost allocation plan (as described in Appendix V to this part) and not otherwise treated as direct costs.
3. Indirect costs are normally charged to Federal awards by the use of an indirect cost rate. A separate indirect cost rate(s) is usually necessary for each department or agency of the governmental unit claiming indirect costs under Federal awards. Guidelines and illustrations of indirect cost proposals are provided in a brochure published by the Department of Health and Human Services entitled "*A Guide for States and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government.*" A copy of this brochure may be obtained from HHS Cost Allocation Services or at their website.
4. Because of the diverse characteristics and accounting practices of governmental units, the types of costs which may be classified as indirect costs cannot be specified in all situations. However, typical examples of indirect costs may include certain state/local-wide central service costs, general administration of the non-Federal entity accounting and personnel services performed within the non-Federal entity, depreciation on buildings and equipment, the costs of operating and maintaining facilities.
5. This Appendix does not apply to state public assistance agencies. These agencies should refer instead to Appendix VI to this part.

B. Definitions

1. **Base** means the accumulated direct costs (normally either total direct salaries and wages or total direct costs exclusive of any extraordinary or distorting expenditures) used to distribute indirect costs to individual Federal awards. The direct cost base selected should result in each Federal award bearing a fair share of the indirect costs in reasonable relation to the benefits received from the costs.
2. **Base period** for the allocation of indirect costs is the period in which such costs are incurred and accumulated for allocation to activities performed in that period. The base period normally should coincide with the governmental unit's fiscal year, but in any event, must be so selected as to avoid inequities in the allocation of costs.
3. **Cognizant agency for indirect costs** means the Federal agency responsible for reviewing and approving the governmental unit's indirect cost rate(s) on the behalf of the Federal Government. The cognizant agency for indirect costs assignment is described in Appendix V, section F.
4. **Final rate** means an indirect cost rate applicable to a specified past period which is based on the actual allowable costs of the period. A final audited rate is not subject to adjustment.
5. **Fixed rate** means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual, allowable costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.

6. **Indirect cost pool** is the accumulated costs that jointly benefit two or more programs or other cost objectives.
7. **Indirect cost rate** is a device for determining in a reasonable manner the proportion of indirect costs each program should bear. It is the ratio (expressed as a percentage) of the indirect costs to a direct cost base.
8. **Indirect cost rate proposal** means the documentation prepared by a governmental unit or subdivision thereof to substantiate its request for the establishment of an indirect cost rate.
9. **Predetermined rate** means an indirect cost rate, applicable to a specified current or future period, usually the governmental unit's fiscal year. This rate is based on an estimate of the costs to be incurred during the period. Except under very unusual circumstances, a predetermined rate is not subject to adjustment. (Because of legal constraints, predetermined rates are not permitted for Federal contracts; they may, however, be used for grants or cooperative agreements.) Predetermined rates may not be used by governmental units that have not submitted and negotiated the rate with the cognizant agency for indirect costs. In view of the potential advantages offered by this procedure, negotiation of predetermined rates for indirect costs for a period of two to four years should be the norm in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of indirect costs during the ensuing accounting periods.
10. **Provisional rate** means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on Federal awards pending the establishment of a "final" rate for that period.

C. Allocation of Indirect Costs and Determination of Indirect Cost Rates

1. General

- a. Where a governmental unit's department or agency has only one major function, or where all its major functions benefit from the indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures as described in subsection 2.
- b. Where a governmental unit's department or agency has several major functions which benefit from its indirect costs in varying degrees, the allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefitted functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual Federal awards and other activities included in that function by means of an indirect cost rate(s).
- c. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in subsections 2, 3 and 4.

2. Simplified Method

- a. Where a non-Federal entity's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by

- (1) classifying the non-Federal entity's total costs for the base period as either direct or indirect, and
 - (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual Federal awards. The rate should be expressed as the percentage which the total amount of allowable indirect costs bears to the base selected. This method should also be used where a governmental unit's department or agency has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal awards to that department or agency is relatively small.
- b. Both the direct costs and the indirect costs must exclude capital expenditures and unallowable costs. However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.
- c. The distribution base may be
- (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, subcontracts in excess of \$25,000, participant support costs, etc.),
 - (2) direct salaries and wages, or
 - (3) another base which results in an equitable distribution.

3. Multiple Allocation Base Method

- a. Where a non-Federal entity's indirect costs benefit its major functions in varying degrees, such costs must be accumulated into separate cost groupings. Each grouping must then be allocated individually to benefitted functions by means of a base which best measures the relative benefits.
- b. The cost groupings should be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping should constitute a pool of expenses that are of like character in terms of the functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The number of separate groupings should be held within practical limits, taking into consideration the materiality of the amounts involved and the degree of precision needed.
- c. Actual conditions must be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefitted functions. When an allocation can be made by assignment of a cost grouping directly to the function benefitted, the allocation must be made in that manner. When the expenses in a grouping are more general in nature, the allocation should be made through the use of a selected base which produces results that are equitable to both the Federal Government and the governmental unit. In general, any cost element or related factor associated with the governmental unit's activities is potentially adaptable for use as an allocation base provided that:
- (1) it can readily be expressed in terms of dollars or other quantitative measures (total direct costs, direct salaries and wages, staff hours applied, square feet used, hours of usage, number of documents processed, population served, and the like), and
 - (2) it is common to the benefitted functions during the base period.

- d. Except where a special indirect cost rate(s) is required in accordance with paragraph (C)(4) of this Appendix, the separate groupings of indirect costs allocated to each major function must be aggregated and treated as a common pool for that function. The costs in the common pool must then be distributed to individual Federal awards included in that function by use of a single indirect cost rate.
- e. The distribution base used in computing the indirect cost rate for each function may be
 - (1) total direct costs (excluding capital expenditures and other distorting items such as pass-through funds, subawards in excess of \$25,000, participant support costs, etc.),
 - (2) direct salaries and wages, or
 - (3) another base which results in an equitable distribution. An indirect cost rate should be developed for each separate indirect cost pool developed. The rate in each case should be stated as the percentage relationship between the particular indirect cost pool and the distribution base identified with that pool.

4. Special Indirect Cost Rates

- a. In some instances, a single indirect cost rate for all activities of a non-Federal entity or for each major function of the agency may not be appropriate. It may not take into account those different factors which may substantially affect the indirect costs applicable to a particular program or group of programs. The factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources employed, the organizational arrangements used, or any combination thereof. When a particular Federal award is carried out in an environment which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to that Federal award. The separate indirect cost pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom should be used, provided that:
 - (1) The rate differs significantly from the rate which would have been developed under paragraphs (C)(2) and (C)(3) of this Appendix, and
 - (2) the Federal award to which the rate would apply is material in amount.
- b. Where Federal statutes restrict the reimbursement of certain indirect costs, it may be necessary to develop a special rate for the affected Federal award. Where a "restricted rate" is required, the same procedure for developing a non-restricted rate will be used except for the additional step of the elimination from the indirect cost pool those costs for which the law prohibits reimbursement.

D. Submission and Documentation of Proposals

1. Submission of Indirect Cost Rate Proposals

- a. All departments or agencies of the governmental unit desiring to claim indirect costs under Federal awards must prepare an indirect cost rate proposal and related documentation to support those costs. The proposal and related documentation must be retained for audit in accordance with the records retention requirements contained in § 200.334.

- b. A governmental department or agency unit that receives more than \$35 million in direct Federal funding must submit its indirect cost rate proposal to its cognizant agency for indirect costs. Other governmental department or agency must develop an indirect cost proposal in accordance with the requirements of this Part and maintain the proposal and related supporting documentation for audit. These governmental departments or agencies are not required to submit their proposals unless they are specifically requested to do so by the cognizant agency for indirect costs. Where a non-Federal entity only receives funds as a subrecipient, the pass-through entity will be responsible for negotiating and/or monitoring the subrecipient's indirect costs.
- c. Each Indian tribal government desiring reimbursement of indirect costs must submit its indirect cost proposal to the Department of the Interior (its cognizant agency for indirect costs).
- d. Indirect cost proposals must be developed (and, when required, submitted) within six months after the close of the governmental unit's fiscal year, unless an exception is approved by the cognizant agency for indirect costs. If the proposed central service cost allocation plan for the same period has not been approved by that time, the indirect cost proposal may be prepared including an amount for central services that is based on the latest federally-approved central service cost allocation plan. The difference between these central service amounts and the amounts ultimately approved will be compensated for by an adjustment in a subsequent period.

2. Documentation of Proposals

The following must be included with each indirect cost proposal:

- a. The rates proposed, including subsidiary work sheets and other relevant data, cross referenced and reconciled to the financial data noted in subsection b. Allocated central service costs will be supported by the summary table included in the approved central service cost allocation plan. This summary table is not required to be submitted with the indirect cost proposal if the central service cost allocation plan for the same fiscal year has been approved by the cognizant agency for indirect costs and is available to the funding agency.
- b. A copy of the financial data (financial statements, comprehensive annual financial report, executive budgets, accounting reports, etc.) upon which the rate is based. Adjustments resulting from the use of unaudited data will be recognized, where appropriate, by the Federal cognizant agency for indirect costs in a subsequent proposal.
- c. The approximate amount of direct base costs incurred under Federal awards. These costs should be broken out between salaries and wages and other direct costs.
- d. A chart showing the organizational structure of the agency during the period for which the proposal applies, along with a functional statement(s) noting the duties and/or responsibilities of all units that comprise the agency. (Once this is submitted, only revisions need be submitted with subsequent proposals.)

3. Required certification.

Each indirect cost rate proposal must be accompanied by a certification in the following form:

Certificate of Indirect Costs

This is to certify that I have reviewed the indirect cost rate proposal submitted herewith and to the best of my knowledge and belief:

- (1) All costs included in this proposal [identify date] to establish billing or final indirect costs rates for [identify period covered by rate] are allowable in accordance with the requirements of the Federal award(s) to which they apply and the provisions of this Part. Unallowable costs have been adjusted for in allocating costs as indicated in the indirect cost proposal
- (2) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently and the Federal Government will be notified of any accounting changes that would affect the predetermined rate.

I declare that the foregoing is true and correct.

Governmental Unit: _____

Signature: _____

Name of Official: _____

Title: _____

Date of Execution: _____

E. Negotiation and Approval of Rates

1. Indirect cost rates will be reviewed, negotiated, and approved by the cognizant agency on a timely basis. Once a rate has been agreed upon, it will be accepted and used by all Federal agencies unless prohibited or limited by statute. Where a Federal awarding agency has reason to believe that special operating factors affecting its Federal awards necessitate special indirect cost rates, the funding agency will, prior to the time the rates are negotiated, notify the cognizant agency for indirect costs.
2. The use of predetermined rates, if allowed, is encouraged where the cognizant agency for indirect costs has reasonable assurance based on past experience and reliable projection of the non-Federal entity's costs, that the rate is not likely to exceed a rate based on actual costs. Long-term agreements utilizing predetermined rates extending over two or more years are encouraged, where appropriate.
3. The results of each negotiation must be formalized in a written agreement between the cognizant agency for indirect costs and the governmental unit. This agreement will be subject to re-opening if the agreement is subsequently found to violate a statute, or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. The agreed upon rates must be made available to all Federal agencies for their use.

4. Refunds must be made if proposals are later found to have included costs that
 - (a) are unallowable
 - (i) as specified by law or regulation,
 - (ii) as identified in § 200.420, or
 - (iii) by the terms and conditions of Federal awards, or
 - (b) are unallowable because they are clearly not allocable to Federal awards. These adjustments or refunds will be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional).

F. Other Policies

1. Fringe Benefit Rates

If overall fringe benefit rates are not approved for the governmental unit as part of the central service cost allocation plan, these rates will be reviewed, negotiated and approved for individual recipient agencies during the indirect cost negotiation process. In these cases, a proposed fringe benefit rate computation should accompany the indirect cost proposal. If fringe benefit rates are not used at the recipient agency level (i.e., the agency specifically identifies fringe benefit costs to individual employees), the governmental unit should so advise the cognizant agency for indirect costs.

2. Billed Services Provided by the Recipient Agency

In some cases, governmental departments or agencies (components of the governmental unit) provide and bill for services similar to those covered by central service cost allocation plans (e.g., computer centers). Where this occurs, the governmental departments or agencies (components of the governmental unit) should be guided by the requirements in Appendix V relating to the development of billing rates and documentation requirements, and should advise the cognizant agency for indirect costs of any billed services. Reviews of these types of services (including reviews of costing/billing methodology, profits or losses, etc.) will be made on a case-by-case basis as warranted by the circumstances involved.

3. Indirect Cost Allocations Not Using Rates

In certain situations, governmental departments or agencies (components of the governmental unit), because of the nature of their Federal awards, may be required to develop a cost allocation plan that distributes indirect (and, in some cases, direct) costs to the specific funding sources. In these cases, a narrative cost allocation methodology should be developed, documented, maintained for audit, or submitted, as appropriate, to the cognizant agency for indirect costs for review, negotiation, and approval.

4. Appeals

If a dispute arises in a negotiation of an indirect cost rate (or other rate) between the cognizant agency for indirect costs and the governmental unit, the dispute must be resolved in accordance with the appeals procedures of the cognizant agency for indirect costs.

5. Collection of Unallowable Costs and Erroneous Payments

Costs specifically identified as unallowable and charged to Federal awards either directly or indirectly will be refunded (including interest chargeable in accordance with applicable Federal cognizant agency for indirect costs regulations).

6. OMB Assistance

To the extent that problems are encountered among the Federal agencies or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75889, Dec. 19, 2014; 85 FR 49581, Aug. 13, 2020]

Appendix VIII to Part 200—Nonprofit Organizations Exempted From Subpart E of Part 200

1. Advance Technology Institute (ATI), Charleston, South Carolina
2. Aerospace Corporation, El Segundo, California
3. American Institutes of Research (AIR), Washington, DC
4. Argonne National Laboratory, Chicago, Illinois
5. Atomic Casualty Commission, Washington, DC
6. Battelle Memorial Institute, Headquartered in Columbus, Ohio
7. Brookhaven National Laboratory, Upton, New York
8. Charles Stark Draper Laboratory, Incorporated, Cambridge, Massachusetts
9. CNA Corporation (CNAC), Alexandria, Virginia
10. Environmental Institute of Michigan, Ann Arbor, Michigan
11. Georgia Institute of Technology/Georgia Tech Applied Research Corporation/Georgia Tech Research Institute, Atlanta, Georgia
12. Hanford Environmental Health Foundation, Richland, Washington
13. IIT Research Institute, Chicago, Illinois
14. Institute of Gas Technology, Chicago, Illinois
15. Institute for Defense Analysis, Alexandria, Virginia
16. LMI, McLean, Virginia
17. Mitre Corporation, Bedford, Massachusetts
18. Noblis, Inc., Falls Church, Virginia
19. National Radiological Astronomy Observatory, Green Bank, West Virginia
20. National Renewable Energy Laboratory, Golden, Colorado

21. Oak Ridge Associated Universities, Oak Ridge, Tennessee
22. Rand Corporation, Santa Monica, California
23. Research Triangle Institute, Research Triangle Park, North Carolina
24. Riverside Research Institute, New York, New York
25. South Carolina Research Authority (SCRA), Charleston, South Carolina
26. Southern Research Institute, Birmingham, Alabama
27. Southwest Research Institute, San Antonio, Texas
28. SRI International, Menlo Park, California
29. Syracuse Research Corporation, Syracuse, New York
30. Universities Research Association, Incorporated (National Acceleration Lab), Argonne, Illinois
31. Urban Institute, Washington DC
32. Nonprofit insurance companies, such as Blue Cross and Blue Shield Organizations
33. Other nonprofit organizations as negotiated with Federal awarding agencies

[78 FR 78608, Dec. 26, 2013, as amended at 85 FR 49582, Aug. 13, 2020]

Appendix IX to Part 200—Hospital Cost Principles

Until such time as revised guidance is proposed and implemented for hospitals, the existing principles located at 45 CFR part 75 Appendix IX, entitled “Principles for Determining Cost Applicable to Research and Development Under Grants and Contracts with Hospitals,” remain in effect.

[86 FR 10440, Feb. 22, 2021]

Appendix X to Part 200—Data Collection Form (Form SF-SAC)

Link to an amendment published at 89 FR 30207, Apr. 22, 2024.

The Data Collection Form SF-SAC is available on the FAC Web site.

Appendix XI to Part 200—Compliance Supplement

The compliance supplement is available on the OMB website.

[85 FR 49582, Aug. 13, 2020]

Appendix XII to Part 200—Award Term and Condition for Recipient Integrity and Performance Matters

Link to an amendment published at 89 FR 30207, Apr. 22, 2024.

A. Reporting of Matters Related to Recipient Integrity and Performance

1. General Reporting Requirement

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

2. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

- a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
- b. Reached its final disposition during the most recent five-year period; and
- c. Is one of the following:
 - (1) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
 - (2) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
 - (3) An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
 - (4) Any other criminal, civil, or administrative proceeding if:
 - (i) It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;
 - (ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
 - (iii) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

3. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

4. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

5. Definitions

For purposes of this award term and condition:

- a. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.
- b. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
- c. Total value of currently active grants, cooperative agreements, and procurement contracts includes—
 - (1) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
 - (2) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

B. [Reserved]

[80 FR 43310, July 22, 2015, as amended at 85 FR 49582, Aug. 13, 2020]

This content is from the eCFR and is authoritative but unofficial.

Title 24 —Housing and Urban Development

Subtitle A —Office of the Secretary, Department of Housing and Urban Development

Part 85 Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments

§ 85.1 Applicability of and cross reference to 2 CFR part 200.

PART 85—ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE, LOCAL AND FEDERALLY RECOGNIZED INDIAN TRIBAL GOVERNMENTS

Authority: 42 U.S.C. 3535(d).

Source: 53 FR 8068, 8087, Mar. 11, 1988, unless otherwise noted.

§ 85.1 Applicability of and cross reference to 2 CFR part 200.

- (a) Federal awards with State, local and Indian tribal governments are subject to the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards at 2 CFR part 200.
- (b) Federal awards made prior to December 26, 2014 will continue to be governed by the regulations in effect and codified in 24 CFR part 85 (2013 edition) or as provided by the terms of the Federal award. Where the terms of a Federal award made prior to December 26, 2014, state that the award will be subject to regulations as may be amended, the Federal award shall be subject to 2 CFR part 200.

[79 FR 76079, Dec. 19, 2014]

Exhibit D

Subpart K of Title 24 of the Code of Federal Regulations relating to CDBG Program Regulations

This content is from the eCFR and is authoritative but unofficial.

Title 24 —Housing and Urban Development

Subtitle B —Regulations Relating to Housing and Urban Development

Chapter V —Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development

Subchapter C —Community Facilities

Part 570 —Community Development Block Grants

Authority: 12 U.S.C. 1701x, 1701 x-1; 42 U.S.C. 3535(d) and 5301-5320.

Source: 40 FR 24693, June 9, 1975, unless otherwise noted.

Subpart K Other Program Requirements

§ 570.600 General.

§ 570.601 Public Law 88-352 and Public Law 90-284; affirmatively furthering fair housing;
Executive Order 11063.

§ 570.602 Section 109 of the Act.

§ 570.603 Labor standards.

§ 570.604 Environmental standards.

§ 570.605 National Flood Insurance Program.

§ 570.606 Displacement, relocation, acquisition, and replacement of housing.

§ 570.607 Employment and contracting opportunities.

§ 570.608 Lead-based paint.

§ 570.609 Use of debarred, suspended or ineligible contractors or subrecipients.

§ 570.610 Uniform administrative requirements, cost principles, and audit requirements for
Federal awards.

§ 570.611 Conflict of interest.

§ 570.612 Executive Order 12372.

§ 570.613 Eligibility restrictions for certain resident aliens.

§ 570.614 Architectural Barriers Act and the Americans with Disabilities Act.

§ 570.615 Housing counseling.

Subpart K—Other Program Requirements

Source: 53 FR 34456, Sept. 6, 1988, unless otherwise noted.

§ 570.600 General.

- (a) This subpart K enumerates laws that the Secretary will treat as applicable to grants made under section 106 of the Act, other than grants to states made pursuant to section 106(d) of the Act, for purposes of the Secretary's determinations under section 104(e)(1) of the Act, including statutes expressly made applicable by the Act and certain other statutes and Executive Orders for which the Secretary has

enforcement responsibility. This subpart K applies to grants made under the Insular Areas Program in § 570.405 and § 570.440 with the exception of § 570.612. The absence of mention herein of any other statute for which the Secretary does not have direct enforcement responsibility is not intended to be taken as an indication that, in the Secretary's opinion, such statute or Executive Order is not applicable to activities assisted under the Act. For laws that the Secretary will treat as applicable to grants made to states under section 106(d) of the Act for purposes of the determination required to be made by the Secretary pursuant to section 104(e)(2) of the Act, see § 570.487.

- (b) This subpart also sets forth certain additional program requirements which the Secretary has determined to be applicable to grants provided under the Act as a matter of administrative discretion.
- (c) In addition to grants made pursuant to section 106(b) and 106(d)(2)(B) of the Act (subparts D and F, respectively), the requirements of this subpart K are applicable to grants made pursuant to sections 107 and 119 of the Act (subparts E and G, respectively), and to loans guaranteed pursuant to subpart M.

[53 FR 34456, Sept. 6, 1988, as amended at 61 FR 11477, Mar. 20, 1996; 72 FR 12536, Mar. 15, 2007]

§ 570.601 Public Law 88-352 and Public Law 90-284; affirmatively furthering fair housing; Executive Order 11063.

- (a) The following requirements apply according to sections 104(b) and 107 of the Act:
 - (1) Public Law 88-352, which is title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), and implementing regulations in 24 CFR part 1.
 - (2) Public Law 90-284, which is the Fair Housing Act (42 U.S.C. 3601-3620). In accordance with the Fair Housing Act, the Secretary requires that grantees administer all programs and activities related to housing and community development in a manner to affirmatively further the policies of the Fair Housing Act.
- (b) Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1959-1963 Comp., p. 652; 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing), and implementing regulations in 24 CFR part 107, also apply.

[61 FR 11477, Mar. 20, 1996, as amended at 80 FR 42368, July 16, 2015; 85 FR 47911, Aug. 7, 2020; 86 FR 30792, June 10, 2021]

§ 570.602 Section 109 of the Act.

Section 109 of the Act requires that no person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance made available pursuant to the Act. Section 109 also directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act and the prohibitions against discrimination on the basis of disability under Section 504 shall apply to programs or activities receiving Federal financial assistance under Title I programs. The policies and procedures necessary to ensure enforcement of section 109 are codified in 24 CFR part 6.

[64 FR 3802, Jan. 25, 1999]

§ 570.603 Labor standards.

- (a) Section 110(a) of the Act contains labor standards that apply to nonvolunteer labor financed in whole or in part with assistance received under the Act. In accordance with section 110(a) of the Act, the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) also applies. However, these requirements apply to the rehabilitation of residential property only if such property contains not less than 8 units.
- (b) The regulations in 24 CFR part 70 apply to the use of volunteers.

[61 FR 11477, Mar. 20, 1996]

§ 570.604 Environmental standards.

For purposes of section 104(g) of the Act, the regulations in 24 CFR part 58 specify the other provisions of law which further the purposes of the National Environmental Policy Act of 1969, and the procedures by which grantees must fulfill their environmental responsibilities. In certain cases, grantees assume these environmental review, decisionmaking, and action responsibilities by execution of grant agreements with the Secretary.

[61 FR 11477, Mar. 20, 1996]

§ 570.605 National Flood Insurance Program.

Notwithstanding the date of HUD approval of the recipient's application (or, in the case of grants made under subpart D of this part or HUD-administered small cities recipients in Hawaii, the date of submission of the grantee's consolidated plan, in accordance with 24 CFR part 91), section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106) and the regulations in 44 CFR parts 59 through 79 apply to funds provided under this part 570.

[61 FR 11477, Mar. 20, 1996]

§ 570.606 Displacement, relocation, acquisition, and replacement of housing.

- (a) **General policy for minimizing displacement.** Consistent with the other goals and objectives of this part, grantees (or States or state recipients, as applicable) shall assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of activities assisted under this part.
- (b) **Relocation assistance for displaced persons at URA levels.**
 - (1) A displaced person shall be provided with relocation assistance at the levels described in, and in accordance with the requirements of 49 CFR part 24, which contains the government-wide regulations implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601-4655).
 - (2) **Displaced person.**
 - (i) For purposes of paragraph (b) of this section, the term “displaced person” means any person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves his or her personal property from real property, permanently and involuntarily, as a direct result of rehabilitation, demolition, or acquisition for an activity assisted under this part. A permanent, involuntary move for an assisted activity includes a permanent move from real property that is made:

- (A) After notice by the grantee (or the state recipient, if applicable) to move permanently from the property, if the move occurs after the initial official submission to HUD (or the State, as applicable) for grant, loan, or loan guarantee funds under this part that are later provided or granted.
- (B) After notice by the property owner to move permanently from the property, if the move occurs after the date of the submission of a request for financial assistance by the property owner (or person in control of the site) that is later approved for the requested activity.
- (C) Before the date described in paragraph (b)(2)(i)(A) or (B) of this section, if either HUD or the grantee (or State, as applicable) determines that the displacement directly resulted from acquisition, rehabilitation, or demolition for the requested activity.
- (D) After the "initiation of negotiations" if the person is the tenant-occupant of a dwelling unit and any one of the following three situations occurs:
 - (1) The tenant has not been provided with a reasonable opportunity to lease and occupy a suitable decent, safe, and sanitary dwelling in the same building/complex upon the completion of the project, including a monthly rent that does not exceed the greater of the tenant's monthly rent and estimated average utility costs before the initiation of negotiations or 30 percent of the household's average monthly gross income; or
 - (2) The tenant is required to relocate temporarily for the activity but the tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary location and any increased housing costs, or other conditions of the temporary relocation are not reasonable; and the tenant does not return to the building/complex; or
 - (3) The tenant is required to move to another unit in the building/complex, but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move.
- (ii) Notwithstanding the provisions of paragraph (b)(2)(i) of this section, the term "*displaced person*-" does not include:
 - (A) A person who is evicted for cause based upon serious or repeated violations of material terms of the lease or occupancy agreement. To exclude a person on this basis, the grantee (or State or state recipient, as applicable) must determine that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance under this section;
 - (B) A person who moves into the property after the date of the notice described in paragraph (b)(2)(i)(A) or (B) of this section, but who received a written notice of the expected displacement before occupancy.
 - (C) A person who is not displaced as described in 49 CFR 24.2(g)(2).
 - (D) A person who the grantee (or State, as applicable) determines is not displaced as a direct result of the acquisition, rehabilitation, or demolition for an assisted activity. To exclude a person on this basis, HUD must concur in that determination.

(iii) A grantee (or State or state recipient, as applicable) may, at any time, request HUD to determine whether a person is a displaced person under this section.

(3) **Initiation of negotiations.** For purposes of determining the type of replacement housing assistance to be provided under paragraph (b) of this section, if the displacement is the direct result of privately undertaken rehabilitation, demolition, or acquisition of real property, the term "*initiation of negotiations*" means the execution of the grant or loan agreement between the grantee (or State or state recipient, as applicable) and the person owning or controlling the real property.

(c) **Residential antidisplacement and relocation assistance plan.** The grantee shall comply with the requirements of 24 CFR part 42, subpart B.

(d) **Optional relocation assistance.** Under section 105(a)(11) of the Act, the grantee may provide (or the State may permit the state recipient to provide, as applicable) relocation payments and other relocation assistance to persons displaced by activities that are not subject to paragraph (b) or (c) of this section. The grantee may also provide (or the State may also permit the state recipient to provide, as applicable) relocation assistance to persons receiving assistance under paragraphs (b) or (c) of this section at levels in excess of those required by these paragraphs. Unless such assistance is provided under State or local law, the grantee (or state recipient, as applicable) shall provide such assistance only upon the basis of a written determination that the assistance is appropriate (see, e.g., 24 CFR 570.201(i), as applicable). The grantee (or state recipient, as applicable) must adopt a written policy available to the public that describes the relocation assistance that the grantee (or state recipient, as applicable) has elected to provide and that provides for equal relocation assistance within each class of displaced persons.

(e) **Acquisition of real property.** The acquisition of real property for an assisted activity is subject to 49 CFR part 24, subpart B.

(f) **Appeals.** If a person disagrees with the determination of the grantee (or the state recipient, as applicable) concerning the person's eligibility for, or the amount of, a relocation payment under this section, the person may file a written appeal of that determination with the grantee (or state recipient, as applicable). The appeal procedures to be followed are described in 49 CFR 24.10. In addition, a low- or moderate-income household that has been displaced from a dwelling may file a written request for review of the grantee's decision to the HUD Field Office. For purposes of the State CDBG program, a low- or moderate-income household may file a written request for review of the state recipient's decision with the State.

(g) **Responsibility of grantee or State.**

(1) The grantee (or State, if applicable) is responsible for ensuring compliance with the requirements of this section, notwithstanding any third party's contractual obligation to the grantee to comply with the provisions of this section. For purposes of the State CDBG program, the State shall require state recipients to certify that they will comply with the requirements of this section.

(2) The cost of assistance required under this section may be paid from local public funds, funds provided under this part, or funds available from other sources.

(3) The grantee (or State and state recipient, as applicable) must maintain records in sufficient detail to demonstrate compliance with the provisions of this section.

(Approved by the Office of Management and Budget under OMB control number 2506-0102)

[61 FR 11477, Mar. 20, 1996, as amended at 61 FR 51760, Oct. 3, 1996]

§ 570.607 Employment and contracting opportunities.

To the extent that they are otherwise applicable, grantees shall comply with:

- (a) Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR 1964-1965 Comp. p. 339; 3 CFR, 1966-1970 Comp., p. 684; 3 CFR, 1966-1970., p. 803; 3 CFR, 1978 Comp., p. 230; 3 CFR, 1978 Comp., p. 264 (Equal Employment Opportunity), and Executive Order 13279 (Equal Protection of the Laws for Faith-Based and Community Organizations), 67 FR 77141, 3 CFR, 2002 Comp., p. 258; and the implementing regulations at 41 CFR chapter 60; and
- (b) Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 75.

[68 FR 56405, Sept. 30, 2003, as amended at 85 FR 61567, Sept. 29, 2020]

§ 570.608 Lead-based paint.

The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, J, K, and R of this part apply to activities under this program.

[64 FR 50226, Sept. 15, 1999]

§ 570.609 Use of debarred, suspended or ineligible contractors or subrecipients.

The requirements set forth in 24 CFR part 5 apply to this program.

[61 FR 5209, Feb. 9, 1996]

§ 570.610 Uniform administrative requirements, cost principles, and audit requirements for Federal awards.

The recipient, its agencies or instrumentalities, and subrecipients shall comply with 2 CFR part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards", as set forth at § 570.502.

[80 FR 75938, Dec. 7, 2015]

§ 570.611 Conflict of interest.

- (a) **Applicability.**
 - (1) In the procurement of supplies, equipment, construction, and services by recipients and by subrecipients, the conflict of interest provisions in 2 CFR 200.317 and 200.318 shall apply.
 - (2) In all cases not governed by 2 CFR 200.317 and 200.318, the provisions of this section shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the recipient or by its subrecipients to individuals, businesses, and other private entities under eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other

improvements of private properties or facilities pursuant to § 570.202; or grants, loans, and other assistance to businesses, individuals, and other private entities pursuant to § 570.203, 570.204, 570.455, or 570.703(i)).

- (b) **Conflicts prohibited.** The general rule is that no persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter. For the UDAG program, the above restrictions shall apply to all activities that are a part of the UDAG project, and shall cover any such financial interest or benefit during, or at any time after, such person's tenure.
- (c) **Persons covered.** The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the recipient, or of any designated public agencies, or of subrecipients that are receiving funds under this part.
- (d) **Exceptions.** Upon the written request of the recipient, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it has satisfactorily met the threshold requirements of (d)(1) of this section, taking into account the cumulative effects of paragraph (d)(2) of this section.
 - (1) **Threshold requirements.** HUD will consider an exception only after the recipient has provided the following documentation:
 - (i) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and
 - (ii) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law.
 - (2) **Factors to be considered for exceptions.** In determining whether to grant a requested exception after the recipient has satisfactorily met the requirements of paragraph (d)(1) of this section, HUD shall conclude that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the recipient's program or project, taking into account the cumulative effect of the following factors, as applicable:
 - (i) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available;
 - (ii) Whether an opportunity was provided for open competitive bidding or negotiation;
 - (iii) Whether the person affected is a member of a group or class of low- or moderate-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;
 - (iv) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process with respect to the specific assisted activity in question;
 - (v) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;

- (vi) Whether undue hardship will result either to the recipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
- (vii) Any other relevant considerations.

[60 FR 56916, Nov. 9, 1995, as amended at 80 FR 75938, Dec. 7, 2015]

§ 570.612 Executive Order 12372.

- (a) **General.** Executive Order 12372, Intergovernmental Review of Federal Programs, and the Department's implementing regulations at 24 CFR part 52, allow each State to establish its own process for review and comment on proposed Federal financial assistance programs.
- (b) **Applicability.** Executive Order 12372 applies to the CDBG Entitlement program and the UDAG program. The Executive Order applies to all activities proposed to be assisted under UDAG, but it applies to the Entitlement program only where a grantee proposes to use funds for the planning or construction (reconstruction or installation) of water or sewer facilities. Such facilities include storm sewers as well as all sanitary sewers, but do not include water and sewer lines connecting a structure to the lines in the public right-of-way or easement. It is the responsibility of the grantee to initiate the Executive Order review process if it proposes to use its CDBG or UDAG funds for activities subject to review.

§ 570.613 Eligibility restrictions for certain resident aliens.

- (a) **Restriction.** Certain newly legalized aliens, as described in 24 CFR part 49, are not eligible to apply for benefits under covered activities funded by the programs listed in paragraph (e) of this section. "Benefits" under this section means financial assistance, public services, jobs and access to new or rehabilitated housing and other facilities made available under covered activities funded by programs listed in paragraph (e) of this section. "Benefits" do not include relocation services and payments to which displacees are entitled by law.
- (b) **Covered activities.** "Covered activities" under this section means activities meeting the requirements of § 570.208(a) that either:
 - (1) Have income eligibility requirements limiting the benefits exclusively to low and moderate income persons; or
 - (2) Are targeted geographically or otherwise to primarily benefit low and moderate income persons (excluding activities serving the public at large, such as sewers, roads, sidewalks, and parks), and that provide benefits to persons on the basis of an application.
- (c) **Limitation on coverage.** The restrictions under this section apply only to applicants for new benefits not being received by covered resident aliens as of the effective date of this section.
- (d) **Compliance.** Compliance can be accomplished by obtaining certification as provided in 24 CFR 49.20.
- (e) **Programs affected.**
 - (1) The Community Development Block Grant program for small cities, administered under subpart F of part 570 of this title until closeout of the recipient's grant.
 - (2) The Community Development Block Grant program for entitlement grants, administered under subpart D of part 570 of this title.

- (3) The Community Development Block Grant program for States, administered under subpart I of part 570 of this title until closeout of the unit of general local government's grant by the State.
- (4) The Urban Development Action Grants program, administered under subpart G of part 570 of this title until closeout of the recipient's grant.

[55 FR 18494, May 2, 1990]

§ 570.614 Architectural Barriers Act and the Americans with Disabilities Act.

- (a) The Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that insure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed, or altered with funds allocated or reallocated under this part after December 11, 1995, and that meets the definition of "residential structure" as defined in 24 CFR 40.2 or the definition of "building" as defined in 41 CFR 101-19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and shall comply with the Uniform Federal Accessibility Standards (appendix A to 24 CFR part 40 for residential structures, and appendix A to 41 CFR part 101-19, subpart 101-19.6, for general type buildings).
- (b) The Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218 and 225) (ADA) provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications. It further provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 26, 1993, that are readily accessible to and usable by individuals with disabilities. Further, the ADA requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable—that is, easily accomplishable and able to be carried out without much difficulty or expense.

[60 FR 56917, Nov. 9, 1995]

§ 570.615 Housing counseling.

Housing counseling, as defined in 24 CFR 5.100, that is funded with or provided in connection with CDBG funds must be carried out in accordance with 24 CFR 5.111.

[81 FR 90659, Dec. 14, 2016]

Exhibit E

Financial Records Requirements as required by 24 CFR 570.502 and OMB Circular A-87

OFFICE OF MANAGEMENT AND BUDGET**2 CFR Part 225****Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87)**

AGENCY: Office of Management and Budget

ACTION: Relocation of policy guidance to 2 CFR chapter II.

SUMMARY: The Office of Management and Budget (OMB) is relocating Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments," to Title 2 in the Code of Federal Regulations (2 CFR), Subtitle A, Chapter II, part 225 as part of an initiative to provide the public with a central location for Federal government policies on grants and other financial assistance and nonprocurement agreements. Consolidating the OMB guidance and co-locating the agency regulations provides a good foundation for streamlining and simplifying the policy framework for grants and agreements as part of the efforts to implement the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106-107).

DATES: This document is effective August 31, 2005. This document republishes the existing OMB Circular A-87, which already is in effect.

FOR FURTHER INFORMATION CONTACT: Gil Tran, Office of Federal Financial Management, Office of Management and Budget, telephone 202-395-3052 (direct) or 202-395-3993 (main office) and e-mail: Hai_M._Tran@omb.eop.gov.

SUPPLEMENTARY INFORMATION: On May 10, 2004 [69 FR 25970], we revised the three OMB circulars containing Federal cost principles. The purpose of those revisions was to simplify the cost principles by making the descriptions of similar cost items consistent across the circulars where possible, thereby reducing the possibility of misinterpretation. Those revisions, a result of OMB and Federal agency efforts to implement Public Law 106-107, were effective on June 9, 2004.

In this document, we relocate OMB Circular A-87 to the CFR, in Title 2 which was established on May 11, 2004 [69 FR 26276] as a central location for OMB and Federal agency policies on grants and agreements.

Our relocation of OMB Circular A-87 does not change the substance of the circular. Other than adjustments needed to conform to the formatting requirements of the CFR, this notice relocates in 2 CFR the version of OMB

Circular A-87 as revised by the May 10, 2004 notice.

List of Subjects in 2 CFR Part 225

Accounting, Grant administration, Grant programs, Reporting and recordkeeping requirements, State, local, and Indian tribal governments.

Dated: August 8, 2005.

Joshua B. Bolten,
Director.

Authority and Issuance

■ For the reasons set forth above, the Office of Management and Budget amends 2 CFR Subtitle A, Chapter II, by adding a part 225 as set forth below.

PART 225—COST PRINCIPLES FOR STATE, LOCAL, AND INDIAN TRIBAL GOVERNMENTS (OMB CIRCULAR A-87)

Sec.

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- 225.10 Authority
- 225.15 Background
- 225.20 Policy.
- 225.25 Definitions.
- 225.30 OMB responsibilities.
- 225.35 Federal agency responsibilities.
- 225.40 Effective date of changes.
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- 225.50 Policy review date.
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- Appendix A to Part 225—General Principles for Determining Allowable Costs
- Appendix B to Part 225—Selected Items of Cost
- Appendix C to Part 225—State/Local-Wide Central Service Cost Allocation Plans
- Appendix D to Part 225—Public Assistance Cost Allocation Plans
- Appendix E to Part 225—State and Local Indirect Cost Rate Proposals

Authority: 31 U.S.C. 503; 31 U.S.C. 1111; 41 U.S.C. 405; Reorganization Plan No. 2 of 1970; E.O. 11541, 35 FR 10737, 3 CFR, 1966-1970, p. 939.

§ 225.5 Purpose.

This part establishes principles and standards for determining costs for Federal awards carried out through grants, cost reimbursement contracts, and other agreements with State and local governments and federally-recognized Indian tribal governments (governmental units).

§ 225.10 Authority.

This part is issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended; the Chief Financial Officers Act of 1990; Reorganization Plan No. 2 of 1970; and Executive Order No. 11541 ("Prescribing the Duties of the Office of Management and Budget and the Domestic Policy Council in the Executive Office of the President").

§ 225.15 Background.

As part of the government-wide grant streamlining effort under Public Law 106-107, Federal Financial Award Management Improvement Act of 1999, OMB led an interagency workgroup to simplify and make consistent, to the extent feasible, the various rules used to award Federal grants. An interagency task force was established in 2001 to review existing cost principles for Federal awards to State, local, and Indian tribal governments; colleges and universities; and non-profit organizations. The task force studied "Selected Items of Cost" in each of the three cost principles to determine which items of costs could be stated consistently and/or more clearly.

§ 225.20 Policy.

This part establishes principles and standards to provide a uniform approach for determining costs and to promote effective program delivery, efficiency, and better relationships between governmental units and the Federal Government. The principles are for determining allowable costs only. They are not intended to identify the circumstances or to dictate the extent of Federal and governmental unit participation in the financing of a particular Federal award. Provision for profit or other increment above cost is outside the scope of this part.

§ 225.25 Definitions.

Definitions of key terms used in this part are contained in Appendix A to this part, Section B.

§ 225.30 OMB responsibilities.

The Office of Management and Budget (OMB) will review agency regulations and implementation of this part, and will provide policy interpretations and assistance to insure effective and efficient implementation. Any exceptions will be subject to approval by OMB. Exceptions will only be made in particular cases where adequate justification is presented.

§ 225.35 Federal agency responsibilities.

Agencies responsible for administering programs that involve cost reimbursement contracts, grants, and other agreements with governmental units shall issue regulations to implement the provisions of this part and its appendices.

§ 225.40 Effective date of changes.

This part is effective August 31, 2005.

§ 225.45 Relationship to previous issuance.

(a) The guidance in this part previously was issued as OMB Circular

A-87. Appendix A to this part contains the guidance that was in Attachment A (general principles) to the OMB circular; Appendix B contains the guidance that was in Attachment B (selected items of cost); Appendix C contains the information that was in Attachment C (state/local-wide central service cost allocation plans); Appendix D contains the guidance that was in Attachment D (public assistance cost allocation plans); and Appendix E contains the guidance that was in Attachment E (state and local indirect cost rate proposals).

(b) This part supersedes OMB Circular A-87, as amended May 10, 2004, which superseded Circular A-87, as amended and issued May 4, 1995.

§ 225.50 Policy review date.

This part will have a policy review three years from the date of issuance.

§ 225.55 Information contact.

Further information concerning this part may be obtained by contacting the Office of Federal Financial Management, Financial Standards and Reporting Branch, Office of Management and Budget, Washington, DC 20503, telephone 202-395-3993.

Appendix A to Part 225—General Principles for Determining Allowable Costs

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General Principles for Determining Allowable Costs

A. Purpose and Scope

1. Objectives. This Appendix establishes principles for determining the allowable costs incurred by State, local, and federally-recognized Indian tribal governments (governmental units) under grants, cost reimbursement contracts, and other agreements with the Federal Government (collectively referred to in this appendix and other appendices to 2 CFR part 225 as "Federal awards"). The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal or governmental unit participation in the financing of a particular program or project. The principles are designed to provide that Federal awards bear their fair share of cost recognized under these principles except where restricted or prohibited by law. Provision for profit or other increment above cost is outside the scope of 2 CFR part 225.

2. Policy guides.

a. The application of these principles is based on the fundamental premises that:

(1) Governmental units are responsible for the efficient and effective administration of Federal awards through the application of sound management practices.

(2) Governmental units assume responsibility for administering Federal funds in a manner consistent with underlying agreements, program objectives, and the terms and conditions of the Federal award.

(3) Each governmental unit, in recognition of its own unique combination of staff, facilities, and experience, will have the primary responsibility for employing whatever form of organization and management techniques may be necessary to assure proper and efficient administration of Federal awards.

b. Federal agencies should work with States or localities which wish to test alternative mechanisms for paying costs for administering Federal programs. The Office of Management and Budget (OMB) encourages Federal agencies to test fee-for-service alternatives as a replacement for current cost-reimbursement payment methods in response to the National Performance Review's (NPR) recommendation. The NPR recommended the fee-for-service approach to reduce the burden associated with maintaining systems for charging administrative costs to Federal programs and preparing and approving cost allocation plans. This approach should also increase incentives for administrative efficiencies and improve outcomes.

3. Application.

a. These principles will be applied by all Federal agencies in determining costs incurred by governmental units under

Federal awards (including subawards) except those with (1) publicly-financed educational institutions subject to, 2 CFR part 220, Cost Principles for Educational Institutions (OMB Circular A-21), and (2) programs administered by publicly-owned hospitals and other providers of medical care that are subject to requirements promulgated by the sponsoring Federal agencies. However, 2 CFR part 225 does apply to all central service and department/agency costs that are allocated or billed to those educational institutions, hospitals, and other providers of medical care or services by other State and local government departments and agencies.

b. All subawards are subject to those Federal cost principles applicable to the particular organization concerned. Thus, if a subaward is to a governmental unit (other than a college, university or hospital), 2 CFR part 225 shall apply; if a subaward is to a commercial organization, the cost principles applicable to commercial organizations shall apply; if a subaward is to a college or university, 2 CFR part 220 (Circular A-21) shall apply; if a subaward is to a hospital, the cost principles used by the Federal awarding agency for awards to hospitals shall apply, subject to the provisions of subsection A.3.a. of this Appendix; if a subaward is to some other non-profit organization, 2 CFR part 230, Cost Principles for Non-Profit Organizations (Circular A-122), shall apply.

c. These principles shall be used as a guide in the pricing of fixed price arrangements where costs are used in determining the appropriate price.

d. Where a Federal contract awarded to a governmental unit incorporates a Cost Accounting Standards (CAS) clause, the requirements of that clause shall apply. In such cases, the governmental unit and the cognizant Federal agency shall establish an appropriate advance agreement on how the governmental unit will comply with applicable CAS requirements when estimating, accumulating and reporting costs under CAS-covered contracts. The agreement shall indicate that 2 CFR part 225 (OMB Circular A-87) requirements will be applied to other Federal awards. In all cases, only one set of records needs to be maintained by the governmental unit.

e. Conditional exemptions.

(1) OMB authorizes conditional exemption from OMB administrative requirements and cost principles for certain Federal programs with statutorily-authorized consolidated planning and consolidated administrative funding, that are identified by a Federal agency and approved by the head of the Executive department or establishment. A Federal agency shall consult with OMB during its consideration of whether to grant such an exemption.

(2) To promote efficiency in State and local program administration, when Federal non-entitlement programs with common purposes have specific statutorily-authorized consolidated planning and consolidated administrative funding and where most of the State agency's resources come from non-Federal sources, Federal agencies may exempt these covered State-administered, non-entitlement grant programs from certain OMB grants management requirements. The

exemptions would be from all but the allocability of costs provisions of Appendix A subsection C.3 of 2 CFR part 225, Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87); Appendix A, Section C.4 of 2 CFR 220, Cost Principles for Educational Institutions (Circular A-21); Appendix A, subsection A.4 of 2 CFR 230 Cost Principles for Non-Profit Organizations (Circular A-122); and from all of the administrative requirements provisions of 2 CFR part 215, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (Circular A-110), and the agencies' grants management common rule.

(3) When a Federal agency provides this flexibility, as a prerequisite to a State's exercising this option, a State must adopt its own written fiscal and administrative requirements for expending and accounting for all funds, which are consistent with the provisions of 2 CFR part 225 (OMB Circular A-87), and extend such policies to all subrecipients. These fiscal and administrative requirements must be sufficiently specific to ensure that: Funds are used in compliance with all applicable Federal statutory and regulatory provisions, costs are reasonable and necessary for operating these programs, and funds are not used for general expenses required to carry out other responsibilities of a State or its subrecipients.

B. Definitions

1. "Approval or authorization of the awarding or cognizant Federal agency" means documentation evidencing consent prior to incurring a specific cost. If such costs are specifically identified in a Federal award document, approval of the document constitutes approval of the costs. If the costs are covered by a State/local-wide cost allocation plan or an indirect cost proposal, approval of the plan constitutes the approval.

2. "Award" means grants, cost reimbursement contracts and other agreements between a State, local and Indian tribal government and the Federal Government.

3. "Awarding agency" means (a) with respect to a grant, cooperative agreement, or cost reimbursement contract, the Federal agency, and (b) with respect to a subaward, the party that awarded the subaward.

4. "Central service cost allocation plan" means the documentation identifying, accumulating, and allocating or developing billing rates based on the allowable costs of services provided by a governmental unit on a centralized basis to its departments and agencies. The costs of these services may be allocated or billed to users.

5. "Claim" means a written demand or written assertion by the governmental unit or grantor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of award terms, or other relief arising under or relating to the award. A voucher, invoice or other routine request for payment that is not a dispute when submitted is not a claim. Appeals, such as those filed by a governmental unit in response to questioned audit costs, are not considered claims until a final management

decision is made by the Federal awarding agency.

6. "Cognizant agency" means the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals developed under 2 CFR part 225 on behalf of all Federal agencies. OMB publishes a listing of cognizant agencies.

7. "Common Rule" means the "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; Final Rule" originally issued at 53 FR 8034-8103 (March 11, 1988). Other common rules will be referred to by their specific titles.

8. "Contract" means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to): Awards and notices of awards; job orders or task orders issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and, bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301 *et seq.*

9. "Cost" means an amount as determined on a cash, accrual, or other basis acceptable to the Federal awarding or cognizant agency. It does not include transfers to a general or similar fund.

10. "Cost allocation plan" means central service cost allocation plan, public assistance cost allocation plan, and indirect cost rate proposal. Each of these terms is further defined in this section.

11. "Cost objective" means a function, organizational subdivision, contract, grant, or other activity for which cost data are needed and for which costs are incurred.

12. "Federally-recognized Indian tribal government" means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any native village as defined in Section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided through the Bureau of Indian Affairs.

13. "Governmental unit" means the entire State, local, or federally-recognized Indian tribal government, including any component thereof. Components of governmental units may function independently of the governmental unit in accordance with the term of the award.

14. "Grantee department or agency" means the component of a State, local, or federally-recognized Indian tribal government which is responsible for the performance or administration of all or some part of a Federal award.

15. "Indirect cost rate proposal" means the documentation prepared by a governmental unit or component thereof to substantiate its request for the establishment of an indirect

cost rate as described in Appendix E of 2 CFR part 225.

16. "Local government" means a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (whether or not incorporated as a non-profit corporation under State law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

17. "Public assistance cost allocation plan" means a narrative description of the procedures that will be used in identifying, measuring and allocating all administrative costs to all of the programs administered or supervised by State public assistance agencies as described in Appendix D of 2 CFR part 225.

18. "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments.

C. Basic Guidelines

1. Factors affecting allowability of costs. To be allowable under Federal awards, costs must meet the following general criteria:

a. Be necessary and reasonable for proper and efficient performance and administration of Federal awards.

b. Be allocable to Federal awards under the provisions of 2 CFR part 225.

c. Be authorized or not prohibited under State or local laws or regulations.

d. Conform to any limitations or exclusions set forth in these principles, Federal laws, terms and conditions of the Federal award, or other governing regulations as to types or amounts of cost items.

e. Be consistent with policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the governmental unit.

f. Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.

g. Except as otherwise provided for in 2 CFR part 225, be determined in accordance with generally accepted accounting principles.

h. Not be included as a cost or used to meet cost sharing or matching requirements of any other Federal award in either the current or a prior period, except as specifically provided by Federal law or regulation.

i. Be the net of all applicable credits.

j. Be adequately documented.

2. Reasonable costs. A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when governmental units or components are predominately federally-funded. In determining reasonableness of a given cost, consideration shall be given to:

a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the governmental unit or the performance of the Federal award.

b. The restraints or requirements imposed by such factors as: Sound business practices; arm's-length bargaining; Federal, State and other laws and regulations; and, terms and conditions of the Federal award.

c. Market prices for comparable goods or services.

d. Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the governmental unit, its employees, the public at large, and the Federal Government.

e. Significant deviations from the established practices of the governmental unit which may unjustifiably increase the Federal award's cost.

3. Allocable costs.

a. A cost is allocable to a particular cost objective if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received.

b. All activities which benefit from the governmental unit's indirect cost, including unallowable activities and services donated to the governmental unit by third parties, will receive an appropriate allocation of indirect costs.

c. Any cost allocable to a particular Federal award or cost objective under the principles provided for in 2 CFR part 225 may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by law or terms of the Federal awards, or for other reasons.

d. Where an accumulation of indirect costs will ultimately result in charges to a Federal award, a cost allocation plan will be required as described in Appendices C, D, and E to this part.

4. Applicable credits.

a. Applicable credits refer to those receipts or reduction of expenditure-type transactions that offset or reduce expense items allocable to Federal awards as direct or indirect costs. Examples of such transactions are: Purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds or rebates, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the governmental unit relate to allowable costs, they shall be credited to the Federal award either as a cost reduction or cash refund, as appropriate.

b. In some instances, the amounts received from the Federal Government to finance activities or service operations of the governmental unit should be treated as applicable credits. Specifically, the concept of netting such credit items (including any amounts used to meet cost sharing or matching requirements) should be recognized in determining the rates or amounts to be charged to Federal awards. (See Appendix B to this part, item 11, "Depreciation and use allowances," for areas of potential application in the matter of Federal financing of activities.)

D. Composition of Cost

1. Total cost. The total cost of Federal awards is comprised of the allowable direct cost of the program, plus its allocable portion of allowable indirect costs, less applicable credits.

2. Classification of costs. There is no universal rule for classifying certain costs as

either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the Federal award or other final cost objective. Therefore, it is essential that each item of cost be treated consistently in like circumstances either as a direct or an indirect cost. Guidelines for determining direct and indirect costs charged to Federal awards are provided in the sections that follow.

E. Direct Costs

1. General. Direct costs are those that can be identified specifically with a particular final cost objective.

2. Application. Typical direct costs chargeable to Federal awards are:

a. Compensation of employees for the time devoted and identified specifically to the performance of those awards.

b. Cost of materials acquired, consumed, or expended specifically for the purpose of those awards.

c. Equipment and other approved capital expenditures.

d. Travel expenses incurred specifically to carry out the award.

3. Minor items. Any direct cost of a minor amount may be treated as an indirect cost for reasons of practicality where such accounting treatment for that item of cost is consistently applied to all cost objectives.

F. Indirect Costs

1. General. Indirect costs are those: Incurred for a common or joint purpose benefiting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. The term "indirect costs," as used herein, applies to costs of this type originating in the grantee department, as well as those incurred by other departments in supplying goods, services, and facilities. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect costs within a governmental unit department or in other agencies providing services to a governmental unit department. Indirect cost pools should be distributed to benefitted cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.

2. Cost allocation plans and indirect cost proposals. Requirements for development and submission of cost allocation plans and indirect cost rate proposals are contained in Appendices C, D, and E to this part.

3. Limitation on indirect or administrative costs.

a. In addition to restrictions contained in 2 CFR part 225, there may be laws that further limit the amount of administrative or indirect cost allowed.

b. Amounts not recoverable as indirect costs or administrative costs under one Federal award may not be shifted to another Federal award, unless specifically authorized by Federal legislation or regulation.

G. Interagency Services. The cost of services provided by one agency to another within the governmental unit may include allowable direct costs of the service plus a pro rate share of indirect costs. A standard indirect cost allowance equal to ten percent

of the direct salary and wage cost of providing the service (excluding overtime, shift premiums, and fringe benefits) may be used in lieu of determining the actual indirect costs of the service. These services do not include centralized services included in central service cost allocation plans as described in Appendix C to this part.

H. Required Certifications. Each cost allocation plan or indirect cost rate proposal required by Appendices C and E to this part must comply with the following:

1. No proposal to establish a cost allocation plan or an indirect cost rate, whether submitted to a Federal cognizant agency or maintained on file by the governmental unit, shall be acceptable unless such costs have been certified by the governmental unit using the Certificate of Cost Allocation Plan or Certificate of Indirect Costs as set forth in Appendices C and E to this part. The certificate must be signed on behalf of the governmental unit by an individual at a level no lower than chief financial officer of the governmental unit that submits the proposal or component covered by the proposal.

2. No cost allocation plan or indirect cost rate shall be approved by the Federal Government unless the plan or rate proposal has been certified. Where it is necessary to establish a cost allocation plan or an indirect cost rate and the governmental unit has not submitted a certified proposal for establishing such a plan or rate in accordance with the requirements, the Federal Government may either disallow all indirect costs or unilaterally establish such a plan or rate. Such a plan or rate may be based upon audited historical data or such other data that have been furnished to the cognizant Federal agency and for which it can be demonstrated that all unallowable costs have been excluded. When a cost allocation plan or indirect cost rate is unilaterally established by the Federal Government because of failure of the governmental unit to submit a certified proposal, the plan or rate established will be set to ensure that potentially unallowable costs will not be reimbursed.

Appendix B to Part 225—Selected Items of Cost

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Sections 1 through 43 provide principles to be applied in establishing the allowability or unallowability of certain items of cost. These principles apply whether a cost is treated as direct or indirect. A cost is allowable for Federal reimbursement only to the extent of benefits received by Federal awards and its conformance with the general policies and principles stated in Appendix A to this part. Failure to mention a particular item of cost in these sections is not intended to imply that it is either allowable or unallowable; rather, determination of allowability in each case should be based on the treatment or standards provided for similar or related items of cost.

1. Advertising and public relations costs.

a. The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television, direct mail, exhibits, electronic or computer transmittals, and the like.

b. The term public relations includes community relations and means those activities dedicated to maintaining the image of the governmental unit or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

c. The only allowable advertising costs are those which are solely for:

(1) The recruitment of personnel required for the performance by the governmental unit of obligations arising under a Federal award;

(2) The procurement of goods and services for the performance of a Federal award;

(3) The disposal of scrap or surplus materials acquired in the performance of a Federal award except when governmental units are reimbursed for disposal costs at a predetermined amount; or

(4) Other specific purposes necessary to meet the requirements of the Federal award.

d. The only allowable public relations costs are:

(1) Costs specifically required by the Federal award;

(2) Costs of communicating with the public and press pertaining to specific activities or accomplishments which result from performance of Federal awards (these costs are considered necessary as part of the outreach effort for the Federal award); or

(3) Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary keep the public informed on matters of public concern, such as notices of Federal contract/grant awards, financial matters, etc.

e. Costs identified in subsections c and d if incurred for more than one Federal award or for both sponsored work and other work of the governmental unit, are allowable to the extent that the principles in Appendix A to this part, sections E. ("Direct Costs") and F. ("Indirect Costs") are observed.

f. Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in subsections 1.c, d, and e of this appendix;

(2) Costs of meetings, conventions, convocations, or other events related to other activities of the governmental unit, including:

(a) Costs of displays, demonstrations, and exhibits;

(b) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(c) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs;

(4) Costs of advertising and public relations designed solely to promote the governmental unit.

2. *Advisory councils.* Costs incurred by advisory councils or committees are allowable as a direct cost where authorized by the Federal awarding agency or as an indirect cost where allocable to Federal awards.

3. *Alcoholic beverages.* Costs of alcoholic beverages are unallowable.

4. *Audit costs and related services.*

a. The costs of audits required by, and performed in accordance with, the Single Audit Act, as implemented by Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" are allowable. Also see 31 U.S.C. 7505(b) and section 230 ("Audit Costs") of Circular A-133.

b. Other audit costs are allowable if included in a cost allocation plan or indirect cost proposal, or if specifically approved by the awarding agency as a direct cost to an award.

c. The cost of agreed-upon procedures engagements to monitor subrecipients who are exempted from A-133 under section 200(d) are allowable, subject to the conditions listed in A-133, section 230 (b)(2).

5. *Bad debts.* Bad debts, including losses (whether actual or estimated) arising from

uncollectable accounts and other claims, related collection costs, and related legal costs, are unallowable.

6. Bonding costs.

a. Bonding costs arise when the Federal Government requires assurance against financial loss to itself or others by reason of the act or default of the governmental unit. They arise also in instances where the governmental unit requires similar assurance. Included are such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.

b. Costs of bonding required pursuant to the terms of the award are allowable.

c. Costs of bonding required by the governmental unit in the general conduct of its operations are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

7. *Communication costs.* Costs incurred for telephone services, local and long distance telephone calls, telegrams, postage, messenger, electronic or computer transmittal services and the like are allowable.

8. Compensation for personal services.

a. General. Compensation for personnel services includes all remuneration, paid currently or accrued, for services rendered during the period of performance under Federal awards, including but not necessarily limited to wages, salaries, and fringe benefits. The costs of such compensation are allowable to the extent that they satisfy the specific requirements of this and other appendices under 2 CFR Part 225, and that the total compensation for individual employees:

(1) Is reasonable for the services rendered and conforms to the established policy of the governmental unit consistently applied to both Federal and non-Federal activities;

(2) Follows an appointment made in accordance with a governmental unit's laws and rules and meets merit system or other requirements required by Federal law, where applicable; and

(3) Is determined and supported as provided in subsection h.

b. Reasonableness. Compensation for employees engaged in work on Federal awards will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the governmental unit. In cases where the kinds of employees required for Federal awards are not found in the other activities of the governmental unit, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.

c. Unallowable costs. Costs which are unallowable under other sections of these principles shall not be allowable under this section solely on the basis that they constitute personnel compensation.

d. Fringe benefits.

(1) Fringe benefits are allowances and services provided by employers to their

employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave, employee insurance, pensions, and unemployment benefit plans. Except as provided elsewhere in these principles, the costs of fringe benefits are allowable to the extent that the benefits are reasonable and are required by law, governmental unit-employee agreement, or an established policy of the governmental unit.

(2) The cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, holidays, court leave, military leave, and other similar benefits, are allowable if: They are provided under established written leave policies; the costs are equitably allocated to all related activities, including Federal awards; and, the accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the governmental unit.

(3) When a governmental unit uses the cash basis of accounting, the cost of leave is recognized in the period that the leave is taken and paid for. Payments for unused leave when an employee retires or terminates employment are allowable in the year of payment provided they are allocated as a general administrative expense to all activities of the governmental unit or component.

(4) The accrual basis may be only used for those types of leave for which a liability as defined by Generally Accepted Accounting Principles (GAAP) exists when the leave is earned. When a governmental unit uses the accrual basis of accounting, in accordance with GAAP, allowable leave costs are the lesser of the amount accrued or funded.

(5) The cost of fringe benefits in the form of employer contributions or expenses for social security; employee life, health, unemployment, and worker's compensation insurance (except as indicated in section 22, Insurance and indemnification); pension plan costs (see subsection e.); and other similar benefits are allowable, provided such benefits are granted under established written policies. Such benefits, whether treated as indirect costs or as direct costs, shall be allocated to Federal awards and all other activities in a manner consistent with the pattern of benefits attributable to the individuals or group(s) of employees whose salaries and wages are chargeable to such Federal awards and other activities.

e. Pension plan costs. Pension plan costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the governmental unit.

(1) For pension plans financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) Pension costs calculated using an actuarial cost-based method recognized by GAAP are allowable for a given fiscal year if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The cognizant

agency may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursement and the governmental unit's contribution to the pension fund. Adjustments may be made by cash refund or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the pension fund.

(3) Amounts funded by the governmental unit in excess of the actuarially determined amount for a fiscal year may be used as the governmental unit's contribution in future periods.

(4) When a governmental unit converts to an acceptable actuarial cost method, as defined by GAAP, and funds pension costs in accordance with this method, the unfunded liability at the time of conversion shall be allowable if amortized over a period of years in accordance with GAAP.

(5) The Federal Government shall receive an equitable share of any previously allowed pension costs (including earnings thereon) which revert or inure to the governmental unit in the form of a refund, withdrawal, or other credit.

f. Post-retirement health benefits. Post-retirement health benefits (PRHB) refers to costs of health insurance or health services not included in a pension plan covered by subsection 8.e. of this appendix for retirees and their spouses, dependents, and survivors. PRHB costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the governmental unit.

(1) For PRHB financed on a pay as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) PRHB costs calculated using an actuarial cost method recognized by GAAP are allowable if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The cognizant agency may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursements and the governmental unit's contributions to the PRHB fund. Adjustments may be made by cash refund, reduction in current year's PRHB costs, or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the PRHB fund.

(3) Amounts funded in excess of the actuarially determined amount for a fiscal year may be used as the government's contribution in a future period.

(4) When a governmental unit converts to an acceptable actuarial cost method and funds PRHB costs in accordance with this method, the initial unfunded liability attributable to prior years shall be allowable if amortized over a period of years in accordance with GAAP, or, if no such GAAP period exists, over a period negotiated with the cognizant agency.

(5) To be allowable in the current year, the PRHB costs must be paid either to:

(a) An insurer or other benefit provider as current year costs or premiums, or

(b) An insurer or trustee to maintain a trust fund or reserve for the sole purpose of providing post-retirement benefits to retirees and other beneficiaries.

(6) The Federal Government shall receive an equitable share of any amounts of previously allowed post-retirement benefit costs (including earnings thereon) which revert or inure to the governmental unit in the form of a refund, withdrawal, or other credit.

g. Severance pay.

(1) Payments in addition to regular salaries and wages made to workers whose employment is being terminated are allowable to the extent that, in each case, they are required by law, employer-employee agreement, or established written policy.

(2) Severance payments (but not accruals) associated with normal turnover are allowable. Such payments shall be allocated to all activities of the governmental unit as an indirect cost.

(3) Abnormal or mass severance pay will be considered on a case-by-case basis and is allowable only if approved by the cognizant Federal agency.

h. Support of salaries and wages. These standards regarding time distribution are in addition to the standards for payroll documentation.

(1) Charges to Federal awards for salaries and wages, whether treated as direct or indirect costs, will be based on payrolls documented in accordance with generally accepted practice of the governmental unit and approved by a responsible official(s) of the governmental unit.

(2) No further documentation is required for the salaries and wages of employees who work in a single indirect cost activity.

(3) Where employees are expected to work solely on a single Federal award or cost objective, charges for their salaries and wages will be supported by periodic certifications that the employees worked solely on that program for the period covered by the certification. These certifications will be prepared at least semi-annually and will be signed by the employee or supervisory official having first hand knowledge of the work performed by the employee.

(4) Where employees work on multiple activities or cost objectives, a distribution of their salaries or wages will be supported by personnel activity reports or equivalent documentation which meets the standards in subsection 8.h.(5) of this appendix unless a statistical sampling system (see subsection 8.h.(6) of this appendix) or other substitute system has been approved by the cognizant Federal agency. Such documentary support will be required where employees work on:

(a) More than one Federal award,

(b) A Federal award and a non-Federal award,

(c) An indirect cost activity and a direct cost activity,

(d) Two or more indirect activities which are allocated using different allocation bases, or

(e) An unallowable activity and a direct or indirect cost activity.

(5) Personnel activity reports or equivalent documentation must meet the following standards:

(a) They must reflect an after-the-fact distribution of the actual activity of each employee,

(b) They must account for the total activity for which each employee is compensated,

(c) They must be prepared at least monthly and must coincide with one or more pay periods, and

(d) They must be signed by the employee.

(e) Budget estimates or other distribution percentages determined before the services are performed do not qualify as support for charges to Federal awards but may be used for interim accounting purposes, provided that:

(i) The governmental unit's system for establishing the estimates produces reasonable approximations of the activity actually performed;

(ii) At least quarterly, comparisons of actual costs to budgeted distributions based on the monthly activity reports are made. Costs charged to Federal awards to reflect adjustments made as a result of the activity actually performed may be recorded annually if the quarterly comparisons show the differences between budgeted and actual costs are less than ten percent; and

(iii) The budget estimates or other distribution percentages are revised at least quarterly, if necessary, to reflect changed circumstances.

(6) Substitute systems for allocating salaries and wages to Federal awards may be used in place of activity reports. These systems are subject to approval if required by the cognizant agency. Such systems may include, but are not limited to, random moment sampling, case counts, or other quantifiable measures of employee effort.

(a) Substitute systems which use sampling methods (primarily for Temporary Assistance to Needy Families (TANF), Medicaid, and other public assistance programs) must meet acceptable statistical sampling standards including:

(i) The sampling universe must include all of the employees whose salaries and wages are to be allocated based on sample results except as provided in subsection 8.h.(6)(c) of this appendix;

(ii) The entire time period involved must be covered by the sample; and

(iii) The results must be statistically valid and applied to the period being sampled.

(b) Allocating charges for the sampled employees' supervisors, clerical and support staffs, based on the results of the sampled employees, will be acceptable.

(c) Less than full compliance with the statistical sampling standards noted in subsection 8.h.(6)(a) of this appendix may be accepted by the cognizant agency if it concludes that the amounts to be allocated to Federal awards will be minimal, or if it concludes that the system proposed by the governmental unit will result in lower costs to Federal awards than a system which complies with the standards.

(7) Salaries and wages of employees used in meeting cost sharing or matching requirements of Federal awards must be supported in the same manner as those

claimed as allowable costs under Federal awards.

i. Donated services.

(1) Donated or volunteer services may be furnished to a governmental unit by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with the provisions of the Common Rule.

(2) The value of donated services utilized in the performance of a direct cost activity shall, when material in amount, be considered in the determination of the governmental unit's indirect costs or rate(s) and, accordingly, shall be allocated a proportionate share of applicable indirect costs.

(3) To the extent feasible, donated services will be supported by the same methods used by the governmental unit to support the allocability of regular personnel services.

9. *Contingency provisions.* Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable. The term "contingency reserve" excludes self-insurance reserves (see section 22.c. of this appendix), pension plan reserves (see section 8.e.), and post-retirement health and other benefit reserves (section 8.f.) computed using acceptable actuarial cost methods.

10. *Defense and prosecution of criminal and civil proceedings, and claims.*

a. The following costs are unallowable for contracts covered by 10 U.S.C. 2324(k), "Allowable costs under defense contracts."

(1) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of false certification brought by the United States where the contractor is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of a false certification).

(2) Costs incurred by a contractor in connection with any criminal, civil or administrative proceedings commenced by the United States or a State to the extent provided in 10 U.S.C. 2324(k).

b. Legal expenses required in the administration of Federal programs are allowable. Legal expenses for prosecution of claims against the Federal Government are unallowable.

11. *Depreciation and use allowances.*

a. Depreciation and use allowances are means of allocating the cost of fixed assets to periods benefiting from asset use. Compensation for the use of fixed assets on hand may be made through depreciation or use allowances. A combination of the two methods may not be used in connection with a single class of fixed assets (e.g., buildings, office equipment, computer equipment, etc.) except as provided for in subsection g. Except for enterprise funds and internal service funds that are included as part of a State/local cost allocation plan, classes of assets shall be determined on the same basis used for the government-wide financial statements.

b. The computation of depreciation or use allowances shall be based on the acquisition cost of the assets involved. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used. The value of an asset donated to the governmental unit by an unrelated third party shall be its fair market value at the time of donation. Governmental or quasi-governmental organizations located within the same State shall not be considered unrelated third parties for this purpose.

c. The computation of depreciation or use allowances will exclude:

(1) The cost of land;

(2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government irrespective of where title was originally vested or where it presently resides; and

(3) Any portion of the cost of buildings and equipment contributed by or for the governmental unit, or a related donor organization, in satisfaction of a matching requirement.

d. Where the depreciation method is followed, the following general criteria apply:

(1) The period of useful service (useful life) established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment used, historical usage patterns, technological developments, and the renewal and replacement policies of the governmental unit followed for the individual items or classes of assets involved. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater in the early portions than in the later portions of its useful life, the straight line method of depreciation shall be used.

(2) Depreciation methods once used shall not be changed unless approved by the Federal cognizant or awarding agency. When the depreciation method is introduced for application to an asset previously subject to a use allowance, the annual depreciation charge thereon may not exceed the amount that would have resulted had the depreciation method been in effect from the date of acquisition of the asset. The combination of use allowances and depreciation applicable to the asset shall not exceed the total acquisition cost of the asset or fair market value at time of donation.

e. When the depreciation method is used for buildings, a building's shell may be segregated from the major component of the building (e.g., plumbing system, heating, and air conditioning system, etc.) and each major component depreciated over its estimated useful life, or the entire building (i.e., the shell and all components) may be treated as a single asset and depreciated over a single useful life.

f. Where the use allowance method is followed, the following general criteria apply:

(1) The use allowance for buildings and improvements (including land improvements, such as paved parking areas, fences, and sidewalks) will be computed at an annual rate not exceeding two percent of acquisition costs.

(2) The use allowance for equipment will be computed at an annual rate not exceeding 6⅔ percent of acquisition cost.

(3) When the use allowance method is used for buildings, the entire building must be treated as a single asset; the building's components (e.g., plumbing system, heating and air condition, etc.) cannot be segregated from the building's shell. The two percent limitation, however, need not be applied to equipment which is merely attached or fastened to the building but not permanently fixed to it and which is used as furnishings or decorations or for specialized purposes (e.g., dentist chairs and dental treatment units, counters, laboratory benches bolted to the floor, dishwashers, modular furniture, carpeting, etc.). Such equipment will be considered as not being permanently fixed to the building if it can be removed without the destruction of, or need for costly or extensive alterations or repairs, to the building or the equipment. Equipment that meets these criteria will be subject to the 6⅔ percent equipment use allowance limitation.

g. A reasonable use allowance may be negotiated for any assets that are considered to be fully depreciated, after taking into consideration the amount of depreciation previously charged to the government, the estimated useful life remaining at the time of negotiation, the effect of any increased maintenance charges, decreased efficiency due to age, and any other factors pertinent to the utilization of the asset for the purpose contemplated.

h. Charges for use allowances or depreciation must be supported by adequate property records. Physical inventories must be taken at least once every two years (a statistical sampling approach is acceptable) to ensure that assets exist, and are in use. Governmental units will manage equipment in accordance with State laws and procedures. When the depreciation method is followed, depreciation records indicating the amount of depreciation taken each period must also be maintained.

12. Donations and contributions.

a. Contributions or donations rendered. Contributions or donations, including cash, property, and services, made by the governmental unit, regardless of the recipient, are unallowable.

b. Donated services received:

(1) Donated or volunteer services may be furnished to a governmental unit by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with the Federal Grants Management Common Rule.

(2) The value of donated services utilized in the performance of a direct cost activity shall, when material in amount, be considered in the determination of the governmental unit's indirect costs or rate(s) and, accordingly, shall be allocated a proportionate share of applicable indirect costs.

(3) To the extent feasible, donated services will be supported by the same methods used by the governmental unit to support the allocability of regular personnel services.

13. Employee morale, health, and welfare costs.

a. The costs of employee information publications, health or first-aid clinics and/or infirmaries, recreational activities, employee counseling services, and any other expenses incurred in accordance with the governmental unit's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance are allowable.

b. Such costs will be equitably apportioned to all activities of the governmental unit. Income generated from any of these activities will be offset against expenses.

14. *Entertainment.* Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities) are unallowable.

15. Equipment and other capital expenditures.

a. For purposes of this subsection 15, the following definitions apply:

(1) "Capital Expenditures" means expenditures for the acquisition cost of capital assets (equipment, buildings, land), or expenditures to make improvements to capital assets that materially increase their value or useful life. Acquisition cost means the cost of the asset including the cost to put it in place. Acquisition cost for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in, or excluded from the acquisition cost in accordance with the governmental unit's regular accounting practices.

(2) "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of the capitalization level established by the governmental unit for financial statement purposes, or \$5000.

(3) "Special purpose equipment" means equipment which is used only for research, medical, scientific, or other technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers.

(4) "General purpose equipment" means equipment, which is not limited to research, medical, scientific or other technical activities. Examples include office equipment and furnishings, modular offices, telephone networks, information technology equipment and systems, air conditioning equipment, reproduction and printing equipment, and motor vehicles.

b. The following rules of allowability shall apply to equipment and other capital expenditures:

(1) Capital expenditures for general purpose equipment, buildings, and land are unallowable as direct charges, except where approved in advance by the awarding agency.

(2) Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of \$5000 or more have the prior approval of the awarding agency.

(3) Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior approval of the awarding agency.

(4) When approved as a direct charge pursuant to section 15.b(1), (2), and (3) of this appendix, capital expenditures will be charged in the period in which the expenditure is incurred, or as otherwise determined appropriate and negotiated with the awarding agency. In addition, Federal awarding agencies are authorized at their option to waive or delegate the prior approval requirement.

(5) Equipment and other capital expenditures are unallowable as indirect costs. However, see section 11 of this appendix, Depreciation and use allowance, for rules on the allowability of use allowances or depreciation on buildings, capital improvements, and equipment. Also, see section 37 of this appendix, Rental costs, concerning the allowability of rental costs for land, buildings, and equipment.

(6) The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by continuing to claim the otherwise allowable use allowances or depreciation on the equipment, or by amortizing the amount to be written off over a period of years negotiated with the cognizant agency.

(7) When replacing equipment purchased in whole or in part with Federal funds, the governmental unit may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.

16. *Fines and penalties.* Fines, penalties, damages, and other settlements resulting from violations (or alleged violations) of, or failure of the governmental unit to comply with, Federal, State, local, or Indian tribal laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the Federal award or written instructions by the awarding agency authorizing in advance such payments.

17. Fund raising and investment management costs.

a. Costs of organized fund raising, including financial campaigns, solicitation of gifts and bequests, and similar expenses incurred to raise capital or obtain contributions are unallowable, regardless of the purpose for which the funds will be used.

b. Costs of investment counsel and staff and similar expenses incurred to enhance income from investments are unallowable. However, such costs associated with investments covering pension, self-insurance, or other funds which include Federal participation allowed by this and other appendices of 2 CFR part 225 are allowable.

c. Fund raising and investment activities shall be allocated an appropriate share of indirect costs under the conditions described in subsection C.3.b. of Appendix A to this part.

18. *Gains and losses on disposition of depreciable property and other capital assets*

and substantial relocation of Federal programs.

a. (1) Gains and losses on the sale, retirement, or other disposition of depreciable property shall be included in the year in which they occur as credits or charges to the asset cost grouping(s) in which the property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate asset cost grouping(s) shall be the difference between the amount realized on the property and the undepreciated basis of the property.

(2) Gains and losses on the disposition of depreciable property shall not be recognized as a separate credit or charge under the following conditions:

(a) The gain or loss is processed through a depreciation account and is reflected in the depreciation allowable under sections 11 and 15 of this appendix.

(b) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(c) A loss results from the failure to maintain permissible insurance, except as otherwise provided in subsection 22.d of this appendix.

(d) Compensation for the use of the property was provided through use allowances in lieu of depreciation.

b. Substantial relocation of Federal awards from a facility where the Federal Government participated in the financing to another facility prior to the expiration of the useful life of the financed facility requires Federal agency approval. The extent of the relocation, the amount of the Federal participation in the financing, and the depreciation charged to date may require negotiation of space charges for Federal awards.

c. Gains or losses of any nature arising from the sale or exchange of property other than the property covered in subsection 18.a. of this appendix, e.g., land or included in the fair market value used in any adjustment resulting from a relocation of Federal awards covered in subsection b. shall be excluded in computing Federal award costs.

19. General government expenses.

a. The general costs of government are unallowable (except as provided in section 43 of this appendix, Travel costs). These include:

(1) Salaries and expenses of the Office of the Governor of a State or the chief executive of a political subdivision or the chief executive of federally-recognized Indian tribal government;

(2) Salaries and other expenses of a State legislature, tribal council, or similar local governmental body, such as a county supervisor, city council, school board, etc., whether incurred for purposes of legislation or executive direction;

(3) Costs of the judiciary branch of a government;

(4) Costs of prosecutorial activities unless treated as a direct cost to a specific program if authorized by program statute or regulation (however, this does not preclude the allowability of other legal activities of the Attorney General); and

(5) Costs of other general types of government services normally provided to

the general public, such as fire and police, unless provided for as a direct cost under a program statute or regulation.

b. For federally-recognized Indian tribal governments and Councils Of Governments (COGs), the portion of salaries and expenses directly attributable to managing and operating Federal programs by the chief executive and his staff is allowable.

20. *Goods or services for personal use.* Costs of goods or services for personal use of the governmental unit's employees are unallowable regardless of whether the cost is reported as taxable income to the employees.

21. *Idle facilities and idle capacity.*

As used in this section the following terms have the meanings set forth below:

(1) "Facilities" means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the governmental unit.

(2) "Idle facilities" means completely unused facilities that are excess to the governmental unit's current needs.

(3) "Idle capacity" means the unused capacity of partially used facilities. It is the difference between: that which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays; and the extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis should be used if it can be shown that this amount of usage would normally be expected for the type of facility involved.

(4) "Cost of idle facilities or idle capacity" means costs such as maintenance, repair, housing, rent, and other related costs, e.g., insurance, interest, property taxes and depreciation or use allowances.

b. The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet fluctuations in workload; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subsection, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of such facilities.

c. The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided that the capacity is reasonably anticipated to be necessary or was originally reasonable and is not subject to reduction or elimination by use on other Federal awards, subletting, renting, or sale, in accordance with sound business, economic, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be considered idle facilities.

22. *Insurance and indemnification.*

a. Costs of insurance required or approved and maintained, pursuant to the Federal award, are allowable.

b. Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

(1) Types and extent and cost of coverage are in accordance with the governmental unit's policy and sound business practice.

(2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that the awarding agency has specifically required or approved such costs.

c. Actual losses which could have been covered by permissible insurance (through a self-insurance program or otherwise) are unallowable, unless expressly provided for in the Federal award or as described below. However, the Federal Government will participate in actual losses of a self insurance fund that are in excess of reserves. Costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable.

d. Contributions to a reserve for certain self-insurance programs including workers compensation, unemployment compensation, and severance pay are allowable subject to the following provisions:

(1) The type of coverage and the extent of coverage and the rates and premiums would have been allowed had insurance (including reinsurance) been purchased to cover the risks. However, provision for known or reasonably estimated self-insured liabilities, which do not become payable for more than one year after the provision is made, shall not exceed the discounted present value of the liability. The rate used for discounting the liability must be determined by giving consideration to such factors as the governmental unit's settlement rate for those liabilities and its investment rate of return.

(2) Earnings or investment income on reserves must be credited to those reserves.

(3) Contributions to reserves must be based on sound actuarial principles using historical experience and reasonable assumptions. Reserve levels must be analyzed and updated at least biennially for each major risk being insured and take into account any reinsurance, coinsurance, etc. Reserve levels related to employee-related coverages will normally be limited to the value of claims submitted and adjudicated but not paid, submitted but not adjudicated, and incurred but not submitted. Reserve levels in excess of the amounts based on the above must be identified and justified in the cost allocation plan or indirect cost rate proposal.

(4) Accounting records, actuarial studies, and cost allocations (or billings) must recognize any significant differences due to types of insured risk and losses generated by the various insured activities or agencies of the governmental unit. If individual departments or agencies of the governmental

unit experience significantly different levels of claims for a particular risk, those differences are to be recognized by the use of separate allocations or other techniques resulting in an equitable allocation.

(5) Whenever funds are transferred from a self-insurance reserve to other accounts (e.g., general fund), refunds shall be made to the Federal Government for its share of funds transferred, including earned or imputed interest from the date of transfer.

e. Actual claims paid to or on behalf of employees or former employees for workers' compensation, unemployment compensation, severance pay, and similar employee benefits (e.g., subsection 8.f. for post retirement health benefits), are allowable in the year of payment provided the governmental unit follows a consistent costing policy and they are allocated as a general administrative expense to all activities of the governmental unit.

f. Insurance refunds shall be credited against insurance costs in the year the refund is received.

g. Indemnification includes securing the governmental unit against liabilities to third persons and other losses not compensated by insurance or otherwise. The Federal Government is obligated to indemnify the governmental unit only to the extent expressly provided for in the Federal award, except as provided in subsection 22.d of this appendix.

h. Costs of commercial insurance that protects against the costs of the contractor for correction of the contractor's own defects in materials or workmanship are unallowable.

23. Interest.

a. Costs incurred for interest on borrowed capital or the use of a governmental unit's own funds, however represented, are unallowable except as specifically provided in subsection b. or authorized by Federal legislation.

b. Financing costs (including interest) paid or incurred which are associated with the otherwise allowable costs of building acquisition, construction, or fabrication, reconstruction or remodeling completed on or after October 1, 1980 is allowable subject to the conditions in section 23.b.(1) through (4) of this appendix. Financing costs (including interest) paid or incurred on or after September 1, 1995 for land or associated with otherwise allowable costs of equipment is allowable, subject to the conditions in section 23.b. (1) through (4) of this appendix.

(1) The financing is provided (from other than tax or user fee sources) by a bona fide third party external to the governmental unit;

(2) The assets are used in support of Federal awards;

(3) Earnings on debt service reserve funds or interest earned on borrowed funds pending payment of the construction or acquisition costs are used to offset the current period's cost or the capitalized interest, as appropriate. Earnings subject to being reported to the Federal Internal Revenue Service under arbitrage requirements are excludable.

(4) For debt arrangements over \$1 million, unless the governmental unit makes an initial equity contribution to the asset purchase of 25 percent or more, the governmental unit

shall reduce claims for interest cost by an amount equal to imputed interest earnings on excess cash flow, which is to be calculated as follows. Annually, non-Federal entities shall prepare a cumulative (from the inception of the project) report of monthly cash flows that includes inflows and outflows, regardless of the funding source. Inflows consist of depreciation expense, amortization of capitalized construction interest, and annual interest cost. For cash flow calculations, the annual inflow figures shall be divided by the number of months in the year (i.e., usually 12) that the building is in service for monthly amounts. Outflows consist of initial equity contributions, debt principal payments (less the pro rata share attributable to the unallowable costs of land) and interest payments. Where cumulative inflows exceed cumulative outflows, interest shall be calculated on the excess inflows for that period and be treated as a reduction to allowable interest cost. The rate of interest to be used to compute earnings on excess cash flows shall be the three-month Treasury bill closing rate as of the last business day of that month.

(5) Interest attributable to fully depreciated assets is unallowable.

24. Lobbying.

a. General. The cost of certain influencing activities associated with obtaining grants, contracts, cooperative agreements, or loans is an unallowable cost. Lobbying with respect to certain grants, contracts, cooperative agreements, and loans shall be governed by the common rule, "New Restrictions on Lobbying" (see Section J.24 of Appendix A to 2 CFR part 220), including definitions, and the Office of Management and Budget "Government-wide Guidance for New Restrictions on Lobbying" and notices published at 54 FR 52306 (December 20, 1989), 55 FR 24540 (June 15, 1990), and 57 FR 1772 (January 15, 1992), respectively.

b. Executive lobbying costs. Costs incurred in attempting to improperly influence either directly or indirectly, an employee or officer of the Executive Branch of the Federal Government to give consideration or to act regarding a sponsored agreement or a regulatory matter are unallowable. Improper influence means any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a federally-sponsored agreement or regulatory matter on any basis other than the merits of the matter.

25. *Maintenance, operations, and repairs.* Unless prohibited by law, the cost of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, necessary maintenance, normal repairs and alterations, and the like are allowable to the extent that they: keep property (including Federal property, unless otherwise provided for) in an efficient operating condition, do not add to the permanent value of property or appreciably prolong its intended life, and are not otherwise included in rental or other charges for space. Costs which add to the permanent value of property or appreciably prolong its intended life shall be treated as capital expenditures (see sections 11 and 15 of this appendix).

26. Materials and supplies costs.

a. Costs incurred for materials, supplies, and fabricated parts necessary to carry out a Federal award are allowable.

b. Purchased materials and supplies shall be charged at their actual prices, net of applicable credits. Withdrawals from general stores or stockrooms should be charged at their actual net cost under any recognized method of pricing inventory withdrawals, consistently applied. Incoming transportation charges are a proper part of materials and supplies costs.

c. Only materials and supplies actually used for the performance of a Federal award may be charged as direct costs.

d. Where federally-donated or furnished materials are used in performing the Federal award, such materials will be used without charge.

27. *Meetings and conferences.* Costs of meetings and conferences, the primary purpose of which is the dissemination of technical information, are allowable. This includes costs of meals, transportation, rental of facilities, speakers' fees, and other items incidental to such meetings or conferences. But see section 14, Entertainment costs, of this appendix.

28. Memberships, subscriptions, and professional activity costs.

a. Costs of the governmental unit's memberships in business, technical, and professional organizations are allowable.

b. Costs of the governmental unit's subscriptions to business, professional, and technical periodicals are allowable.

c. Costs of membership in civic and community, social organizations are allowable as a direct cost with the approval of the Federal awarding agency.

d. Costs of membership in organizations substantially engaged in lobbying are unallowable.

29. Patent costs.

a. The following costs relating to patent and copyright matters are allowable: cost of preparing disclosures, reports, and other documents required by the Federal award and of searching the art to the extent necessary to make such disclosures; cost of preparing documents and any other patent costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is required by the Federal Government to be conveyed to the Federal Government; and general counseling services relating to patent and copyright laws, regulations, clauses, and employee agreements (but see sections 32, Professional service costs, and 38, Royalties and other costs for use of patents and copyrights, of this appendix).

b. The following costs related to patent and copyright matter are unallowable: Cost of preparing disclosures, reports, and other documents and of searching the art to the extent necessary to make disclosures not required by the award; costs in connection with filing and prosecuting any foreign patent application; or any United States patent application, where the Federal award does not require conveying title or a royalty-free license to the Federal Government (but see section 38, Royalties and other costs for use of patents and copyrights, of this appendix).

30. *Plant and homeland security costs.*

Necessary and reasonable expenses incurred for routine and homeland security to protect facilities, personnel, and work products are allowable. Such costs include, but are not limited to, wages and uniforms of personnel engaged in security activities; equipment; barriers; contractual security services; consultants; etc. Capital expenditures for homeland and plant security purposes are subject to section 15, Equipment and other capital expenditures, of this appendix.

31. *Pre-award costs.* Pre-award costs are those incurred prior to the effective date of the award directly pursuant to the negotiation and in anticipation of the award where such costs are necessary to comply with the proposed delivery schedule or period of performance. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award and only with the written approval of the awarding agency.

32. *Professional service costs.*

a. Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the governmental unit, are allowable, subject to subparagraphs b and c when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government. In addition, legal and related services are limited under section 10 of this appendix.

b. In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors are relevant:

(1) The nature and scope of the service rendered in relation to the service required.

(2) The necessity of contracting for the service, considering the governmental unit's capability in the particular area.

(3) The past pattern of such costs, particularly in the years prior to Federal awards.

(4) The impact of Federal awards on the governmental unit's business (*i.e.*, what new problems have arisen).

(5) Whether the proportion of Federal work to the governmental unit's total business is such as to influence the governmental unit in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Federal grants and contracts.

(6) Whether the service can be performed more economically by direct employment rather than contracting.

(7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-Federal awards.

(8) Adequacy of the contractual agreement for the service (*e.g.*, description of the service, estimate of time required, rate of compensation, and termination provisions).

c. In addition to the factors in subparagraph b, retainer fees to be allowable must be supported by available or rendered evidence of bona fide services available or rendered.

33. *Proposal costs.* Costs of preparing proposals for potential Federal awards are

allowable. Proposal costs should normally be treated as indirect costs and should be allocated to all activities of the governmental unit utilizing the cost allocation plan and indirect cost rate proposal. However, proposal costs may be charged directly to Federal awards with the prior approval of the Federal awarding agency.

34. *Publication and printing costs.*

a. Publication costs include the costs of printing (including the processes of composition, plate-making, press work, binding, and the end products produced by such processes), distribution, promotion, mailing, and general handling. Publication costs also include page charges in professional publications.

b. If these costs are not identifiable with a particular cost objective, they should be allocated as indirect costs to all benefiting activities of the governmental unit.

c. Page charges for professional journal publications are allowable as a necessary part of research costs where:

(1) The research papers report work supported by the Federal Government; and

(2) The charges are levied impartially on all research papers published by the journal, whether or not by federally-sponsored authors.

35. *Rearrangement and alteration costs.*

Costs incurred for ordinary and normal rearrangement and alteration of facilities are allowable. Special arrangements and alterations costs incurred specifically for a Federal award are allowable with the prior approval of the Federal awarding agency.

36. *Reconversion costs.* Costs incurred in the restoration or rehabilitation of the governmental unit's facilities to approximately the same condition existing immediately prior to commencement of Federal awards, less costs related to normal wear and tear, are allowable.

37. *Rental costs of buildings and equipment.*

a. Subject to the limitations described in subsections b. through d. of this section, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased. Rental arrangements should be reviewed periodically to determine if circumstances have changed and other options are available.

b. Rental costs under "sale and lease back" arrangements are allowable only up to the amount that would be allowed had the governmental unit continued to own the property. This amount would include expenses such as depreciation or use allowance, maintenance, taxes, and insurance.

c. Rental costs under "less-than-arm's-length" leases are allowable only up to the amount (as explained in section 37.b of this appendix) that would be allowed had title to the property vested in the governmental unit. For this purpose, a less-than-arm's-length lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not

limited to those between divisions of a governmental unit; governmental units under common control through common officers, directors, or members; and a governmental unit and a director, trustee, officer, or key employee of the governmental unit or his immediate family, either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. For example, a governmental unit may establish a separate corporation for the sole purpose of owning property and leasing it back to the governmental unit.

d. Rental costs under leases which are required to be treated as capital leases under GAAP are allowable only up to the amount (as explained in subsection 37.b of this appendix) that would be allowed had the governmental unit purchased the property on the date the lease agreement was executed. The provisions of Financial Accounting Standards Board Statement 13, Accounting for Leases, shall be used to determine whether a lease is a capital lease. Interest costs related to capital leases are allowable to the extent they meet the criteria in section 23 of this appendix. Unallowable costs include amounts paid for profit, management fees, and taxes that would not have been incurred had the governmental unit purchased the facility.

38. *Royalties and other costs for the use of patents.*

a. Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights thereto, necessary for the proper performance of the award are allowable unless:

(1) The Federal Government has a license or the right to free use of the patent or copyright.

(2) The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid.

(3) The patent or copyright is considered to be unenforceable.

(4) The patent or copyright is expired.

b. Special care should be exercised in determining reasonableness where the royalties may have been arrived at as a result of less-than-arm's-length bargaining, *e.g.*:

(1) Royalties paid to persons, including corporations, affiliated with the governmental unit.

(2) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Federal award would be made.

(3) Royalties paid under an agreement entered into after an award is made to a governmental unit.

c. In any case involving a patent or copyright formerly owned by the governmental unit, the amount of royalty allowed should not exceed the cost which would have been allowed had the governmental unit retained title thereto.

39. *Selling and marketing.* Costs of selling and marketing any products or services of the governmental unit are unallowable (unless allowed under section 1. of this appendix as allowable public relations costs or under section 33. of this appendix as allowable proposal costs).

40. *Taxes.*

a. Taxes that a governmental unit is legally required to pay are allowable, except for self-

assessed taxes that disproportionately affect Federal programs or changes in tax policies that disproportionately affect Federal programs. This provision is applicable to taxes paid during the governmental unit's first fiscal year that begins on or after January 1, 1998, and applies thereafter.

b. Gasoline taxes, motor vehicle fees, and other taxes that are in effect user fees for benefits provided to the Federal Government are allowable.

c. This provision does not restrict the authority of Federal agencies to identify taxes where Federal participation is inappropriate. Where the identification of the amount of unallowable taxes would require an inordinate amount of effort, the cognizant agency may accept a reasonable approximation thereof.

41. *Termination costs applicable to sponsored agreements.* Termination of awards generally gives rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the Federal award not been terminated. Cost principles covering these items are set forth below. They are to be used in conjunction with the other provisions of this appendix in termination situations.

a. The cost of items reasonably usable on the governmental unit's other work shall not be allowable unless the governmental unit submits evidence that it would not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the governmental unit, the awarding agency should consider the governmental unit's plans and orders for current and scheduled activity. Contemporaneous purchases of common items by the governmental unit shall be regarded as evidence that such items are reasonably usable on the governmental unit's other work. Any acceptance of common items as allocable to the terminated portion of the Federal award shall be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

b. If in a particular case, despite all reasonable efforts by the governmental unit, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this and other appendices of 2 CFR part 225, except that any such costs continuing after termination due to the negligent or willful failure of the governmental unit to discontinue such costs shall be unallowable.

c. Loss of useful value of special tooling, machinery, and equipment is generally allowable if:

(1) Such special tooling, special machinery, or equipment is not reasonably capable of use in the other work of the governmental unit,

(2) The interest of the Federal Government is protected by transfer of title or by other means deemed appropriate by the awarding agency, and

(3) The loss of useful value for any one terminated Federal award is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as

the terminated portion of the Federal award bears to the entire terminated Federal award and other Federal awards for which the special tooling, machinery, or equipment was acquired.

d. Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated Federal award less the residual value of such leases, if:

(1) The amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the Federal award and such further period as may be reasonable, and

(2) The governmental unit makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the Federal award, and of reasonable restoration required by the provisions of the lease.

e. Settlement expenses including the following are generally allowable:

(1) Accounting, legal, clerical, and similar costs reasonably necessary for:

(a) The preparation and presentation to the awarding agency of settlement claims and supporting data with respect to the terminated portion of the Federal award, unless the termination is for default (see Subpart .44 of the Grants Management Common Rule (see § 215.5) implementing OMB Circular A-102); and

(b) The termination and settlement of subawards.

(2) Reasonable costs for the storage, transportation, protection, and disposition of property provided by the Federal Government or acquired or produced for the Federal award, except when grantees or contractors are reimbursed for disposals at a predetermined amount in accordance with Subparts .31 and .32 of the Grants Management Common Rule (see § 215.5) implementing OMB Circular A-102.

f. Claims under subawards, including the allocable portion of claims which are common to the Federal award, and to other work of the governmental unit are generally allowable. An appropriate share of the governmental unit's indirect expense may be allocated to the amount of settlements with subcontractors and/or subgrantees, provided that the amount allocated is otherwise consistent with the basic guidelines contained in Appendix A to this part. The indirect expense so allocated shall exclude the same and similar costs claimed directly or indirectly as settlement expenses.

42. *Training costs.* The cost of training provided for employee development is allowable.

43. *Travel costs.*

a. General. Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the governmental unit. Such costs may be charged on an actual cost basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the

trip, and results in charges consistent with those normally allowed in like circumstances in the governmental unit's non-federally-sponsored activities. Notwithstanding the provisions of section 19 of this appendix, General government expenses, travel costs of officials covered by that section are allowable with the prior approval of an awarding agency when they are specifically related to Federal awards.

b. Lodging and subsistence. Costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered reasonable and allowable only to the extent such costs do not exceed charges normally allowed by the governmental unit in its regular operations as the result of the governmental unit's written travel policy. In the absence of an acceptable, written governmental unit policy regarding travel costs, the rates and amounts established under subchapter I of Chapter 57, Title 5, United States Code ("Travel and Subsistence Expenses; Mileage Allowances"), or by the Administrator of General Services, or by the President (or his or her designee) pursuant to any provisions of such subchapter shall apply to travel under Federal awards (48 CFR 31.205-46(a)).

c. Commercial air travel.

(1) Airfare costs in excess of the customary standard commercial airfare (coach or equivalent), Federal Government contract airfare (where authorized and available), or the lowest commercial discount airfare are unallowable except when such accommodations would:

(a) Require circuitous routing;

(b) Require travel during unreasonable hours;

(c) Excessively prolong travel;

(d) Result in additional costs that would offset the transportation savings; or

(e) Offer accommodations not reasonably adequate for the traveler's medical needs. The governmental unit must justify and document these conditions on a case-by-case basis in order for the use of first-class airfare to be allowable in such cases.

(2) Unless a pattern of avoidance is detected, the Federal Government will generally not question a governmental unit's determinations that customary standard airfare or other discount airfare is unavailable for specific trips if the governmental unit can demonstrate either of the following:

(aa) That such airfare was not available in the specific case; or

(b) That it is the governmental unit's overall practice to make routine use of such airfare.

d. Air travel by other than commercial carrier. Costs of travel by governmental unit-owned, -leased, or -chartered aircraft include the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, insurance, and other related costs. The portion of such costs that exceeds the cost of allowable commercial air travel, as provided for in subsection 43.c. of this appendix, is unallowable.

e. Foreign travel. Direct charges for foreign travel costs are allowable only when the travel has received prior approval of the awarding agency. Each separate foreign trip

must receive such approval. For purposes of this provision, "foreign travel" includes any travel outside Canada, Mexico, the United States, and any United States territories and possessions. However, the term "foreign travel" for a governmental unit located in a foreign country means travel outside that country.

Appendix C to Part 225—State/Local-Wide Central Service Cost Allocation Plans

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 - A. *General*.
 - 1. Most governmental units provide certain services, such as motor pools, computer centers, purchasing, accounting, etc., to operating agencies on a centralized basis. Since federally-supported awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefitted activities on a reasonable and consistent basis. The central service cost allocation plan provides that process. All costs and other data used to distribute the costs included in the plan should be supported by formal accounting and other records that will support the propriety of the costs assigned to Federal awards.
 - 2. Guidelines and illustrations of central service cost allocation plans are provided in a brochure published by the Department of Health and Human Services entitled "A Guide for State and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government." A copy of this brochure may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20401.
 - B. *Definitions*.

1. "Billed central services" means central services that are billed to benefitted agencies and/or programs on an individual fee-for-service or similar basis. Typical examples of billed central services include computer services, transportation services, insurance, and fringe benefits.

2. "Allocated central services" means central services that benefit operating agencies but are not billed to the agencies on a fee-for-service or similar basis. These costs are allocated to benefitted agencies on some reasonable basis. Examples of such services might include general accounting, personnel administration, purchasing, etc.

3. "Agency or operating agency" means an organizational unit or sub-division within a governmental unit that is responsible for the performance or administration of awards or activities of the governmental unit.

C. *Scope of the Central Service Cost Allocation Plans*. The central service cost allocation plan will include all central service costs that will be claimed (either as a billed or an allocated cost) under Federal awards and will be documented as described in section E. Costs of central services omitted from the plan will not be reimbursed.

D. *Submission Requirements*.

1. Each State will submit a plan to the Department of Health and Human Services for each year in which it claims central service costs under Federal awards. The plan should include a projection of the next year's allocated central service cost (based either on actual costs for the most recently completed year or the budget projection for the coming year), and a reconciliation of actual allocated central service costs to the estimated costs used for either the most recently completed year or the year immediately preceding the most recently completed year.

2. Each local government that has been designated as a "major local government" by the Office of Management and Budget (OMB) is also required to submit a plan to its cognizant agency annually. OMB periodically lists major local governments in the **Federal Register**.

3. All other local governments claiming central service costs must develop a plan in accordance with the requirements described in this appendix and maintain the plan and related supporting documentation for audit. These local governments are not required to submit their plans for Federal approval unless they are specifically requested to do so by the cognizant agency. Where a local government only receives funds as a sub-recipient, the primary recipient will be responsible for negotiating indirect cost rates and/or monitoring the sub-recipient's plan.

4. All central service cost allocation plans will be prepared and, when required, submitted within six months prior to the beginning of each of the governmental unit's fiscal years in which it proposes to claim central service costs. Extensions may be granted by the cognizant agency on a case-by-case basis.

E. *Documentation Requirements for Submitted Plans*. The documentation requirements described in this section may be modified, expanded, or reduced by the cognizant agency on a case-by-case basis. For example, the requirements may be reduced

for those central services which have little or no impact on Federal awards. Conversely, if a review of a plan indicates that certain additional information is needed, and will likely be needed in future years, it may be routinely requested in future plan submissions. Items marked with an asterisk (*) should be submitted only once; subsequent plans should merely indicate any changes since the last plan.

1. *General*. All proposed plans must be accompanied by the following: An organization chart sufficiently detailed to show operations including the central service activities of the State/local government whether or not they are shown as benefiting from central service functions; a copy of the Comprehensive Annual Financial Report (or a copy of the Executive Budget if budgeted costs are being proposed) to support the allowable costs of each central service activity included in the plan; and, a certification (see subsection 4.) that the plan was prepared in accordance with this and other appendices to this part, contains only allowable costs, and was prepared in a manner that treated similar costs consistently among the various Federal awards and between Federal and non-Federal awards/activities.

2. *Allocated central services*. For each allocated central service, the plan must also include the following: A brief description of the service*, an identification of the unit rendering the service and the operating agencies receiving the service, the items of expense included in the cost of the service, the method used to distribute the cost of the service to benefitted agencies, and a summary schedule showing the allocation of each service to the specific benefitted agencies. If any self-insurance funds or fringe benefits costs are treated as allocated (rather than billed) central services, documentation discussed in subsections 3.b. and c. shall also be included.

3. *Billed services*.

a. *General*. The information described below shall be provided for all billed central services, including internal service funds, self-insurance funds, and fringe benefit funds.

b. *Internal service funds*.

(1) For each internal service fund or similar activity with an operating budget of \$5 million or more, the plan shall include: A brief description of each service; a balance sheet for each fund based on individual accounts contained in the governmental unit's accounting system; a revenue/expenses statement, with revenues broken out by source, e.g., regular billings, interest earned, etc.; a listing of all non-operating transfers (as defined by Generally Accepted Accounting Principles (GAAP)) into and out of the fund; a description of the procedures (methodology) used to charge the costs of each service to users, including how billing rates are determined; a schedule of current rates; and, a schedule comparing total revenues (including imputed revenues) generated by the service to the allowable costs of the service, as determined under this and other appendices of this part, with an explanation of how variances will be handled.

(2) Revenues shall consist of all revenues generated by the service, including unbilled and uncollected revenues. If some users were not billed for the services (or were not billed at the full rate for that class of users), a schedule showing the full imputed revenues associated with these users shall be provided. Expenses shall be broken out by object cost categories (e.g., salaries, supplies, etc.).

c. Self-insurance funds. For each self-insurance fund, the plan shall include: The fund balance sheet; a statement of revenue and expenses including a summary of billings and claims paid by agency; a listing of all non-operating transfers into and out of the fund; the type(s) of risk(s) covered by the fund (e.g., automobile liability, workers' compensation, etc.); an explanation of how the level of fund contributions are determined, including a copy of the current actuarial report (with the actuarial assumptions used) if the contributions are determined on an actuarial basis; and, a description of the procedures used to charge or allocate fund contributions to benefitted activities. Reserve levels in excess of claims submitted and adjudicated but not paid, submitted but not adjudicated, and incurred but not submitted must be identified and explained.

d. Fringe benefits. For fringe benefit costs, the plan shall include: A listing of fringe benefits provided to covered employees, and the overall annual cost of each type of benefit; current fringe benefit policies*; and procedures used to charge or allocate the costs of the benefits to benefitted activities. In addition, for pension and post-retirement health insurance plans, the following information shall be provided: the governmental unit's funding policies, e.g., legislative bills, trust agreements, or State-mandated contribution rules, if different from actuarially determined rates; the pension plan's costs accrued for the year; the amount funded, and date(s) of funding; a copy of the current actuarial report (including the actuarial assumptions); the plan trustee's report; and, a schedule from the activity showing the value of the interest cost associated with late funding.

4. Required certification. Each central service cost allocation plan will be accompanied by a certification in the following form:

Certificate of Cost Allocation Plan

This is to certify that I have reviewed the cost allocation plan submitted herewith and to the best of my knowledge and belief:

(1) All costs included in this proposal [identify date] to establish cost allocations or billings for [identify period covered by plan] are allowable in accordance with the requirements of 2 CFR Part 225, Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87), and the Federal award(s) to which they apply. Unallowable costs have been adjusted for in allocating costs as indicated in the cost allocation plan.

(2) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the awards to which they are allocated in

accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently.

I declare that the foregoing is true and correct.

Governmental Unit: _____

Signature: _____

Name of Official: _____

Title: _____

Date of Execution: _____

F. Negotiation and Approval of Central Service Plans.

1. All proposed central service cost allocation plans that are required to be submitted will be reviewed, negotiated, and approved by the Federal cognizant agency on a timely basis. The cognizant agency will review the proposal within six months of receipt of the proposal and either negotiate/approve the proposal or advise the governmental unit of the additional documentation needed to support/evaluate the proposed plan or the changes required to make the proposal acceptable. Once an agreement with the governmental unit has been reached, the agreement will be accepted and used by all Federal agencies, unless prohibited or limited by statute. Where a Federal funding agency has reason to believe that special operating factors affecting its awards necessitate special consideration, the funding agency will, prior to the time the plans are negotiated, notify the cognizant agency.

2. The results of each negotiation shall be formalized in a written agreement between the cognizant agency and the governmental unit. This agreement will be subject to re-opening if the agreement is subsequently found to violate a statute or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. The results of the negotiation shall be made available to all Federal agencies for their use.

3. Negotiated cost allocation plans based on a proposal later found to have included costs that: Are unallowable as specified by law or regulation, as identified in Appendix B of this part, or by the terms and conditions of Federal awards, or are unallowable because they are clearly not allocable to Federal awards, shall be adjusted, or a refund shall be made at the option of the Federal cognizant agency. These adjustments or refunds are designed to correct the plans and do not constitute a reopening of the negotiation.

G. Other Policies.

1. Billed central service activities. Each billed central service activity must separately account for all revenues (including imputed revenues) generated by the service, expenses incurred to furnish the service, and profit/loss.

2. Working capital reserves. Internal service funds are dependent upon a reasonable level of working capital reserve to operate from one billing cycle to the next. Charges by an internal service activity to provide for the establishment and maintenance of a reasonable level of working capital reserve, in addition to the full

recovery of costs, are allowable. A working capital reserve as part of retained earnings of up to 60 days cash expenses for normal operating purposes is considered reasonable. A working capital reserve exceeding 60 days may be approved by the cognizant Federal agency in exceptional cases.

3. Carry-forward adjustments of allocated central service costs. Allocated central service costs are usually negotiated and approved for a future fiscal year on a "fixed with carry-forward" basis. Under this procedure, the fixed amounts for the future year covered by agreement are not subject to adjustment for that year. However, when the actual costs of the year involved become known, the differences between the fixed amounts previously approved and the actual costs will be carried forward and used as an adjustment to the fixed amounts established for a later year. This "carry-forward" procedure applies to all central services whose costs were fixed in the approved plan. However, a carry-forward adjustment is not permitted, for a central service activity that was not included in the approved plan, or for unallowable costs that must be reimbursed immediately.

4. Adjustments of billed central services. Billing rates used to charge Federal awards shall be based on the estimated costs of providing the services, including an estimate of the allocable central service costs. A comparison of the revenue generated by each billed service (including total revenues whether or not billed or collected) to the actual allowable costs of the service will be made at least annually, and an adjustment will be made for the difference between the revenue and the allowable costs. These adjustments will be made through one of the following adjustment methods: A cash refund to the Federal Government for the Federal share of the adjustment, credits to the amounts charged to the individual programs, adjustments to future billing rates, or adjustments to allocated central service costs. Adjustments to allocated central services will not be permitted where the total amount of the adjustment for a particular service (Federal share and non-Federal) share exceeds \$500,000.

5. Records retention. All central service cost allocation plans and related documentation used as a basis for claiming costs under Federal awards must be retained for audit in accordance with the records retention requirements contained in the Common Rule.

6. Appeals. If a dispute arises in the negotiation of a plan between the cognizant agency and the governmental unit, the dispute shall be resolved in accordance with the appeals procedures of the cognizant agency.

7. OMB assistance. To the extent that problems are encountered among the Federal agencies and/or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

Appendix D to Part 225—Public Assistance Cost Allocation Plans

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C. Policy
D. Submission, Documentation, and Approval of Public Assistance Cost Allocation Plans
E. Review of Implementation of Approved Plans
F. Unallowable Costs
 A. *General.* Federally-financed programs administered by State public assistance agencies are funded predominately by the Department of Health and Human Services (HHS). In support of its stewardship requirements, HHS has published requirements for the development, documentation, submission, negotiation, and approval of public assistance cost allocation plans in Subpart E of 45 CFR part 95. All administrative costs (direct and indirect) are normally charged to Federal awards by implementing the public assistance cost allocation plan. This appendix extends these requirements to all Federal agencies whose programs are administered by a State public assistance agency. Major federally-financed programs typically administered by State public assistance agencies include: Temporary Assistance to Needy Families (TANF), Medicaid, Food Stamps, Child Support Enforcement, Adoption Assistance and Foster Care, and Social Services Block Grant.

B. Definitions.

1. "State public assistance agency" means a State agency administering or supervising the administration of one or more public assistance programs operated by the State as identified in Subpart E of 45 CFR part 95. For the purpose of this appendix, these programs include all programs administered by the State public assistance agency.

2. "State public assistance agency costs" means all costs incurred by, or allocable to, the State public assistance agency, except expenditures for financial assistance, medical vendor payments, food stamps, and payments for services and goods provided directly to program recipients.

C. *Policy.* State public assistance agencies will develop, document and implement, and the Federal Government will review, negotiate, and approve, public assistance cost allocation plans in accordance with Subpart E of 45 CFR part 95. The plan will include all programs administered by the State public assistance agency. Where a letter of approval or disapproval is transmitted to a State public assistance agency in accordance with Subpart E, the letter will apply to all Federal agencies and programs. The remaining sections of this appendix (except for the requirement for certification) summarize the provisions of Subpart E of 45 CFR part 95.

D. Submission, Documentation, and Approval of Public Assistance Cost Allocation Plans.

1. State public assistance agencies are required to promptly submit amendments to the cost allocation plan to HHS for review and approval.

2. Under the coordination process outlined in subsection E, affected Federal agencies will review all new plans and plan amendments and provide comments, as appropriate, to HHS. The effective date of the plan or plan amendment will be the first day of the quarter following the submission of the plan or amendment, unless another date is specifically approved by HHS. HHS, as the cognizant agency acting on behalf of all affected Federal agencies, will, as necessary, conduct negotiations with the State public assistance agency and will inform the State agency of the action taken on the plan or plan amendment.

E. Review of Implementation of Approved Plans.

1. Since public assistance cost allocation plans are of a narrative nature, the review during the plan approval process consists of evaluating the appropriateness of the proposed groupings of costs (cost centers) and the related allocation bases. As such, the Federal Government needs some assurance that the cost allocation plan has been implemented as approved. This is accomplished by reviews by the funding agencies, single audits, or audits conducted by the cognizant audit agency.

2. Where inappropriate charges affecting more than one funding agency are identified, the cognizant HHS cost negotiation office will be advised and will take the lead in resolving the issue(s) as provided for in Subpart E of 45 CFR part 95.

3. If a dispute arises in the negotiation of a plan or from a disallowance involving two or more funding agencies, the dispute shall be resolved in accordance with the appeals procedures set out in 45 CFR part 75. Disputes involving only one funding agency will be resolved in accordance with the funding agency's appeal process.

4. To the extent that problems are encountered among the Federal agencies and/or governmental units in connection with the negotiation and approval process, the Office of Management and Budget will lend assistance, as required, to resolve such problems in a timely manner.

F. *Unallowable Costs.* Claims developed under approved cost allocation plans will be based on allowable costs as identified in 2 CFR part 225. Where unallowable costs have been claimed and reimbursed, they will be refunded to the program that reimbursed the unallowable cost using one of the following methods: a cash refund, offset to a subsequent claim, or credits to the amounts charged to individual awards.

Appendix E to Part 225—State and Local Indirect Cost Rate Proposals

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A. General.

1. Indirect costs are those that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned directly to Federal awards and other activities as appropriate, indirect costs are those remaining to be allocated to benefitted cost objectives. A cost may not be allocated to a Federal award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to a Federal award as a direct cost.

2. Indirect costs include the indirect costs originating in each department or agency of the governmental unit carrying out Federal awards and the costs of central governmental services distributed through the central service cost allocation plan (as described in Appendix C to this part) and not otherwise treated as direct costs.

3. Indirect costs are normally charged to Federal awards by the use of an indirect cost rate. A separate indirect cost rate(s) is usually necessary for each department or agency of the governmental unit claiming indirect costs under Federal awards. Guidelines and illustrations of indirect cost proposals are provided in a brochure published by the Department of Health and Human Services entitled "A Guide for State and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government." A copy of this brochure may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20401.

4. Because of the diverse characteristics and accounting practices of governmental units, the types of costs which may be classified as indirect costs cannot be specified in all situations. However, typical examples of indirect costs may include certain State/local-wide central service costs, general administration of the grantee department or agency, accounting and personnel services performed within the grantee department or agency, depreciation

or use allowances on buildings and equipment, the costs of operating and maintaining facilities, etc.

5. This appendix does not apply to State public assistance agencies. These agencies should refer instead to Appendix D to this part.

B. Definitions.

1. "Indirect cost rate proposal" means the documentation prepared by a governmental unit or subdivision thereof to substantiate its request for the establishment of an indirect cost rate.

2. "Indirect cost rate" is a device for determining in a reasonable manner the proportion of indirect costs each program should bear. It is the ratio (expressed as a percentage) of the indirect costs to a direct cost base.

3. "Indirect cost pool" is the accumulated costs that jointly benefit two or more programs or other cost objectives.

4. "Base" means the accumulated direct costs (normally either total direct salaries and wages or total direct costs exclusive of any extraordinary or distorting expenditures) used to distribute indirect costs to individual Federal awards. The direct cost base selected should result in each award bearing a fair share of the indirect costs in reasonable relation to the benefits received from the costs.

5. "Predetermined rate" means an indirect cost rate, applicable to a specified current or future period, usually the governmental unit's fiscal year. This rate is based on an estimate of the costs to be incurred during the period. Except under very unusual circumstances, a predetermined rate is not subject to adjustment. (Because of legal constraints, predetermined rates are not permitted for Federal contracts; they may, however, be used for grants or cooperative agreements.) Predetermined rates may not be used by governmental units that have not submitted and negotiated the rate with the cognizant agency. In view of the potential advantages offered by this procedure, negotiation of predetermined rates for indirect costs for a period of two to four years should be the norm in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of indirect costs during the ensuing accounting periods.

6. "Fixed rate" means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual, allowable costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.

7. "Provisional rate" means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on Federal awards pending the establishment of a "final" rate for that period.

8. "Final rate" means an indirect cost rate applicable to a specified past period which is based on the actual allowable costs of the period. A final audited rate is not subject to adjustment.

9. "Base period" for the allocation of indirect costs is the period in which such

costs are incurred and accumulated for allocation to activities performed in that period. The base period normally should coincide with the governmental unit's fiscal year, but in any event, shall be so selected as to avoid inequities in the allocation of costs.

C. Allocation of Indirect Costs and Determination of Indirect Cost Rates.

1. General.

a. Where a governmental unit's department or agency has only one major function, or where all its major functions benefit from the indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures as described in subsection 2 of this appendix.

b. Where a governmental unit's department or agency has several major functions which benefit from its indirect costs in varying degrees, the allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefitted functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual awards and other activities included in that function by means of an indirect cost rate(s).

c. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in subsections 2, 3 and 4 of this appendix.

2. Simplified method.

a. Where a grantee agency's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by classifying the grantee agency's total costs for the base period as either direct or indirect, and dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual Federal awards. The rate should be expressed as the percentage which the total amount of allowable indirect costs bears to the base selected. This method should also be used where a governmental unit's department or agency has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal awards to that department or agency is relatively small.

b. Both the direct costs and the indirect costs shall exclude capital expenditures and unallowable costs. However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

c. The distribution base may be total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), direct salaries and wages, or another base which results in an equitable distribution.

3. Multiple allocation base method.

a. Where a grantee agency's indirect costs benefit its major functions in varying degrees, such costs shall be accumulated into separate

cost groupings. Each grouping shall then be allocated individually to benefitted functions by means of a base which best measures the relative benefits.

b. The cost groupings should be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping should constitute a pool of expenses that are of like character in terms of the functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The number of separate groupings should be held within practical limits, taking into consideration the materiality of the amounts involved and the degree of precision needed.

c. Actual conditions must be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefitted functions. When an allocation can be made by assignment of a cost grouping directly to the function benefitted, the allocation shall be made in that manner. When the expenses in a grouping are more general in nature, the allocation should be made through the use of a selected base which produces results that are equitable to both the Federal Government and the governmental unit. In general, any cost element or related factor associated with the governmental unit's activities is potentially adaptable for use as an allocation base provided that: it can readily be expressed in terms of dollars or other quantitative measures (total direct costs, direct salaries and wages, staff hours applied, square feet used, hours of usage, number of documents processed, population served, and the like), and it is common to the benefitted functions during the base period.

d. Except where a special indirect cost rate(s) is required in accordance with subsection 4, the separate groupings of indirect costs allocated to each major function shall be aggregated and treated as a common pool for that function. The costs in the common pool shall then be distributed to individual Federal awards included in that function by use of a single indirect cost rate.

e. The distribution base used in computing the indirect cost rate for each function may be total direct costs (excluding capital expenditures and other distorting items such as pass-through funds, major subcontracts, etc.), direct salaries and wages, or another base which results in an equitable distribution. An indirect cost rate should be developed for each separate indirect cost pool developed. The rate in each case should be stated as the percentage relationship between the particular indirect cost pool and the distribution base identified with that pool.

4. Special indirect cost rates.

a. In some instances, a single indirect cost rate for all activities of a grantee department or agency or for each major function of the agency may not be appropriate. It may not take into account those different factors which may substantially affect the indirect costs applicable to a particular program or group of programs. The factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources

employed, the organizational arrangements used, or any combination thereof. When a particular award is carried out in an environment which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to that award. The separate indirect cost pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom should be used, provided that: the rate differs significantly from the rate which would have been developed under subsections 2. and 3. of this appendix, and the award to which the rate would apply is material in amount.

b. Although 2 CFR part 225 adopts the concept of the full allocation of indirect costs, there are some Federal statutes which restrict the reimbursement of certain indirect costs. Where such restrictions exist, it may be necessary to develop a special rate for the affected award. Where a "restricted rate" is required, the procedure for developing a non-restricted rate will be used except for the additional step of the elimination from the indirect cost pool those costs for which the law prohibits reimbursement.

D. Submission and Documentation of Proposals.

1. Submission of indirect cost rate proposals.

a. All departments or agencies of the governmental unit desiring to claim indirect costs under Federal awards must prepare an indirect cost rate proposal and related documentation to support those costs. The proposal and related documentation must be retained for audit in accordance with the records retention requirements contained in the Common Rule.

b. A governmental unit for which a cognizant agency assignment has been specifically designated must submit its indirect cost rate proposal to its cognizant agency. The Office of Management and Budget (OMB) will periodically publish lists of governmental units identifying the appropriate Federal cognizant agencies. The cognizant agency for all governmental units or agencies not identified by OMB will be determined based on the Federal agency providing the largest amount of Federal funds. In these cases, a governmental unit must develop an indirect cost proposal in accordance with the requirements of 2 CFR 225 and maintain the proposal and related supporting documentation for audit. These governmental units are not required to submit their proposals unless they are specifically requested to do so by the cognizant agency. Where a local government only receives funds as a sub-recipient, the primary recipient will be responsible for negotiating and/or monitoring the sub-recipient's plan.

c. Each Indian tribal government desiring reimbursement of indirect costs must submit its indirect cost proposal to the Department of the Interior (its cognizant Federal agency).

d. Indirect cost proposals must be developed (and, when required, submitted) within six months after the close of the governmental unit's fiscal year, unless an exception is approved by the cognizant Federal agency. If the proposed central

service cost allocation plan for the same period has not been approved by that time, the indirect cost proposal may be prepared including an amount for central services that is based on the latest federally-approved central service cost allocation plan. The difference between these central service amounts and the amounts ultimately approved will be compensated for by an adjustment in a subsequent period.

2. Documentation of proposals. The following shall be included with each indirect cost proposal:

a. The rates proposed, including subsidiary work sheets and other relevant data, cross referenced and reconciled to the financial data noted in subsection b of this appendix. Allocated central service costs will be supported by the summary table included in the approved central service cost allocation plan. This summary table is not required to be submitted with the indirect cost proposal if the central service cost allocation plan for the same fiscal year has been approved by the cognizant agency and is available to the funding agency.

b. A copy of the financial data (financial statements, comprehensive annual financial report, executive budgets, accounting reports, etc.) upon which the rate is based.

Adjustments resulting from the use of unaudited data will be recognized, where appropriate, by the Federal cognizant agency in a subsequent proposal.

c. The approximate amount of direct base costs incurred under Federal awards. These costs should be broken out between salaries and wages and other direct costs.

d. A chart showing the organizational structure of the agency during the period for which the proposal applies, along with a functional statement(s) noting the duties and/or responsibilities of all units that comprise the agency. (Once this is submitted, only revisions need be submitted with subsequent proposals.)

3. Required certification. Each indirect cost rate proposal shall be accompanied by a certification in the following form:

Certificate of Indirect Costs

This is to certify that I have reviewed the indirect cost rate proposal submitted herewith and to the best of my knowledge and belief:

(1) All costs included in this proposal [identify date] to establish billing or final indirect costs rates for [identify period covered by rate] are allowable in accordance with the requirements of the Federal award(s) to which they apply and 2 CFR part 225, Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87). Unallowable costs have been adjusted for in allocating costs as indicated in the cost allocation plan.

(2) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently and the Federal

Government will be notified of any accounting changes that would affect the predetermined rate.

I declare that the foregoing is true and correct.

Governmental Unit: _____

Signature: _____

Name of Official: _____

Title: _____

Date of Execution: _____

E. Negotiation and Approval of Rates.

1. Indirect cost rates will be reviewed, negotiated, and approved by the cognizant Federal agency on a timely basis. Once a rate has been agreed upon, it will be accepted and used by all Federal agencies unless prohibited or limited by statute. Where a Federal funding agency has reason to believe that special operating factors affecting its awards necessitate special indirect cost rates, the funding agency will, prior to the time the rates are negotiated, notify the cognizant Federal agency.

2. The use of predetermined rates, if allowed, is encouraged where the cognizant agency has reasonable assurance based on past experience and reliable projection of the grantee agency's costs, that the rate is not likely to exceed a rate based on actual costs. Long-term agreements utilizing predetermined rates extending over two or more years are encouraged, where appropriate.

3. The results of each negotiation shall be formalized in a written agreement between the cognizant agency and the governmental unit. This agreement will be subject to re-opening if the agreement is subsequently found to violate a statute, or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. The agreed upon rates shall be made available to all Federal agencies for their use.

4. Refunds shall be made if proposals are later found to have included costs that are unallowable as specified by law or regulation, as identified in Appendix B to this part, or by the terms and conditions of Federal awards, or are unallowable because they are clearly not allocable to Federal awards. These adjustments or refunds will be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional).

F. Other Policies.

1. Fringe benefit rates. If overall fringe benefit rates are not approved for the governmental unit as part of the central service cost allocation plan, these rates will be reviewed, negotiated and approved for individual grantee agencies during the indirect cost negotiation process. In these cases, a proposed fringe benefit rate computation should accompany the indirect cost proposal. If fringe benefit rates are not used at the grantee agency level (*i.e.*, the agency specifically identifies fringe benefit costs to individual employees), the governmental unit should so advise the cognizant agency.

2. Billed services provided by the grantee agency. In some cases, governmental units provide and bill for services similar to those covered by central service cost allocation plans (*e.g.*, computer centers). Where this

occurs, the governmental unit should be guided by the requirements in Appendix C to this part relating to the development of billing rates and documentation requirements, and should advise the cognizant agency of any billed services. Reviews of these types of services (including reviews of costing/billing methodology, profits or losses, etc.) will be made on a case-by-case basis as warranted by the circumstances involved.

3. Indirect cost allocations not using rates. In certain situations, a governmental unit, because of the nature of its awards, may be required to develop a cost allocation plan that distributes indirect (and, in some cases, direct) costs to the specific funding sources. In these cases, a narrative cost allocation methodology should be developed, documented, maintained for audit, or submitted, as appropriate, to the cognizant agency for review, negotiation, and approval.

4. Appeals. If a dispute arises in a negotiation of an indirect cost rate (or other rate) between the cognizant agency and the governmental unit, the dispute shall be resolved in accordance with the appeals procedures of the cognizant agency.

5. Collection of unallowable costs and erroneous payments. Costs specifically identified as unallowable and charged to Federal awards either directly or indirectly will be refunded (including interest chargeable in accordance with applicable Federal agency regulations).

6. OMB assistance. To the extent that problems are encountered among the Federal agencies and/or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

[FR Doc. 05-16649 Filed 8-30-05; 8:45 am]

BILLING CODE 3110-01-P

OFFICE OF MANAGEMENT AND BUDGET

2 CFR Part 230

Cost Principles for Non-Profit Organizations (OMB Circular A-122)

AGENCY: Office of Management and Budget.

ACTION: Relocation of policy guidance to 2 CFR chapter II.

SUMMARY: The Office of Management and Budget (OMB) is relocating Circular A-122, "Cost Principles for Non-Profit Organizations," to Title 2 in the Code of Federal Regulations (CFR), subtitle A, chapter II, part 230. This relocation is part of our broader initiative to create 2 CFR as a single location where the public can find both OMB guidance for grants and agreements and the associated Federal agency implementing regulations. The broader initiative provides a good foundation for streamlining and simplifying the policy framework for grants and agreements, one objective of OMB and Federal

agency efforts to implement the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106-107).

DATES: Part 230 is effective August 31, 2005. This document republishes the existing OMB Circular A-122, which already is in effect.

FOR FURTHER INFORMATION CONTACT: Gil Tran, Office of Federal Financial Management, Office of Management and Budget, telephone 202-395-3052 (direct) or 202-395-3993 (main office) and e-mail: *Hai_M._Tran@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: On May 10, 2004 [69 FR 25970], we revised the three OMB circulars containing Federal cost principles. The purpose of those revisions was to simplify the cost principles by making the descriptions of similar cost items consistent across the circulars where possible, thereby reducing the possibility of misinterpretation. Those revisions, a result of OMB and Federal agency efforts to implement Public Law 106-107, were effective on June 9, 2004.

In this document, we relocate OMB Circular A-122 to the CFR, in Title 2 which was established on May 11, 2004 [69 FR 26276] as a central location for OMB and Federal agency policies on grants and agreements.

Our relocation of OMB Circular A-122 does not change the substance of the circular. Other than adjustments needed to conform to the formatting requirements of the CFR, this document relocates in 2 CFR the version of OMB Circular A-122 as revised by the May 10, 2004 notice.

List of Subjects in 2 CFR Part 230

Accounting, Grant programs, Grants administration, Non-profit organizations, Reporting and recordkeeping requirements.

Dated: August 8, 2005.

Joshua B. Bolten,
Director.

Authority and Issuance

■ For the reasons set forth above, the Office of Management and Budget amends 2 CFR Subtitle A, chapter II, by adding a part 230 as set forth below.

PART 230—COST PRINCIPLES FOR NON-PROFIT ORGANIZATIONS (OMB CIRCULAR A-122)

Sec.

230.5 Purpose.

230.10 Scope.

230.15 Policy.

230.20 Applicability.

230.25 Definitions.

230.30 OMB responsibilities.

230.35 Federal agency responsibilities.

230.40 Effective date of changes.

230.45 Relationship to previous issuance.

230.50 Information Contact.

Appendix A to Part 230—General Principles
Appendix B to Part 230—Selected Items of Cost

Appendix C to Part 230—Non-Profit

Organizations Not Subject to This Part

Authority: 31 U.S.C. 503; 31 U.S.C. 1111; 41 U.S.C. 405; Reorganization Plan No. 2 of 1970; E.O. 11541, 35 FR 10737, 3 CFR, 1966-1970, p. 939

§ 230.5 Purpose.

This part establishes principles for determining costs of grants, contracts and other agreements with non-profit organizations.

§ 230.10 Scope.

(a) This part does not apply to colleges and universities which are covered by 2 CFR part 220 Cost Principles for Educational Institutions (OMB Circular A-21); State, local, and federally-recognized Indian tribal governments which are covered by 2 CFR part 225 Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87); or hospitals.

(b) The principles deal with the subject of cost determination, and make no attempt to identify the circumstances or dictate the extent of agency and non-profit organization participation in the financing of a particular project. Provision for profit or other increment above cost is outside the scope of this part.

§ 230.15 Policy.

The principles are designed to provide that the Federal Government bear its fair share of costs except where restricted or prohibited by law. The principles do not attempt to prescribe the extent of cost sharing or matching on grants, contracts, or other agreements. However, such cost sharing or matching shall not be accomplished through arbitrary limitations on individual cost elements by Federal agencies.

§ 230.20 Applicability.

(a) These principles shall be used by all Federal agencies in determining the costs of work performed by non-profit organizations under grants, cooperative agreements, cost reimbursement contracts, and other contracts in which costs are used in pricing, administration, or settlement. All of these instruments are hereafter referred to as awards. The principles do not apply to awards under which an organization is not required to account to the Federal Government for actual costs incurred.

Exhibit F

City Insurance Requirements

**COMMUNITY DEVELOPMENT BLOCK GRANT
PROGRAM YEAR 2024/2025
INSURANCE REQUIREMENTS**

INSURANCE REQUIREMENTS

Sub-recipient shall procure and maintain insurance for the duration for this Agreement against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by Sub-recipient, its agents, representatives, subcontractors, or employees. If Sub-recipient fails to maintain insurance acceptable to the City for the full term of this Agreement, the City may terminate this Agreement. Prior to the commencement of work under this Agreement, Sub-recipient will file with the City (who shall forward to County) an original Certificate of Insurance and all required endorsements evidencing that coverage required by this Agreement and necessary to satisfy the insurance provisions of Contract No. 12-24011200 PF&I have been complied with and are in effect. Such insurance and the certificates will be kept on deposit with the City and County during the entire term of this Agreement.

In addition, all construction subcontractors performing work on behalf of Sub-recipient pursuant to this Agreement shall be covered under Sub-recipient's insurance or shall obtain insurance subject to the same terms and conditions as set forth herein. Sub-recipient shall require that any subcontractor working for Sub-recipient have the insurance required by this section and not allow subcontractors to work if the subcontractors have less than the level of coverage required by the City under this Agreement. Sub-recipient shall provide notice of the insurance requirements to every subcontractor and must receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Sub-recipient or subcontractor through the entirety of this Agreement for inspection by City and County representatives at any reasonable time.

A. Minimum Limits of Insurance

The policy or policies of insurance maintained by Sub-recipient shall provide the minimum limits and coverage as set forth herein below:

The policy or policies of insurance maintained by the Subrecipient shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers Compensation	Statutory
Employers Liability Insurance	\$1,000,000 per accident or disease
Network Security & Privacy	\$1,000,000 per claims-made Liability
Professional Liability	\$1,000,000 per claims-made or occurrence \$1,000,000 aggregate
Sexual Misconduct	\$1,000,000 per occurrence
Employee Dishonesty	\$100,000 per occurrence

Increased insurance limits may be satisfied with Excess/Umbrella policies. Excess/Umbrella policies when required must provide Follow Form coverage.

The City and County are to be added as an additional insured except for Workers' Compensation/Employers' Liability. (Endorsement must be attached to Certificate of Insurance).

B. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared and approved by the City. Any deductible or self-insured retention (SIR) amount in excess of \$50,000 shall specifically be approved by the County's Executive Office/Office of Risk Management. Subrecipient shall be responsible for reimbursement of any deductible to the insurer.

C. Acceptability of Insurers

The policy or policies of insurance must be issued by an insurer licensed to do business in the State of California (California Admitted Carrier).

Insurance is to be placed with insurers with a minimum insurance company rating as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com of A- (Secure A.M. Best's Rating) and VIII (Finance Size Category as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com).

If the carrier is a non- admitted carrier in the State of California, the City and County retain the right to approve or reject carrier after a review of the company's performance and financial ratings.

D. Changes to Insurance

1. Insurance policy or policies shall not be changed, canceled, limited in scope of coverage or non-renewed until 30-days written notice had been given to the City and County of Orange/OC Community Resources (Endorsement must be attached to Certificate of Insurance).

2. Any of the above insurance types may be increased or waived due to current insurance marketplace conditions, at the sole discretion of the City and County. In addition, the City and County retain the right to require additional insurance coverage as may be deemed appropriate to adequately protect the City and County. The requirements shall be reasonable and shall be designed to assure protection from and against the kind and extent of risks, which exist at the time a change in insurance is required.

3. The City shall notify Sub-recipient in writing of changes required in the insurance requirements. If Sub-recipient does not deposit copies of acceptable Certificates of Insurance and endorsements with the City within thirty (30) days of receipt of such notice, this Agreement may be in default without further notice to Sub-recipient, and City shall be entitled to all legal remedies.

E. Other Requirements

Each insurance policy required by this Agreement shall be endorsed to contain the following provisions:

All rights of subrogation are hereby waived against City and County, their respective elective and appointed officials, officers and employees when acting within the scope of their employment or appointment, and County and their Board or Commissions, which are governed by County Board of Supervisors. (Endorsement must be attached to Certificate of Insurance).

F. Verification of Coverage

Sub-recipient shall furnish the City with original certificates and amendatory endorsements affecting coverage. Said policies and endorsements shall conform to the

requirements herein stated. All certificates and endorsements are to be received and approved by the City before work commences. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on the standard industry forms, as listed below. The City reserves the right to require Sub-recipient's insurers to provide complete, certified copies of all required insurances policies at any time.

Required Coverage Forms

The Commercial General Liability coverage shall be written on occurrence basis utilizing Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

1) An Additional Insured endorsement using ISO form CG 20 26 04 13, or a form at least as broad naming the County of Orange its elected and appointed officials, officers, employees, and agents as Additional Insureds, and naming the City of Laguna Hills its elected and appointed officials, officers, employees, and agents as Additional Insureds , or provide blanket coverage, which will state As Required by Written Contract.

2) A primary non-contributory endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that the Sub-recipient's insurance is primary, and any insurance or self-insurance maintained by the County shall be excess and noncontributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange its elected and appointed officials, officers, employees, and agents as Additional Insureds, and naming the City of Laguna Hills its elected and appointed officials, officers, employees, and agents as Additional Insureds , or provide blanket coverage, which will state As Required by Written Contract.

The Network Security and Privacy Liability policy shall contain the following endorsements which shall accompany the Certificate of Insurance:

1) An Additional Insured endorsement naming the County of Orange its elected and appointed officials, officers, employees, and agents as Additional Insureds, and naming the City of Laguna Hills its elected and appointed officials, officers, employees, and

agents as Additional Insureds , or provide blanket coverage, which will state As Required by Written Contract for its vicarious liability.

2) A primary and non-contributory endorsement evidencing that the Sub-recipient's insurance is primary, and any insurance or self-insurance maintained by the County shall be excess and non-contributing.

All insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange its elected and appointed officials, officers, employees, and agents as Additional Insureds, and the City of Laguna Hills its elected and appointed officials, officers, employees, and agents as Additional Insureds when acting within the scope of their appointment or employment.

The County of Orange shall be the loss payee on the Employee Dishonesty coverage. A Loss Payee endorsement evidencing that the County of Orange is a Loss Payee shall accompany the Certificate of Insurance.

Sub-recipient shall provide thirty (30) days prior written notice to the City and the County of any policy cancellation or non-renewal and ten (10) days prior written notice where cancellation is due to non-payment of premium and provide a copy of the cancellation notice to the City and the County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the City and the County may suspend or terminate this Contract.

If Sub-recipient's Professional Liability, and/or Network Security & Privacy Liability are "Claims-Made" policy(ies), Subrecipient shall agree to the following:

- 1) The retroactive date must be shown and must be before the date of the Contract or the beginning of the Contract services.
- 2) Insurance must be maintained, and evidence of insurance must be provided for at least three (3) years after expiration or earlier termination of Contract services. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the contract services, Subrecipient must purchase an extended reporting period for a minimum of three (3) years after expiration or earlier termination of the Contract.

The Commercial General Liability policy shall contain a severability of interests clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy). Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Subrecipient fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

The City or the County expressly retains the right to require Sub-recipient to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by the City or the County of Orange Risk Manager as appropriate to adequately protect the City or the County.

The City shall notify Sub-recipient in writing of changes in the insurance requirements. If Subrecipient does not provide acceptable Certificates of Insurance and endorsements to City incorporating such changes within thirty (30) days of receipt of such notice, this Contract may be in breach without further notice to Sub-recipient, and City shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Sub-recipient's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

Insurance information shall be submitted to:
City of Laguna Hills
Attn: Eric Hendrickson, Finance Director
24035 El Toro Rd
Laguna Hills, CA 92653

For submittal also to:
County of Orange
OC Community Resources
Attn: Contract Administrator
601 N. Ross Street, 6th Floor
Santa Ana, CA 92701

G. Sub-Recipient Liability

The procuring of such required policy or policies of insurance shall not be construed to limit Sub-recipient's liability hereunder or to fulfill the indemnification provisions and requirements of this Agreement.



City of Laguna Hills City Council / Planning Agency Staff Report

Date: July 9, 2024
To: Mayor and Council Members
From: Joe Ames, Public Works Director/City Engineer
Issue: Proposed Civic Center Office Lease with Layla Fijany DDS MS Corp., a California corporation, for 24031 El Toro Road, Suite 205, Laguna Hills, California

Recommendation: That the City Council: 1) Approve the lease agreement with Layla Fijany DDS MS Corp., a California corporation, for 24031 El Toro Road, Suite 205, Laguna Hills, California; 2) Authorize the City Manager to make minor modifications to and negotiate the final terms of the lease agreement, as necessary; and 3) Authorize the City Manager to execute the lease agreement.

Background:

City staff and the Civic Center property management company have negotiated a ten-year lease with Layla Fijany DDS MS Corp, a California corporation, for 24031 El Toro Road, Suite 205. Dr. Layla Fijany plans to open a new orthodontic practice in Suite 205.

During the May and June 2023 Special Study Session Budget Workshops, City staff presented an overview of the Civic Center Enterprise Fund's historical profits and losses, reviewed needed capital improvements, and requested funding for capital improvement projects. During that discussion, City staff indicated Suite 205 had never been built out and made ready for leasing, and consequently, this has been lost revenue. City Council authorized the transfer of \$850,000 in general fund reserves to CIP 505, Civic Center Improvements, for the build out of tenant improvements for Suite 205 and other improvements at the Civic Center. Since then, City staff simultaneously worked to develop plans and specifications for tenant improvements to Suite 205 to make it ready for leasing for use as a "traditional office" suite, while also authorizing Essex Realty Management, Inc., the City's property management company for the

Laguna Hills Civic Center, to market the space for lease.

The market rate for medical office use (an orthodontic practice is considered a medical use) in shell form is currently \$3.50 per square foot, with the lessor contributing approximately \$100/square foot for tenant improvements to the lessee. This would equate to a tenant improvement allowance of approximately \$234,000. Because the Civic Center is owned by the City of Laguna Hills (“lessor”), if the City provides any tenant improvement funding to a tenant (“lessee”), any subsequent construction improvement project may be considered a “public works project” subject to California Labor Code Section 1720. This may require that anyone working on a tenant improvement project be paid prevailing wages as determined by the Department of Industrial Relations regardless if the contractor was hired by the lessee or the lessor. Therefore, in part due to Labor Code Section 1720, City staff recommended the build out of Suite 205 to make it ready to lease to relieve any potential lessee from the expense of paying prevailing wages to construction workers.

On May 14, 2024, City Council approved the plans and specifications and authorized the advertisement for bids for the Laguna Hills Civic Center Suite 205 Tenant Improvements Project, CIP No. 505-B. Construction bids were opened on June 20, 2024. The lowest responsive, responsible bidder provided a bid of \$289,000.

During the bidding process in June, Essex Realty Management, Inc., received an offer from a new orthodontic practice, Layla Fijany DDS MS Corp, for the lease of Suite 205. In lieu of providing a tenant improvement allowance to the lessee, City staff and Essex negotiated a proposed lease that reduces the 10-year lease rate congruent with the lessee’s expected cost of building out the suite for use as a dental office. This arrangement saves City staff time that would otherwise be spent on managing a very specialized tenant improvement project, preserves funding in CIP No. 505 (Civic Center Improvements) for other capital improvements, and allows the lessee complete control over the design and tenant improvements. The lease does require that the City provide rough electrical, plumbing, and HVAC in the unit at its own expense, which is typical.

Consequently, City staff recommends that the City Council: 1) Approve the lease agreement with Layla Fijany DDS MS Corp, a California corporation, for 24031 El Toro Road, Suite 205, Laguna Hills, California; 2) Authorize the City Manager to make minor modifications to and negotiate the final terms of the lease agreement, as necessary; and 3) Authorize the City Manager to execute the lease agreement.

CEQA Findings:

Environmental review is not required under the California Environmental Quality Act (CEQA) pursuant to the California Code of Regulations, Title 14, Chapter 3, Section 15301 as a Class 1 Categorical Exemption – “Existing Facilities.”

Fiscal Impact:

The following is a summary of the key lease terms and financial analysis:

Commencement Date:	July 1, 2024 (subject to change)
Term:	One hundred twenty-five (125) months
Rentable Square Feet:	2,343
Upfront Capital:	\$42,546 (Estimated)
Base Rent:	Months 1-5: \$0
	Months 6-17: \$5,623.20/month (~\$2.40/SF/mo)
	Months 18-29: \$5,791.90/month (~\$2.47/SF/mo)
	Months 30-41: \$5,965.65/month (~\$2.55/SF/mo)
	Months 42-53: \$6,144.62/month (~\$2.62/SF/mo)
	Months 54-65: \$6,328.96/month (~\$2.70/SF/mo)
	Months 66-77: \$6,518.83/month (~\$2.78/SF/mo)
	Months 78-89: \$6,714.39/month (~\$2.87/SF/mo)
	Months 90-101: \$6,915.83/month (~\$2.95/SF/mo)
	Months 102-113: \$7,123.30/month (~\$3.04/SF/mo)
	Months 114-125: \$7,337.00/month (~\$3.13/SF/mo)
Total Rent Payments:	\$773,564

The Base Rent includes the lessee’s share of eligible operating expenses (also known as common area maintenance charges) for the first year. In the second and subsequent

years, any increases in eligible operating expenses will be borne, proportionally, by the lessee up to 4% annually.

The Base Rent schedule reflects a 3% annual increase.

Upfront Capital includes leasing commissions and tenant improvements (or allowances for tenant improvements). The negotiated first amendment to the lease does not include any tenant improvement allowances. Essex Realty, per the terms of the existing property management agreement, will receive approximately \$19,339 for its lease commission (2.5% of total rent consideration) as the listing broker, and the broker representing Dr. Layla Fijany will receive approximately \$23,207 for its lease commission (3% of total rent consideration) as the procuring broker.

Attachments:

1. Proposed Lease for Suite 205



STANDARD MULTI-TENANT OFFICE LEASE - GROSS

1. Basic Provisions ("Basic Provisions").

1.1 **Parties.** This Lease ("Lease"), dated for reference purposes only July 1, 2024, is made by and between The City of Laguna Hills, a municipal corporation organized and existing under the laws of the State of California ("Lessor") and Layla Fijany, DDS MS Corp ("Lessee"), (collectively the "Parties", or individually a "Party").

1.2(a) **Premises:** That certain Portion of the Project (as defined below), commonly known as (street address, suite, city, state): 24031 El Toro Road, Suite 205 Laguna Hills, CA 92654 ("Premises"). The Premises are located in the County of Orange, and consist of approximately 2,343 rentable square feet and approximately 1,958 useable square feet. In addition to Lessee's rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to the Common Areas (as defined in Paragraph 2.7 below) as hereinafter specified, but shall not have any rights to the roof, the exterior walls, the area above the dropped ceilings, or the utility raceways of the building containing the Premises ("Building") or to any other buildings in the Project. The Premises, the Building, the Common Areas, the land upon which they are located, along with all other buildings and improvements thereon, are herein collectively referred to as the "Project." The Project consists of approximately 51,946 rentable square feet. (See also Paragraph 2)

1.2(b) **Parking:** 4/1000sf unreserved and N/A reserved vehicle parking spaces at a monthly cost of N/A per unreserved space and N/A per reserved space. (See Paragraph 2.6)

1.3 **Term:** 10 years and 5 months ("Original Term") commencing see Addendum paragraph 50 ("Commencement Date") and ending _____ ("Expiration Date"). (See also Paragraph 3)

1.4 **Early Possession:** If the Premises are available Lessee may have non-exclusive possession of the Premises commencing Lessee shall be granted early possession upon the receipt of a fully executed lease agreement, monies outlined in section 1.7e, and a certificate of liability insurance naming Landlord and it's agent as additionally insured. ("Early Possession Date"). (See also Paragraphs 3.2 and 3.3)

1.5 **Base Rent:** \$5,623.20 per month ("Base Rent"), payable on the First day of each month commencing August 1, 2023. (See also Paragraph 4)

☒ If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph 4.4. (See Addendum

Paragraph 1)

1.6 **Lessee's Share of Operating Expense Increase:** four point five one percent (4.51 %) ("Lessee's Share"). In the event that that size of the Premises and/or the Project are modified during the term of this Lease, Lessor shall recalculate Lessee's Share to reflect such modification.

1.7 Base Rent and Other Monies Paid Upon Execution:

- (a) **Base Rent:** \$5,623.20 for the period first month's rent.
- (b) **Security Deposit:** \$7,337.00 ("Security Deposit"). (See also Paragraph 5)
- (c) **Parking:** N/A for the period N/A.
- (d) **Other:** N/A for N/A.
- (e) **Total Due Upon Execution of this Lease:** \$12,960.20.

1.8 **Agreed Use:** general dentistry and related specialties. (See also Paragraph 6)

1.9 **Base Year; Insuring Party.** The Base Year is 2024. Lessor is the "Insuring Party". (See also Paragraphs 4.2 and 8)

1.10 **Real Estate Brokers.** (See also Paragraph 15 and 25)

(a) **Representation:** Each Party acknowledges receiving a Disclosure Regarding Real Estate Agency Relationship, confirms and consents to the following agency relationships in this Lease with the following real estate brokers ("Broker(s)") and/or their agents ("Agent(s)"):

Lessor's Brokerage Firm Essex Realty Management, Inc. License No. 02081393 Is the broker of (check one): ☒ the Lessor; or ☐ both the Lessee and Lessor (dual agent).

Lessor's Agent Heather Stark License No. 02153034 Is (check one): ☐ the Lessor's Agent (salesperson or broker associate); or ☐ both the Lessee's Agent and the Lessor's Agent (dual agent).

Lessee's Brokerage Firm Roam Commercial Realty License No. _____ Is the broker of (check one): ☒ the Lessee; or ☐ both the Lessee and Lessor (dual agent).

Lessee's Agent Neil O'Connor License No. 02153201 Is (check one): ☒ the Lessee's Agent (salesperson or broker associate); or ☐ both the Lessee's Agent and the Lessor's Agent (dual agent).

(b) **Payment to Brokers:** Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers the brokerage fee agreed to in a separate written agreement ~~(or if there is no such agreement, the sum of _____ or _____ % of the total Base Rent)~~ for the brokerage services rendered by the Brokers.

1.11 **Guarantor.** The obligations of the Lessee under this Lease are to be guaranteed by Layla Fijany, an individual ("Guarantor"). (See also Paragraph 37)

1.12 **Business Hours for the Building:** 7:00 a.m. to 6:00 p.m., Mondays through Fridays (except Building Holidays) and 8:00 a.m. to 2:00 p.m. on Saturdays (except Building Holidays). "Building Holidays" shall mean the dates of observation of New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and N/A.

1.13 **Lessor Supplied Services.** Notwithstanding the provisions of Paragraph 11.1, Lessor is NOT obligated to provide the following within the Premises:

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☐ Janitorial services

☐ Electricity

☐ Other (specify): _____

1.14 **Attachments.** Attached hereto are the following, all of which constitute a part of this Lease:

☒ an Addendum consisting of Paragraphs 1 through 9 ;

☒ a plot plan depicting the Premises; **Exhibit "A"**

☒ a current set of the Rules and Regulations; **Exhibit "B"**

☒ a Work Letter **/Requirements for Improvements or Alterations by Lessee; Exhibit "D"**

☐ a janitorial schedule;

☒ other (specify): Exhibit "C" Waiver and Release. .

2. Premises.

2.1 **Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. **NOTE: Lessee is advised to verify the actual size prior to executing this Lease.**

2.2 **Condition.** Lessor shall deliver the Premises to Lessee in a clean condition on the Commencement Date or the Early Possession Date, whichever first occurs ("Start Date"), and warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("HVAC"), and all other items which the Lessor is obligated to construct pursuant to the Work Letter attached hereto, if any, other than those constructed by Lessee, shall be in good operating condition on said date, that the structural elements of the roof, bearing walls and foundation of the Unit shall be free of material defects, and that the Premises do not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. Lessor also warrants, that unless otherwise specified in writing, Lessor is unaware of (i) any recorded Notices of Default affecting the Premise; (ii) any delinquent amounts due under any loan secured by the Premises; and (iii) any bankruptcy proceeding affecting the Premises.

2.3 **Compliance.** Lessor warrants that to the best of its knowledge the improvements on the Premises and the Common Areas comply with the building codes, applicable laws, covenants or restrictions of record, regulations, and ordinances ("Applicable Requirements") that were in effect at the time that each improvement, or portion thereof, was constructed. Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 4.9), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: Lessee is responsible for determining whether or not the zoning and other Applicable Requirements are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Premises, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Premises ("Capital Expenditure"), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however, that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and the amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to 1/144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay Interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with Interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to non-voluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not have any right to terminate this Lease.

2.4 **Acknowledgements.** Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises, (b) Lessee has been advised by Lessor and/or Brokers to satisfy itself with respect to the size and condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements), and their suitability for Lessee's intended use, (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, (d) it is not relying on any representation as to the size of the Premises made by Brokers or Lessor, (e) the square footage of the Premises was not material to Lessee's decision to lease the Premises and pay the Rent stated herein, and (f) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the

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financial capability and/or suitability of all proposed tenants.

2.5 **Lessee as Prior Owner/Occupant.** The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date, Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.

2.6 **Vehicle Parking.** So long as Lessee is not in default, and subject to the Rules and Regulations attached hereto, and as established by Lessor from time to time, Lessee shall be entitled to rent and use the number of parking spaces specified in Paragraph 1.2(b) at the rental rate applicable from time to time for monthly parking as set by Lessor and/or its licensee.

(a) If Lessee commits, permits or allows any of the prohibited activities described in the Lease or the rules then in effect, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

(b) The monthly rent per parking space specified in Paragraph 1.2(b) is subject to change upon 30 days prior written notice to Lessee. The rent for the parking is payable one month in advance prior to the first day of each calendar month.

2.7 **Common Areas - Definition.** The term "Common Areas" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Project and interior utility raceways and installations within the Premises that are provided and designated by the Lessor from time to time for the general nonexclusive use of Lessor, Lessee and other tenants of the Project and their respective employees, suppliers, shippers, customers, contractors and invitees, including, but not limited to, common entrances, lobbies, corridors, stairwells, public restrooms, elevators, parking areas, loading and unloading areas, trash areas, roadways, walkways, driveways and landscaped areas.

2.8 **Common Areas - Lessee's Rights.** Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Project. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.9 **Common Areas - Rules and Regulations.** Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to adopt, modify, amend and enforce reasonable rules and regulations ("Rules and Regulations") for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Project and their invitees. The Lessee agrees to abide by and conform to all such Rules and Regulations, and shall use its best efforts to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessor shall not be responsible to Lessee for the noncompliance with said Rules and Regulations by other tenants of the Project.

2.10 **Common Areas - Changes.** Lessor shall have the right, in Lessor's sole discretion, from time to time:

(a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of the lobbies, windows, stairways, air shafts, elevators, escalators, restrooms, driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways;

(b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;

(c) To designate other land outside the boundaries of the Project to be a part of the Common Areas;

(d) To add additional buildings and improvements to the Common Areas;

(e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project, or any portion thereof; and

(f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Project as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

3. Term.

3.1 **Term.** The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

3.2 **Early Possession.** Any provision herein granting Lessee Early Possession of the Premises is subject to and conditioned upon the Premises being available for such possession prior to the Commencement Date. Any grant of Early Possession only conveys a non-exclusive right to occupy the Premises. If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such Early Possession. All other terms of this Lease (including but not limited to the obligations to pay Lessee's Share of the Operating Expense Increase) shall be in effect during such period. Any such Early Possession shall not affect the Expiration Date.

3.3 **Delay In Possession.** Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or change the Expiration Date. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the Commencement Date, as the same may be extended under the terms of any Work Letter executed by Parties, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. If possession of the Premises is not delivered within 120 days after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 **Lessee Compliance.** Lessor shall not be required to deliver possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.5). **Paragraph 8 of the Lease (See Addendum Paragraph 4)** Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

4. Rent.

4.1 **Rent Defined.** All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("Rent").

4.2 **Operating Expense Increase.** Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's Share of the amount by which all Operating Expenses for each Comparison Year exceeds the amount of all Operating Expenses for the Base Year, such excess being hereinafter referred to as the "Operating Expense Increase", in accordance with the following provisions:

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(a) "Base Year" is as specified in Paragraph 1.9.

(b) "Comparison Year" is defined as each calendar year during the term of this Lease subsequent to the Base Year; provided, however, Lessee shall have no obligation to pay a share of the Operating Expense Increase applicable to the first 12 months of the Lease Term (other than such as are mandated by a governmental authority, as to which government mandated expenses Lessee shall pay Lessee's Share, notwithstanding they occur during the first twelve (12) months). Lessee's Share of the Operating Expense Increase for the first and last Comparison Years of the Lease Term shall be prorated according to that portion of such Comparison Year as to which Lessee is responsible for a share of such increase.

(c) The following costs relating to the ownership and operation of the Project, calculated as if the Project was at least 95% occupied, are defined as "Operating Expenses":

(i) Costs relating to the operation, repair, and maintenance in neat, clean, safe, good order and condition, but not the replacement (see subparagraph (g)), of the following:

(aa) The Common Areas, including their surfaces, coverings, decorative items, carpets, drapes and window coverings, and including parking areas, loading and unloading areas, trash areas, roadways, sidewalks, walkways, stairways, parkways, driveways, landscaped areas, striping, bumpers, irrigation systems, Common Area lighting facilities, building exteriors and roofs, fences and gates;

(bb) All heating, air conditioning, plumbing, electrical systems, life safety equipment, communication systems and other equipment used in common by, or for the benefit of, tenants or occupants of the Project, including elevators and escalators, tenant directories, fire detection systems including sprinkler system maintenance and repair.

(cc) All other areas and improvements that are within the exterior boundaries of the Project but outside of the Premises and/or any other space occupied by a tenant.

(ii) The cost of trash disposal, janitorial and security services, pest control services, and the costs of any environmental inspections;

(iii) The cost of any other service to be provided by Lessor that is elsewhere in this Lease stated to be an "Operating Expense";

(iv) The cost of the premiums for the insurance policies maintained by Lessor pursuant to paragraph 8 and any deductible portion of an insured loss concerning the Building or the Common Areas;

(v) The amount of the Real Property Taxes payable by Lessor pursuant to paragraph 10;

(vi) The cost of water, sewer, gas, electricity, and other publicly mandated services not separately metered;

(vii) Labor, salaries, and applicable fringe benefits and costs, materials, supplies and tools, used in maintaining and/or cleaning the Project and accounting and management fees attributable to the operation of the Project;

(viii) The cost of any capital improvement to the Building or the Project not covered under the provisions of Paragraph 2.3 provided; however, that Lessor shall allocate the cost of any such capital improvement over a 12 year period and Lessee shall not be required to pay more than Lessee's Share of 1/144th of the cost of such Capital Expenditure in any given month;

(ix) The cost to replace equipment or improvements that have a useful life for accounting purposes of 5 years or less.

(x) Reserves set aside for maintenance, repair and/or replacement of Common Area improvements and equipment.

(d) Any item of Operating Expense that is specifically attributable to the Premises, the Building or to any other building in the Project or to the operation, repair and maintenance thereof, shall be allocated entirely to such Premises, Building or other building. However, any such item that is not specifically attributable to the Building or to any other building or to the operation, repair and maintenance thereof, shall be equitably allocated by Lessor to all buildings in the Project.

(e) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(c) shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities or to provide those services unless the Project already has the same, Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or some of them.

(f) Lessee's Share of Operating Expense Increase is payable monthly on the same day as the Base Rent is due hereunder. The amount of such payments shall be based on Lessor's estimate of the Operating Expense Expenses. Within 60 days after written request (but not more than once each year) Lessor shall deliver to Lessee a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses for the preceding year. If Lessee's payments during such Year exceed Lessee's Share, Lessee shall credit the amount of such over-payment against Lessee's future payments. If Lessee's payments during such Year were less than Lessee's Share, Lessee shall pay to Lessor the amount of the deficiency within 10 days after delivery by Lessor to Lessee of said statement. Lessor and Lessee shall forthwith adjust between them by cash payment any balance determined to exist with respect to that portion of the last Comparison Year for which Lessee is responsible as to Operating Expense Increases, notwithstanding that the Lease term may have terminated before the end of such Comparison Year.

(g) Operating Expenses shall not include the costs of replacement for equipment or capital components such as the roof, foundations, exterior walls or a Common Area capital improvement, such as the parking lot paving, elevators, fences that have a useful life for accounting purposes of 5 years or more.

(h) Operating Expenses shall not include any expenses paid by any tenant directly to third parties, or as to which Lessor is otherwise reimbursed by any third party, other tenant, or by insurance proceeds.

4.3 Payment. Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States on or before the day on which it is due, without offset or deduction (except as specifically permitted in this Lease). All monetary amounts shall be rounded to the nearest whole dollar. In the event that any invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of ~~\$2575~~ in addition to any Late Charge and Lessor, at its option, may require all future Rent be paid by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent and Common Area Operating Expenses, and any remaining amount to any other outstanding charges or costs.

5. Security Deposit. Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit

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to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. Lessor shall upon written request provide Lessee with an accounting showing how that portion of the Security Deposit that was not returned was applied. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease. THE SECURITY DEPOSIT SHALL NOT BE USED BY LESSEE IN LIEU OF PAYMENT OF THE LAST MONTH'S RENT.

6. Use. (See Addendum Paragraph 3)

~~6.1 Use. Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the improvements of the Building, will not adversely affect the mechanical, electrical, HVAC, and other systems of the Building, and/or will not affect the exterior appearance of the Building. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.~~

6.2 Hazardous Substances.

(a) **Reportable Uses Require Consent.** The term "Hazardous Substance" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, byproducts or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use such as ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) **Lessee Remediation.** Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.

(d) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from areas outside of the Project not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

(e) **Lessor Indemnification.** Except as otherwise provided in paragraph 8.7, Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which result from Hazardous Substances which existed on the Premises prior to Lessee's occupancy or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) **Investigations and Remediations.** Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to Lessee's occupancy, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or \$100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of

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Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or \$100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

6.3 Lessee's Compliance with Applicable Requirements. Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the Premises, without regard to whether said Applicable Requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall immediately give written notice to Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises.

6.4 Inspection; Compliance. Lessor and Lessor's "Lender" (as defined in Paragraph 30) and consultants authorized by Lessor shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times, after reasonable notice, for the purpose of inspecting and/or testing the condition of the Premises and/or for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see Paragraph 9.1e) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (MSDS) to Lessor within 10 days of the receipt of written request therefor. Lessee acknowledges that any failure on its part to allow such inspections or testing will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to allow such inspections and/or testing in a timely fashion the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for the remainder to the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to allow such inspection and/or testing. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to such failure nor prevent the exercise of any of the other rights and remedies granted hereunder.

7. Maintenance; Repairs; Utility Installations; Trade Fixtures and Alterations.

7.1 Lessee's Obligations. Notwithstanding Lessor's obligation to keep the Premises in good condition and repair, Lessee shall be responsible for payment of the cost thereof to Lessor as additional rent for that portion of the cost of any maintenance and repair of the Premises, or any equipment (wherever located) that serves only Lessee or the Premises, to the extent such cost is attributable to abuse or misuse. In addition, Lessee rather than the Lessor shall be responsible for the cost of painting, repairing or replacing wall coverings, and to repair or replace any similar improvements within the Premises. Lessor may, at its option, upon reasonable notice, elect to have Lessee perform any particular such maintenance or repairs the cost of which is otherwise Lessee's responsibility hereunder."

7.2 Lessor's Obligations. Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, fire alarm and/or smoke detection systems, fire hydrants, and the Common Areas.

7.3 Utility Installations; Trade Fixtures; Alterations.

(a) **Definitions.** The term "Utility Installations" refers to all floor and window coverings, air lines, vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, and plumbing in or on the Premises. The term "Trade Fixtures" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "Alterations" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "Lessee Owned Alterations and/or Utility Installations" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof, ceilings, floors or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, do not trigger the requirement for additional modifications and/or improvements to the Premises resulting from Applicable Requirements, such as compliance with Title 24, and the cumulative cost thereof during this Lease as extended does not exceed \$2000. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

In addition to and without limiting the other requirements of this Paragraph 7.3, all utilities, installations, and alterations made by Lessee shall also be subject to the provisions of Exhibit "D" attached to this Lease.

(c) **Liens; Bonds.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

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7.4 Ownership; Removal; Surrender; and Restoration.

(a) **Ownership.** Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Removal.** By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) **Surrender; Restoration.** Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing and the provisions of Paragraph 7.1(a), if the Lessee occupies the Premises for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises) to the level specified in Applicable Requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

8. Insurance; Indemnity. (See Addendum Paragraph 4)

8.1 **Insurance Premiums.** The cost of the premiums for the insurance policies maintained by Lessor pursuant to paragraph 8 are included as Operating Expenses (see paragraph 4.2 (c)(iv)). Said costs shall include increases in the premiums resulting from additional coverage related to requirements of the holder of a mortgage or deed of trust covering the Premises, Building and/or Project, increased valuation of the Premises, Building and/or Project, and/or a general premium rate increase. Said costs shall not, however, include any premium increases resulting from the nature of the occupancy of any other tenant of the Building. If the Project was not insured for the entirety of the Base Year, then the base premium shall be the lowest annual premium reasonably obtainable for the required insurance as of the Start Date, assuming the most nominal use possible of the Building and/or Project. In no event, however, shall Lessee be responsible for any portion of the premium cost attributable to liability insurance coverage in excess of \$2,000,000 procured under Paragraph 8.2(b).

8.2 Liability Insurance.

~~(a) Carried by Lessee. Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured- Managers or Lessors of Premises". Endorsement and coverage shall also be extended to include damage caused by heat, smoke or fumes from a hostile fire. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.~~

~~(b) Carried by Lessor. Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.~~

8.3 Property Insurance- Building, Improvements and Rental Value.

~~(a) Building and Improvements. Lessor shall obtain and keep in force a policy or policies of insurance in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Building and/or Project. The amount of such insurance shall be equal to the full insurable replacement cost of the Building and/or Project, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee not by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed \$5,000 per occurrence.~~

~~(b) Rental Value. Lessor shall also obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days ("Rental Value insurance"). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period.~~

~~(c) Adjacent Premises. Lessee shall pay for any increase in the premiums for the property insurance of the Building and for the Common Areas or other buildings in the Project if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.~~

~~(d) Lessee's Improvements. Since Lessor is the Insuring Party, Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease.~~

8.4 Lessee's Property; Business Interruption Insurance; Worker's Compensation Insurance.

~~(a) Property Damage. Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed \$1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations.~~

~~(b) Worker's Compensation Insurance. Lessee shall obtain and maintain Worker's Compensation Insurance in such amount as may be required by Applicable Requirements. Such policy shall include a "Waiver of Subrogation" endorsement. Lessee shall provide Lessor with a copy of such endorsement along with the certificate of insurance or copy of the policy required by paragraph 8.5.~~

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~~(c) —Business Interruption. Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.~~

~~(d) —No Representation of Adequate Coverage. Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.~~

~~8.5 —Insurance Policies. Insurance required herein shall be by companies maintaining during the policy term a "General Policyholders Rating" of at least A-, VII, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates with copies of the required endorsements evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 10 days prior written notice to Lessor. Lessee shall, at least 30 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may increase his liability insurance coverage and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.~~

~~8.6 —Waiver of Subrogation. Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.~~

8.7 **Indemnity.** Except for Lessor's gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, a Breach of the Lease by Lessee and/or the use and/or occupancy of the Premises and/or Project by Lessee and/or by Lessee's employees, contractors or invitees. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

8.8 **Exemption of Lessor and its Agents from Liability.** Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

8.9 **Failure to Provide Insurance.** Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.

9. Damage or Destruction.

9.1 Definitions.

(a) **"Premises Partial Damage"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 3 months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 3 months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) **"Insured Loss"** shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in **Paragraph 8 of this Lease (See**

Addendum Paragraph 4) Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) **"Replacement Cost"** shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) **"Hazardous Substance Condition"** shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance, in, on, or under the Premises which requires restoration.

9.2 **Partial Damage - Insured Loss.** If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is \$5,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or

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to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 Partial Damage - Uninsured Loss. If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense (subject to reimbursement pursuant to Paragraph 4.2), in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

9.4 Total Destruction. Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.6.

9.5 Damage Near End of Term. If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

9.6 Abatement of Rent; Lessee's Remedies.

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) **Remedies.** If Lessor is obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

9.7 Termination; Advance Payments. Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

10. Real Property Taxes.

10.1 Definitions. As used herein, the term "Real Property Taxes" shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Project address. "Real Property Taxes" shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Project, (ii) a change in the improvements thereon, and/or (iii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease.

10.2 Payment of Taxes. Except as otherwise provided in Paragraph 10.3, Lessor shall pay the Real Property Taxes applicable to the Project, and said payments shall be included in the calculation of Operating Expenses in accordance with the provisions of Paragraph 4.2.

10.3 Additional Improvements. Operating Expenses shall not include Real Property Taxes specified in the tax assessor's records and work sheets as being caused by additional improvements placed upon the Project by other lessees or by Lessor for the exclusive enjoyment of such other lessees. Notwithstanding Paragraph 10.2 hereof, Lessee shall, however, pay to Lessor at the time Operating Expenses are payable under Paragraph 4.2, the entirety of any increase in Real Property Taxes if assessed solely by reason of Alterations, Trade Fixtures or Utility Installations placed upon the Premises by Lessee or at Lessee's request or by reason of any alterations or improvements to the Premises made by Lessor subsequent to the execution of this Lease by the Parties.

10.4 Joint Assessment. If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

10.5 Personal Property Taxes. Lessee shall pay prior to delinquency all taxes assessed against and levied upon Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee contained in the Premises. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real

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property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. Utilities and Services.

11.1 Services Provided by Lessor. Lessor shall provide heating, ventilation, air conditioning, reasonable amounts of electricity for normal lighting and office machines, water for reasonable and normal drinking and lavatory use in connection with an office, and replacement light bulbs and/or fluorescent tubes and ballasts for standard overhead fixtures. Lessor shall also provide janitorial services to the Premises and Common Areas 5 times per week, excluding Building Holidays, or pursuant to the attached janitorial schedule, if any. Lessor shall not, however, be required to provide janitorial services to kitchens or storage areas included within the Premises.

11.2 Services Exclusive to Lessee. Notwithstanding the provisions of paragraph 11.1, Lessee shall pay for all water, gas, light, power, telephone and other utilities and services specially or exclusively supplied and/or metered exclusively to the Premises or to Lessee, together with any taxes thereon. Notwithstanding the provisions of Paragraph 4.2(vi), if a service is deleted by Paragraph 1.13 and such service is not separately metered to the Premises, Lessee shall pay at Lessor's option, either Lessee's Share or a reasonable proportion to be determined by Lessor of all charges for such jointly metered service.

11.3 Hours of Service. Said services and utilities shall be provided during times set forth in Paragraph 1.12. Utilities and services required at other times shall be subject to advance request and reimbursement by Lessee to Lessor of the cost thereof.

11.4 Excess Usage by Lessee. Lessee shall not make connection to the utilities except by or through existing outlets and shall not install or use machinery or equipment in or about the Premises that uses excess water, lighting or power, or suffer or permit any act that causes extra burden upon the utilities or services, including but not limited to security and trash services, over standard office usage for the Project. Lessor shall require Lessee to reimburse Lessor for any excess expenses or costs that may arise out of a breach of this subparagraph by Lessee. Lessor may, in its sole discretion, install at Lessee's expense supplemental equipment and/or separate metering applicable to Lessee's excess usage or loading.

11.5 Interruptions. There shall be no abatement of rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

11.6 Within fifteen days of Lessor's written request, Lessee agrees to deliver to Lessor such information, documents and/or authorization as Lessor needs in order for Lessor to comply with new or existing Applicable Requirements relating to commercial building energy usage, ratings, and/or the reporting thereof.

12. Assignment and Subletting.

12.1 Lessor's Consent Required.

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "assign or assignment") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent.

(b) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 25% or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buyout or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee by an amount greater than 25% of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. "Net Worth of Lessee" shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(d), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

(e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

(f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested.

(g) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, ie. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

12.2 Terms and Conditions Applicable to Assignment and Subletting.

(a) Regardless of Lessor's consent, no assignment or subletting shall: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

(b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

(c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefor to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of \$500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 36)

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

(g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease

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unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

12.3 Additional Terms and Conditions Applicable to Subletting. The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

13. Default; Breach; Remedies.

13.1 Default; Breach. A "Default" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

(a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8 (See Addendum Paragraph 4) is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee. THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee. In the event that Lessee commits waste, a nuisance or an illegal activity a second time then, the Lessor may elect to treat such conduct as a non-curable Breach rather than a Default.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 41, (viii) material safety data sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 2.9 hereof, other than those described in subparagraphs 13.1(a), (b) or (c), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

(f) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "debtor" as defined in 11 U.S.C. § 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(g) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(h) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

13.2 Remedies. If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount

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necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover any damages to which Lessor is otherwise entitled. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

13.3 Inducement Recapture. Any agreement for free or abated rent or other charges, the cost of tenant improvements for Lessee paid for or performed by Lessor, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "**Inducement Provisions**," shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

13.4 Late Charges. Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 10% of each such overdue amount or \$100, whichever is greater. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

13.5 Interest. Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due shall bear interest from the 31st day after it was due. The interest ("**Interest**") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.6 Breach by Lessor. (See Addendum Paragraph 5)

(a) **Notice of Breach.** Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name and address shall have been furnished to Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

(b) **Performance by Lessee on Behalf of Lessor.** In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided, however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to seek reimbursement from Lessor for any such expense in excess of such offset. Lessee shall document the cost of said cure and supply said documentation to Lessor.

14. Condemnation. If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "Condemnation"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the rentable floor area of the Premises, or more than 25% of Lessee's Reserved Parking Spaces, if any, are taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation paid by the condemnor for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

15. Brokerage Fees.

~~15.1 Additional Commission. In addition to the payments owed pursuant to Paragraph 1.10 above, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the Project, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or~~

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~~operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the fee schedule of the Brokers in effect at the time the Lease was executed.~~

~~15.2 Assumption of Obligations. Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.10, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.~~

15.3 **Representations and Indemnities of Broker Relationships.** Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker, agent or finder (other than the Brokers and Agents, if any) in connection with this Lease, and that no one other than said named Brokers and Agents is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

16. Estoppel Certificates.

(a) Each Party (as "**Responding Party**") shall within 10 days after written notice from the other Party (the "**Requesting Party**") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "**Estoppel Certificate**" form published BY AIR CRE, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate. In addition, Lessee acknowledges that any failure on its part to provide such an Estoppel Certificate will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to execute and/or deliver a requested Estoppel Certificate in a timely fashion the monthly Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for remainder of the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to provide the Estoppel Certificate. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to provide the Estoppel Certificate nor prevent the exercise of any of the other rights and remedies granted hereunder.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 days after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. **Definition of Lessor.** The term "**Lessor**" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

18. **Severability.** The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. **Days.** Unless otherwise specifically indicated to the contrary, the word "**days**" as used in this Lease shall mean and refer to calendar days.

20. **Limitation on Liability.** The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor, or its partners, members, directors, officers or shareholders, and Lessee shall look to the Project, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

21. **Time of Essence.** Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

22. **No Prior or Other Agreements; Broker Disclaimer.** This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party.

23. Notices.

23.1 **Notice Requirements.** All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, or by email, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

23.2 **Date of Notice.** Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices delivered by hand, or transmitted by facsimile transmission or by email shall be deemed delivered upon actual receipt. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

23.3 **Options.** Notwithstanding the foregoing, in order to exercise any Options (see paragraph 39), the Notice must be sent by Certified Mail (return receipt requested), Express Mail (signature required), courier (signature required) or some other methodology that provides a receipt establishing the date the notice was

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received by the Lessor.

24. Waivers.

(a) No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

(b) The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of monies or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

(c) THE PARTIES AGREE THAT THE TERMS OF THIS LEASE SHALL GOVERN WITH REGARD TO ALL MATTERS RELATED THERETO AND HEREBY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE TO THE EXTENT THAT SUCH STATUTE IS INCONSISTENT WITH THIS LEASE.

25. Disclosures Regarding The Nature of a Real Estate Agency Relationship.

(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows:

(i) Lessor's Agent. A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: To the Lessor: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. To the Lessee and the Lessor: (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) Lessee's Agent. An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations. To the Lessee: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. To the Lessee and the Lessor: (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(iii) Agent Representing Both Lessor and Lessee. A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. (b) Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not, without the express permission of the respective Party, disclose to the other Party confidential information, including, but not limited to, facts relating to either Lessee's or Lessor's financial position, motivations, bargaining position, or other personal information that may impact rent, including Lessor's willingness to accept a rent less than the listing rent or Lessee's willingness to pay rent greater than the rent offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional. Both Lessor and Lessee should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

(c) Lessor and Lessee agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

26. No Right To Holdover. Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be increased to 150% of the Base Rent applicable immediately preceding the expiration or termination. Holdover Base Rent shall be calculated on a monthly basis. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

27. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. Covenants and Conditions; Construction of Agreement. All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

29. Binding Effect; Choice of Law. This Lease shall be binding upon the parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

30. Subordination; Attornment; Non-Disturbance.

30.1 **Subordination.** This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "**Security Device**"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "**Lender**") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted

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hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 Attornment. In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor which was not paid or credited to such new owner.

30.3 Non-Disturbance. With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "Non-Disturbance Agreement") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall, if requested by Lessee, use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

30.4 Self-Executing. The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

31. Attorneys' Fees. If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "**Prevailing Party**" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach (\$200 is a reasonable minimum per occurrence for such services and consultation).

32. Lessor's Access; Showing Premises; Repairs. Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect on Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

33. Auctions. Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

34. Signs. Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. Lessor may not place any sign on the exterior of the Building that covers any of the windows of the Premises. Except for ordinary "For Sublease" signs which may be placed only on the Premises, Lessee shall not place any sign upon the Project without Lessor's prior written consent. All signs must comply with all Applicable Requirements.

35. Termination; Merger. Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

36. Consents. All requests for consent shall be in writing. Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

37. Guarantor.

37.1 Execution. The Guarantors, if any, shall each execute a guaranty in the form most recently published BY AIR CRE.

37.2 Default. It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) an Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.

38. Quiet Possession. Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

39. Options. If Lessee is granted any option, as defined below, then the following provisions shall apply.

39.1 Definition. "Option" shall mean: (a) the right to extend or reduce the term of or renew this Lease or to extend or reduce the term of or renew any lease

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that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase, the right of first offer to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

39.2 Options Personal To Original Lessee. Any Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

39.3 Multiple Options. In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

39.4 Effect of Default on Options.

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

40. Security Measures. Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties. In the event, however, that Lessor should elect to provide security services, then the cost thereof shall be an Operating Expense.

41. Reservations.

(a) Lessor reserves the right: (i) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, (ii) to cause the recordation of parcel maps and restrictions, (iii) to create and/or install new utility raceways, so long as such easements, rights, dedications, maps, restrictions, and utility raceways do not unreasonably interfere with the use of the Premises by Lessee. Lessor may also: change the name, address or title of the Building or Project upon at least 90 days prior written notice; provide and install, at Lessee's expense, Building standard graphics on the door of the Premises and such portions of the Common Areas as Lessor shall reasonably deem appropriate; grant to any lessee the exclusive right to conduct any business as long as such exclusive right does not conflict with any rights expressly given herein; and to place such signs, notices or displays as Lessor reasonably deems necessary or advisable upon the roof, exterior of the Building or the Project or on signs in the Common Areas. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate such rights. The obstruction of Lessee's view, air, or light by any structure erected in the vicinity of the Building, whether by Lessor or third parties, shall in no way affect this Lease or impose any liability upon Lessor.

(b) Lessor also reserves the right to move Lessee to other space of comparable size in the Building or Project. Lessor must provide at least 45 days prior written notice of such move, and the new space must contain improvements of comparable quality to those contained within the Premises. Lessor shall pay the reasonable out of pocket costs that Lessee incurs with regard to such relocation, including the expenses of moving and necessary stationary revision costs. In no event, however, shall Lessor be required to pay an amount in excess of two months Base Rent. Lessee may not be relocated more than once during the term of this Lease.

(c) Lessee shall not: (i) use a representation (photographic or otherwise) of the Building or Project or their name(s) in connection with Lessee's business; or (ii) suffer or permit anyone, except in emergency, to go upon the roof of the Building.

42. Performance Under Protest. If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid "under protest" within 6 months shall be deemed to have waived its right to protest such payment.

43. Authority; Multiple Parties; Execution.

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

(b) If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

44. Conflict. Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

45. Offer. Preparation of this Lease by either party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

46. Amendments. This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

47. Waiver of Jury Trial. THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.

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48. **Arbitration of Disputes.** An Addendum requiring the Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease ☐ is ☒ is not attached to this Lease.

49. **Accessibility; Americans with Disabilities Act.**

(a) The Premises:

☒ have not undergone an inspection by a Certified Access Specialist (CASp). Note: A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

☐ have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises met all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential.

☐ have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises did not meet all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential except as necessary to complete repairs and corrections of violations of construction related accessibility standards.

In the event that the Premises have been issued an inspection report by a CASp the Lessor shall provide a copy of the disability access inspection certificate to Lessee within 7 days of the execution of this Lease.

(b) Since compliance with the Americans with Disabilities Act (ADA) and other state and local accessibility statutes are dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in compliance with ADA or other accessibility statutes, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY AIR CRE OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.
2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING AND SIZE OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

WARNING: IF THE PREMISES ARE LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at: 24031 El Toro Road, Suite 100, Laguna Hills, CA 92654

On: _____

By LESSOR:

The City of Laguna Hills, a municipal corporation organized and existing under the laws of the State of California

By: _____

Name Printed: Jarad Hildenbrand

Title: City Manager

Phone: _____

Fax: _____

Email: _____

By: _____

Name Printed: _____

Title: _____

Phone: _____

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OFG-21.20, Revised 01-01-2019

Executed at: _____

On: _____

By LESSEE:

Layla Fijany, DDS MS Corp

By: _____

Name Printed: Dr. Layla Fijany

Title: Individual

Phone: _____

Fax: _____

Email: _____

By: _____

Name Printed: _____

Title: _____

Phone: _____

Fax: _____

Email: _____

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Fax: _____
Email: _____

Address: _____
Federal ID No.: _____

BROKER

Essex Realty Management, Inc.

Attn: Heather Stark
Title: Senior Associate

Address: 17744 Sky Park Circle, Suite 100, Irvine CA 92614
Phone: 949-798-8100

Fax: _____
Email: hstark@essexrealty.com

Federal ID No.: _____
Broker/AGENT DRE License #: 02081393

Address: _____
Federal ID No.: _____

BROKER

Roam Commercial Realty

Attn: Neil O'Connor
Title: _____

Address: _____
Phone: _____

Fax: _____
Email: _____

Federal ID No.: _____
Broker/AGENT DRE License #: _____

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DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP

(As required by the Civil Code)

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

SELLER'S AGENT

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Seller.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

BUYER'S AGENT

A Buyer's agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:

To the Buyer: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Buyer.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent, either acting directly or through one or more salesperson and broker associates, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

- (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer.
- (b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, a dual agent may not, without the express permission of the respective party, disclose to the other party confidential information, including, but not limited to, facts relating to either the Buyer's or Seller's financial position, motivations, bargaining position, or other personal information that may impact price, including the Seller's willingness to accept a price less than the listing price or the Buyer's willingness to pay a price greater than the price offered.

SELLER AND BUYER RESPONSIBILITIES

Either the purchase agreement or a separate document will contain a confirmation of which agent is representing you and whether that agent is representing you exclusively in the transaction or acting as a dual agent. Please pay attention to that confirmation to make sure it accurately reflects your understanding of your agent's role. The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional. If you are a Buyer, you have the duty to exercise reasonable care to protect yourself, including as to those facts about the property which are known to you or within your diligent attention and observation. Both Sellers and Buyers should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction. **This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on page 2. Read it carefully. I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE AND THE PORTIONS OF THE CIVIL CODE PRINTED ON THE BACK (OR A SEPARATE PAGE).**

☐ Buyer	☐ Seller	☒ Lessor	☐ Lessee	-	Date: _____
☐ Buyer	☐ Seller	☐ Lessor	☒ Lessee	-	Date: _____

Agent: Essex Realty Management DRE Lic. #: 00965485
Real Estate Broker (Firm)

By: Heather Stark- DRE Lic. #: 02153034 Date: _____
(Salesperson or Broker-Associate)

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THIS FORM HAS BEEN PREPARED BY AIR CRE. NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF THIS FORM FOR ANY SPECIFIC TRANSACTION. PLEASE SEEK LEGAL COUNSEL AS TO THE APPROPRIATENESS OF THIS FORM.

DRAFT

DRAFT

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**DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP
CIVIL CODE SECTIONS 2079.13 THROUGH 2079.24 (2079.16 APPEARS ON THE FRONT)**

2079.13. As used in Sections 2079.7 and 2079.14 to 2079.24, inclusive, the following terms have the following meanings:

(a) "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. The agent in the real property transaction bears responsibility for that agent's salespersons or broker associates who perform as agents of the agent. When a salesperson or broker associate owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the salesperson or broker associate functions. **(b)** "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee of real property. **(c)** "Commercial real property" means all real property in the state, except (1) single-family residential real property, (2) dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, (3) a mobilehome, as defined in Section 798.3, (4) vacant land, or (5) a recreational vehicle, as defined in Section 799.29. **(d)** "Dual agent" means an agent acting, either directly or through a salesperson or broker associate, as agent for both the seller and the buyer in a real property transaction. **(e)** "Listing agreement" means a written contract between a seller of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer, including rendering other services for which a real estate license is required to the seller pursuant to the terms of the agreement. **(f)** "Seller's agent" means a person who has obtained a listing of real property to act as an agent for compensation. **(g)** "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the seller's agent. **(h)** "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property. **(i)** "Offer to purchase" means a written contract executed by a buyer acting through a buyer's agent that becomes the contract for the sale of the real property upon acceptance by the seller. **(j)** "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property, and includes (1) single-family residential property, (2) multiunit residential property with more than four dwelling units, (3) commercial real property, (4) vacant land, (5) a ground lease coupled with improvements, or (6) a manufactured home as defined in Section 18007 of the Health and Safety Code, or a mobilehome as defined in Section 18008 of the Health and Safety Code, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. **(k)** "Real property transaction" means a transaction for the sale of real property in which an agent is retained by a buyer, seller, or both a buyer and seller to act in that transaction, and includes a listing or an offer to purchase. **(l)** "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration. **(m)** "Seller" means the transferor in a real property transaction and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor of real property. **(n)** "Buyer's agent" means an agent who represents a buyer in a real property transaction.

2079.14. A seller's agent and buyer's agent shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and shall obtain a signed acknowledgment of receipt from that seller and buyer, except as provided in Section 2079.15, as follows: **(a)** The seller's agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. **(b)** The buyer's agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase. If the offer to purchase is not prepared by the buyer's agent, the buyer's agent shall present the disclosure form to the buyer not later than the next business day after receiving the offer to purchase from the buyer.

2079.15. In any circumstance in which the seller or buyer refuses to sign an acknowledgment of receipt pursuant to Section 2079.14, the agent shall set forth, sign, and date a written declaration of the facts of the refusal.

2079.16 Reproduced on Page 1 of this AD form.

2079.17(a) As soon as practicable, the buyer's agent shall disclose to the buyer and seller whether the agent is acting in the real property transaction as the buyer's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the buyer's agent prior to or coincident with execution of that contract by the buyer and the seller, respectively. **(b)** As soon as practicable, the seller's agent shall disclose to the seller whether the seller's agent is acting in the real property transaction as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the seller's agent prior to or coincident with the execution of that contract by the seller.

(C) CONFIRMATION: The following agency relationships are confirmed for this transaction.

Seller's Brokerage Firm **DO NOT COMPLETE, SAMPLE ONLY** _____ License Number _____

Is the broker of (check one): ☐ the seller; or ☐ both the buyer and seller. (dual agent)

Seller's Agent **DO NOT COMPLETE, SAMPLE ONLY** _____ License Number _____

Is (check one): ☐ the Seller's Agent. (salesperson or broker associate); or ☐ both the Buyer's Agent and the Seller's Agent. (dual agent)

Buyer's Brokerage Firm **DO NOT COMPLETE, SAMPLE ONLY** _____ License Number _____

Is the broker of (check one): ☐ the buyer; or ☐ both the buyer and seller. (dual agent)

Buyer's Agent **DO NOT COMPLETE, SAMPLE ONLY** _____ License Number _____

Is (check one): ☐ the Buyer's Agent. (salesperson or broker associate); or ☐ both the Buyer's Agent and the Seller's Agent. (dual agent)

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14. An agent's duty to provide disclosure and confirmation of representation in this section may be performed by a real estate salesperson or broker associate affiliated with that broker.

2079.18 (Repealed pursuant to AB-1289, 2017-18 California Legislative session)

2079.19 The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

2079.20 Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically

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prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

2079.21 (a) A dual agent may not, without the express permission of the seller, disclose to the buyer any confidential information obtained from the seller. **(b)** A dual agent may not, without the express permission of the buyer, disclose to the seller any confidential information obtained from the buyer. **(c)** "Confidential information" means facts relating to the client's financial position, motivations, bargaining position, or other personal information that may impact price, such as the seller is willing to accept a price less than the listing price or the buyer is willing to pay a price greater than the price offered. **(d)** This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

2079.22 Nothing in this article precludes a seller's agent from also being a buyer's agent. If a seller or buyer in a transaction chooses to not be represented by an agent, that does not, of itself, make that agent a dual agent.

2079.23 (a) A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship. **(b)** A lender or an auction company retained by a lender to control aspects of a transaction of real property subject to this part, including validating the sales price, shall not require, as a condition of receiving the lender's approval of the transaction, the homeowner or listing agent to defend or indemnify the lender or auction company from any liability alleged to result from the actions of the lender or auction company. Any clause, provision, covenant, or agreement purporting to impose an obligation to defend or indemnify a lender or an auction company in violation of this subdivision is against public policy, void, and unenforceable.

2079.24 Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.

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GUARANTY OF LEASE

WHEREAS Layla Fijany, DDS MS Corp ("Lessee") desires to lease from The City of Laguna Hills, a municipal corporation organized and existing under the laws of the State of California ("Lessor") the premises commonly known as (street address, city, state, zip) 24031 El Toro Road, Suite 205 Laguna Hills, CA 92654 ("Premises") pursuant to a lease dated for reference purposes only as of July 1, 2024 ("Lease").

WHEREAS, as a material inducement to and in consideration of Lessor executing the Lease, Lessor requires Layla Fijany, DDS MS Corp ("Guarantor") to execute this Guaranty of Lease ("Guaranty"); Guarantor desires Lessee to consummate the Lease. Accordingly, contemporaneous with execution of the Lease, Guarantor is executing this Guaranty to induce Lessor to execute the Lease with Lessee.

NOW THEREFORE, Guarantor hereby unconditionally and irrevocably guarantees and promises to perform and be liable for any and all obligations and liabilities of Lessee under the Lease, including, but not limited to, payment of all rents and all other sums payable by Lessee under the Lease and performance by Lessee of each and every one of the terms, conditions and covenants to be kept and performed by Lessee under the Lease.

Guarantor hereby agrees that, without the consent of, or notice to, Guarantor and without affecting or in any way releasing Guarantor's obligations under this Guaranty: (i) Lessor and Lessee may, by agreement or course of conduct, amend, extend, renew or otherwise alter any term, covenant or condition of the Lease, or the Lease may be assigned by Lessor or Lessee (and their successors and assigns) and this Guaranty shall guarantee all obligations of Lessee under the Lease as so amended, extended, renewed, altered or assigned; (ii) Lessor may release, change or add a party to the Lease and/or a guarantor of the Lease; (iii) Lessor may exercise, not exercise, delay exercising, impair, modify, limit, terminate or suspend any of Lessor's rights or remedies under the Lease or this Guaranty; and (iv) Lessor may permit all or any part of the Premises to be subleased, or the Lease to be assigned, assumed, transferred, mortgaged or encumbered.

Guarantor hereby agrees that no notice of nonperformance or default by Lessee or by another guarantor need be given to Guarantor. This Guaranty is a continuing and irrevocable guarantee. Guarantor waives the benefit of any law allowing Guarantor to revoke this Guaranty. No provision of this Guaranty or rights of Lessor hereunder may be waived, nor may any Guarantor be released from any obligation under this Guaranty except by a writing duly executed by Lessor.

Guarantor hereby waives and agrees not to assert or take advantage of any right or defense based on: (i) notice of acceptance of this Guaranty; (ii) demands (including demands for payment or performance), presentation and protest; (iii) any statute of limitations; (iv) requiring Lessor to proceed against Lessee, any Guarantor or other guarantor or any other person (as herein defined) liable to Lessor, or to proceed against these persons in any order; (v) requiring Lessor to apply any security deposit or other security; (vi) requiring Lessor to proceed under any other remedy Lessor may have before proceeding against Guarantor; (vii) any right of subrogation that Guarantor may have against Lessee or other guarantors; (viii) any right or defense that may arise by reason of the incapacity, lack of authority, death or disability of Lessee, any guarantor or any other person; (ix) any right or defense arising by reason of the absence, impairment, modification, limitation, destruction or cessation (in bankruptcy, by an election of remedies, or otherwise) of the liability of Lessee, of the subrogation rights of Guarantor, or of the rights of Guarantor to proceed against Lessee for reimbursement; (x) limiting Guarantor's obligations to not exceed Lessee's obligations; and (xi) notices (including notices of adverse change in the financial status of Lessee or other facts that increase the risk to Guarantor).

The obligations of Guarantor under this Guaranty shall not be altered, limited or affected by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization or liquidation of Lessee, Guarantor, any other guarantor, or by any defense that Lessee, Guarantor or any other guarantor may have by reason of any order, decree, or decision of any court or administrative body resulting from any such proceeding.

Guarantor subordinates any and all existing or future indebtedness of Lessee to Guarantor to Lessee's obligations owed to Lessor under the Lease. Any recovery by Lessor from any other guarantor or insurer shall first be credited to the portion of Lessee's indebtedness to Lessor which exceeds the maximum liability of Guarantor under this Guaranty. If a person comprising Guarantor is married, such Guarantor expressly agrees that recourse may be had against such Guarantor's separate or community property.

Guarantor shall, upon ten (10) days' prior written notice from Lessor, provide Lessor with Guarantor's financial statements for the current year and tax returns for the three (3) preceding years and, if such is the normal practice of Guarantor, such statements shall be prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant. Lessor shall maintain Guarantor's financial statements and tax returns in confidence but shall be permitted to disclose Guarantor's financial statements and tax returns to prospective lenders, purchasers or others for a bona fide business purpose.

Guarantor shall, upon ten (10) days' prior written notice from Lessor, in writing reaffirm that this Guaranty remains and continues in full force and effect, that no event has occurred that would invalidate the Guaranty or excuse Guarantor's obligations or performance under the Guaranty, and that the Guaranty applies to the Lease, as amended, extended, renewed, altered or assigned. Guarantor shall, upon ten (10) days' prior written notice from Lessor, execute such other and further documents and do such further acts as may be reasonably necessary or required by Lessor to effectuate the intent of the parties and carry out the terms of this Guaranty.

Guarantor agrees that any suit, action or proceeding arising directly or indirectly from the Guaranty or the Lease shall be litigated only in courts located within the county and state in which the Premises is located. Guarantor irrevocably consents to the jurisdiction of any local, state or federal court located within the county and state in which the Premises is located, and waives and agrees not to assert by way of motion, defense or otherwise in any suit, action, or proceeding any claim that Guarantor is not personally subject to the jurisdiction of the above-named courts, that such suit, action, or proceeding is brought in an inconvenient forum, or that the venue of such action, suit, or proceeding is improper.

Each person which comprises Guarantor consents to service of process by a nationally recognized overnight courier service (such as Federal Express) at either the Premises or at the Guarantor's address for notices set forth below, and shall be deemed served and received three (3) business days after deposit with the overnight mail service. Guarantor irrevocably waives and agrees not to plead or claim in any action or proceeding that such service of process was in any way invalid or ineffective. Lessor reserves the right to serve process in any other manner permitted by law.

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This Guaranty shall be governed by the laws of the state in which the Premises is located and, for purposes of conflicts of law, Guarantor shall be treated as if resident of or domiciled in such state. Guarantor waives the right to a jury trial of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding or other hearing brought against Guarantor. If and to the extent the Lease requires Lessor and Lessee to arbitrate any disputes, then Guarantor also agrees to arbitrate such disputes in the same arbitration to the extent related to the Guaranty and upon the same terms and conditions provided in the Lease.

If Lessor brings an action or proceeding against Guarantor to enforce this Guaranty, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "Prevailing Party" shall include, without limitation, the party who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other party of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred.

This Guaranty constitutes the entire agreement between Guarantor and Lessor with respect to the subject matter of this Guaranty and supersedes all prior agreements, understandings, negotiations, representations and discussions, whether verbal or written, of the parties, pertaining to such subject matter. Guarantor is not relying on any representations, warranties or inducements from Lessor that are not expressly stated in this Guaranty.

If any provision of this Guaranty is determined to be illegal or unenforceable, all other provisions hereof shall nevertheless be effective. The waiver or failure to enforce any provision of this Guaranty shall not operate as a waiver of any other breach of such provision or any other provisions of this Guaranty, nor shall any single or partial exercise of any right, power or privilege preclude any other or further such exercise or the exercise of any other right, power or privilege. Time is strictly of the essence under this Guaranty and any amendment, modification or revision of this Guaranty.

Each person executing this Guaranty represents and warrants to Lessor that (i) each individual executing this Guaranty has the legal power, right, and actual authority to bind Guarantor; (ii) Guarantor has the legal right, power and authority to enter into and perform this Guaranty; (iii) all requisite action by or on behalf of a corporation, limited liability company, partnership (general or limited), trust or other legal entity ("entity") has been taken for this Guaranty to be duly authorized by such entity or Guarantor; (vi) no consent of any partner, shareholder, member, creditor, investor, government, judicial or administrative body or other party is required in connection with Guarantor executing this Guaranty; (v) this Guaranty is a valid and legally binding obligation of Guarantor; (vi) the execution and delivery of this Guaranty does not conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note, or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement or other agreements or instruments to which Guarantor is a party or by which Guarantor is bound; and (vi) Guarantor will derive a substantial and material economic benefit from Lessor's execution of the Lease. If Guarantor is an entity, Guarantor shall, concurrently with the execution of this Guaranty (or upon ten (10) days' prior written notice from Lessor), deliver to Lessor a certified copy of a resolution or other documentation evidencing that such entity is authorized or ratifies the entity's execution of this Guaranty.

The term "person" as used in this Guaranty shall include an individual and/or an entity. If more than one (1) person comprises Guarantor, the obligations of such persons shall be joint and several. The unenforceability of this Guaranty or Lessor's election not to enforce this Guaranty against one (1) or more persons shall not affect the obligations of the remaining persons which comprise Guarantor or the enforceability of this Guaranty against such remaining persons.

Any notice, request, demand, instruction or other communication to be given to Guarantor under this Guaranty shall be in writing and shall be delivered at either the Premises or the address set forth beneath the Guarantor's signature below, or to such other place as Guarantor may from time to time in writing designate by at least fifteen (15) days' notice to Lessor.

When the context and construction so requires, all words used in the singular in this Guaranty shall be deemed to have been used in the plural. The term "Lessee" as used in this Guaranty shall mean the Lessee named in the Lease, any assignee of Lessee's interest under the Lease and their respective successors and assigns. The term "Lessor" as used in this Guaranty shall mean the Lessor named in the Lease, any assignee of Lessor, whether by outright assignment, assignment for security or otherwise. Lessor may without Guarantor's consent assign this Guaranty, voluntarily or by operation of law. This Guaranty applies to, inures to the benefit of, and binds all persons that comprise Guarantor, their heirs, devisees, legatees, executors, administrators, representatives, successors and assigns.

Signatures to this Guaranty accomplished by means of electronic signature or similar technology shall be legal and binding. This Guaranty may be executed in counterparts.

Guarantor is advised to seek advice of legal counsel before signing this Guaranty. Guarantor acknowledges that AIR CRE, the real estate brokers or their agents or employees have not made any representation or statement as to the legal sufficiency or effect or tax consequences of this Guaranty or the Lease.

GUARANTOR
Layla Fijany, DDS MS Corp

Executed At: _____
On: _____

By: _____
Name Printed: Dr. Layla Fijany
Title: _____
Address: _____
Email Address: _____

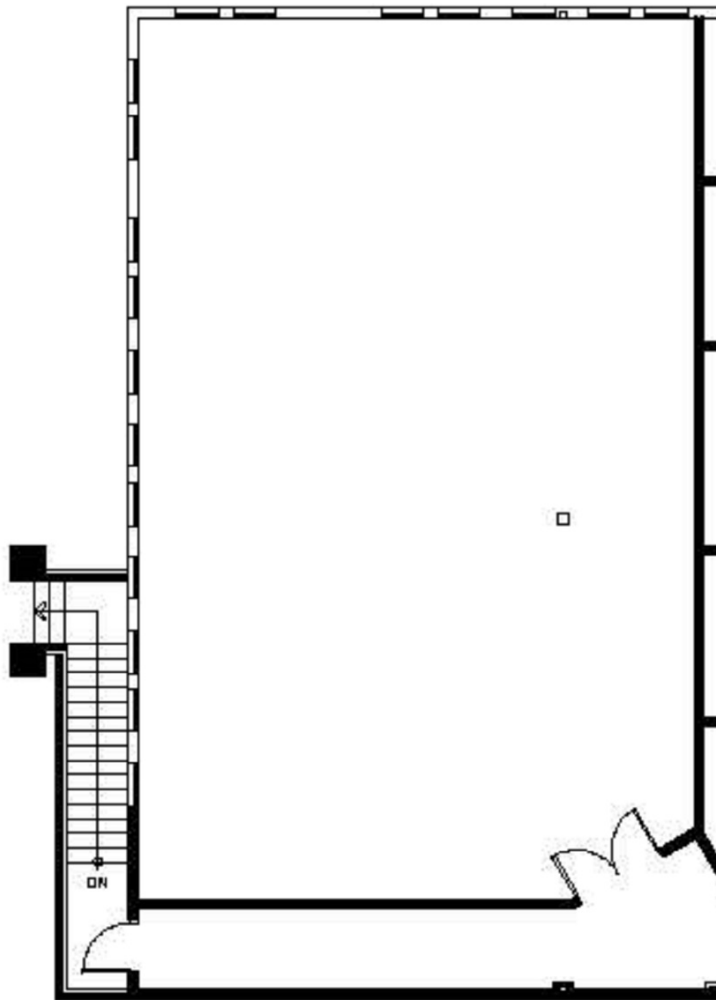
By: _____
Name Printed: _____
Title: _____
Address: _____
Email Address: _____

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EXHIBITS TO LEASE

Exhibit "A":

AVAILABLE
SUITE 205
1958 USF
2343 RSF



INITIALS

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EXLS-1.00, Revised 10-22-2020

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Last Edited: 7/1/2024 1:49 PM

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EXHIBIT B

RULES AND REGULATIONS

ATTACHED TO AND MADE A PART OF STANDARD OFFICE LEASE

The following Rules and Regulations shall be in effect at the Office Building Project. Lessor reserves the right to adopt reasonable modifications and additions hereto. In the case of any conflict between these Rules and Regulations and the Lease, the Lease shall be controlling.

1. Except with the prior written consent of Lessor, no Lessee shall conduct any retail sales or any manufacturing of any kind in or from the Premises, or any business other than that specifically provided for in the Lease.

2. Lessor reserves the right to prohibit personal goods and services vendors from access to the Office Building Project except upon such reasonable terms and conditions, including but not limited to the payment of a reasonable fee and provision for insurance coverage, as are related to the safety, care and cleanliness of the Office Building Project, the preservation of good order thereon, and the relief of any financial or other burden on Lessor occasioned by the presence of such vendors or the sale by them of personal goods or services to the Lessee or its employees. If reasonably necessary for the accomplishment of these purposes, Lessor may exclude a particular vendor entirely or limit the number of vendors who may be present at any one time in the Office Building Project. The term "personal goods or services vendors" means persons who periodically enter the Office Building Project of which the Premises are a part for the purpose of selling goods or services to a Lessee, other than goods or services, which are used by a lessee only for the purpose of conducting its business on the Premises. "Personal goods or services" include, but are not limited to, drinking water and other beverages, food, barbering services, and shoe shining services. This Section 2 shall not apply to Lessee's vendors and suppliers in connection with Lessee's operation of its business.

3. The sidewalks, halls, passages, elevators and stairways shall not be obstructed by any Lessee or used by it for any purpose other than for ingress to and egress from their respective Premises. The halls, passages, entrances, elevators, stairways, balconies and roof are not for the use of the general public, and Lessor shall in all cases retain the right to control and prevent access thereto of all persons whose presence in the judgment of Lessor shall be prejudicial to the safety, character, reputation and interests of the Office Building Project and its lessees, provided that nothing herein contained shall be construed to prevent such access to persons with whom Lessee normally deals only for the purpose of conducting its business on the Premises (such as clients, customers, office suppliers and equipment vendors, and the like) unless such persons are engaged in illegal activities. No Lessee and no employees of any Lessee shall go upon the roof of the Building without the written consent of Lessor. This Section 3 shall not apply to Lessee's vendor's suppliers in connection with Lessee's operation of its business.

4. The sashes, sash doors, windows, glass lights, and any lights or skylights that reflect or admit light into the halls or other places of the Building shall not be covered or obstructed. The toilet rooms, water and wash closets and other water apparatus shall not be used for any purpose other than that for which they were constructed, and no foreign substance of any kind whatsoever shall be thrown therein, and the expense of any breakage, stoppage or damage, resulting from the violation of this rule shall be borne by the Lessee who, or whose clerks, agents, employees, or visitors, shall have caused it.

5. No sign, advertisement or notice visible from the exterior of the Premises or Building shall be inscribed, painted or affixed by Lessee on any part of the Office Building Project or the Premises without the prior written consent of Lessor. If Lessor shall have given such consent at any time, whether before or after the execution of this Lease, such consent shall in no way operate as a waiver or release of any of the provisions hereof or of this Lease, and shall be deemed to relate only to the particular sign, advertisement or notice so consented to by Lessor and shall not be construed as dispensing with the necessity of obtaining the specific written consent of Lessor with respect to each and every such sign, advertisement or notice, as the case may be, so consented to by Lessor. Lessor shall have the right to remove any non-approved sign, advertisement or notice, without notice to and at the expense of Lessee, and Lessor shall not be liable in damages for such removal.

6. In order to maintain the outward professional appearance of the Office Building Project all window coverings to be installed at the Premises shall be subject to Lessor's prior approval. If Lessor, by a notice in writing to Lessee, shall object to any curtain, blind, shade or screen attached to or hung in, or used in connection with, any window door of the Premises, such use of such curtain, blind, shade or screen shall be forthwith discontinued by Lessee. No awnings shall be permitted on any part of the Premises.

7. Lessee shall not lay linoleum, tile, carpet or other similar floor covering so that the same shall be affixed to the floor of the Premises in any manner except as approved by Lessor.

8. Lessee shall not do or permit anything to be done in the Premises, or bring or keep anything therein, which shall in any way increase the rate of fire insurance on the Office Building Project, or on the property kept therein, or obstruct or interfere with the rights of other Lessees, or in any way injure or annoy them, or conflict with the regulations of the Fire Department or the fire laws, or with any insurance policy upon the Office Building Project, or any part thereof, or with any rules and ordinances established by the Board of Health or other governmental authority.

9. No Lessee shall sweep or throw or permit to be swept or thrown from the

Premises any dirt or other substance into any of the corridors or halls or elevators, or out of the doors or windows or stairways of the Building. Lessee shall not use, keep or permit to be used any foul or noxious gas or substance in the Premises, or permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to Lessor or other occupants of the Office Building Project by reason of noise, odors, fire hazards and/or vibrations, or interfere in any way with other Lessees or those having business therein, nor shall any animals or birds be kept in or about the Office Building Project.

10. Lessee and its employees, agents and invitees shall not smoke any tobacco products or any other smoking materials whatsoever in the Premises, Building, common areas or any other area of the Project except in such areas, if any, as shall be designated by Lessor for smoking, in Lessor's sole and absolute discretion.

11. No cooking shall be done or permitted by Lessee on the Premises, except for the use of a microwave oven for food or Underwriter's Laboratory approved equipment for brewing coffee, tea, and similar beverages shall be permitted, provided that such use is in compliance with law. Offices in the Office Building Project shall not be used for the storage of merchandise or for sleeping or lodging.

12. Lessee, upon the termination of its tenancy, shall deliver to Lessor all the keys of offices, rooms and toilet rooms which shall have been furnished Lessee or which Lessee shall have had made, and in the event of loss of any keys so furnished, shall pay Lessor therefore.

13. On Saturdays after 6:00pm., Sundays and legal holidays, and on other days between the hours of 9:00 p.m. and 7:00 a.m., access to the Office Building Project or to the halls, corridors, elevators or stairways in the Building, or to the Premises may be refused unless the person seeking access is known to the building watchman, if any, in charge and has a pass or is properly identified. Lessor shall in no case be liable for damages for the admission to or exclusion from the Office Building Project of any person whom Lessor has the right to exclude under Rule 3 above. In case of invasion, mob, riot, public excitement, or other commotion, Lessor reserves the right but shall not be obligated to prevent access to the Office Building Project during the continuance of the same by closing the doors or otherwise, for the safety of the tenants and protection of property in the Office Building Project.

14. Lessee shall see that the windows and doors of the Premises are closed and securely locked before leaving the building and Lessee shall exercise extraordinary care and caution that all water faucets or water apparatus are entirely shut off before Lessee or Lessee's employees leave the Building, and that all electricity, gas or air shall likewise be carefully shut off, so as to prevent waste or damage, and for any default or carelessness Lessee shall make good all injuries sustained by other Lessees or occupants of the Building or Lessor.

15. Lessee shall not alter any lock or install a new or additional lock or any bolt

on any door of the Premises without prior written consent of Lessor. If Lessor shall give its consent, Lessee shall in each case furnish Lessor with a key for any such lock.

16. Lessee shall not install equipment such as, but not limited to, electronic tabulating or computer equipment requiring electrical or air conditioning service in excess of those to be provided by Lessor under the Lease and any such equipment shall be placed in the Premises in settings approved by Lessor to adsorb or prevent any vibration, noise or annoyance.

17. No bicycle, or shopping cart, or other vehicle or any animal shall be brought into the Premises or the halls, corridors, elevators or any part of the Building by Lessee.

18. Lessor shall have the right to prohibit the use of the name of the Office Building Project or any other publicity by Lessee which in Landlord's opinion tends to impair the reputation of the Office Building Project, or their desirability for other Lessees, and upon written notice from Lessor, Lessee will refrain from or discontinue such publicity.

19. Lessee shall not erect any aerial or antenna on the roof or exterior walls of the Premises, the Building, or the Office Building Project.

20. Lessee shall not overload the floor of the Premises. In addition, Lessee shall not mark, drive nails, screw or drill into partitions, ceilings or floor of the Premises or deface the Premises.

21. No furniture, freight or equipment of any kind shall be brought into the Building or the Building's elevator without the consent of Lessor and all moving of the same into or out of the Building shall be done at such time and in such manner, as Lessor shall designate. Lessor shall have the right to prescribe the weight, size and position of all safes and other heavy equipment brought into the Building and also the times and manner of moving the same in and out of the Office Building Project. Safes or other heavy objects shall, if considered necessary by Lessor, stand on wood strips of such thickness as is necessary to properly distribute the weight. However, Lessor's consent to placement of Lessee's safes, heavy equipment or furniture shall not constitute a representation or warranty by Lessor that the safe, heavy equipment or furniture complies, with regard to distribution of weight and/or vibration, with the provisions of the Rule 21 nor relieve Lessee from responsibility for the consequences of noncompliance. Lessor will not be responsible for loss of or damage to any safe or property from any cause and all damage done to the Building by moving or maintaining any such safe or property from any cause and all damage done to the Building by moving or maintaining any such safe or other property shall be repaired at the expense of Lessee. There shall not be used in any space, or in the public halls of the Building, either by any Lessee or others, any hand trucks except those equipped with rubber tires and side guards.

22. Except with the written consent of Lessor, no person or persons other than those approved by Lessor shall be permitted to enter the Building for their purpose of cleaning the same. Lessee shall not cause any unnecessary labor by reason of Lessee's carelessness or indifference in the preservation of good order and cleanliness. Lessor shall in no way be responsible to any Lessee for any loss of property on the Premises, however occurring, or for any damage done to the effects of any lessee by the janitor or any other employee or any other person. Janitor service shall include ordinary dusting and cleaning by the janitor assigned to such work and shall not include cleaning of carpets or rugs, except normal vacuuming, or moving of furniture and other special services. Janitor service may not be furnished on nights when rooms are occupied after 9:00p.m.

23. Lessor will direct electricians as to where and how telephone and telegraph wires are to be introduced. No boring or cutting for wires will be allowed without the consent of Lessor. The location of telephones, call boxes and other office equipment affixed to the Premises shall be subject to the approval of Lessor.

24. No furniture, packages, supplies, equipment or merchandise will be received in the Building or carried up or down in the elevators, except between such hours and in such elevators as shall be designated by Lessor.

25. Lessor reserves the right to exclude or expel from the Office Building Project any person who in the judgment of Lessor, is intoxicated or under the influence of liquor or illegal, non-prescription drugs, or who shall in any manner do any act in violation of any of the Rules and Regulations of the Office Building Project.

26. The requirements of Lessee will be attended to only upon application to Lessor. Contractors, vendors and employees of Lessor shall not perform any work or do anything outside of their regular duties unless under special instructions from the Lessor or Lessor's agent.

27. No vending machine shall be installed, maintained or operated upon the Premises without the written consent of the Lessor.

28. Lessor shall have the right, exercisable without notice and without liability to Lessee, to change the name and the street address of the Building and/or Office Building Project of which the Premises are a part.

29. Lessee agrees that it shall comply with all fire and security regulations that may be issued from time-to-time by Lessor and Lessee also shall provide Lessor with the name of a designated responsible employee to represent Lessee in all matters pertaining to such fire or security regulations.

30. Lessor reserves the right by written notice to Lessee, to rescind, alter or

waive any rule or regulation at any time prescribed for the Office Building Project when, in Lessor's judgment, it is necessary, desirable or proper for the best interest of the Office Building Project and its lessees.

31. Lessees shall not disturb, solicit, or canvas any occupant of the Office Building Project and shall cooperate to prevent same.

32. Lessor shall furnish heating and air conditioning during the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday, and 8:00 a.m. to 12:00 p.m. on Saturday except for holidays. In the event Lessee requires heating and air conditioning during off hours, Sundays or Holidays, Lessor shall on notice provide such services at the then prevailing rate for such extra services.

33. Lessee shall cooperate with Lessor in obtaining maximum effectiveness of the cooling system by closing blinds when the sun's rays fall directly on windows of the premises. Lessee shall not obstruct, alter, or in any way impair the efficient operation of Lessor's heating, ventilating and air-conditioning system. Lessee shall not tamper with or change the setting of any thermostats or control valves.

34. Parking

- (a) The parking lot shall be accessible twenty-four (24) hours per day, subject to parking card or other reasonable Identification or security restriction as may be reasonably established by Lessor from time-to-time. Lessee agrees to cooperate with Lessor in completing regular maintenance of the parking lot.
- (b) Automobiles must be parked entirely within the stall lines.
- (c) All directional signs and arrows must be observed and the speed limit shall be 5 miles per hour.
- (d) Parking is prohibited in areas not striped for parking.
- (e) Lessor may refuse to permit any person who violates the within rules to park in the parking lot, and any violation of the rules shall subject the automobile to removal from the parking lot at the parker's expense.
- (f) Every parker is required to park and lock his or her own automobile. All responsibility for any loss or damage to automobile or any personal property therein is assumed by the parker.

- (g) The parking lot is for the sole purpose of parking one automobile per space. Washing, waxing, cleaning or servicing of any vehicles by the parker or his agents is prohibited.
- (h) Storage of vehicles in the parking facilities is prohibited. Lessee and Lessee's employees and visitors shall not leave vehicles in the parking lot overnight.
- (I) Lessor reserves the right to restrict customer, Lessee and Lessee's employees parking to a limited designated area or areas.

35. Lessee agrees to comply and acquaint its employees with such reasonable rules and regulations in the use of such Common areas as Lessor may adopt from time to time for the orderly and proper operation of said Common Areas.

Lessor reserves the right to make such other and further rules and regulations as in its judgment may be for the safety, care and cleanliness of the Office Building Project and for the preservation of good order therein. Lessee agrees to abide by these Rules and Regulations herein above stated and any additional rules and regulations, which are adopted hereafter.

Date: _____

Date: _____

Lessor's Initials: _____

Lessee's Initials: _____

EXHIBIT "C"

Waiver and Release.

It is the express and understood intent, purpose, desire, and agreement of the parties in the event of termination for cause or expiration of the Lease term, that Lessee, on behalf of itself, its officers, heirs, agents, shareholders, employees, subcontractors, executors, successors and assigns, shall and does hereby release and discharge Lessor, and its respective elected and appointed officials, officers, directors, employees, attorneys, accountants, consultants, other professionals, and agents, from and against the following: any claims, penalties, actions or causes of action, obligations, and demands of any kind including but not limited to, any claims arising under the California Eminent Domain Law (Title 7 (commencing with Section 1230.010) of Part 3 of the California Code of Civil Procedure), the Relocation Statutes and Regulations set forth in Chapter 16 (commencing with Section 7260) of Division 7 of the California Government Code and Subchapter 1 (commencing with Section 6000) Division 3 of Title 25 of the California Code of regulations, and claims for a "taking" or inverse condemnation arising under the United States or California Constitutions or under any federal, state, or local law, statute, ordinance, regulation, rule, official policy, court order, or common law (collectively, the "Released Claims").

The parties further acknowledge that the Released Claims include any claims for loss of business goodwill pursuant to Code of Civil Procedure §1263.510 et seq., for precondemnation damages and severance damages.

Date: _____

Date: _____

Lessor's Initials: _____ Lessee's Initials: _____

EXHIBIT "D"

WORK LETTER/REQUIREMENTS FOR IMPROVEMENTS OR ALTERATIONS BY LESSEE

If Lessor shall permit Lessee to construct any interior improvements (subsequent to the initial improvements to be constructed by Lessor, if any) in the Premises or to have any work performed in the Premises at any time prior to or during the Lease term by a contractor retained by Lessee ("Lessee's Work"), then Lessee shall comply with the requirements set forth herein. If Lessee's Work has been properly authorized, Lessee will receive written approval and consent for alterations to the Premises. All alterations to the Premises, excepting movable furniture and trade fixtures, shall, at Lessor's option, become a part of the realty and belong to Lessor.

1. SUBMITTAL OF PLANS. Prior to commencing any work in the Premises, Lessee shall submit to Lessor for approval its proposed plans for the work. Without limiting the foregoing, Lessee shall provide:

(a) A separate scale drawing denoting all proposed construction and/or demolition, if necessary.

(b) A separate drawing for each trade proposing structural, electrical, mechanical, civil or landscaping modifications.

(c) Specify all dimensions and complete references to all work to be performed in the affected areas.

(d) If adding extra electrical or mechanical equipment, provide complete operating and maintenance specifications for each item.

2. CHECKLIST. With respect to each project, Lessor will provide Lessee with a checklist listing the items required to be furnished to Lessor in connection with the proposed work. Lessee shall furnish to Lessor prior to, during, or upon completion of Lessee's Work, as applicable, each of the items specified in the checklist attached hereto as Attachment 1.

3. CONTRACTORS PROVIDING INTERIOR IMPROVEMENT SERVICES.

(a) The contractor employed by Lessee and any subcontractors shall be (i) duly licensed in the state in which the Premises are located, and (ii) subject to Lessor's prior written approval, which approval shall not be unreasonably withheld. If more than one trade is employed on a single job, state law requires the services of a general contractor in addition to contractors for specialty work being performed.

(b) Each contractor shall provide proof of licensing as a general or specialty contractor in accordance with state law. Additionally, each contractor shall furnish proof of licensing in the city or municipality in which the construction related activity is to take place.

(c) Lessee shall use Lessor's subcontractor for mechanical, electrical, plumbing, roofing and roofing consultant if available at competitive rates.

(d) Lessee and Lessee's contractors shall comply with all Applicable Laws pertaining to the performance of Lessee's Work and the completed improvements and all applicable safety regulations established by Lessor or the general contractor.

(e) Prior to commencement of any work in the Premises, Lessee and Lessee's contractors (and any subcontractors) shall obtain and provide Lessor with certificates evidencing Workers' Compensation, public liability and property damage insurance in amounts and forms and with companies

satisfactory to Lessor. Each general contractor (and any subcontractor) employed on the Premises shall provide Lessor with a current certificate of insurance in effect for that contractor with a thirty day notice of cancellation or revocation clause. Insurance requirements are as follows:

- (i) Comprehensive General Liability with a \$1,000,000 Combined Single Limit covering the liability of Lessor and contractor for bodily injury and property damage arising as a result of the construction of the improvements and the services performed thereunder. Lessor and any Management Company shall be named as an additional insured.
- (ii) Comprehensive Automobile Liability with a \$1,000,000 Combined Single Limit covering Lessor and vehicles used by contractor (and any subcontractor) in connection with the construction of the improvements.
- (iii) Workers' Compensation and Employer's Liability as required by law, for employees of the contractor (and any subcontractors) performing work on the Premises.

(f) The following requirements shall be incorporated as "Special Conditions" into the contract between Lessee and its contractors and a copy of the contract shall be furnished to Lessor prior to the commencement of Lessee's Work:

- (i) Prior to start of Lessee's Work, Lessee's contractor shall provide Lessor with a construction schedule in "bar graph" form indicating the completion dates of all phases of Lessee's Work.
- (ii) Lessee's contractor shall be responsible for the repair, replacement or clean-up of any damage done by it to other contractors' work which specifically includes accessways to the Premises which may be concurrently used by others.
- (iii) Lessee's contractor shall accept the Premises prior to starting any trenching operations. Any rework of sub-base or compaction required after the contractor's initial acceptance of the Premises shall be done by Lessee's contractor, which shall include the removal from the Project of any excess dirt or debris.
- (iv) Lessee's contractor shall contain its storage of materials and its operations within the Premises and such other space as it may be assigned by Lessor or Lessor's contractor. Should Lessee's contractor be assigned space outside the Premises, it shall move to such other space as Lessor or Lessor's contractor shall direct from time to time to avoid interference or delays with other work.
- (v) Lessee's contractor shall clean up the construction area and surrounding exterior areas daily. All trash, demolition materials and surplus construction materials shall be stored within the Premises and promptly removed from the Premises and the Project and disposed of in an approved sanitation site.
- (vi) Lessee's contractor shall provide temporary utilities, portable toilet facilities, and potable drinking water as required for its work within the Premises and shall pay to Lessor's contractor the cost of any temporary utilities and facilities provided by Lessor's contractor at Lessee's

contractor's request.

- (vii) Lessee's contractor shall notify Lessor or Lessor's project manager of any planned work to be done on weekends or other than normal job hours.
- (viii) Lessee's contractor or subcontractors shall not post signs on any part of the Project or on the Premises.

4. COSTS.

(a) Lessee shall promptly pay any and all costs and expenses in connection with or arising out of the performance of Lessee's Work (including the costs of permits thereof) and shall furnish to Lessor evidence of such payment upon request.

(b) Except in the case of carpet replacement or repainting, Lessee shall pay Lessor an amount equal to five percent (5%) of the total hard costs of construction and installation of Lessee's Work as compensation to Lessor for review of plans, use of facilities and other miscellaneous costs of Lessor incurred as a result of such work.

5. CONTRACTOR'S BONDS. At Lessor's sole discretion, Lessor may require Lessee to obtain performance and completion bonds to insure Interior Work

6. MECHANIC'S LIENS.

(a) Lessee shall not suffer or permit to be enforced against the Premises or any part of the Project any mechanic's, materialman's, contractor's or subcontractor's lien arising out of any work of improvement, however it may arise.

(b) Lessee shall notify Lessor at least ten (10) days prior to the commencement of construction of any Lessee's Work and Lessor shall have the right to post and record a notice of no responsibility in conformity with applicable law. Within ten (10) days following completion of Lessee's Work, Lessee shall file a Notice of Completion and deliver to Lessor an unconditional release and waiver of lien executed by each contractor, subcontractor and materialman involved in Lessee's Work.

(c) In the event any lien is filed against the Project or any portion thereof or against Lessee's leasehold interest therein as a result of Lessee's work, Lessee shall obtain the release and/or discharge of said lien, within ten (10) days after the filing thereof. In the event Lessee fails to do so, Lessor may obtain the release and/or discharge of said lien and Lessee shall indemnify Lessor for the costs thereof, including reasonable attorney's fees, together with interest at the Applicable Interest Rate from the date of demand. Nothing herein shall prohibit Lessee from contesting the validity of any such asserted claim, provided Lessee has furnished to Lessor a lien release bond freeing the Premises from the effect of the lien claim.

7. INDEMNITY. Lessee shall indemnify, defend (with counsel satisfactory to Lessor) and hold Lessor harmless from and against any and all suits, claims, actions, loss, cost or expense (including claims for workers' compensation, attorney's fees and costs) based on personal injury or property damage, or otherwise (including, without limitation, contract and breach of warranty claims) arising from the performance of Lessee's Work. Lessee shall repair or replace (or, at Lessor's election, reimburse Lessor for the cost of repairing or replacing) any portion of the Building or item of Lessor's equipment or any of Lessor's real or personal property damaged, lost or destroyed in the performance of Lessee's Work.

8. BUILDING STANDARDS. All work shall conform to Lessor's established building standards and specifications. Lessee is required to make these standards part of the construction documents.

9. ROOF PENETRATIONS. If improvements penetrate the roof membrane, the penetrations will be sealed per Lessor/IRC roofing specifications and inspected by IRC to maintain roof warranty. The cost of inspection and all corrective work shall be borne by Lessee. Lessee shall use Lessor's original roofing contractor.

10. BUILDING MODIFICATIONS. Work will only be approved within the confines of a given space. Lessee will not be allowed to modify building exterior or mechanical and electrical service as provided to the building in common with other tenants.

11. ELECTRICAL WORK. All electrical work shall be approved from the unit space electrical panel only. Additional service requirements shall be secured only by direction of Lessor. Lessee shall use Lessor's original electrical contractor if available at competitive rates.

12. SCHEDULE OF WORK. Lessee shall be required to provide a schedule of all work to be performed, subject to Lessor approval. All costs to produce such schedule shall be borne solely by Lessee.

13. CLEAN UP AND DISPOSAL OF CONSTRUCTION DEBRIS. Building trash containers are provided for office generated trash only and are not to be used for disposal of construction-related materials and debris. Unapproved usage will result in a penalty assessment to the Lessee equal to the cost of an extra pick-up service as provided under the current rate schedule of regular trash removal service.

14. INSPECTION BY LANDLORD. Lessor reserves the following rights: (i) the right of inspection prior to, during and at completion of all construction and/or demolition, (ii) the right to post and record a notice of nonresponsibility in conformity with California law, and (iii) the right to order, if reasonable, a total stop to all improvements underway for non-compliance with any of the requirements hereof.

15. GENERAL PROVISIONS.

(a) If Lessor has agreed to provide an allowance toward the cost of tenant improvements (other than the initial Lessee Improvement Allowance), Lessor shall retain from such funds an amount determined by Lessor until Lessee has fully complied with the requirements hereof.

(b) All materials, work, installations and decorations of any nature whatsoever brought on or installed in the Premises before the commencement of the Term or throughout the Term shall be at Lessee's risk, and neither Lessor nor any party acting on Lessor's behalf shall be responsible for any damage thereto or loss or destruction thereof due to any reason or cause whatsoever.

(c) Nothing contained herein shall make or constitute Lessee as the agent of Lessor.

Attachment 1 to "Exhibit D"

ITEMS TO BE FURNISHED TO LESSOR FOR EACH WORK OF IMPROVEMENT

1. Plan of Alterations for Lessor Approval.
2. Contractor(s), Address, Telephone Number, Contact Person.
3. Copy of Contractor's State and City Business License.
4. Copy of Building Permit.
5. Copy of Final Inspection and Signed Building Permit Cards.
6. Copy of Certificate of Insurance Naming The City of Laguna Hills and Essex Realty Management as Additional Insured. Insurance to include Comprehensive General Liability, Comprehensive Auto, Workers' Compensation, Employer's Liability and original Endorsement.
7. Signed Unconditional Lien Waiver in favor of Development Corporation.
8. Schedule of Work.
9. Copy of Completion and Payment Bond.
10. Architect's License and Expiration.
11. Copy of Permit Plans.
12. Copy of As-Built.
13. Copy of Recorded Notice of Completion.
14. Certificate of Occupancy.
15. Evidence of Insurance for All-Risk/Builder's Risk Insurance to the Amount of Improvements.



City of Laguna Hills City Council / Planning Agency Staff Report

Date: July 9, 2024
To: Mayor and Council Members
From: Jarad Hildenbrand, City Manager
Issue: Agreement with Procure America for Cost Reduction Consulting Services

Recommendation: That the City Council approve entering into a Consultant Services Agreement with Procure America for Cost Reduction Services and authorize the City Manager to execute the Agreement on behalf of the City

Background:

Procure America provides government agencies with business intelligent services to identify cost savings in indirect expense categories such as utilities (gas and electric), print management (copier lease and maintenance), telecommunications (voice, data, mobile), treasury and technology optimization. Procure America achieves savings for agencies by having their teams of subject matter experts review and analyze the billing rates and contracts for services in these expense categories. Through this process, these teams identify opportunities for savings or alternative arrangements for services.

Procure America has provided these services to many public agencies in California including the cities of Fullerton, Santa Ana, Tustin, Irvine, as well as the County of Orange, Orange County Transportation Authority, and Orange County Fire Authority.

Fiscal Impact:

There is no net financial impact associated with executing the agreement.

The City will pay Procure America fees at a percentage rate of 30% of cost savings/refunds actualized, per audit review for 60 consecutive months. In the instance where no cost savings or refunds are obtained, then Procure America will receive no

compensation for services rendered. This item is being brought to the City Council for approval in the instance the fees for service surpass the City Manager's signing authority of \$50,000.

Attachments:

1. Proposed Consulting Services Agreement with Procure America

CONSULTING SERVICES AGREEMENT

ProcureAmerica, LLC
Cost Reduction Consulting Services

THIS CONSULTING SERVICES AGREEMENT (hereinafter “Agreement”) is made and entered into, to be effective this 9th day of July 2024, by and between the CITY OF LAGUNA HILLS, a municipal corporation organized and existing under the laws of the State of California (hereinafter referred to as “City”), and PROCUREAMERICA, a California Limited Liability Company (hereinafter referred to as “Consultant”). City and Consultant are sometimes hereinafter individually referred to as “Party” and are hereinafter collectively referred to as the “Parties.”

RECITALS

A. City has determined that there is a need to retain the services of a qualified firm that specializes in providing cost recovery and reduction consulting services to public agencies (the “Project”).

B. Consultant has submitted to City a proposal and statement of work to provide cost reduction consulting services for the Project pursuant to the terms of this Agreement.

C. Consultant represents and maintains that it is uniquely qualified by virtue of its experience, training, education, reputation, and expertise to provide the requested cost reduction consulting services to City for the Project and has agreed to provide such services as provided herein. City does not have the personnel, experience, specialized training, qualifications, or technical expertise able to perform the work and services contracted for herein.

D. City desires to retain Consultant to provide such consulting services to City for the Project.

NOW, THEREFORE, in consideration of the promises and mutual obligations, covenants, and conditions contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. SERVICES OF CONSULTANT

1.1 Scope of Services and Standard of Performance. In compliance with all terms and conditions of this Agreement, Consultant agrees to provide and perform the cost reduction consulting services for the Project as described and as set forth in Consultant’s Proposal/Statement of Work, which is attached hereto as Exhibit “A” and is incorporated herein by reference (hereinafter referred to as the “Scope of Services,” the “Services” or “Work”). As a material inducement to the City entering into this Agreement, Consultant acknowledges and understands that the Services and Work contracted for under this Agreement require specialized skills and abilities and that, consistent with this understanding, Consultant’s Services and Work shall be performed in a skillful and competent manner and shall be held to a standard of quality

and workmanship prevalent in the industry for such Services and Work and with the standards recognized as being employed by consultants in the same discipline in the State of California. Consultant represents and warrants that it is skilled in the discipline necessary to perform the Services and Work and that it holds the necessary skills and abilities to satisfy the standard of work as set forth in this Agreement. Consultant represents and warrants that it and all of its employees, subconsultants and subcontractors providing any Work or Services under this Agreement shall have sufficient skill and experience to perform the Work or Services assigned to them. All Services and Work shall be completed to the reasonable satisfaction of the City.

1.2 Contract Documents. The Agreement between the Parties shall consist of the following: (1) this Agreement; and, (2) the Consultant's Proposal / Statement of Work submitted to the City ("Consultant's Proposal"), which shall both be referred to collectively hereinafter as the "Contract Documents." The Consultant's Proposal, attached hereto as Exhibit "A," is hereby incorporated by reference and is made a part of this Agreement. All provisions of the Contract Documents shall be binding on the Parties. Should any conflict or inconsistency exist in the Contract Documents, the conflict or inconsistency shall be resolved by applying the provisions in the highest priority document, which shall be determined in the following order of priority: (1st) the terms and conditions of this Agreement; and, (2nd) the provisions of the Consultant's Proposal.

1.3 Compliance with Law. Consultant shall comply at all times during the term of this Agreement with all applicable federal, state, and local laws, statutes, and ordinances and all lawful orders, rules, and regulations promulgated thereunder, including without limitation all applicable fair labor standards and Cal/OSHA requirements. Consultant shall keep itself fully informed of and in compliance with all local, state, and federal laws, rules, and regulations in any manner affecting the performance of the Work and Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with performing the Work and Services. If Consultant performs any Work or Services in violation of such laws, rules, and regulations, Consultant shall be solely responsible for all penalties and costs arising therefrom. Consultant shall defend, indemnify, and hold City, its officials, officers, employees, agents and volunteers, free and harmless from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules, or regulations.

1.4 Licenses, Permits, Fees, and Assessments. Prior to performing any Services or Work hereunder Consultant shall obtain all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession and perform the Work and Services required by this Agreement. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement and any extension, any license, permit, qualification, or approval that is legally required for Consultant to perform the Work and Services under this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant's performance of the Work and Services required by this Agreement, and shall defend, indemnify, and hold the City, its officials, officers, employees, agents and volunteers, free and harmless from and against

any claim or liability arising out of any failure or alleged failure to obtain such license, permits, and approvals of whatever nature that are legally required to perform the Work or Services.

1.5 Familiarity with Work. By executing this Agreement, Consultant represents and warrants that it (a) has thoroughly investigated and considered the Scope of Work or Services to be performed, (b) has carefully considered how the Services should be performed and has carefully examined the location or locations at or with respect to where such Services or Work is to be performed, and (c) fully understands the facilities, difficulties, and restrictions attending performance of the Services under this Agreement.

1.6 Care of Work. Consultant shall adopt reasonable methods during the term of the Agreement to furnish continuous protection to the Work and the equipment, materials, papers, documents, plans, studies, and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the Work by the City, except such losses or damages as may be caused by City's own negligence.

1.7 Further Responsibilities of Parties. Both Parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both Parties agree to act in good faith to execute all instruments, prepare all documents, and take all actions as may be reasonably necessary to carry out the purposes of this Agreement.

1.8 Additional Services. City shall have the right at any time during the performance of the Services, without invalidating this Agreement, to order extra work beyond that specified in Consultant's Proposal/Scope of Work (Exhibit "A") or make changes by altering, adding to, or deducting from such Work. No such extra work may be undertaken unless a written order is first given by the City to the Consultant, incorporating therein any adjustment in (i) the Maximum Contract Amount, as defined below, and/or (ii) the time to perform this Agreement, which adjustments are subject to the written approval of the Consultant. It is expressly understood by Consultant that the provisions of this section shall not apply to the Work and Services specifically set forth in the Scope of Services or reasonably contemplated therein, regardless of whether the time or materials required to complete any Work or Service identified in the Scope of Services exceeds any time or material amounts or estimates provided therein.

1.9 Non-Exclusive Agreement. Consultant acknowledges that City may enter into agreements with other contractors, consultants, or vendors for services similar to the services that are the subject of this Agreement. Consultant further acknowledges that City may have its own employees perform services similar to the services that are the subject of this Agreement.

2. COMPENSATION

2.1 Maximum Contract Amount. For the Services and Work rendered pursuant to this Agreement, Consultant shall be compensated by City for the services performed, including authorized reimbursements, in accordance with the rates and charges set forth in the Schedule of Compensation/Fees, which is attached hereto as Exhibit "A" and is incorporated herein by reference, but not exceeding a percentage rate of 30% of cost savings/refunds actualized, per audit review for 60 consecutive months; and in the instance where no cost savings or refunds are

obtained, then Consultant will receive no compensation for Services and Work rendered (hereinafter referred to as the "Maximum Contract Amount"). The method of compensation shall be as set forth in Exhibit "A". Compensation for necessary expenditures for reproduction costs, telephone expenses, and transportation expenses must be approved in advance by the Contract Officer designated pursuant to Section 4.2 and will only be approved if such expenses are also specified in the Schedule of Compensation/Fees. The maximum amount of City's payment obligation under this Agreement is the amount specified in this section.

2.2. Method of Payment. Unless some other method of payment is specified in the Schedule of Compensation/Fees (Exhibit "A"), in any month in which Consultant wishes to receive payment, no later than the tenth (10th) working day of such month, Consultant shall submit to the City, in a form approved by the City's Finance Director, an invoice for services rendered prior to the date of the invoice. Such requests shall be based upon the amount and value of the services performed by Consultant and accompanied by such reporting data including an itemized breakdown of all costs incurred and tasks performed during the period covered by the invoice, as may be required by the City. City shall use reasonable efforts to make payments to Consultant within forty-five (45) days after receipt of the invoice or a soon thereafter as is reasonably practical.

2.3 Changes in Scope. In the event any change or changes in the Scope of Services is requested by the City, the Parties shall execute a written amendment to this Agreement, setting forth with particularity all terms of such amendment, including, but not limited to, any additional professional fees. An amendment may be entered into: (a) to provide for revisions or modifications to documents or other work product or work when documents or other work product or work is required by the enactment or revision of law subsequent to the preparation of any documents, other work product, or work; and/or (b) to provide for additional services not included in this Agreement or not customarily furnished in accordance with generally accepted practice in Consultant's profession.

2.4 Appropriations. This Agreement is subject to and contingent upon funds being appropriated therefore by the Laguna Hills City Council for each fiscal year covered by the Agreement. If such appropriations are not made, this Agreement shall automatically terminate without penalty to the City.

3. SCHEDULE OF PERFORMANCE

3.1 Time of Essence. Time is of the essence in the performance of this Agreement. The time for completion of the services to be performed by Consultant is an essential condition of this Agreement. Consultant shall prosecute regularly and diligently the Work of this Agreement according to the agreed upon Schedule of Performance.

3.2 Schedule of Performance. Consultant shall commence the Services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all Services within the time period(s) established in the Schedule of Performance, which is attached hereto as Exhibit "A" and is incorporated herein by reference. When requested by Consultant, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer; however, the City shall not be obligated to grant such an extension.

3.3 Force Majeure. The time period(s) specified in the Schedule of Performance for performance of the Services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant (financial inability excepted), including, but not limited to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, pandemics, quarantine restrictions, riots, strikes, freight embargoes, wars, and/or acts of any governmental agency, including the City, if Consultant, within ten (10) days of the commencement of such delay, notifies the City Manager in writing of the causes of the delay. The City Manager shall ascertain the facts and the extent of delay, and extend the time for performing the Services for the period of the enforced delay when and if in the judgment of the City Manager such delay is justified. The City Manager's determination shall be final and conclusive upon the Parties to this Agreement. In no event shall Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement pursuant to this section.

3.4 Term. Unless earlier terminated as provided elsewhere in this Agreement, this Agreement shall commence on July 9, 2024 and shall continue in full force and effect for five (5) years, ending July 9, 2029, unless extended by mutual written agreement of the Parties.

4. COORDINATION OF WORK

4.1 Representative of Consultant. The following principal of Consultant is hereby designated as being the principal and representative of Consultant authorized to act in its behalf with respect to the Services to be performed under this Agreement and make all decisions in connection therewith: **Todd Main, Executive Vice President.** It is expressly understood that the experience, knowledge, education, capability, expertise, and reputation of the foregoing principal is a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principal shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the Work or Services performed hereunder. The foregoing principal may not be changed by Consultant without prior written approval of the Contract Officer.

4.2 Contract Officer. The Contract Officer shall be such person as may be designated by the City Manager of City, and is subject to change by the City Manager. It shall be the Consultant's responsibility to ensure that the Contract Officer is kept fully informed of the progress of the performance of the Services, and the Consultant shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

4.3 Prohibition Against Subcontracting or Assignments. The experience, knowledge, capability, expertise, and reputation of Consultant, its principals and employees, were a substantial inducement for City to enter into this Agreement. Therefore, Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, voluntarily or by operation of law, without the prior written consent of City.

Consultant shall not contract with any other entity to perform the Services required without prior written consent of City. If Consultant is permitted to subcontract any part of this Agreement by City, Consultant shall be responsible to City for the acts and omissions of its subcontractor(s) in the same manner as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationships between any subcontractor and City. All persons engaged in the Work will be considered employees of Consultant. City will deal directly with and will make all payments to Consultant.

4.4 Independent Contractor.

A. The legal relationship between the Parties is that of an independent contractor, and nothing herein shall be deemed to make Consultant a City employee. During the performance of this Agreement, Consultant and its officers, employees, and agents shall act in an independent capacity and shall not act as City officers or employees. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. The personnel performing the Services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officials, officers, employees, agents or volunteers shall have control over the conduct of Consultant or any of its officers, employees, or agents, except as set forth in this Agreement. Consultant, its officers, employees or agents, shall not maintain a permanent office or fixed business location at City's offices. City shall have no voice in the selection, discharge, supervision, or control of Consultant's officers, employees, representatives or agents or in fixing their number, compensation, or hours of service. Consultant shall pay all wages, salaries, and other amounts due its employees in connection with the performance of Services under this Agreement as required by law and shall be responsible for all reports and obligations respecting them, including but not limited to social security income tax withholding, unemployment compensation, workers' compensation, and other similar matters. City shall not in any way or for any purpose be deemed to be a partner of Consultant in its business or otherwise a joint venturer or a member of any joint enterprise with Consultant.

B. Consultant shall not incur or have the power to incur any debt, obligation, or liability against City, or bind City in any manner.

C. No City benefits shall be available to Consultant, its officers, employees, or agents, in connection with the performance of any Work or Services under this Agreement. Except for professional fees paid to Consultant as provided for in this Agreement, City shall not pay salaries, wages, or other compensation to Consultant for the performance of any Work or Services under this Agreement. City shall not be liable for compensation or indemnification to Consultant, its officers, employees, or agents, for injury or sickness arising out of performing any Work or Services hereunder. If for any reason any court or governmental agency determines that the City has financial obligations, other than pursuant to Section 2 and Subsection 1.8 herein, of any nature relating to salary, taxes, or benefits of Consultant's officers, employees, representatives, agents, or subconsultants or subcontractors, Consultant shall defend, indemnify, and hold harmless City from and against all such financial obligations.

4.5 PERS Eligibility Indemnification.

A. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing any Work or Services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employee Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of the City.

B. Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing any Work or Services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

5. INSURANCE

5.1 Compliance with Insurance Requirements. Consultant shall obtain, maintain, and keep in full force and effect during the term of this Agreement, at its sole cost and expense, and in a form and content satisfactory to City, all insurance required under this section. Consultant shall not commence any Work or Services under this Agreement unless and until it has provided evidence satisfactory to City that it has secured all insurance required under this section. If Consultant's existing insurance policies do not meet the insurance requirements set forth herein, Consultant agrees to amend, supplement or endorse the policies to do so.

5.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement, and without limiting the indemnity provisions set forth in this Agreement, Consultant shall obtain and maintain in full force and effect during the term of this Agreement, including any extension thereof, the following policies of insurance:

A. **Commercial General Liability Insurance.** Consultant shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of Commercial General Liability Insurance written on an occurrence basis with limits of at least one million dollars (\$1,000,000.00) per occurrence, two million dollars (\$2,000,000.00) in the general aggregate, and one million dollars (\$1,000,000.00) for products and completed operations. Defense costs shall be paid in addition to the limits. The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; or (3) contain any other exclusion contrary to the Agreement.

B. **Automobile Liability Insurance.** Consultant shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of Automobile Liability

Insurance written on a per occurrence basis with limits of at least one million dollars (\$1,000,000.00) combined limit for each occurrence covering bodily injury and property damage. The policy shall specifically include coverage for owned, non-owned, leased, and hired automobiles.

C. Workers' Compensation Insurance. Consultant shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of Workers' Compensation Insurance in at least the minimum statutory amounts, and in compliance with all other statutory requirements, as required by the State of California. Consultant agrees to waive and obtain endorsements from its workers' compensation insurer waiving all subrogation rights under its workers' compensation insurance policy against the City, its officials, officers, employees, agents and volunteers, and to require each of its subconsultants and subcontractors, if any, to do likewise under their workers' compensation insurance policies. Consultant shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of Employer's Liability Insurance written on a per occurrence basis with limits of at least one million dollars (\$1,000,000.00) per accident for bodily injury or disease.

5.3 Acceptability of Insurers. Insurance required by this section shall be issued by a licensed company authorized to transact business in the state by the Department of Insurance for the State of California with a current rating of A:VII or better (if an admitted carrier), or a current rating of A:X or better (if offered by a non-admitted insurer listed on the State of California List of Approved Surplus Lines Insurers (LASLI), by the latest edition of A.M. Best's Key Rating Guide, except that the City will accept workers' compensation insurance from the State Compensation Fund. In the event the City determines that the Work or Services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Consultant agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt of written notice from the City. Consultant shall immediately substitute any insurer whose A.M. Best rating drops below the levels specified herein.

5.4 Insurance Endorsements. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for written approval. Required insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms approved by the City to add the following provisions to the insurance policies:

A. The policy or policies of insurance required by this section for Commercial General Liability and Automobile Liability Insurance shall be endorsed to provide the following:

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

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

Agreement; and, the coverage shall contain no special limitations on the scope of protection afforded to additional insureds.

3. Notice: The policy or policies of insurance required by this section for Commercial General Liability and Automobile Liability Insurance shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or modified, or reduced in coverage or in limits, except after thirty (30) days prior written notice by First Class U.S. Mail, postage-prepaid, has been provided to the City. Notwithstanding the foregoing, if coverage is to be suspended, voided, or cancelled because of Consultant's failure to pay the insurance premium, the notice provided to City shall be by ten (10) days prior written notice.

B. For all policies of Commercial General Liability Insurance, Consultant shall provide endorsements for ongoing operations and completed operations to effectuate this requirement.

5.5 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be approved in writing by the City in advance and shall protect the City, its officials, officers, employees, agents and volunteers, in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

5.6 Primary and Non-Contributing Insurance. All policies of Commercial General Liability Insurance and Automobile Liability Insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the City, its officials, officers, employees, agents or volunteers, shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

5.7 Waiver of Subrogation. All policies of Commercial General Liability and Automobile Liability Insurance shall contain or be endorsed to waive subrogation against the City, its officials, officers, employees, agents and volunteers, or shall specifically allow Consultant or others providing insurance evidence in compliance with the requirements set forth in this section to waive their right to recovery prior to a loss. Consultant hereby agrees to waive its own right of recovery against the City, its officials, officers, employees, agents and volunteers, and Consultant hereby agrees to require similar written express waivers and insurance clauses from each of its subconsultants or subcontractors.

5.8 Evidence of Coverage. Concurrently with the execution of the Agreement, Consultant shall deliver certificates of insurance together with original endorsements affecting each of the insurance policies required by this section. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for written approval. The certificates of insurance and original endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced and not replaced immediately so as to avoid a lapse in the required coverage, Consultant shall, within ten (10) days after receipt of written

notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. Consultant shall promptly furnish, at City's request, copies of actual policies including all declaration pages, endorsements, exclusions and any other policy documents City requires to verify coverage.

5.9 Requirements Not Limiting. Requirement of specific coverage or minimum limits contained in this section are not intended as a limitation on coverage, limits, or other requirements, or a waiver of any coverage normally provided by any insurance. Nothing in this section shall be construed as limiting in any way the indemnification provision contained in this Agreement, or the extent to which Consultant may be held responsible for payments of damages to persons or property.

5.10 Enforcement of Agreement (Non-Estoppel). Consultant acknowledges and agrees that actual or alleged failure on the part of the City to inform Consultant of any non-compliance with any of the insurance requirements set forth in this section imposes no additional obligation on the City nor does it waive any rights hereunder.

5.11 Insurance for Subconsultants. Consultant shall either: (1) include all subconsultants or subcontractors engaged in any Work or Services for Consultant relating to this Agreement as additional named insureds under the Consultant's insurance policies; or (2) Consultant shall be responsible for causing its subconsultants or subcontractors to procure and maintain the appropriate insurance in compliance with the terms of the insurance requirements set forth in this section, including adding the City, its officials, officers, employees, agents and volunteers, as additional insureds to their respective policies. All policies of Commercial General Liability Insurance provided by Consultant's subconsultants or subcontractors performing any Work or Services related to this Agreement shall be endorsed to name the City, its officials, officers, employees, agents and volunteers, as additional insureds. Consultant shall not allow any subconsultant or subcontractor to commence any Work or Services relating to this Agreement unless and until it has provided evidence satisfactory to City that the subconsultant or subcontractor has secured all insurance required under this section.

5.12 Other Insurance Requirements. The following terms and conditions shall apply to the insurance policies required of Consultant pursuant to this Agreement:

A. Consultant shall provide immediate written notice to City if (1) any of the insurance policies required herein are terminated, cancelled or suspended, (2) the limits of any of the insurance coverages required herein are reduced, or (3) the deductible or self-insured retention is increased.

B. All insurance coverage and limits provided by Consultant and available or applicable to this Agreement are intended to apply to each insured, including additional insureds, against whom a claim is made or suit is brought to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operations shall limit the application of such insurance coverage.

C. None of the insurance coverages required herein will be in compliance with the requirements of this section if they include any limiting endorsement which substantially impairs the coverages set forth herein (e.g., elimination of contractual liability or reduction of discovery period), unless the endorsement has first been submitted to the City and approved in writing.

D. Certificates of insurance will not be accepted in lieu of required endorsements, and submittal of certificates without required endorsements may delay commencement of the Project. It is Consultant's obligation to ensure timely compliance with all insurance submittal requirements as provided herein.

E. Consultant agrees to ensure that subconsultants and subcontractors, if any, and any other parties involved with the Project who are brought onto or involved in the Project by Consultant, provide the same minimum insurance coverage required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with subcontractors and others engaged in the Project will be submitted to the City for review.

F. Consultant agrees to provide immediate written notice to City of any claim, demand or loss against Consultant arising out of the Work or Services performed under this Agreement and for any other claim, demand or loss which may reduce the insurance available to pay claims, demands or losses arising out of this Agreement.

6. INDEMNIFICATION

To the fullest extent permitted by law, Consultant shall defend (at Consultant's sole cost and expense with legal counsel reasonably acceptable to City), indemnify, protect, and hold harmless City, its officials, officers, employees, agents and volunteers (collectively the "Indemnified Parties"), from and against any and all liabilities, actions, suits, claims, demands, losses, costs, judgments, arbitration awards, settlements, damages, demands, orders, penalties, and expenses including legal costs and attorney fees (collectively "Claims"), including but not limited to Claims arising from injuries to or death of persons (Consultant's employees included), for damage to property, including property owned by City, or from any violation of any federal, state, or local law or ordinance, which Claims arise out of, pertain to, or are related to Consultant's performance under this Agreement. Under no circumstances shall the insurance requirements and limits set forth in this Agreement be construed to limit Consultant's indemnification obligation or other liability hereunder.

7. REPORTS AND RECORDS

7.1 Accounting Records. Consultant shall keep complete, accurate, and detailed accounts of all time, costs, expenses, and expenditures pertaining in any way to this Agreement. Consultant shall keep such books and records as shall be necessary to properly perform the Services required by this Agreement and to enable the Contract Officer to evaluate the performance of such Services. The Contract Officer shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records.

7.2 Reports. Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the Services required by this Agreement as the Contract Officer shall require.

7.3 Ownership of Documents. All drawings, specifications, reports, records, documents, memoranda, correspondence, computations, and other materials prepared by Consultant, its employees, subconsultants, subcontractors, and agents in the performance of this Agreement shall be the property of City and shall be promptly delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership of the documents and materials hereunder.

7.4 Release of Documents. All drawings, specifications, reports, records, documents, and other materials prepared by Consultant in the performance of services under this Agreement shall not be released publicly without the prior written approval of the Contract Officer. All information gained by Consultant in the performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization.

7.5 Audit and Inspection of Records. After receipt of reasonable notice and during the regular business hours of City, Consultant shall provide City, or other agents of City, such access to Consultant's books, records, payroll documents, and facilities as City deems necessary to examine, copy, audit, and inspect all accounting books, records, work data, documents, and activities directly related to Consultant's performance under this Agreement. Consultant shall maintain such books, records, data, and documents in accordance with generally accepted accounting principles and shall clearly identify and make such items readily accessible to such parties during the term of this Agreement and for a period of three (3) years from the date of final payment by City hereunder.

8. ENFORCEMENT OF AGREEMENT

8.1 California Law and Venue. This Agreement shall be construed and interpreted both as to validity and as to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Orange, State of California, or any other appropriate court in such County, and Consultant covenants and agrees

to submit to the personal jurisdiction of such court in the event of such action.

8.2 Interpretation. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties. The terms of this Agreement are contractual and the result of negotiation between the Parties. Accordingly, any rule of construction of contracts (including, without limitation, California Civil Code Section 1654) that ambiguities are to be construed against the drafting Party, shall not be employed in the interpretation of this Agreement. The caption headings of the various sections and paragraphs of this Agreement are for convenience and identification purposes only and shall not be deemed to limit, expand, or define the contents of the respective sections or paragraphs.

8.3 Termination. City may terminate this Agreement for any reason, with or without cause, upon giving Consultant thirty (30) days written notice. Upon such notice, City shall pay Consultant for Services performed through the date of termination. Upon receipt of such notice, Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. Thereafter, Consultant shall have no further claims against the City under this Agreement. Upon termination of the Agreement pursuant to this section, Consultant shall submit to the City an invoice for work and services performed prior to the date of termination. In addition, Consultant reserves the right to terminate this Agreement at any time upon sixty (60) days written notice to the City, except that where termination is due to material default by the City, the period of notice may be such shorter time as the Consultant may determine.

8.4 Waiver. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought. Any waiver by the Parties of any default or breach of any covenant, condition, or term contained in this Agreement, shall not be construed to be a waiver of any subsequent or other default or breach, nor shall failure by the Parties to require exact, full, and complete compliance with any of the covenants, conditions, or terms contained in this Agreement be construed as changing the terms of this Agreement in any manner or preventing the Parties from enforcing the full provisions hereof.

8.5 Rights and Remedies Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

8.6 Legal Action. In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

8.7 Attorneys' Fees. In the event any dispute between the Parties with respect to this Agreement results in litigation or any non-judicial proceeding, the prevailing Party shall be entitled, in addition to such other relief as may be granted, to recover from the non-prevailing Party all reasonable costs and expenses, including but not limited to reasonable attorneys' fees,

expert witness fees, court costs and all fees, costs, and expenses incurred in any appeal or in collection of any judgment entered in such proceeding. To the extent authorized by law, in the event of a dismissal by the plaintiff or petitioner of the litigation or non-judicial proceeding within thirty (30) days of the date set for trial or hearing, the other Party shall be deemed to be the prevailing Party in such litigation or proceeding.

9. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

9.1 Non-liability of City Officers and Employees. No officer or employee of the City shall be personally liable to the Consultant, or any successor-in-interest, in the event of any default or breach by the City or for any amount which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

9.2 Conflict of Interest. No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his or her financial interest or the financial interest of any corporation, partnership, or association in which they are, directly or indirectly, interested in violation of any state statute or regulation. Consultant represents and warrants that it has not paid or given and will not pay or give any third party any money or other consideration in exchange for obtaining this Agreement.

9.3 Covenant Against Discrimination. In connection with its performance under this Agreement, Consultant shall not discriminate against any employee or applicant for employment because of race, disability, medical condition, religion, color, sex, sexual orientation, age, marital status, ancestry, or national origin. Consultant shall ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, disability, medical condition, religion, color, sex, sexual orientation, age, marital status, ancestry, or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

10. MISCELLANEOUS PROVISIONS

10.1 Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered, sent by registered or certified mail, postage prepaid, return receipt requested, or delivered or sent by facsimile with attached evidence of completed transmission, and shall be deemed received upon the earlier of (i) the date of delivery to the address of the person to receive such notice if delivered personally or by messenger or overnight courier; (ii) five (5) business days after the date of posting by the United States Post Office if by mail; or (iii) when sent if given by facsimile. Notices or other communications shall be addressed as follows:

To City:

City of Laguna Hills
Attention: Jarad L. Hildenbrand, City Manager
24035 El Toro Road
Laguna Hills, California 92653
Telephone: (949) 707-2600
Facsimile: (949) 707-2633

To Consultant:

ProcureAmerica, LLC
Attention: Todd Main, Executive Vice President
31103 Rancho Viejo Road, #D2102
San Juan Capistrano, California 92675
Telephone: (949) 388-2686

10.2 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all prior negotiations, arrangements, agreements, representations, and understandings, if any, made by or among the Parties with respect to the subject matter hereof. No amendments or other modifications of this Agreement shall be binding unless executed in writing by both Parties hereto, or their respective successors, assigns, or grantees.

10.3 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be determined to be invalid by a final judgment or decree of a court of competent jurisdiction, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of that provision, or the remaining provisions of this Agreement unless the invalid provision is so material that its invalidity deprives either Party of the basic benefit of their bargain or renders this Agreement meaningless.

10.4 Successors in Interest. This Agreement shall be binding upon and inure to the benefit of the Parties' successors and assignees.

10.5 Third Party Beneficiary. Nothing contained in this Agreement is intended to confer, nor shall this Agreement be construed as conferring, any rights, including, without limitation, any rights as a third-party beneficiary or otherwise, upon any entity or person not a party hereto.

10.6 Recitals. The above-referenced Recitals are hereby incorporated into the Agreement as though fully set forth herein and each Party acknowledges and agrees that such Party is bound, for purposes of this Agreement, by the same.

10.7 Corporate Authority. Each of the undersigned represents and warrants that (i) the Party for which he/she is executing this Agreement is duly authorized and existing, (ii) he/she is duly authorized to execute and deliver this Agreement on behalf of the Party for which he/she is signing, (iii) by so executing this Agreement, the Party for which he/she is signing is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not

violate any provision of any other Agreement to which the Party for which he/she is signing is bound.

10.8 Labor Code Requirements.

A. Prevailing Wages. Consultant is aware of the requirements of California labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Work or Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Work or Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. It is the intent of the parties to effectuate the requirements of sections 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code within this Agreement, and Consultant shall therefore comply with such Labor Code sections to the fullest extent required by law. Consultant shall defend, indemnify, and hold the City, its officials, officers, employees, agents, and volunteers free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. The foregoing indemnity shall survive termination of this Agreement.

B. DIR Registration. If the Work or Services are being performed as part of an applicable "public works" or "maintenance" project, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, the Consultant and all subconsultants must be registered with the Department of Industrial Relations ("DIR"). Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants. This Project may also be subject to compliance monitoring and enforcement by the DIR. It shall be Contractor's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties have executed and entered into this Agreement as of the date first written above.

"CITY"
City of Laguna Hills,
a California municipal corporation

JARAD L. HILDENBRAND,
City Manager

ATTEST:

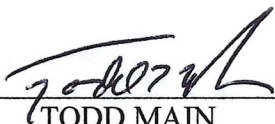
(SEAL)

JENNIFER LEE,
City Clerk

APPROVED AS TO FORM:

GREGORY E. SIMONIAN,
City Attorney

"CONSULTANT"
ProcureAmerica, LLC., a California
Limited Liability Company

By: 

TODD MAIN

Its: Executive Vice President

EXHIBIT “A”

CONSULTANT’S PROPOSAL / STATEMENT OF WORK

SCOPE OF SERVICES FOR PROJECT

INCLUDING,

SCHEDULE OF PERFORMANCE

AND

SCHEDULE OF COMPENSATION/ REVENUE SHARING



Statement of Work

1.) STATEMENT OF WORK: Procure America (PA) is pleased to provide the following cost reduction consulting services to Client (as selected by Client) with the resolve and purpose of reducing or recovering costs.

- | | |
|---|--|
| ☐ Waste Services | ☐ Utilities |
| ☐ Print Management | ☐ Treasury Services |
| ☐ Telecommunications | ☐ Technology Optimization |

PA shall use its best efforts to obtain cost savings for Client's benefit by analyzing Client's policies, procedures, supplier contracts, past invoices and other pertinent information as it relates to the above selected expense categories set for review. PA will gather information as to Client's needs (past, present and future) from Client's service providers so as to build a solution that not only lowers cost, but also matches Client's operational and corporate requirements and expectations. After analyzing Client's current spending patterns, PA shall provide Client with a findings report outlining PA's observations. PA's report will include a review of operations, cost reduction recommendations and potential service level enhancements. The report's recommendations will also include a comparison to the Client's historical cost or "Established Rates" to clearly outline the cost savings generated by this project. It is understood that despite PA's recommendations, the Client has the right not to proceed with any of PA's result findings or proposals.

2.) POST REVIEW PHASE: In the event that the Client wishes to proceed with PA's recommendations as set forth in PA's findings report, for the entire balance of the relationship with Client, PA will continue to consult with Client in an effort to continuously look for efficiencies in the chosen areas of focus. Periodically, the PA team will review Client's invoicing and deliverables to ensure accountability by Client's service providers with respect to the spirit and intent of the agreement between Client and the third-party service provider. This review will take into account service levels, cost controls and overall client satisfaction. Further, PA will continuously consult with Client to anticipate changes in service needs to ensure that the proper service provider, contract and procedures are in place to address Client's go forward requirements.

3.) REVENUE SHARE: Client has in place certain existing costs as it pertains to the requested expense categories selected for review ("Established Rates"). PA's findings report will document the Established Rates and specific recommendations for each service or product chosen for review and outline the methodology used to generate PA's report. Client and PA will then discuss and agree on the Established Rates for the targeted service or product as outlined in PA's findings report. If Client elects to proceed with any or all of the recommendations as set forth in PA's findings report, Client agrees to compensate PA for the savings outlined with the findings report. The Revenue Share to PA is thirty percent of the actual realized savings measured by the difference between the agreed upon Established Rates and Client's new costs as set forth in PA's findings report and documented through actual realized savings.

In some cases, the PA staff may discover over billing, credits, rebates or other sources of revenue. This income is to be considered expense reduction for purposes of this Agreement and will be accounted for in the same manner as the expense reduction savings. This revenue shall be shared with PA after the refunds or other credits are realized by Client. In other cases, PA may have the ability to recover rebates or other compensation by contractors or service providers. PA shall disclose this compensation to Client and both parties shall share this revenue as savings at the time the revenue is received. It may be necessary to institute cost reduction strategies within a specific expense category in stages. If this occurs, then each stage of implementation will be viewed with its own billing cycle.

4.) CLIENT PARTICIPATION: Client shall give its full cooperation to PA in providing all required documents, invoices, contracts and staff consultation time to PA's evaluation team in order to conduct the expense reduction review. During the review process, Client agrees not to renegotiate, amend or extend in place contracts or introduce operational procedures/changes that will effect cost/pricing and or contractual obligations of the Client to the supplier. Any cost reduction made during the assessment process will be credited to PA's presence and is therefore treated as such and factored into the shared revenue structure. During the course of the relationship between PA and Client, Client and PA understand that despite PA's recommendations, suggestions, potential suppliers and other proposals, Client has the right not to proceed with said proposals. However, if Client does pursue any or all of the documented review recommendations (with or without PA's further assistance), PA is entitled to the appropriate revenue share as outlined in Section 3 above. Client agrees to grant PA the right to review any materials (books, records, invoices, contracts or other information) related to the review category selected by Client in Section 1 above. PA is authorized to obtain information relating to the provider accounts directly from the providers personnel and provider websites. Any additional Client request or engagements, written or otherwise, to review supplementary expenses or income streams will also be governed by this Agreement.

This Agreement shall commence with the Client's first PA invoice per expense category and will be in effect for an initial 60 month term. Each expense reduction category carries its own 60 month term/billing cycle commencing on the first invoice for that particular practice group. If the savings is implemented in stages, each stage will carry its own 60 month term. PA and Client shall have the option to terminate this Agreement after the initial term with a 30 day prior written notice to the other party.

IN WITNESS WHEREOF, Client has executed this Agreement to be effective on the date below.

Client: City of Laguna Hills
 Title: City Manager
 Date: _____

By: Jarad Hildenbrand
 Signature: _____





City of Laguna Hills City Council / Planning Agency Staff Report

Date: July 9, 2024
To: Mayor and Council Members
From: Jarad Hildenbrand, City Manager
Issue: Community Assistance Funding to the Laguna Hills High School Parent Teacher Student Association for Grad Nite and Scholarship Funding

Recommendation: That the City Council adopt a Resolution entitled: "A Resolution of the City Council of the City of Laguna Hills, California, authorizing annual Community Assistance Funding to the Laguna Hills High School Parent Teacher Student Association for Grad Nite and Scholarship Funding."

Background:

At the June 25, 2024, City Council meeting, the City Council directed staff to prepare an authorizing Resolution for an annual community assistance funding in the amount of \$8,000 to the Laguna Hills High School Parent Teacher Student Association for Grad Nite and Scholarship Funding.

The attached proposed Resolution authorizes community assistance funding in the total amount of \$8,000 per year to the Laguna Hills High School PTSA, a 501(c)(3) nonprofit corporation. The annual contribution will be broken down as follows: (a) an amount of \$6,000 for the LHPTSA's Grad Nite program; and, (b) an amount of \$2,000 for the LHPTSA's Scholarship Program.

Fiscal Impact:

The annual community assistance funding in the amount of \$8,000 to the Laguna Hills High School Parent Teacher Student Association is funded by the City's General Fund. The Fiscal Year 2024/25 Budget includes \$50,000 (Account Number 100-155-695000) for Community Assistance / Public Relations. The City Council's decision to increase the

contribution from \$4,000 to \$8,000 does not alter the current budget.

Attachments:

1. Proposed Resolution for LHPTSA Community Assistance Funding

RESOLUTION NO. 2024-07-09-1

A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF LAGUNA HILLS, CALIFORNIA,
AUTHORIZING ANNUAL COMMUNITY
ASSISTANCE FUNDING TO THE LAGUNA HILLS
HIGH SCHOOL PARENT TEACHER STUDENT
ASSOCIATION FOR GRAD NITE AND
SCHOLARSHIP FUNDING

The City Council of the City of Laguna Hills, California, hereby finds, determines, declares, and resolves as follows:

WHEREAS, at the discretion of the City Council, the City may provide community assistance funding to certain community groups, civic, philanthropic, and nonprofit organizations that provide community assistance, service, support, events and/or programming efforts intended to enhance the quality of life of the City's residents and business community, provided the City Council finds and determines that the expenditure of such community assistance funding fulfills a public purpose and provides a direct public benefit within the City of Laguna Hills; and,

WHEREAS, at the June 25, 2024 City Council meeting, and following a public presentation and discussion, the City Council unanimously voted to approve and directed City staff to prepare an authorizing resolution for community assistance funding for the Laguna Hills High School Parent Teacher Student Association ("LHPTSA"), a 501(c)(3) nonprofit corporation; and,

WHEREAS, the LHPTSA is a volunteer organization that works to support Laguna Hills High School students and teachers by facilitating numerous programs, events, and services for the Laguna Hills High School community. Relevant here, the LHPTSA hosts a yearly Grad Nite celebration for Laguna Hills High School students, providing a safe and secure, substance-free place for graduating seniors to celebrate the culmination of their high school experience. The Grad Nite program aims to provide a safe alternative to what can often be a perilous and hazardous night for students, thus fulfilling a critical public safety function designed to protect Laguna Hills High School children. The LHPTSA also offers several scholarship opportunities for the benefit of Laguna Hills High School students, which include the PTSA Service Scholarship, the PTSA Creative Student Scholarship, the PTSA Hawk Inspiration Scholarship, PTSA Occupational Award Scholarship, the PTSA Senior of the Year Scholarship, and the PTSA Working Student Scholarship; and,

WHEREAS, supporting Laguna Hills High School students, teachers, and community is at the core of the PTSA's public purpose mission; toward this mission and commitment to public service, the LHPTSA regularly provides scholarship opportunities and programs like Grad Nite for the benefit of Laguna High School students and Laguna Hills residents; and,

WHEREAS, in 1992, the City Council approved an annual \$2,500 contribution for Grad Nite. In 1998, the City's annual contribution to Grad Nite increased to \$4,000, a level that has been maintained to this day. Given the enduring success and importance of Grad Nite in ensuring the safety and enjoyment of Laguna Hills High School graduating seniors and the LHPTSA's continued commitment to providing scholarships to Laguna Hills High School students, the City Council hereby affirms its commitment to the safety, education, and well-being of the City's youth and continued support of this long-standing community tradition; and,

WHEREAS, through the adoption of this Resolution, a majority of the City Council desires to make public purpose findings in order to authorize the continued expenditure of community assistance funding to the Laguna Hills High School PTSA in recognition and in support of the programming, events, work and services the PTSA provides to enhance the quality of life within the City of Laguna Hills.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. The foregoing recitals are true and correct and are incorporated herein by reference.

SECTION 2. The City Council hereby authorizes and directs that the City provide community assistance funding in the total amount of \$8,000 per year to the Laguna Hills High School PTSA, a 501(c)(3) nonprofit corporation. The annual contribution will be broken down as follows: (a) an amount of \$6,000 for the LHPTSA's Grad Nite program; and, (b) an amount of \$2,000 for the LHPTSA's Scholarship Program.

SECTION 3. The City Council hereby finds and determines that the annual expenditure of community assistance funding in the operating budget to the Laguna Hills High School PTSA, as authorized herein, fulfills a public safety purpose and provides a direct public benefit to the Laguna Hills High School community and to the residents and children of the City of Laguna Hills.

PASSED, APPROVED, AND ADOPTED this 9th day of July 2024.

DAVE WHEELER, MAYOR

ATTEST:

JENNIFER LEE, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF LAGUNA HILLS)

I, Jennifer Lee, City Clerk of the City of Laguna Hills, California, DO
HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution
No. 2024-07-09-X adopted by the City Council of the City of Laguna Hills, California, at a
Regular Meeting thereof held on the 9th day of July 2024, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

(SEAL)

JENNIFER LEE, CITY CLERK



City of Laguna Hills City Council / Planning Agency Staff Report

Date: July 9, 2024
To: Chair and Agency Members
From: Larry Longenecker, Community Development Director
Issue: Conditional Use Permit (CUP) No. USE-0180-2024, a Request by Brian Batista-Lopez, Project Architect with MSA Architecture and Design, on Behalf of MSA Architecture and Design, Inc., to Establish Five Self-Service Grooming Stations Within a Proposed Retail Pet Supply Store, Pet Food Express, in an Existing 5,744 Square-Foot Tenant Space Located at 24241 Avenida De La Carlota

Recommendation: That the Planning Agency:

- 1) Conduct a public hearing;
- 2) Find and determine that the project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 of Title 14, Chapter 3 of the California Code of Regulations (Class 1, Existing Facilities); and
- 3) Adopt a Resolution entitled: "A Resolution of the Planning Agency of the City of Laguna Hills, California, Approving Conditional Use Permit (CUP) No. USE-0180-2024, a Request by Brian Batista-Lopez, Project Architect with MSA Architecture and Design, on Behalf of MSA Architecture and Design, Inc., to Establish Five Self Service Grooming Stations Within a Proposed Retail Pet Supply Store, Pet Food Express, in an Existing 5,744 Square-Foot Tenant Space Located at 24241 Avenida De La Carlota, Including an Exemption from the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15301 of Title 14, Chapter 3 of the California Code of Regulations (Class 1, Existing Facilities)."

Background:

Oakbrook Village ("Center") is a mixed-use commercial center located on the west side of Avenida de la Carlota, north of Los Alisos Boulevard. The Center was originally approved and constructed in the 1970s under the County's jurisdiction (SP77-9P). In 2012, the City approved a redevelopment plan (SDPM/CUP/PUP-12-11-2137) for the

Center, which included up to 489 dwelling units and 82,574 square feet of new commercial/retail space, along with building façade enhancements, pedestrian paseos, and landscaping. In 2018, the City approved a subsequent development plan (SDPM/MSP No. 8-17-3965) which consisted of the demolition of the Lone Star Steakhouse restaurant and the construction of two new commercial/retail buildings in place of it: Building A1 (in-line shops) and Building A2 (Trader Joe's, relocated from across the parking lot).

The Center currently consists of retail and restaurant uses including Trader Joe's, See's Candy, REI, and Woody's Diner, as well as Reata, a multi-story, mixed-use, 289-unit apartment building. The property maintains coordinated circulation, parking, and landscaping. The tenant space of the proposed retail pet supply store with the self-service grooming stations was previously Calico Corners, a fabric retail store, and is currently vacant.

The development plan approved in 2018 expired in December 2023, and any new development proposed for the site, including residential land uses, will require consideration of new permit applications.

Authority:

All development within the Village Commercial zoning district is subject to the Urban Village Specific Plan ("UVSP"). Table 1 Land Use Matrix of the UVSP identifies animal/pet uses as an accessory use subject to LHMC Section 9-56, which requires all commercial animal facilities, including grooming facilities, to obtain a CUP. The process the City must follow in reviewing a CUP for the proposed use is found in LHMC Section 9-92.080(C).

Staff has prepared findings demonstrating that the proposed CUP complies with the City of Laguna Hills Development Code, Village Commercial (VC) zoning district and the Urban Village Specific Plan (UVSP), and the General Plan, as stated in the Proposed Resolution of Approval (Attachment A). Based on these findings, Staff recommends approval of the proposed Conditional Use Permit.

The proposed Conditional Use Permit is consistent with the General Plan's goals and strategies for the Village Commercial land use designation and the Urban Village Specific Plan. Furthermore, the proposed CUP complies with the City of Laguna Hills Development Code. Therefore, Staff is recommending approval of Conditional Use Permit (CUP) No. USE-0180-2024.

Proposal & Analysis:

Brian Batista-Lopez, Project Architect with MSA Architecture and Design, on behalf of MSA Architecture and Design, Inc. ("Applicant") requests approval of a Conditional Use Permit (CUP) to establish five self-service grooming stations located within a proposed retail pet supply store, Pet Food Express, located at 24241 Avenida De La Carlota, an existing 5,744 square-foot tenant space within the Oakbrook Village shopping center ("Center"). The Center is owned by Laguna Hills Investment Company, which has authorized the Applicant to apply for the requested entitlement. The proposed stations will be available during normal retail store operation hours, Monday through Friday from 10:30 a.m. to 6:00 p.m., Saturday from 10:00 a.m. to 6:00 p.m. and Sunday from 10:00 a.m. to 5 p.m. Each of the five wash stations will include a raised tub with entry stairs, shampoo, towels, aprons, and air dryers.

The tenant space will require interior tenant improvements to convert the existing space into a retail pet supply store with the self-service grooming stations. The proposed floor plan (Attachment C) shows that the self-service grooming stations will be located towards the rear right corner of the store. Because retail is a permitted use within the Village Commercial zoning district and the UVSP, the proposed retail store improvements will be submitted and reviewed under a building permit. There are no proposed exterior modifications other than a wall sign which will be reviewed and submitted under a separate building permit.

All business activities of the proposed retail pet supply store, including the self-service grooming stations, will be conducted entirely indoors (Condition of Approval No. 25, Attachment A), which complies with requirements for Commercial Animal Facilities (LHMC Section 9-56.020). Since the business will operate entirely indoors, no noise impacts are expected and interior doors leading to the store shall remain closed to minimize potential noise.

Other business operations include the need to dispose of animal waste, which will be through standard commercial trash service. The Applicant will provide a pet waste station with bags, sanitation items and disposal within the tenant space, as stated in their Letter of Justification, and as required in Conditions of Approval Nos. 23 and 24 in the proposed resolution of approval (Attachment A).

Parking Analysis

The total tenant space for the proposed retail pet supply store is 5,477 square feet, within which the five self-service grooming stations occupy 421 square feet. According to LHMC 9-44.050, restroom and utility areas are exempt from parking requirements.

The proposed floor plan indicates that a total of 127 square feet are for restroom and utility spaces, leaving 5,350 square feet subject to the parking requirements of LHMC Table 9-44.A. The parking requirement for 'General Retail' is one parking stall per 200 square feet of gross floor area (GFA) and for "Animal Boarding/Grooming" is one parking stall per 400 square feet of GFA. Therefore, the proposed retail pet supply store has a parking requirement of 27 parking stalls, as shown below in Table 1:

Table 1: Proposed Retail Pet Supply Store with Self Service Grooming Facilities Parking Requirements

Use	Area	Parking Required
Total Tenant Space	5,477 SF	
Restroom/ Utility (not subject to parking requirements)	127 SF	
Retail Use (parked at 1 space per 200 SF of Area)	4,929 SF	25 Stalls
Self-Service Grooming Stations (parked at 1 space per 400 SF of Area)	421 SF	2 Stalls
Total		27 Stalls

A Parking Use Permit (SDPM/CUP/PUP-12-11-2137) was approved for the Center in 2012 by the Planning Agency. As stated in Condition of Approval No. 32 of the approved PUP, if there is any change to the Center such as a change of tenant mix, the Community Development Director can request an updated parking study to address the impacts on the Center. In January 2021, an updated Parking Study conducted by RK Engineering Group was approved by the Community Development Director. This study concluded that the parking inventory at the Center is 692 parking stalls, with an overall parking demand of 623 parking stalls, resulting in a surplus of 69 parking stalls. The previous use of the subject tenant space was a furniture retail store that required 27 parking spaces. The proposed retail pet supply store with the self-service grooming stations requires 27 parking spaces, the same number as the previous furniture retail use. Therefore, adequate parking exists at the Center to accommodate the proposed business.

Conclusion:

Staff supports approval of the proposed CUP, as conditioned. The proposed self-service grooming stations comply with all requirements of the General Plan, and are consistent with the Land Use Element. Table LU-1 of the General Plan describes the purpose and intent of land uses within the Village Commercial designation is envisioned as a master planned area (Urban Village Specific Plan area) to establish a community core where commercial, civic, and high density residential are provided. The self-service grooming stations are compatible with the General Plan's description of the desired uses, by providing a variety of services to the area residents. The proposed self-service grooming stations are permitted as an accessory use with a CUP in the Village Commercial zone and will comply with the UVSP and LHMC Section 9-56.020 regulating Commercial Animal Facilities, and will be conducted entirely inside the tenant space. Conditions of Approval have been added to ensure the proposed self-service grooming stations will comply with the Laguna Hills Noise Ordinance, and that pet waste is disposed of properly. The proposed CUP complies with all requirements of the City of Laguna Hills Development Code, Village Commercial zoning district, UVSP and General Plan. Therefore, Staff recommends approval of Conditional Use Permit (CUP) No. USE-0180-2024.

Public Notice:

The proposed project was advertised in an adjudicated newspaper of general circulation on June 27, 2024. A total of 39 public hearing notices were mailed, which includes all property owners within a 300-foot radius of the subject property, as well as all tenants of the subject property. To date no comments have been received by Staff.

CEQA Findings:

Staff has reviewed the proposed project for compliance with the California Environmental Quality Act (CEQA) and determined that this project is categorically exempt from CEQA pursuant to Section 15301 of Title 14, Chapter 3 of the California Code of Regulations (Class 1, Existing Facilities). This exemption applies to the permitting or minor alteration of existing structures.

Attachments:

1. Proposed Resolution of Approval
2. Letter of Justification
3. Floor Plan

RESOLUTION NO. PA2024-07-09-X

A RESOLUTION OF THE PLANNING AGENCY OF THE CITY OF LAGUNA HILLS, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT (CUP) NO. USE-0180-2024, A REQUEST BY BRIAN BATISTA-LOPEZ, PROJECT ARCHITECT WITH MSA ARCHITECTURE AND DESIGN ON BEHALF OF MSA ARCHITECTURE AND DESIGN, INC. TO ESTABLISH FIVE SELF-SERVICE GROOMING STATIONS WITHIN A PROPOSED RETAIL PET SUPPLY STORE, PET FOOD EXPRESS, IN AN EXISTING 5,744 SQUARE-FOOT TENANT SPACE LOCATED AT 24241 AVENIDA DE LA CARLOTA, INCLUDING AN EXEMPTION FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PER CEQA GUIDELINES SECTION 15301 OF TITLE 14, CHAPTER 3 OF THE CALIFORNIA CODE OF REGULATIONS (CLASS 1, EXISTING FACILITIES)

The Planning Agency of the City of Laguna Hills, California, hereby finds, determines, declares, and resolves as follows:

WHEREAS, Brian Batista-Lopez on behalf of MSA Architecture and Design, Inc. ("the Applicant") has filed an application for Conditional Use Permit (CUP) No. USE-0180-2024 to establish five self-service grooming stations located within a proposed retail pet supply store, Pet Food Express, at 24241 Avenida De La Carlota, in the Village Commercial (VC) zoning district; and

WHEREAS, the Project is hereby found to be Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Class 1, Existing Facilities) of Title 14, Chapter 3 of the California Code of Regulations. This exemption applies to the permitting or minor alteration of existing structures; and

WHEREAS, on July 9, 2024, the Planning Agency held a duly noticed public hearing and considered public comments and written and oral information and testimony presented by City staff, community residents, and other interested parties; and

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

NOW, THEREFORE, THE PLANNING AGENCY OF THE CITY OF LAGUNA HILLS, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. The above recitals are true and correct, and are incorporated herein by reference.

SECTION 2. That the required findings by the City for approval of CUP No. USE-0180-2024 have been met and are made as follows:

Conditional Use Permit

1. The proposed use is consistent with the General Plan.

The proposed use complies with all requirements of the General Plan, and is consistent with the Land Use Element. Table LU-1 of the General Plan describes the purpose and intent of land uses within the Village Commercial is envisioned as a master planned area (Urban Village Specific Plan area) to establish a community core where commercial, civic, and high density residential are provided. In addition, typical uses allowed include those uses allowed by the Village Commercial designation which consists of services uses, retail sales, professional and medical office uses. The proposed self-service grooming stations are compatible with the General Plan's description of the desired uses in the Village Commercial zone and the UVSP, which implements the Village Commercial land use designation.

2. The nature, condition, and development of adjacent uses, buildings, and structures have been considered and the proposed conditional use will not adversely affect or be materially detrimental to the adjacent uses, buildings, or structures.

The tenant space is located in the Village Commercial (VC) zoning district. All development within this zoning district is subject to the Urban Village Specific Plan. The project site is located along Avenida De La Carlota, north of Los Alisos Boulevard. The surrounding area consists of Interstate 5 freeway to the north, the Village at Laguna Hills property (previous Laguna Hills mall site) to the west, commercial uses and Meridian Laguna Hills assisted living facility to the south and commercial uses and Reata Apartments to the east. The project site consists of seven buildings, which comprise the "Oakbrook Village" shopping center. The uses in the project site consist of a mix of services uses, retail, restaurants, and residential. The proposed self-service grooming stations will be conducted entirely inside the retail pet supply store ensuring compatibility with the center and surrounding uses. Conditions of Approval No. 21 through 25 are included to ensure the proposed project will comply with Laguna Hills Noise Ordinance and property maintenance.

3. The proposed site is adequate in size and shape to accommodate the use and integrate it with the existing and planned uses in the vicinity.

As described above, surrounding uses include restaurants, commercial, retail and service uses, and residential. There are 692 parking spaces located on the project site. The project site is typical of other commercial shopping centers in Laguna Hills in terms of the nature of the improvements provided that result in a functioning commercial property. The existing improvements are sufficient to serve the use and ensure it is properly integrated with existing uses in the vicinity through existing shared improvements on the project site such as utilities, parking, landscaping, and pedestrian and vehicular access. The proposed use is a typical service use

found in other shopping centers in Laguna Hills and does not require any unique or unusual site improvements to operate. The use will operate entirely within the confines of an existing tenant space on the project site, and the Applicant will make necessary tenant improvements to the tenant space to operate the use.

4. All required development standards prescribed by the Development Code can be achieved.

The site is typical of other commercial shopping centers in Laguna Hills in terms of the nature of the improvements provided that result in a functioning commercial property. The existing improvements are sufficient to serve the use consisting of existing shared improvements on the site such as utilities, parking, landscaping, and pedestrian and vehicular access which comply with the City's development standards, or will comply as conditioned. The proposed self-service grooming stations will be located within an existing building, and tenant upgrades are proposed to serve the use.

5. That the conditions and limitations placed upon the use are necessary to ensure compatibility with adjacent or abutting uses and the preservation of the public peace, safety, and welfare.

Conditions of approval are included to ensure that the use is compatible with adjacent uses. Such conditions include that all business activities shall take place within the tenant space (Condition 25), the immediate property around the tenant space shall be inspected daily to ensure that there is no animal waste or trash, and if found disposed of (Condition 23), and that pet relief supplies shall be provided (Condition 24). These conditions help to ensure that the self-service grooming stations will not adversely affect adjacent uses due to excess noise, unpleasant smells, or property maintenance issues.

NOW, THEREFORE, based upon the above findings, the Planning Agency of the City of Laguna Hills does hereby approve CUP No. USE-0180-2024 subject to the following conditions:

General

1. The following Conditions of Approval shall be binding and enforceable against, and, whenever used herein, the term "Applicant" shall mean and refer to each of the following: Brian Batista-Lopez on behalf of MSA Architecture and Design, Inc., the owners(s) and tenant(s) of the property, and each of their respective successors and assigns.
2. Unless the context dictates otherwise, whenever the term "this Permit" is used in the following Conditions of Approval, it shall collectively refer to the Conditional Use Permit (CUP) No. USE-0180-2024, approved pursuant to this Resolution, as well as the plans, studies, and exhibits submitted to the City by the Applicant to describe and depict the improvements to be constructed as a part of the Project, and as otherwise modified by these Conditions of Approval.

3. Unless the context dictates otherwise, whenever the term "Project" is used in the following Conditions of Approval, it shall collectively refer to the plans and exhibits submitted to the City by the Applicant to depict the Project, as modified by these Conditions of Approval, including but not limited to the following: application form (submitted May 3, 2024), letter of justification (dated June 5, 2024), and Site Plan/Floor Plan (dated June 5, 2024).
4. To the fullest extent permitted by law, the Applicant shall, at its sole cost and expense, protect, defend, indemnify, and hold harmless the City, its elected and appointed officers and officials, employees, agents, departments, agencies, authorized volunteers, consultants, attorneys, boards, commissions, and committees, and instrumentalities thereof ("Indemnitees"), from and against any and all claims, liabilities, losses, fines, demands, penalties, lawsuits, writs of mandamus, and any other claims or actions or proceedings of any kind whatsoever (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolution procedures (including, but not limited to, arbitrations, mediations, and other such procedures), judgments, orders and decisions (collectively "Claims" and "Actions"), brought against the Indemnitees, which seek to attack, challenge, modify, set aside, void, or annul any action of or any permit or approval issued by the Indemnitees (including actions approved by the voters of the City) for, in connection with, or concerning the approval of this Permit. It is expressly understood and agreed that the City shall have the right to approve, which approval will not be unreasonably withheld, the legal counsel providing the defense of the Indemnitees for the Claims and Actions, and that the Applicant shall promptly reimburse the City for all costs and expenses directly and necessarily incurred by the City in the course of the defense, including reasonable attorneys' fees. The City shall promptly notify the Applicant of any Claims and Actions brought against the Indemnitees and shall cooperate in the defense of any such Claims and Actions. If the Applicant fails to so defend the Claims and Actions, the City shall have the right but not the obligation to do so and, if it does, the Applicant shall promptly pay the City's full cost thereof.
5. Approval of this Permit constitutes approval of the proposed Project only to the extent that it complies with the City's Development Code and any other applicable zoning regulations. Approval does not include any action or findings as to compliance or approval of the Project regarding any other applicable ordinance, regulation, or requirement.
6. Failure to abide by and faithfully comply with any and all conditions of approval shall constitute grounds for revocation of this Permit by the Laguna Hills Planning Agency.
7. The Applicant shall agree in writing to these conditions of approval within 30 days of the Planning Agency's approval.
8. The conditions of Project approval set forth herein include certain development impact fees and other exactions. Pursuant to Government Code §66020(d), these conditions constitute written notice of the amount of such fees, and/or

exactions. The Applicant is hereby notified that the 90-day protest period in which the Applicant may protest the fees, dedications, reservation, or exactions imposed on this Project through the Conditions of Approval, commencing from the date of approval of the Project, has begun.

9. Pursuant to City Council Resolution No. 2017-07-11-2, the Applicant shall reimburse the City for any outstanding staff time spent on the processing of this Permit within 60 days of the Planning Agency's approval.
10. This Permit shall expire and be of no further force or effect if the Permit is not implemented within two years from July 9, 2024.
11. Within 48 hours from project approval, the Applicant shall submit to the City a check in the amount of \$50.00, made payable to the Orange County Clerk-Recorder, for filing the Notice of Exemption.

Permitting

12. The Applicant shall be responsible for ensuring applicable building permits are obtained, as required by the 2022 California Building Code, prior to commencement of any work for which a permit is required.
13. All construction shall comply with 2022 California Building, Plumbing, Mechanical, Electrical, Green, and Energy Codes with regard to the applicable occupancy group if applicable. Any work being done will require a full set of plans prepared by a licensed architect/engineer.
14. At the time of document submittal for permit issuance, the Applicant shall demonstrate compliance with California Disabled Accessibility requirements, as required by Chapter 11 of the California Building Code if applicable.
15. The Applicant shall comply with all general construction water quality requirements, as required by the LHMC 5-36.
16. The Applicant shall submit Construction and Demolition Waste Recycling Program paper work if applicable, prior to issuance of permits, as required by Laguna Hills Municipal Code Chapter 5-48 and to comply with mandates of CalRecycle.
17. All documents required for permit issuance shall be accurately labeled and reflect all work, as required by the 2022 California Building Code.
18. Prior to issuance of building permits, the Applicant shall apply for a Certificate of Use and Occupancy (COUO), and the Applicant shall obtain the Certificate before conducting operations.
19. The Applicant is advised that the business will need to comply with CalRecycle's requirements of AB 1826 (Mandatory Commercial Organics

Recycling), SB 1383 (Short-Lived Climate Pollutants), and AB 341 (Mandatory Commercial Recycling).

20. That prior to the issuance of a certificate of occupancy, the Applicant shall subscribe to and provide evidence of enrollment in the organics recycling services provided by the City's franchise waste hauler, in order to comply with California State Senate Bill 1383 and California Assembly Bill 1826, for the recycling and disposal of organic waste including any food waste.

Operations

21. If at any time in the future the Community Development Director determines there are trash or debris issues, complaints, or problems, including trash overflow, or smells emanating from the trash area, the Applicant shall prepare a trash management plan, to resolve and remedy identified issues, for review and approval by the Community Development Director.
22. All business activities shall comply with the noise standards of the City of Laguna Hills Noise Ordinance (LHMC 5-24) at all times.
23. The Applicant shall inspect, at least once per day, all sidewalks, drive aisles, parking spaces, and landscape planter areas immediately adjacent to the store for any pet waste and shall collect, fully remove, and discard in the trash any pet waste found. No power washing is allowed.
24. The business shall provide pet relief supplies including disposal bags and sanitation products.
25. All business activities shall be conducted entirely indoors and exterior doors will not be propped open except momentarily for deliveries and similar business operations. No business activities whatsoever shall be permitted to occur outside, including pet relief.

PASSED, APPROVED AND ADOPTED this 9th day of July 2024.

DAVE WHEELER, CHAIR

ATTEST:

JENNIFER LEE, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF LAGUNA HILLS)

I, Jennifer Lee, City Clerk of the City of Laguna Hills, California, DO
HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution
No. PA2024-07-09-X adopted by the Planning Agency of the City of Laguna Hills,
California, at a Regular Meeting thereof held on the 9th day of July 2024, by the following
vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

JENNIFER LEE, CITY CLERK



Letter of Justification

Pet Food Express (PFE) is a community-based retail store aimed at providing products and services to improve the lives of pets and their owners. The California retailer prides themselves on their high product standards, community and neighborhood involvement, and their expertise when it comes to pet care and maintenance.

The proposed PFE in Laguna Hills would serve a city of about 30,568 residents, many of whom own animals themselves. Services provided beyond pet food and accessories include a self-service pet washing station, a community events board that is frequently updated to inform customers of pet centric activities in the area, and occasional coordination of pet adoptions. There will be pet waste bins located outside the store for pet owners to dispose of any waste and sanitizing products within the store for any indoor “accidents”. All pet hair accumulated in the pet wash will be filtered through an underground lint interceptor before reaching the sanitary sewer system.

Laguna Hills municipal code Ch. 9-24.010 identifies the subject parcel as zoned for “Village Commercial VC District”. The intent and purpose is to develop an urban core in which a variety of public, regional commercial, recreational, and high density residential uses work in concert to create an urban village. The surrounding residential neighbors that exist will be given a pet store and washing area within walking distance of their homes, adjacent to many other shopping and dining establishments which would encourage economic growth by the businesses. Creating a high density environment that provides for all residents’ needs within a short travel distance is crucial to developing an urban core.

Specifically stated on page 30 table 1, the Urban Village Specific Plan explicitly permits Retail/Services Businesses which is what we are proposing at this site. We believe PFE would be an asset to the community at large.

Brian Batista

project architect

direct: 415.852.4905

main: 415.541.0977

brianb@msasf.com

www.msasf.com



Self-Service Pet Wash

You wash your pet.
We clean the mess.

Pet wash tokens are now available online!

[Shop Pet Wash Tokens\(/Products/Pet-Food-Express-Self-Service-Pet-Wash-Token.html\)](/Products/Pet-Food-Express-Self-Service-Pet-Wash-Token.html)



Everything You Need

Enjoy back-saving raised
tubs, premium shampoos,
fresh towels, aprons, and
air dryers at our self
-service pet wash.



What is it?

From dogs to cats to pigs to sheep, our self-service pet wash is the best place to wash your pet! You stay dry with our raised tubs and waterproof aprons, while entry steps, waterproof collars, and leash clips keep your pet safely in place.

Premium Shampoos

Choose from a selection of premium plant-based shampoos from West Portal.



Is shampoo included?

The Self-Service Pet Wash includes your choice of premium plant-based shampoos from West Portal. Formulated with oatmeal and aloe, these USA-made shampoos gently clean your pet's coat while soothing their skin – extra sensitive pets may enjoy our Oxy Wash, available at select stores.

Convenient & Affordable

Self-service pet washes include premium shampoo, towels, and a treat. But the best part is – you get to leave the mess behind!



How much does it cost?

You can give your pet a DIY spa experience for 25 minutes at our self-service pet wash for \$18. Pet Wash tokens are part of our Buy 3, Get the 4th Free program every day, so regulars can prepurchase four washes for \$13.50 each.

Or purchase 3 pet wash tokens online for \$54 and get the 4th free!

[Shop Pet Wash Tokens\(/Products/Pet-Food-Express-Self-Service-Pet-Wash-Token.Html\)](/Products/Pet-Food-Express-Self-Service-Pet-Wash-Token.Html)



How does it work?

Purchase a token and
check in with an associate
to get towels.

2

Guide your pet up the
steps and secure them
to a tie-down in the tub.

3

Insert token. Lather and
rinse your pet using the cycle selections on
the machine.

4

Dry your pet using
towels and the air dryer.

[Shop Pet Wash Tokens\(/Products/Pet-Food-Express-Self-Service-Pet-Wash-Token.html\)](#)

[Find A Store\(/Stores/\)](#)

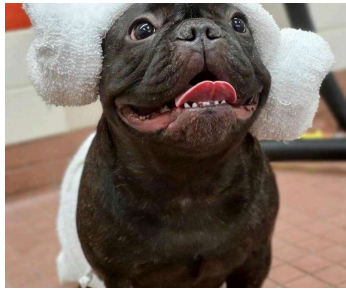
Pet Wash facilities are not available
at our Castro Valley, Mountain View,
and SF – Stonestown locations.



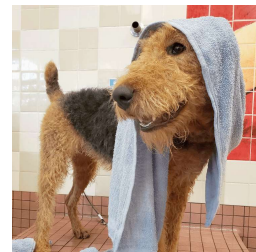
**"Leave the mess behind
—
we'll clean up for you!"**

Meet our customers.

Show off your pet! @petfoodexpress #PFEPetWash
(<https://www.instagram.com/petfoodexpress>)



@rangerthecuriosaussie



[Find a Store\(/stores/\)](#)

Want to hear from us?

Sign up to receive our latest
email news, offers and updates.

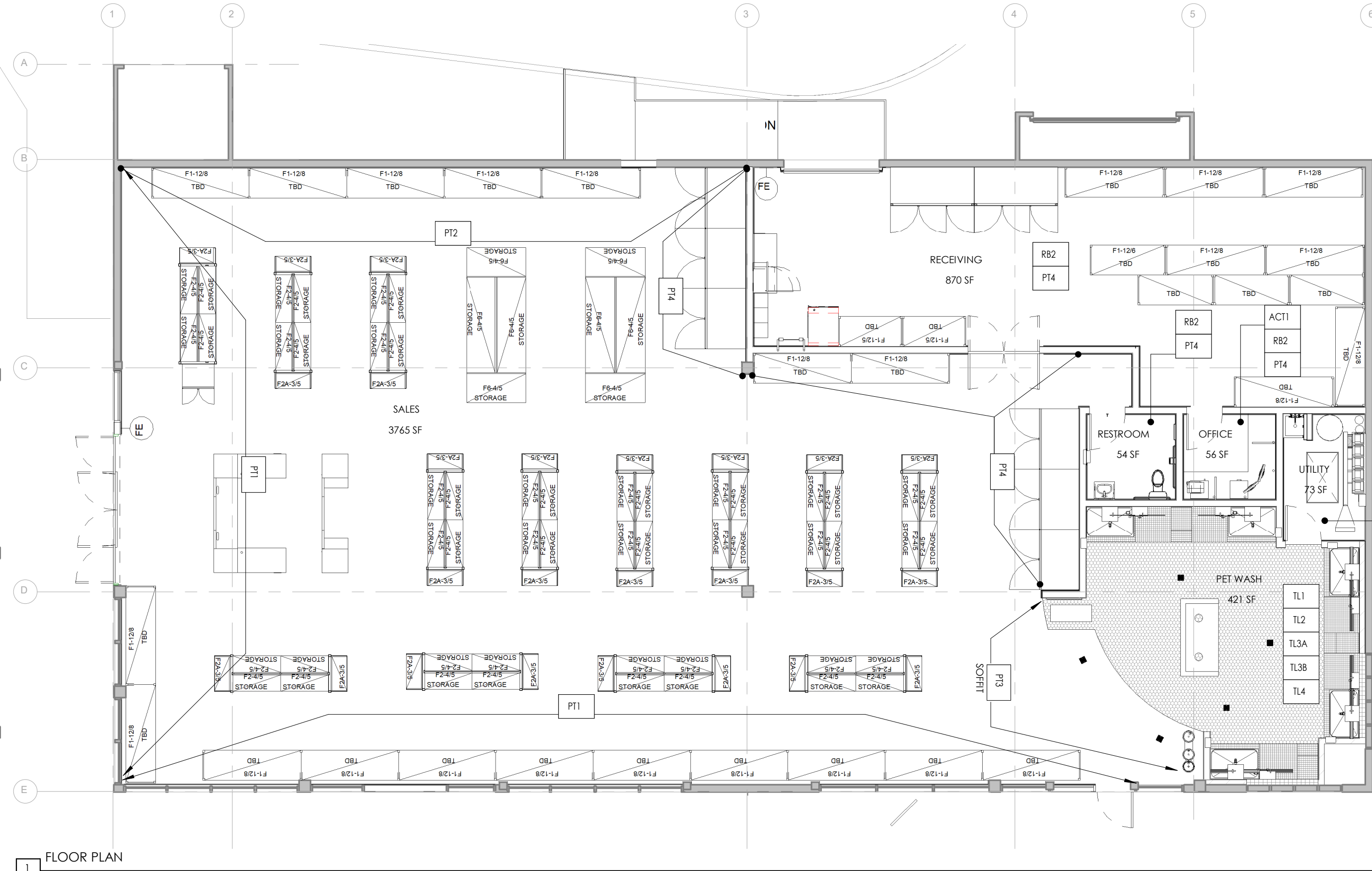
Enter your email address



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[Manage Website Data Collection Preferences](#)



1 FLOOR PLAN
1/8" = 1'-0"

MATERIALS

TL1 D311 BLACK/EBONY

TL2 D200 DESERT GRAY SPECKLE

TL3A 0190 ARCTIC WHITE

TL3B X114 DESERT GRAY

TL4 1469 GALAXY

PT1 BENJAMIN MOORE CHANTILLY LACE OC-65

PT2 KELLY MOORE FRENCH OAK KM4628

PT3 BENJAMIN MOORE HC-152 WHIPPLE BLUE

ROOM NAME	AREA
RECEIVING	870 SF
SALES	3765 SF
RESTROOM	54 SF
OFFICE	56 SF
UTILITY	73 SF
PET WASH	421 SF
	5,239 NET

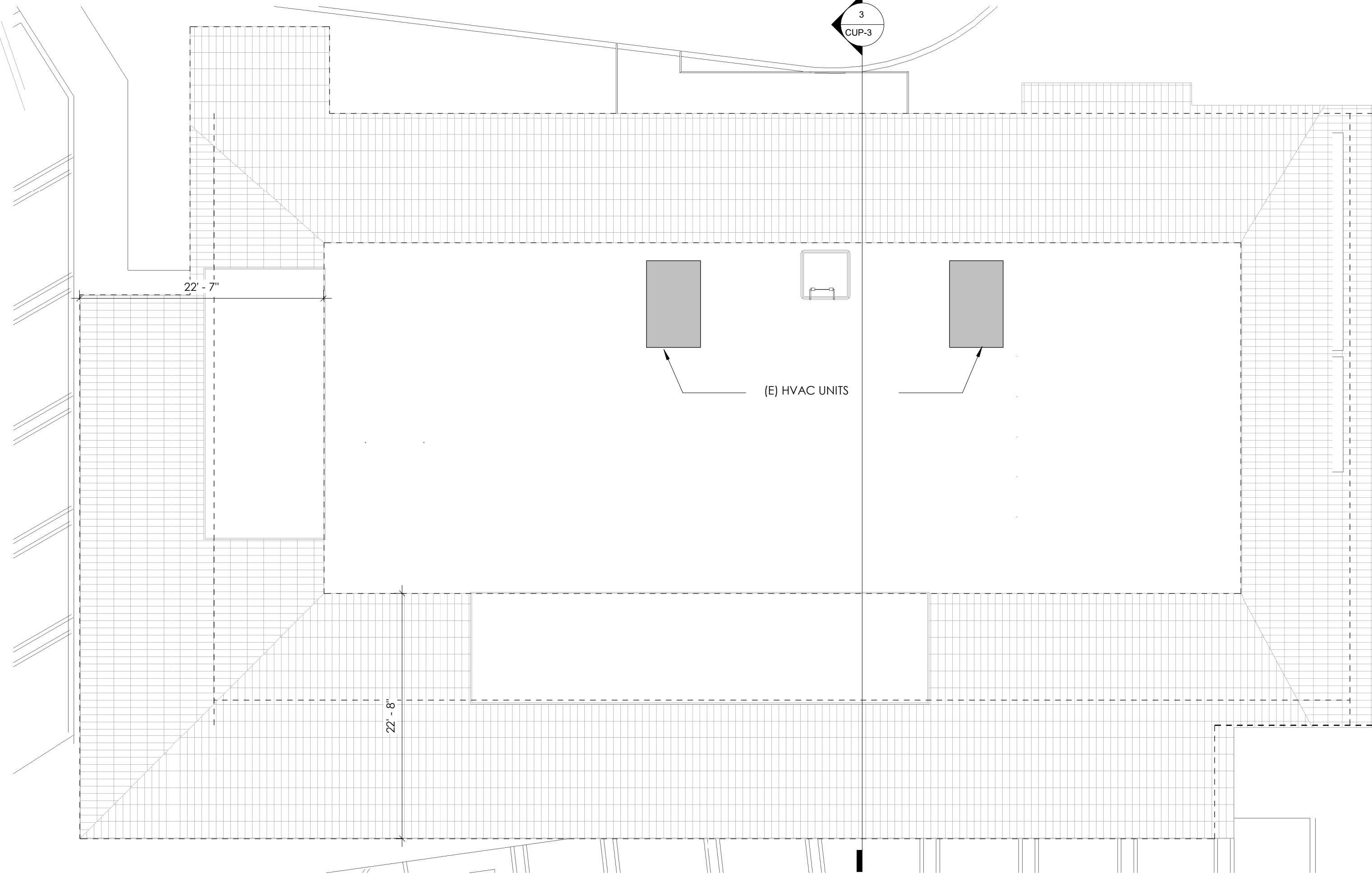
PT4 CHAMPAGNE BUBBLE KM5731-1

ACT1 ARMSTRONG 24X24

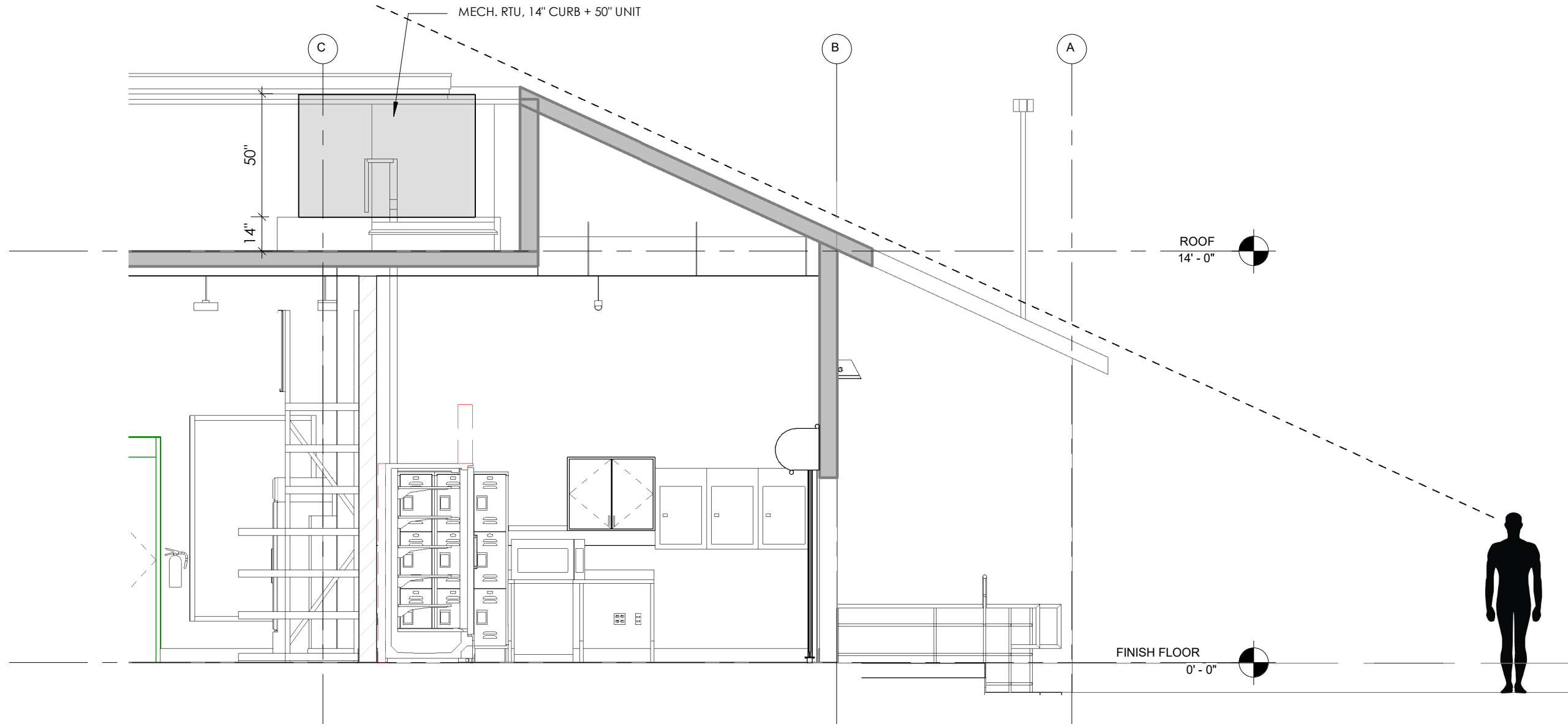
PL1 NEVAMAR S7004T

RB2 BURKE 701

RB1 BURKE 502



2 ROOF PLAN
1/8" = 1'-0"



3 HVAC SITE LINES
1/4" = 1'-0"

FLOOR PLAN AND MATERIALS



360 22nd street, suite 800
oakland, ca 94612
p. 415.541.0977
www.msasf.com



22113
PET FOOD EXPRESS
24241 AVENIDA DE LA CARLOTA
LAGUNA HILLS, CA 92653

CUP-3

CONDITIONAL USE PERMIT



City of Laguna Hills City Council / Planning Agency Staff Report

Date: July 9, 2024
To: Chair and Agency Members
From: Larry Longenecker, Community Development Director
Issue: Parking Use Permit (PUP) No. 0130-2023, a Request by Diamond Star Associates, Inc., on Behalf of Healthcare Realty Trust, Inc., for Approval of a Joint Parking Use Permit for the Taj Mahal Medical Center Located at 23521 Paseo de Valencia

Recommendation: That the Planning Agency:

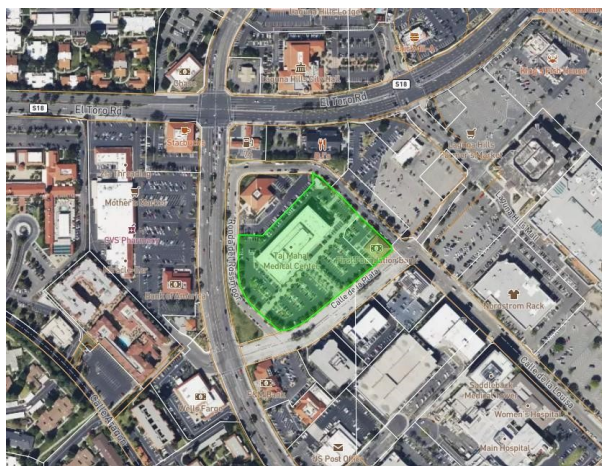
- 1) Conduct a public hearing;
- 2) Find and determine that the proposed project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 of Title 14, Chapter 3 of the California Code of Regulations (Class 1, Existing Facilities); and
- 3) Adopt a Resolution entitled: "A Resolution of the Planning Agency of the City of Laguna Hills, California, Approving Parking Use Permit (PUP) No. 0130-2023, a Request by Diamond Star Associates, Inc., on Behalf of Healthcare Realty Trust, Inc. for Approval of a Joint Parking Use Permit for the Taj Mahal Medical Center Located at 23521 Paseo de Valencia, Including an Exemption from the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15301 of Title 14, Chapter 3 of the California Code of Regulations (Class 1, Existing Facilities)."

Background:

The Taj Mahal Medical Center is located near the corner of Paseo de Valencia and Calle de la Plata (23521 Paseo de Valencia). The project site consists of two parcels totaling approximately 5-acres in size, and includes the Taj Mahal Medical Center, the First Foundation Bank, and a 375-space surface parking lot shared by the two buildings.

During 2020 and 2021, the current property owner, Healthcare Realty Trust (“Owner”), purchased the Taj Mahal building and three neighboring office buildings: the Saddleback Professional Center (24012 Calle de la Plata); The Laguna medical office building (24022 Calle de la Plata); and the Saddleback Medical Building (23961 Calle de la Magdalena), as well as a six-level parking structure shared by the three buildings.

Abutting the Taj Mahal Center to the northeast is a branch of US Bank. Abutting the property to both the east and west is Ronda del Rossmoor, a private street owned by US Bank. Further east, across Ronda del Rossmoor, is a parking lot for the former Laguna Hills Mall. To the south of the property, across Calle de la Plata, are existing office buildings. The Figure below is a vicinity map of the Project:



The Taj Mahal is 73,223 square-feet of floor area (gross building area less restrooms, elevator shafts, utility shafts), and currently consists of a mix of medical, professional, and financial offices.

The First Foundation Bank, located at the corner of Calle de la Louisa and Calle de la Plata, is a 5,288-square foot bank. The two buildings share the parking lot through a reciprocal ingress/egress agreement.

When the City of Laguna Hills incorporated in 1991, it recognized the project site as “legal non-conforming”, since it did not meet the parking requirements adopted by the County in 1985. To ensure that the degree of non-conformity would not be expanded, the City limited the mix of uses on the site to those that were in place as of the date of the City’s incorporation.

In 1992, a Parking Use Permit (UP 93-014) seeking relief from the parking requirements was approved establishing a parking demand ratio of 4.07 parking stalls per 1,000

square feet, which was based upon County parking criteria.

In 2003, the City approved a Change Plan/Site Development Permit (CP/SDP 2003-056), which allowed an increase of leasable medical office use to 35% of the building. The increase was accommodated due to the demolition of a vacant building within the parking lot area that resulted in additional parking stalls. A new parking survey was prepared by Katz, Okitsu & Associates (dated January 8, 2003), and demonstrated that the increase in medical office use could be supported.

The approval also established the application of the City's parking ratios for the project site instead of the past practice of basing parking on County standards.

In 2010, the City approved a Site Development Permit (SDPA No. 06-10-1676) to enhance the entrances to the Taj Mahal. The improvements resulted in reconfiguration of the parking lot and again increased the supply of on-site parking stalls. This facilitated an increase in the amount medical office use to 43%, and brought the site into greater conformance with the City's applicable parking ratios and regulations.

In 2011, the City approved a Site Development Permit/Parking Use Permit/Master Sign Program (SDP/CUP/PUP/MSP No. 11-10-1804) that included construction of additional office space, a new entrance plaza, parking and landscape improvements, and joint use of parking facilities between the Taj Mahal and bank property to support a combination of general and medical office uses. A new parking survey was prepared by Linscott, Law, & Greenspan (dated May 19, 2011), and demonstrated that the increase in medical office square footage could be supported. Condition of Approval no. 20 of this approval limited medical office use to 80% of the building, and 20% business/professional office.

Since 2011, when the latest parking study was approved, the mix of tenants has continued to change, with medical office in high demand. The Taj Mahal is now leased with 75% medical office. The purpose of the proposed project is to facilitate the continued transition of the Taj Mahal Medical Center from primarily professional offices to an increase in occupancy by medical offices. Demand for medical office space has occurred due to the proximity and successful growth of the MemorialCare Saddleback Hospital campus.

Authority:

The process the City must follow in reviewing a Parking Use Permit (PUP) is found in Laguna Hills Municipal Code ("LHMC" or "Code") Chapter 9-44 Access and Parking, and

LHMC Chapter 9-92 Application Process and Submittal Requirements. LHMC Section 9-44.070 (Joint Use of Parking Facilities) describes how the sharing of parking facilities can be approved, as long as there is sufficient parking for all existing and proposed uses within a site. The Planning Agency has review authority over the PUP process in accordance with LHMC Section 9-92.030.

The findings required for the application are found in LHMC Section 9-92.080. Accordingly, Staff has prepared findings demonstrating that the application complies with the General Plan and Zoning Code as stated in the proposed Resolution (Attachment 1).

Proposal & Analysis:

The number of parking stalls required for a particular use or type of business are contained in LHMC Table 9-44.A (Number of Parking Stalls Required). The Code's approach to determining the amount of parking required for a use assumes businesses utilize 100% of the required parking at all times. This is a common approach that cities utilize in determining the parking needs for non-residential uses, but it can overstate required parking.

For commercial centers, required parking is based on the total parking needed to serve all businesses. The parking requirements are compared to the total parking inventory to determine if there is a surplus or deficit of parking stalls. Since commercial centers typically have a variety of uses that have differing parking demand periods during the day, the Code provides the opportunity for the joint use of parking facilities with an approved parking plan (LHMC Section 9-44.070). This approach to calculating parking demand is generally referred to as "shared parking", which is made possible through the approval of a Joint Parking Use Permit by the Planning Agency.

The Applicant requests approval of a Joint Parking Use Permit (PUP), which includes a Parking Study ("Study") prepared by Linscott, Law, & Greenspan Engineers (dated February 21, 2024) (Attachment 2). The purpose of the PUP is to accommodate a desired tenancy ratio of 95% medical office, 5% nonmedical office for the Taj Mahal Medical Center ("Taj Mahal" or "Building").

The Building currently consists of 75% medical office (54,830 square feet), 18% vacant general office (13,448 square feet), 5% general office (3,806 square feet), and 2% retail/pharmacy (1,139 square feet). The Owner would like the ability to convert the vacant and occupied general office space to be able to lease as medical office, with a tenancy ratio of 95% medical office (69,920 square feet), 3% general office (2,164

square feet), and 2% retail/pharmacy (1,139 square feet). The total number of parking spaces required by the Laguna Hills Municipal Code for the desired 95% medical office is 479 parking spaces.

The parking lot shared by the Taj Mahal and First Foundation Bank consists of 375 parking stalls, with an additional 29 striped stalls located on Calle de la Plata; in total, 404 parking stalls are available for the two buildings. This results in a Code-based deficiency of 75 parking stalls.

The Study prepared for the Applicant concludes that utilizing a “shared parking” approach results in an actual peak demand of 227 parking stalls. The methodology used in the Study is a blended approach to calculating parking using observed actual demand for existing tenants, plus Code required parking for both the vacant office space and the proposed increase in medical office use. Parking counts were taken at hourly intervals over a three-day period (Tuesday - Thursday, October 24 – 26, 2023, from 7:00 a.m. to 7:00 p.m.). These three days were chosen to capture the busiest days of the week for medical office uses. The hours of observation were intended to capture the hours of operation for the busiest periods for tenants and visitors of the Taj Mahal. The peak parking demand observed 169 parking stalls on Wednesday at 10:00am., resulting in a surplus of 204 parking stalls. With the proposed tenancy mix for the Taj Mahal (95% medical office, 3% general office, and 2% retail), a projected surplus of 221 stalls would remain available.

Given the results of the Study, it is appropriate to establish a shared parking approach for the Taj Mahal through the City’s PUP process, and allow the Applicant the opportunity to establish a more efficient approach for the use of the existing parking supply. This approach will provide the Applicant with the ability to use actual parking counts to determine parking need, rather than strictly utilizing the City’s standard parking requirements. Use of the shared parking approach will provide a degree of flexibility in how parking demand is calculated, enabling the Owner the opportunity to attract additional medical office uses.

Conclusion:

Staff believes the Study demonstrates that there is adequate available parking for the Taj Mahal to accommodate the proposed 95% medical office-5% general office/retail tenant mix. The Study has effectively shown that the Building’s peak parking demand is far below the parking required by Code. The Study also satisfies the requirements of LHMC Section 9-44.070, which requires a detailed joint parking use plan. Furthermore, Staff’s observations of the parking lot’s capacity are consistent with the conclusions

made in the Study. Therefore, the approval of this PUP will reflect the building's actual parking demand, and enable the Applicant to use the parking structure's surplus parking capacity for a wide range of potential new tenants that may require a higher parking demand, such as additional medical offices.

As a standard City practice for PUPs, staff requires applicants to address future changes in parking demand due to tenant turn over and change in the mix of uses once the PUP has been approved. For instance, Condition of Approval No. 12 provides the Community Development Director the ability to request an update to the Study if the tenant mixture at any time becomes problematic to the center's parking and circulation. Therefore, staff recommends approval, subject to the conditions of approval as listed in the attached Resolution.

Public Notice:

The proposed project was advertised in an adjudicated newspaper of general circulation on June 27, 2024. A total of 64 public hearing notices were mailed, which includes all property owners within a 300-foot radius of the subject property, as well as all tenants of the subject property. To date, no comments have been received. Any written comments received will be distributed at the Planning Agency Public Hearing.

CEQA Findings:

Staff has reviewed the proposed Project for compliance with the California Environmental Quality Act (CEQA) and determined that this project is categorically exempt from CEQA pursuant to Section 15301 of Title 14, Chapter 3 of the California Code of Regulations (Class 1, Existing Facilities). This exemption applies to the permitting or minor alteration of existing structures.

Fiscal Impact:

There is no cost to the City since Staff time and costs are reimbursed by the applicant.

Attachments:

1. Proposed Resolution of Approval
2. Parking Study prepared by Linscott, Law, & Greenspan (February 21, 2024)

RESOLUTION NO. PA2024-07-09-X

A RESOLUTION OF THE PLANNING AGENCY OF THE CITY OF LAGUNA HILLS, CALIFORNIA, APPROVING PARKING USE PERMIT (PUP) NO. 0130-2023, A REQUEST BY DIAMOND STAR ASSOCIATES, INC., ON BEHALF OF HEALTHCARE REALTY TRUST, INC. FOR APPROVAL OF A JOINT PARKING USE PERMIT FOR THE TAJ MAHAL MEDICAL CENTER LOCATED AT 23521 PASEO DE VALENCIA, INCLUDING AN EXEMPTION FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PER CEQA GUIDELINES SECTION 15301 OF TITLE 14, CHAPTER 3 OF THE CALIFORNIA CODE OF REGULATIONS (CLASS 1, EXISTING FACILITIES)

The Planning Agency of the City of Laguna Hills, California, hereby finds, determines, declares, and resolves as follows:

WHEREAS, Diamond Star Associates, Inc., on behalf of Healthcare Realty Trust, Inc. ("the Applicant") has filed an application for Parking Use Permit (PUP No. 0130-2023), a request to establish a Joint Parking Use Permit at the Taj Mahal Medical Center located at 23521 Paseo de Valencia in the Village Commercial zoning district ("Project"); and

WHEREAS, the Project is hereby found to be Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Class 1, Existing Facilities) of Title 14, Chapter 3 of the California Code of Regulations. This exemption applies to the permitting or minor alteration of existing structures; and

WHEREAS, on July 9, 2024, the Planning Agency held a duly noticed public hearing and considered public comments and written and oral information and testimony presented by City staff, community residents, and other interested parties; and

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

NOW, THEREFORE, THE PLANNING AGENCY OF THE CITY OF LAGUNA HILLS, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. The above recitals are true and correct, and are incorporated herein by reference.

SECTION 2. That Planning Agency hereby determines that the required findings by the City for approval of Parking Use Permit PUP No. 0130-2023 have been met and made as follows:

Parking Use Permit

1. The proposed Joint Parking Use Permit is consistent with the intent and purpose of the Development Code.

The City's parking requirements are contained in LHMC Chapter 9-44. The intent of the parking requirements in the Development Code is to ensure that all land uses provide safe access and on-site circulation with adequate off-street parking facilities. The Development Code allows for shared use of parking facilities provided that it can be shown that adequate parking for all users is maintained. The Applicant has demonstrated that based upon the existing actual demand for existing uses, and the Code-required parking for vacancies and future uses, there is sufficient parking for the planned tenant mix, including uses that may have higher parking ratios. A comprehensive shared parking plan allows additional flexibility in leasing to a larger variety of users and allows a more efficient use of the existing parking supply. Condition of Approval No. 12 provides the Community Development Director with the ability to address parking and/or circulation issues relative to any change in any use or any portion of any use (i.e., change in tenant mix) to ensure the proposed Joint Parking Use Permit remains consistent with the requirements of the Development Code.

2. The Joint Parking Use Permit provides a reasonable and enforceable means for all uses to share parking facilities.

The shared parking approach proposed is enforceable upon all current and future tenants to ensure the parking is available. Any changes to the property affecting access or parking would require City approval, at which time the impact on shared parking would be evaluated. This Parking Use Permit is binding and enforceable against the property owner and all existing and future owner(s) and tenants of the property per the project conditions of approval. Additionally, the Community Development Director may evaluate the available parking supply for any change in tenant mix as provided for in Condition of Approval No. 12.

3. The requirement for parking established by the Joint Parking Use Permit shall assure that the parking demands for the participating uses are continually met.

This Parking Use Permit is binding and enforceable against the property owner and all existing and future owner(s) and tenants of the Center per the conditions of approval. Additionally, the Community Development Director may evaluate the available parking supply when any change in tenancy, or mix of uses is proposed at the subject site as provided for in Condition of Approval No. 12. Therefore, parking demand will continually be met. Should a parking issue occur resulting from a change in the tenancy or mix of uses, the Community Development Director, per Condition of Approval No. 12, can require the property owner to provide a parking study to demonstrate that parking is still sufficient.

4. The proposed use is consistent with the General Plan.

The Project is consistent with the goals and policies of the General Plan. In particular, with regard to parking, the General Plan under the Mobility Element (M-15) states the importance of utilizing a broad range of parking management tools to balance parking spillover effects and excessive parking requirements, to encourage efficient use of the land. Currently, the subject parking lot is often underutilized. Establishing formal shared parking will allow the property to accommodate the additional demand for medical office tenants, utilizing currently underused parking, while still providing adequate parking for all users.

5. The nature, condition, and development of adjacent uses, buildings, and structures have been considered and the proposed conditional use will not adversely affect or be materially detrimental to the adjacent uses, buildings, or structures.

Reciprocal ingress/egress and reciprocal use of parking lot areas has already been established between the two parcels and the subject proposal is to continue and expand the shared parking facilities in support of increasing the square footage of the existing buildings with medical office use. Conditions of approval ensure the use of shared parking on the site will not be materially detrimental. For example, Condition of Approval No. 12 requires the property owner to update the parking and circulation study whenever a change tenancy, or a change in the mix of uses is proposed. These requirements will ensure sufficient parking is available on the site for current and future tenants and uses.

6. The proposed site is adequate in size and shape to accommodate the use and integrate it with the existing and planned uses in the vicinity.

The Project Site is improved with commercial buildings, parking lot, and landscaping around the perimeter and in interior areas of the site. The project site is typical of other medical and professional office buildings in Laguna Hills in terms of the nature of the improvements provided that result in a functioning office property.

If the Community Development Director determines insufficient parking exists on a site being considered for new tenants and uses due to the application of the City's standard parking ratios, the City's shared parking regulations contained in LPMC 9-44.070 allow property owners to base parking need on actual demand with the completion of a parking study to determine if a parking surplus exists on the property. The Applicant has submitted a parking study ("Study") to evaluate the actual parking demand for the Project Site. When factoring in the proposed tenant mix, there is a total parking demand of 169 stalls, resulting in a surplus of 204 parking stalls. Off-site uses in the vicinity will not be impacted by the proposed shared parking approach since the Project Site will maintain all of the improvements required to function. Condition of Approval No. 12 will allow the Community Development Director to evaluate the available parking supply for any change in tenants or change in use in the future, to ensure the Applicant's

implementation of a shared parking approach will not result in inadequate parking now or in the future.

7. All required development standards prescribed by the Development Code can be achieved.

The proposed Joint Parking Use Permit will enable the property owner to determine required parking based on actual parking demand, and enable the property owner to accommodate a wider range of potential new tenants, broadening the range of services to serve the public, that may have higher Development Code parking requirements, such as medical offices.

The Applicant, in cooperation with the property owner, has submitted a parking study ("Study") in order to evaluate the actual parking demand for the Project Site. When factoring in the proposed tenant mix, there is a total parking demand of 169 stalls, resulting in a surplus of 204 parking stalls. Off-site uses in the vicinity will not be impacted by the proposed shared parking approach since the Project Site will maintain all of the improvements required to function. Condition of Approval No. 12 will allow the Community Development Director to evaluate the available parking supply for any change in tenants or change in use in the future, to ensure the Applicant's implementation of a shared parking approach will not result in inadequate parking now or in the future.

8. The conditions and limitations placed upon the use are necessary to ensure compatibility with adjacent or abutting uses and the preservation of the public peace, safety, and welfare.

The conditions of approval will ensure that the approval of the Joint Parking Use Permit will not result in the conditions described above. Condition of Approval No. 12 will allow the Community Development Director to evaluate the available parking supply for any change in tenant mix and ensure the adequate parking will be available for all uses. The ability to evaluate required parking for any change in mix of uses, and require reasonable mitigation measures based on future updates to the parking study to be implemented by the Applicant will ensure that incompatible conditions with adjacent or abutting uses will not materialize as a result of the approval of a Joint Parking Use Permit, and ensure that the public peace, safety and welfare is maintained.

NOW, THEREFORE, based upon the above findings, the Planning Agency of the City of Laguna Hills does hereby approve PUP No. 0130-2023 subject to the following conditions:

General

1. The following Conditions of Approval shall be binding and enforceable against, and, whenever used herein, the term "Applicant" shall mean and refer to each of the following: Diamond Star Associates, Inc., on behalf of Healthcare Realty Trust, Inc., the owners(s) and tenant(s) of the property, and each of their respective successors and assigns.

2. Unless the context dictates otherwise, whenever the term “this Permit” is used in the following Conditions of Approval, it shall collectively refer to the Parking Use Permit (PUP) No. 0130-2023, approved pursuant to this Resolution, as well as the plans, studies, and exhibits submitted to the City by the Applicant to describe and depict the improvements to be constructed as a part of the project, and as otherwise modified by these Conditions of Approval.
3. Unless the context dictates otherwise, whenever the term “project” is used in the following Conditions of Approval, it shall collectively refer to the plans and exhibits submitted to the City by the Applicant to depict the project, as modified by these Conditions of Approval.
4. To the fullest extent permitted by law, the Applicant shall, at its sole cost and expense, protect, defend, indemnify, and hold harmless the City, its elected and appointed officers and officials, employees, agents, departments, agencies, authorized volunteers, consultants, attorneys, boards, commissions, and committees, and instrumentalities thereof ("Indemnitees"), from and against any and all claims, liabilities, losses, fines, demands, penalties, lawsuits, writs of mandamus, and any other claims or actions or proceedings of any kind whatsoever (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolution procedures (including, but not limited to, arbitrations, mediations, and other such procedures), judgments, orders and decisions (collectively "Claims" and "Actions"), brought against the Indemnitees, which seek to attack, challenge, modify, set aside, void, or annul any action of or any permit or approval issued by the Indemnitees (including actions approved by the voters of the City) for, in connection with, or concerning the approval of this Permit. It is expressly understood and agreed that the City shall have the right to approve, which approval will not be unreasonably withheld, the legal counsel providing the defense of the Indemnitees for the Claims and Actions, and that the Applicant shall promptly reimburse the City for all costs and expenses directly and necessarily incurred by the City in the course of the defense, including reasonable attorneys' fees. The City shall promptly notify the Applicant of any Claims and Actions brought against the Indemnitees and shall cooperate in the defense of any such Claims and Actions. If the Applicant fails to so defend the Claims and Actions, the City shall have the right but not the obligation to do so and, if it does, the Applicant shall promptly pay the City's full cost thereof.
5. Approval of this Permit constitutes approval of the proposed project only to the extent that it complies with the City's Development Code and any other applicable zoning regulations. Approval does not include any action or findings as to compliance or approval of the project regarding any other applicable ordinance, regulation, or requirement.
6. Failure to abide by and faithfully comply with any and all conditions of approval shall constitute grounds for revocation of this Permit by the Laguna Hills Planning Agency.
7. The Applicant shall agree in writing to these conditions of approval within 30 days of the Planning Agency's approval.

8. The conditions of project approval set forth herein include certain development impact fees and other exactions. Pursuant to Government Code §66020(d), these conditions constitute written notice of the amount of such fees, and/or exactions. The Applicant is hereby notified that the 90-day protest period in which the Applicant may protest the fees, dedications, reservation, or exactions imposed on this project through the Conditions of Approval, commencing from the date of approval of the project, has begun.
9. Pursuant to City Council Resolution No. 2017-07-11-2, the Applicant shall reimburse the City for any outstanding staff time spent on the processing of this Permit within 60 days of the Planning Agency's approval.
10. This Permit shall expire and be of no further force or effect if the Permit is not implemented within two years from July 9, 2024.
11. Within 48 hours from project approval, the Applicant shall submit to the City a check in the amount of \$50.00, made payable to the Orange County Clerk-Recorder, for filing the Notice of Exemption.

Joint Parking Use Permit

12. If at any time in the future the Community Development Director determines, in his or her sole discretion, that a parking and circulation study is necessary to address parking and/or circulation issues relative to any change in any use or any portion of any use (i.e., change in tenant mix) in the shopping center, the Applicant shall, at its sole cost and expense, be responsible for the cost of a parking and circulation study prepared by a licensed consultant selected by the City. The Applicant shall, at its sole cost and expense, be responsible for implementation costs of any reasonable mitigation measures deemed appropriate by the Director related to such impacts based on the findings of such study.

PASSED, APPROVED AND ADOPTED this 9th day of July 2024.

DAVE WHEELER, CHAIR

ATTEST:

JENNIFER LEE, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF LAGUNA HILLS)

I, Jennifer Lee, City Clerk of the City of Laguna Hills, California, DO
HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution
No. PA2024-07-09-X adopted by the Planning Agency of the City of Laguna Hills,
California, at a Regular Meeting thereof held on the 9th day of July 2024, by the following
vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

(SEAL)

JENNIFER LEE, CITY CLERK

February 21, 2024

**Mayor Dave Wheeler; and,
Members of the City Council
City of Laguna Hills
24035 El Toro Road
Laguna Hills, CA 92653**

**Subject: Taj Mahal Medical Center
23521 Paseo de Valencia
Request to Approve a "Joint Parking Use Permit" No. 0130-2023**

Dear Mayor Wheeler and Council Members:

Healthcare Realty Trust, a publicly traded REIT, is the largest owner of medical office buildings in the nation. We selected your city for long-term investment due to the proximity of Saddleback Medical Center and a diverse population needing high quality medical care. We currently own four medical office buildings in Laguna Hills and one in Laguna Woods. Our buildings are professionally managed and in great demand by medical professionals.

When some of our Laguna Hills buildings were constructed decades ago, including prior to City incorporation, the need for medical office space was less than today. However, as the population matures, we are experiencing greater demand for medical office while the demand for general office has dramatically decreased since the pandemic.

Prior owners of the "Taj Mahal Medical Center" first responded to the increasing demand in 2010. Subsequent applications for over a decade have sought City approval of 100% medical tenancy, but the City cautiously approved less than 100%. At present our Taj Mahal building is approved for 80% medical tenants and 20% non-medical. With this "joint parking use permit" application we are seeking an increase to 95% medical and 5% non-medical, just a 15% increase in medical office use.

As owner of medical buildings across the United States, and headquartered in Tennessee, we are experts in selecting buildings which are desirable for medical tenants and in locations where patient demand is greatest. We would not acquire buildings without sufficient parking. In our analysis before purchasing the Taj Mahal, we deemed more than sufficient parking was provided, and to date, we have never experienced "any shortage of parking" for our tenants or patients. The Taj Mahal property always has open onsite parking throughout the day.

We retained the services of Donald Lamm, thirty-six years experienced "local government" city planning director, to process our application. Again, we would not be asking if it would damage our existing tenants or create any negative impacts on the surrounding community. While exploring options with City staff, we agreed with staff's recommendation to pursue approval of a "Joint Parking Use Permit" pursuant to Municipal Code Section 9-44.070, "Joint Use of Parking Facilities." It has been our experience that medical office buildings, in proximity to the Saddleback Medical Center and massive Laguna Woods Village, do not need excessive parking at one space for each 150 sqft of "gross" building floor area. Furthermore, we do not lease to high volume "industrial medical clinics" where dozens of patients wait and are processed in short visit intervals.

Mr. Lamm reports City staff have been "extraordinarily" helpful and a pleasure to work with. Therefore, we proceeded and now have all documents and studies requested by staff for the parking use permit. As such, attached is our February 15, 2024, Taj Mahal "shared parking study" required by staff and prepared by LLG, Inc. Transportation Engineers. A "parking use permit" would allow fifteen percent more medical tenancy. At present, there are at least seventeen physicians in our building who belong to the Memorial Care network and affiliated with Saddleback Medical Center. The demand for more medical specialists to serve the community is significant.

While exploring reasons why the City has not to date approved one hundred percent medical tenancy, we believe the "perception of inadequate on-site parking" is being caused by excessive "private" on-street parking in the area. That on-street parking is creating a negative image, yet we cannot control parking on Ronda del Rossmoor and Calle de Louisa, both private streets. We would prefer the City enforce limited parking on those streets, but we have been informed that is not possible.

Linscott, Law & Greenspan (LLG) conducted parking counts in our Taj Mahal parking lot, our frontage parking on Calle de La Plata, and on Ronda del Rossmoor East & West, to determine the "peak hour" of greatest parking need/demand. LLG previously prepared parking studies in 2011 and 2019, under supervision of former City staff. Using a Wednesday for comparable day of the week, in 2011 the Taj was at 42% medical tenancy and the highest parking demand hour at 10:00am totaled **206 parked cars** with 74 empty spaces. In **2019**, on a comparable Wednesday with 68% medical tenancy, peak hour parking at 11:00am **had 216 parked cars** with 158 available spaces which included a City required increase in supply from 2011. Counts in **summer of 2022 with the Taj at 80% medical, revealed our peak hour parking demand at 10:00am resulted in 171 parked cars.**

Our 2023-24 LLG Parking Study, the subject of this application determined **at the present 80% medical tenancy, during the peak hour for parking demand at 10:00 AM on Wednesday, the Taj Mahal "onsite parking lot with Calle de La Plata parking spaces" were occupied by 169 vehicles of the 373-space capacity.** Again, that is the highest/peak parking need the entire week and all other times and days have less parking. The conversion of 15% non-medical office space to medical should result in a minimal increase in total parking/demand by 49 spaces. Additionally,

there are 75 parking spaces along Ronda del Rossmoor East & West (32 spaces on East and 43 spaces on West). During the same 10:00 AM peak parking hour, 58 of the Ronda del Rossmoor E&W spaces were occupied. Even using a worst-case scenario of "all" Ronda del Rossmoor 58 cars being attributable to Taj Mahal, and being moved to onsite parking, at 95% medical office, the total "onsite parking need/demand" is 276 spaces leaving 97 empty spaces. That still results in 26% of all onsite parking being empty spaces. Additionally, all parking on Ronda del Rossmoor East and West would then be prohibited. That scenario would eliminate the perception that Taj Mahal does not have sufficient onsite parking. (See attached LLG Parking Study-Table 5)

The Laguna Woods Village (LWV) provides its 18,500 residents an extraordinary transportation system to Laguna Hills commercial business, retail stores, and medical offices for patient treatment- lagunawoodsvillage.com "transportation." The transportation system is called their "Easy Rider" bus system for only LWV residents serving six neighborhoods, five fixed routes, and two specific routes into Laguna Hills commercial and medical offices. Easy Rider Bus Route 1 is a daily "fixed route" shuttle to Calle de La Plata (Saddleback Professional/Financial Center and the Laguna Building), Taj Mahal, and "Calle de La Louisa medical buildings." The Easy Rider Wellness "Special Request" Route specifically shuttles to the west doorsteps of Taj Mahal (see attached route maps). The LWV shuttle does not stop at or use the OCTA bus stop at the corner of Paseo de Valencia and Calle de La Plata.

Conclusively, the City's zoning development code mandate for 6.66 (rounded to 7.0) spaces per 1,000 sq ft of "gross floor area" is unnecessary. The evidence is clear the population of visitors and patients to Healthcare Realty's medical buildings, adjacent to the Saddleback Medical Center, are aging and drive fewer cars. A simple fact.

It is our impression many of the vehicles parked on private streets around the Taj Mahal are being stored or parked by visitors, or employees working in the area, and not all necessarily going to Taj Mahal. The attached parking study validates there are 75 parking spaces on Ronda del Rossmoor East (mall side has 32 spaces) and West (Valencia side has 43 spaces). These parked cars on Ronda del Rossmoor West, parallel with Paseo de Valencia, appear as if there is not sufficient parking on the Taj Mahal property. However, even if every vehicle today parked during the peak hour on Ronda del Rossmoor West and East, was moved onto the Taj Parking lot, we would still have open vacant parking spaces, but on street spaces would simply fill by visitors or employees at other buildings in the area. All medical office buildings in the area have secure pay parking to control illegal parking. The same rate is also charged at all parking lots and structure. As for Ronda del Rossmoor East, it is owned by the Laguna Hills Mall owner, signed for their exclusive use, but they do not enforce that parking regulation. So, patients, employees, commuters, and anyone else will park there as they wish.

If the City is greatly concerned that parking needs to be removed from Ronda del Rossmoor West, which is not signed like Ronda East, then we recommend that owner install limited four-hour parking to discourage long-term parking. However, we do not own

Ronda del Rossmoor West, only our frontage along Calle de La Plata for the private street parking. So, we cannot enforce any parking limitations on Ronda West to stop employees, patients, visitors to the banks, to Saddleback Memorial Center, or people simply parking for rideshare commuting and overnight storage.

However, as a responsible building owner we will make every effort to inform out tenants that all employees and visitor patients should park onsite, and each business owner is responsible for obtaining parking passes for their employees and validation parking hours for their patients. We do not have an employee count or known patient demand, only "automobile parking demand."

Healthcare Realty is the largest owner of medical office buildings in your City, other than Memorial Care's Saddleback Medical Center, and we provide considerable opportunities for "small businesses" to thrive in the medical profession. Additionally, "general office", as a land use, greatly impacts roadways with peak traffic generated during employee commute hours of 7-9am and 4-6pm which are the standard AM and PM peak traffic hours in Orange County. Those are also peak traffic congestion hours on El Toro Road for regional commuters. Our "medical office tenants" have "peak hours" after 9:00am and before 4:00pm with far less impact than general office on surrounding roadways. As such, medical tenants have a lower impact on traffic congestion during peak hours on El Toro Road in Laguna Hills.

We sincerely appreciate your consideration of our application and ask that you approve our "joint parking use permit" for the Taj Mahal Medical Center property. We are very responsible property owners in your City, we provide excellent medical support to Memorial Care's Hospital, and we are a community asset and benefit as service providers. We will be present at your meeting to introduce ourselves as members of your community and to answer any questions. Healthcare Realty Trust is significantly invested in Laguna Hills and plans to remain as such.

Thank you. Should you have any questions prior to the meeting, please do not hesitate to contact me or our representative and authorized agent Don Lamm at 949 838-7038,

Sincerely,



Jeffrey A. Rieger
Director of Real Estate

Attachments:

Directory map
Parking Study Table 5
LLG 2024 Parking Studies for Taj Mahal Medical Center

Cc:

Jarad L. Hildenbrand, City Manager
Larry Longenecker, Community Development Director
Joseph Ames, Public Works Director/City Engineer
Felix Mendez, Healthcare Realty Trust
Donald D. Lamm, AICP, Diamond Star Associates, Inc.

PLANTING LEGEND

TREES	COMMON NAME	SIZE
	DATE PALM	18' BT
	CHAMMIS PALM	24' BT
	OHAI	36' BT
	TIPO	36' BT
	MALIBU PALM	18' BT

SPRINGS/GRASSCOVER

COMMON NAME
Adiantum
Asplenium
Calceolaria
Carex
Cyperus
Eleocharis
Erigeron
Galium
Geranium
Hebe
Hesperis
Hydrangea
Impatiens
Juncus
Lupinus
Lythrum
Monarda
Nasturtium
Ornithoglossum
Phlox
Primula
Ranunculus
Salvia
Scilla
Senecio
Sparganium
Thalictrum
Veronica
Viola
Yucca



18000 Santa Monica Blvd.
 Suite 100
 Los Angeles, CA 90025
 T 310 838 2100
 F 310 838 0100

SCALE: 1" = 30'-0"
 N
 W E S

SITE logo
 310 838 0100
 landscape architecture
 714.426.0248
 101 East Main Street, Suite 200
 Torrance, CA 90501

ILLUSTRATIVE LANDSCAPE PLAN

TAJ MAHAL MEDICAL CENTER

Taj Mahal Medical Center and Saddleback Professional Center

- Legend**
- Laguna and Saddleback Medical Buildings
 - Parking Structure
 - Saddleback Professional Building
 - Subject: Saddleback Professional Center
 - Taj Mahal Medical Center

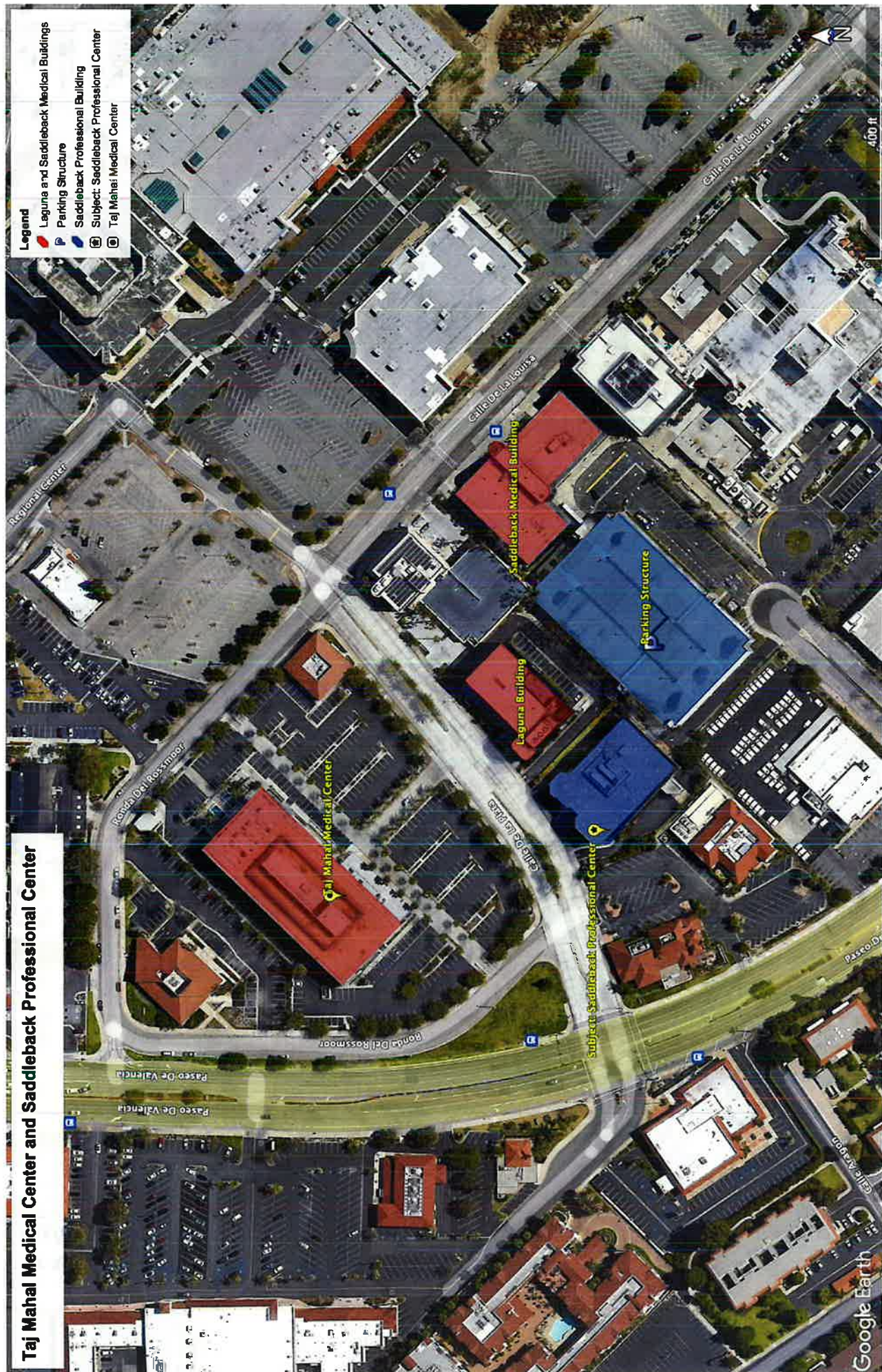
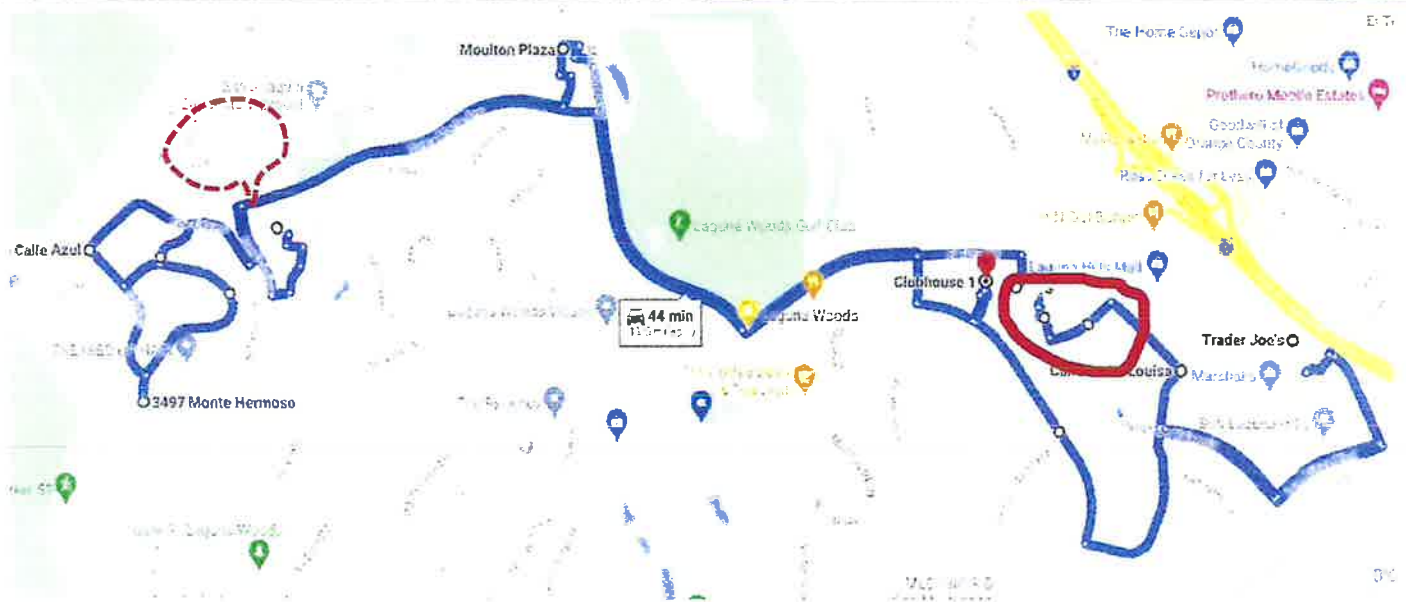


TABLE 5
FUTURE DEMAND VS. EXISTING SUPPLY
Taj Mahal Medical Center, Laguna Hills

	Parking Demand Counts on Wednesday (10-25-23) (PEAK DAY)						Net Hourly Demand by Converting 13,448 SF of Vacant Gen Office to Med Office and 1,642 SF of Occupied Gen Office to Med Office (49 spaces per Table 1)	Existing Demand (per 10-25-23 counts) + Net Hourly Demand from Conversion versus Taj Mahal Supply		Existing Demand (per 10-25-23 counts) + Net Hourly Demand from Conversion versus Taj Mahal Supply and Rhonda del Rossmoor On-Street Spaces		
	Taj Mahal Off-Street + On-Street (Calle de la Plata)		Rhonda del Rossmoor West + East (adjoining Taj Mahal)		Taj Mahal + Rhonda del Rossmoor (adjoining Taj Mahal) Total							
	Taj Mahal Total Demand (sp)	Taj Mahal Total Surplus (sp)	RDR Total Demand (sp)	RDR Total Surplus (sp)	Total Demand (sp)	Total Surplus (sp)		% of 227-space Peak Demand	Total Demand (sp)	Total Surplus (sp)	Total Demand (sp)	Total Surplus (sp)
Supply (sp)	373		75		448				373		448	
7:00 AM	8	365	19	56	27	421	12%	6	33	340	33	415
8:00 AM	48	325	42	33	90	358	40%	20	110	263	110	338
9:00 AM	137	236	57	18	194	254	85%	42	236	137	236	212
10:00 AM	169	204	58	17	227	221	100%	49	276	97	276	172
11:00 AM	163	210	60	15	223	225	98%	48	271	102	271	177
12:00 PM	133	240	48	27	181	267	80%	39	220	153	220	228
1:00 PM	128	245	53	22	181	267	80%	39	220	153	220	228
2:00 PM	138	235	56	19	194	254	85%	42	236	137	236	212
3:00 PM	145	228	51	24	196	252	86%	42	238	135	238	210
4:00 PM	116	257	39	36	155	293	68%	33	188	185	188	260
5:00 PM	79	294	19	56	98	350	43%	21	119	254	119	329
6:00 PM	21	352	11	64	32	416	14%	7	39	334	39	409
7:00 PM	8	365	10	65	18	430	8%	4	22	351	22	426
Peak Demand	169		60		227				276		276	
% Occupancy	45%		80%		51%				74%		62%	
Surplus (+) or Deficiency (-)	204		15		221				97		172	

CVS
Transfer Point to Wellness
Calle de La Plata
**Taj Mahal (Drop Off Only)
Calle de La Louisa (Medical Buildings)
Trader Joe's
Health / Pharmacy / Services Gate 1



Bus Route Hours: 9AM - 5PM Monday through Friday

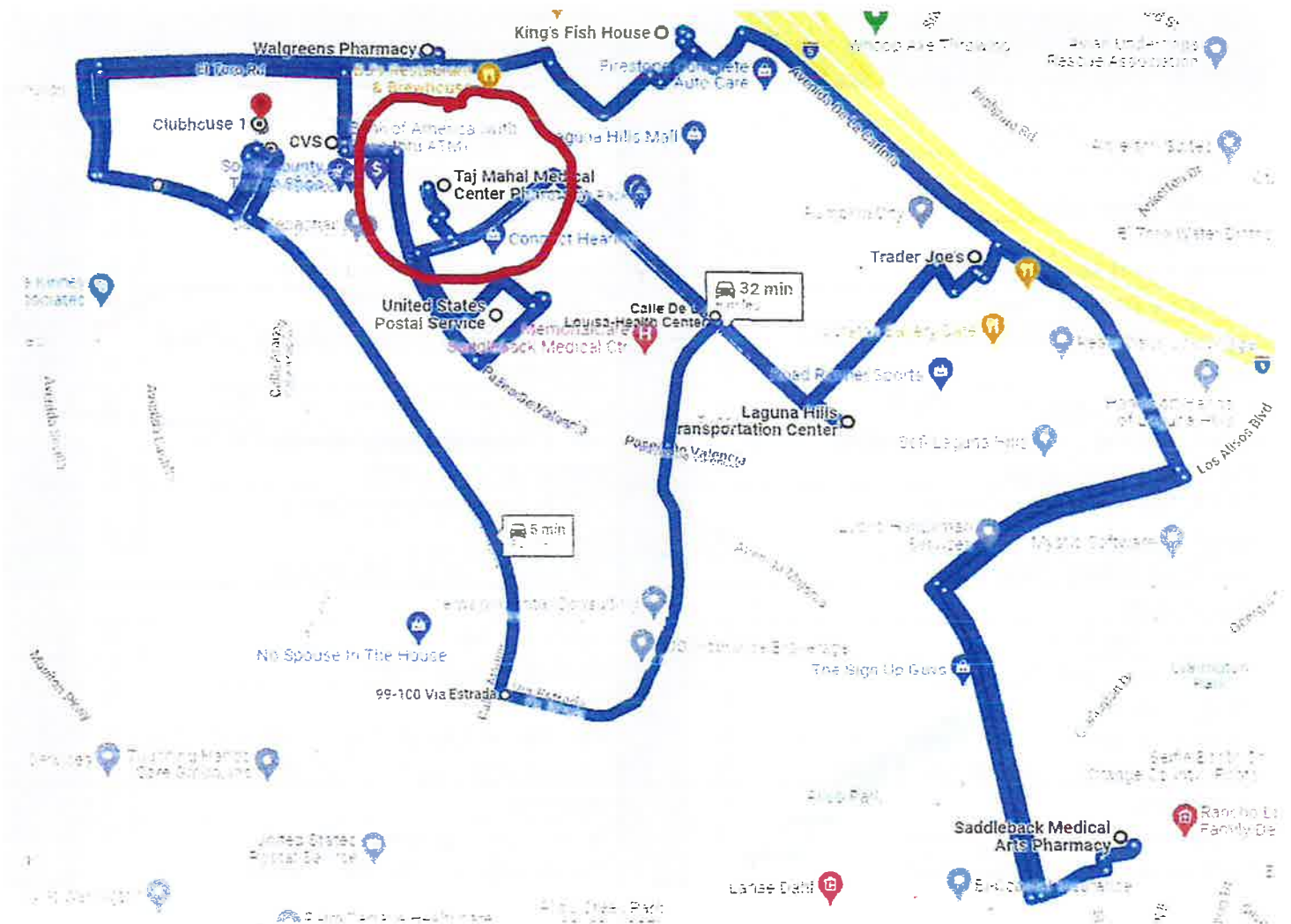
COMMERCIAL EAST AND WELLNESS

DESIGNATED ROUTE		ETA	DESIGNATED ROUTE		ETA
Clubhouse 1 (Starting Point)		0:00	Clubhouse 1 (Starting Point)		0:30
Calle Aragon (CDS 29)		0:01	Calle Aragon (CDS 29)		0:31
CVS/Mother's Market		0:05	CVS/Mother's Market		0:35
Hospital (Rear Loop)	(R)	0:09	Hospital (Rear Loop)	(R)	0:39
Post Office	(R)		Post Office	(R)	
Farmers and Merchant Bank	(R)		Farmers and Merchant Bank	(R)	
California Bank & Trust	(R)		California Bank & Trust	(R)	
Laguna Building (24022 Calle De La Plata)			Laguna Building (24022 Calle De La Plata)		
Taj Mahal	(R)		Taj Mahal	(R)	
Fish House Restaurant / In 'N Out	(R)		Fish House Restaurant / In 'N Out	(R)	
Glass Building / Harvard Eye Center		0:12	Glass Building / Harvard Eye Center		0:42
Memorial Care Center	(R)		Memorial Care Center	(R)	
OCTA Transportation Center		0:15	OCTA Transportation Center		0:45
Rehab Center	(R)		Rehab Center	(R)	
Oakbrook Village / Marshalls		0:20	Oakbrook Village / Marshalls		0:50
Trader Joes		0:22	Trader Joes		0:52
Oakbrook Medical	(R)		Oakbrook Medical	(R)	
Medical Arts Building	(R)		Medical Arts Building	(R)	
Dental Plaza	(R)		Dental Plaza	(R)	
Meridian at Laguna Hills (Villa Valencia)	(R)		Meridian at Laguna Hills (Villa Valencia)	(R)	
Laguna Hills City Hall / Medical Building	(R)		Laguna Hills City Hall / Medical Building	(R)	
Walgreens	(R)		Walgreens	(R)	
St George's Episcopal Church	(R)		St George's Episcopal Church	(R)	
Clubhouse 1 (Transfer Point)		:30	Clubhouse 1 (Transfer Point)		0:00

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Laguna Woods Village®



Neighborhood routes will not operate between 12:30 and 1 p.m. to provide bus drivers a lunch break.

Bus Route Hours: 9AM - 5PM Monday through Friday

Transportation: 949-597-4659



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Pasadena
Irvine
San Diego

February 21, 2024

Mr. Jeff Rieger
Healthcare Realty
23961 Calle de la Magdalena, Suite 440
Laguna Hills, CA 22653

LLG Reference: 2.23.4720.1

Subject: **Parking Study, Trip Generation Assessment, and VMT Screening
for Taj Mahal Medical Center**
Laguna Hills, California

Dear Mr. Rieger:

As requested, Linscott, Law & Greenspan, Engineers (LLG) is pleased to submit findings for the Parking Study, Trip Generation Assessment, and VMT Screening we completed for the Taj Mahal Medical Center, which is an existing medical office/professional office building located at 23521 Paseo del Valencia.

The proposed Project, as envisioned by Healthcare Realty, includes the renovation, re-tenancy and re-occupancy of existing general office space with medical office uses, which would increase the increase existing medical office tenancy to 95%. Based on current approvals (Resolution No. PA201106-14-1), the Taj Mahal Medical Center is permitted to have a tenant mix of 80% medical office and 20% general office. Based on this, the focus of this evaluation is to determine whether existing supply would be adequate in meeting the parking demand that could be generated by a target mix of 95% medical office and 5% general office uses at full occupancy of Taj Mahal in the future.

In addition, the trip generation potential for the proposed medical office conversion was estimated, compared against a 50-peak hour trip threshold (to determine if an LOS-based traffic analysis is warranted), and compared against remaining trip budgets in the Urban Village Specific Plan area. In order to determine the need for a CEQA-based VMT impact assessment, VMT screening was conducted for the Project using City-prescribed methodology and worksheet.

Our method of analysis, findings, and recommendations are detailed in the following sections of this report.

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John A. Boarman, PE
Richard E. Barretto, PE
Keil D. Maberry, PE
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An LG2WB Company Founded 1966

Briefly, our findings indicate that a minimum parking surplus of 221 spaces during peak demand conditions (surpluses would be greater during all other hours of a weekday and weekend) in off-street and on-street spaces serving Taj Mahal would be adequate in meeting a future, net additive demand of 49 spaces generated by a future tenancy scenario of 95% medical office for Taj Mahal.

Project Description

Based on floor area calculations prepared by Healthcare Realty, the existing Taj Mahal building has a total of 82,360 square feet (SF) of Gross Building Floor Area. Per the City of Laguna Hills Municipal Code, the Parking-Based GFA, less elevator shafts and restrooms, for Taj Mahal is calculated to total 73,223 SF (also defined as “Tenant Floor Area” in development tabulations provided by Healthcare Realty).

Table 1, located at the end of this letter report, summarizes the existing tenant mix and associated floor areas for the Taj Mahal Medical Center. The existing land use breakdown consists of the following:

- 18% vacant general office (13,448 SF)
- 75% medical office (54,830 SF)
- 5% general office (3,806 SF)
- 2% retail/pharmacy (1,139 SF)

In order to achieve a future tenancy scenario of 95% medical office for Taj Mahal, the 13,448 SF of vacant general office and 1,642 SF of occupied general office would need to be converted to medical office uses. The resulting land use mix for the future would be as follows:

- 95% medical office (69,920 SF)
- 3% general office (2,164 SF)
- 2% retail/pharmacy (1,139 SF)

Parking Supply

The attached **Figure 1** presents the existing aerial photograph of the site, and on-site parking supply for the Project. Based on a field inventory, the existing on-site parking supply in Zones A through E for the Taj Mahal totals 375 spaces, inclusive of 31 spaces for the bank in Zone E. For the purposes of this study, Zone E is treated as separate from Taj Mahal, even though Taj Mahal has a reciprocal parking agreement with the bank, which allows access to Zone E.

Figure 2 illustrates the Project site plan, existing on-site/off-street parking supply/layout/signage, current permit parking configuration along Calle de la Plata (a private street owned/controlled by Taj Mahal, and therefore part of Taj Mahal's parking supply) and Rhonda del Rossmoor West and East adjoining the site (these segments are private streets, with Ronda del Rossmoor East being owned by the Laguna Hills Mall property owner, and Ronda del Rossmoor West, we are told, is owned by the property owner of US Bank property at 23511 Paseo de Valencia. However, while all of Ronda del Rossmoor is a private street, like Calle de La Plata, with public rights-of-way easements, neither owner of Ronda del Rossmoor enforces parking on the street, and therefore, all 75 spaces are always available to unrestricted parking), primary and secondary driveway ingress and egress, parking controls, and Laguna Woods Village shuttle staging areas.

Table 2 provides a breakdown of the existing parking supply provided within each zone, identified as Zones A through D, and Calle de la Plata, which total 373 spaces, plus 31 spaces for the bank in Zone E, resulting in an overall total supply of 404 spaces.

In addition to the 404 on-site/off-street spaces, there are 32 on-street spaces along Ronda del Rossmoor East, and an additional 43 on-street spaces along Ronda del Rossmoor West, totaling 75 on-street spaces that adjoin Taj Mahal.

City Code Parking Requirements

As presented on the bottom portion of *Table 1*, the Code-required spaces of the Project were first calculated based on the application of "standalone" Municipal Code requirements, applied to the Project's Parking GFA.

Parking ratios from the City Code relevant to the Project site in either its current or proposed development pattern are as follows:

- | | |
|--|--------------------|
| • Medical and dental office: | 1 space/150 SF GFA |
| • Business and professional office (excludes medical, but includes chiropractic, acupuncture, optometry, physical therapy, and psychotherapy): | 1 space/300 SF GFA |
| • General Retail (applied to pharmacy): | 1 space/200 SF GFA |
| • Financial Services (banks): | 1 space/250 SF GFA |

The City Code parking ratios above were applied to the parking GFA of each component of Taj Mahal to calculate the City Code parking requirements under existing and future conditions.

As *Table 1* indicates, the City Code requirements for the existing land use breakdown would total 430 spaces. Comparing this 430-space Code requirement against Taj Mahal's supply of 373 spaces corresponds to a Code-based deficiency of 57 spaces. Accounting for a Code-based surplus of 12 spaces for the bank, the 57-space deficiency is reduced to a Code-based shortfall of 45 spaces. If the 75 on-street spaces along Ronda del Rossmoor West and East are considered in the comparisons, the 45-space deficiency would be offset, and a Code-based residual surplus of 30 spaces would result.

Table 1 further presents that the City Code requirements for the future land use mix at a 95% medical office tenancy would total 479 spaces. Comparing this 479-space Code requirement against Taj Mahal's supply of 373 spaces corresponds to a Code-based deficiency of 106 spaces. Accounting for a Code-based surplus of 12 spaces for the bank, the 106-space deficiency is reduced to a Code-based shortfall of 94 spaces. If the 75 on-street spaces along Ronda del Rossmoor West and East are incorporated into the assessment, the 94-space deficiency would be reduced to a Code-based residual surplus of 19 spaces.

A key finding from *Table 1* is highlighted on the right-hand column, which reports the net number of spaces (49) generated by the conversion of 13,448 SF of vacant general office and 1,642 SF of occupied general office into medical office uses in order to achieve a future tenancy scenario of 95% medical office for Taj Mahal.

Observed Parking Demand

Consistent with study parameters specified in the City Code, as well as the scope of work approved by the City for this study, field studies of actual parking demand at Taj Mahal were conducted to evaluate current parking conditions, and to develop insights as to actual parking surplus or deficiency.

Hourly counts were conducted of the number of vehicles parked in each of the parking zones (on-site and on-street, inclusive of the vehicles parking on Calle de la Plata, and Ronda del Rossmoor West and Ronda del Rossmoor East adjoining the site) over a three-day period (Tuesday/October 24, 2023, Wednesday/October 25, 2023, and Thursday/October 26, 2023) from 7:00 AM through 7:00 PM by Counts Unlimited, Inc. under the guidance of LLG.

As a supplement, pedestrian affinity observations were conducted at all of Taj Mahal's doorways and Laguna Woods Village shuttle staging areas.

Table 3 presents the parking demand survey results, and compares observed demand against existing parking supply. As indicated, the peak demand condition occurred on Wednesday at 10:00 AM with a total demand of 169 spaces for Taj Mahal (on site and along Calle de la Plata), plus a demand of 58 spaces along Ronda del Rossmoor West and East adjoining Taj Mahal. Comparing the 169-space peak demand against Taj Mahal's existing supply of 373 spaces corresponds to an observed surplus of 204 spaces. Including the 58-space demand along Ronda del Rossmoor, the total peak demand of 227 spaces constitutes an operational surplus of 221 spaces when compared against the existing total supply of 448 spaces.

To further illustrate actual parking demand characteristics that were observed for Taj Mahal, a bar graph for each survey date was prepared. Each graph shows Taj Mahal's off-street demand in blue, Taj Mahal's on-street demand on Calle de la Plata in orange, the significant surplus on site in white (i.e., bars below the Taj Mahal supply line at 373 spaces), on-street demand along Ronda del Rossmoor segments adjoining the site in purple, on-street surpluses along the same Ronda del Rossmoor segments in white (below the supply line at 448 spaces), demand for the bank in Zone E in green, and residual surplus in Zone E (below the supply line at 479 spaces).

Table 3 and each of the three graphs clearly show significant surpluses on site that could support the net additive spaces for the future of 49 spaces. To investigate this further, **Table 4** was prepared. **Table 4** presents a focused evaluation of individual parking zones on site (Zones A through E). Zones B and C are grouped together because they are located closest to the southern doorways of Taj Mahal. Zones A and D are grouped together because they have the shortest walking distance to the doorway located on the north side of the Taj Mahal building.

As reported on **Table 4**, Zone C had the greatest occupancy during each survey date. This parking demand characteristic was validated by person affinity observations of the number of person groups arriving and departing Taj Mahal. Zone C provides direct access to the southern doorways, so it is reasonable to conclude that on-site parkers would choose to park in Zone C first over any other parking zone on site.

The columns shaded in blue on **Table 4** indicate the number of person group arrivals per hour (assuming that each person group arrived in one vehicle, which translate to a demand for one parking space) and compare the hourly arrivals to parking demand observed in Zones B and C, and in Zones A and D. The early morning hours on each survey date (7:00 AM to 9:10/11:00 AM) indicate that there were more person group arrivals counted at the southern doorways and northern doorway of the Taj Mahal building. This could indicate that there might be Taj Mahal employees and visitors

who choose to park on street along Ronda del Rossmoor West and East when they find an on-street space readily available early in the morning.

Future Parking Demand

Table 5 presents the parking demand survey results for the peak day condition (Wednesday, October 25, 2023), derives the hourly demand profile from those parking demand counts, applies the empirical hourly profile to the 49 net spaces to be generated by the proposed conversion from general office to medical office to achieve a 95% medical office tenancy, adds the net spaces to observed demand, then compares the resulting sum to existing parking supply.

As indicated on *Table 5*, the peak demand condition occurred on Wednesday at 10:00 AM with a total demand of 227 spaces for Taj Mahal (on site and along Calle de la Plata), and along Ronda del Rossmoor West and East adjoining Taj Mahal. Adding 49 net spaces to the 227-space demand at 10:00 AM results in a total peak demand of 276 spaces. Comparing the 279-space peak demand against Taj Mahal's existing supply of 373 spaces corresponds to a surplus of 97 spaces. Comparing the total peak demand of 276 spaces corresponds to a surplus of 172 spaces when compared against the existing total supply of 448 spaces (inclusive of 75 on-street spaces along Ronda del Rossmoor).

Based on the above findings, it is concluded that a minimum parking surplus of 221 spaces during peak demand conditions (surpluses would be greater during all other hours of a weekday and weekend) in off-street and on-street spaces serving Taj Mahal would be adequate in meeting a future, net additive demand of 49 spaces generated by a future tenancy scenario of 95% medical office for Taj Mahal.

Furthermore, given the robust surpluses in Taj Mahal's off-street supply, no specific parking control and management measures are recommended at this time.

Trip Generation Assessment

Traffic generation is expressed in vehicle trip ends, defined as one-way vehicular movements, either entering or exiting the generating land use. Trip generation equations and/or rates used in the traffic forecasting procedure are found in the 11th Edition of *Trip Generation*, published by the Institute of Transportation Engineers (ITE) [Washington D.C., 2021].

As presented in **Table 6**, the trip rates for ITE Land Use 710: General Office, ITE Land Use 720: Medical Office, and ITE Land Use 880: Pharmacy Drugstore without Drive Through Window were applied in estimating the Project's tripmaking potential.

As shown in **Table 1**, existing Taj Mahal trip generation forecasts are estimated to be 2,264 daily trips on a typical weekday, 200 AM peak hour, and 250 PM peak hour trips.

Presuming the target land use mix of 95% medical office and 5% non-medical uses, future Taj Mahal trip generation forecasts are estimated to be 2,643 daily trips on a typical weekday, 223 AM peak hour, and 288 PM peak hour trips.

The net trips for the Project correspond to 379 daily trips on a typical weekday, 24 AM peak hour, and 38 PM peak hour trips. The net peak hour trips do not exceed the 50-peak-hour-trip threshold, and would therefore not warrant the preparation of an LOS-based traffic study. It should further be noted that the 24 AM peak hour, and 38 PM peak hour trips generated by the Project would fit within the remaining available trip budgets of 216 AM peak hour trips and 2,590 PM peak hour trips for the Urban Village Specific Plan area that Taj Mahal is located within.

Vehicle Miles Traveled (VMT) Screening Analysis

The purpose of this VMT screening analysis is to evaluate the Project based on Senate Bill 743 (SB 743) requirements consistent with the *Technical Advisory on Evaluating Transportation Impacts In California Environmental Quality Act* (CEQA), December 2018, prepared by the State of California Governor's Office of Planning and Research (OPR). The OPR Technical Advisory provides project screening criteria and guidance for analysis of VMT assessments under SB 743. With the adopted guidelines, transportation impacts are to be evaluated based on a project's effect on vehicle miles traveled. Lead agencies are allowed to continue using their current impact criteria, or to opt into the revised transportation guidelines. However, the new guidelines must be used starting July 1, 2020, as required in CEQA section 15064.3.

The City of Laguna Hills has adopted criteria for evaluating VMT impacts under CEQA, and they are presented in the *City of Laguna Hills Vehicle Miles Traveled Analysis Guidelines under the California Environmental Quality Act* (July 9, 2020).

Based on the application of the City's screening criteria, and using the City's spreadsheet tool developed for project screening purposes, it was determined that the Project is located in a low VMT area, does not exceed a net daily trip threshold of 500

ADT, and is therefore screened out from further VMT Project-level assessment because it can be presumed to have less-than-significant impact on VMT. The City's VMT screening form for the Project is included at the end of this letter report.

As detailed in the City's VMT analysis guidelines, potential impacts to active transportation (pedestrian and bicycle) and public transit facilities and circulation can be evaluated by determining whether a project conflicts with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decreases the performance or safety of such facilities.

The proposed Project would not have an impact on the existing multimodal network; specifically, it would not: (1) conflict with a plan, ordinance, or policy related to bicycle, pedestrian, and public transit; (2) substantially increase hazards due to a geometric design feature; and (3) result in inadequate emergency access.

The site plan for the Project will maintain existing sidewalks and access to public transit, pedestrian connections on site and with adjoining uses, and will continue to meet City design standards regarding site access, multimodal connectivity within the internal site circulation system, emergency access, and on-site parking.

Summary of Findings and Conclusions

1. The existing land use breakdown consists of the following:
 - 18% vacant general office (13,448 SF)
 - 75% medical office (54,830 SF)
 - 5% general office (3,806 SF)
 - 2% retail/pharmacy (1,139 SF)
2. In order to achieve a future tenancy scenario of 95% medical office for Taj Mahal, the 13,448 SF of vacant general office and 1,642 SF of occupied general office would need to be converted to medical office uses. The resulting land use mix for the future would be as follows:
 - 95% medical office (69,920 SF)
 - 3% general office (2,164 SF)
 - 2% retail/pharmacy (1,139 SF)
3. The existing on-site parking supply in Zones A through E for the Taj Mahal totals 375 spaces, inclusive of 31 spaces for the bank in Zone E. For the purposes of this study, Zone E is treated as separate from Taj Mahal, even though Taj Mahal has a reciprocal parking agreement with the bank, which allows access to Zone E.

Without Zone E, Zones A through D (344 spaces), plus Calle de la Plata (29 on-street spaces), would total 373 spaces. Adding 31 spaces for the bank in Zone would result in an overall total supply of 404 spaces.

4. In addition to the 404 on-site/off-street spaces, there are 32 on-street spaces along Ronda del Rossmoor East, and an additional 43 on-street spaces along Ronda del Rossmoor West, totaling 75 on-street spaces that adjoin Taj Mahal.
5. The City Code requirements for the existing land use breakdown would total 430 spaces. Comparing this 430-space Code requirement against Taj Mahal's supply of 373 spaces corresponds to a Code-based deficiency of 57 spaces. Accounting for a Code-based surplus of 12 spaces for the bank, the 57-space deficiency is reduced to a Code-based shortfall of 45 spaces. If the 75 on-street spaces along Ronda del Rossmoor West and East are considered in the comparisons, the 45-space deficiency would be offset, and a Code-based residual surplus of 30 spaces would result.
6. The City Code requirements for the future land use mix at a 95% medical office tenancy would total 479 spaces. Comparing this 479-space Code requirement against Taj Mahal's supply of 373 spaces corresponds to a Code-based deficiency of 106 spaces. Accounting for a Code-based surplus of 12 spaces for the bank, the 106-space deficiency is reduced to a Code-based shortfall of 94 spaces. If the 75 on-street spaces along Ronda del Rossmoor West and East are incorporated into the assessment, the 94-space deficiency would be reduced to a Code-based residual surplus of 19 spaces.
7. The net parking generated by the conversion of 13,448 SF of vacant general office and 1,642 SF of occupied general office into medical office uses in order to achieve a future tenancy scenario of 95% medical office for Taj Mahal is 49 spaces.
8. A minimum parking surplus of 221 spaces during peak demand conditions (surpluses would be greater during all other hours of a weekday and weekend) in off-street and on-street spaces serving Taj Mahal would be adequate in meeting a future, net additive demand of 49 spaces generated by a future tenancy scenario of 95% medical office for Taj Mahal.
9. Pursuant to our projections utilizing a "shared/joint use parking methodology", even if "all" existing peak hour street parking along Ronda del Rossmoor East (Mall side) and West (Valencia side) was eliminated from those streets, and those vehicles parked onsite in the Taj Mahal parking lot and its private Calle de La Plata parking spaces, there would still be 97 open parking spaces in the Taj

Mahal parking lot, which is 26% of the total off-street parking spaces, even when joint use parking with the onsite bank is eliminated from the parking space count. This finding is conclusive there is more than adequate “existing onsite parking” to accommodate an increase in parking demand when 15% more of the building’s floor area is converted to medical office, and even if all on-street parking was eliminated in the “worst case scenario.”

10. Given the robust surpluses in Taj Mahal’s off-street supply, no specific parking control and management measures are recommended at this time.
11. The net peak hour trips for the Project (24 AM peak hour trips, 38 PM peak hour trips) do not exceed the 50-peak-hour-trip threshold, and would therefore not warrant the preparation of an LOS-based traffic study. In addition, these net peak hour trips generated by the Project would fit within the remaining available trip budgets of 216 AM peak hour trips and 2,590 PM peak hour trips for the Urban Village Specific Plan area that Taj Mahal is located within.
12. Based on the application of the City’s screening criteria, and using the City’s spreadsheet tool developed for project screening purposes, it was determined that the Project is located in a low VMT area, does not exceed a net daily trip threshold of 500 ADT, and is therefore screened out from further VMT Project-level assessment because it can be presumed to have less-than-significant impact on VMT.

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We appreciate the opportunity to prepare this analysis. Please call us at (949) 825-6175 if you have any questions or comments regarding this letter report.

Sincerely,

Linscott, Law & Greenspan, Engineers



Trissa (de Jesus) Allen, P.E., RSP
California Registration: Traffic 2231
Road Safety Professional (RSP): 981
Senior Transportation Engineer



FIGURE 1

EXISTING ON-SITE PARKING ZONES
TAJ MAHAL MEDICAL CENTER, LAGUNA HILLS

SOURCE: GOOGLE



ON-SITE PARKING ZONES (SEE FIGURE 1)	
ZONE	NUMBER OF SPACES
A	69 SPACES (INCLUDES 8 H/C)
B	93 SPACES (INCLUDES 8 H/C)
C	78 SPACES (INCLUDES 4 H/C)
D	70 SPACES (INCLUDES 4 H/C)
E	31 SPACES (INCLUDES 2 H/C)
TOTAL	375 SPACES

LEGEND

- = TAJ MAHAL "PERMIT PARKING"
- = ON-STREET SPACES
- = RED CURB
- = NUMBER OF ON-STREET PARKING SPACES USING A LENGTH OF 22' PER SPACE
- = DRIVEWAY INGRESS/EGRESS
- = PARKING CONTROL (BOOTH, GATE ARMS)
- = PARKING CONTROL (NO VISITOR EXIT, GATE ARMS)
- = LAGUNA WOODS VILLAGE SHUTTLE STAGING AREA

(#)
→

E = EXISTING SIGNS ON THE SHEET



SPECIAL "A"
PARKING ON THIS PREMISES IS LIMITED TO THE PERMIT PARKING ONLY FOR TAJ MAHAL UNAUTHORIZED VEHICLES WILL BE TOWED AWAY AT OWNER'S RISK. DRIVERS MUST CALL 425-1800 FOR MORE INFORMATION.

R1-1
STOP

R7-7(MOD)
BUS STOP
NO PARKING

TAJ MAHAL MEDICAL CENTER PARKING SUPPLY			
DESCRIPTION	TAJ MAHAL	BANK	TOTAL
OFF-STREET/ON-SITE SPACES	344	31	375
CALLE DE LA PLATA	29	0	29
TOTAL	373	31	404

EXISTING PUBLIC PARKING - ON STREET (ESTIMATED SUPPLY ONLY - NO MARKED SPACES)			
ADJOINING SITE (EXCLUDING UNION BANK)	EXISTING SUPPLY ONLY - NO MARKED SPACES		TOTAL
	EAST SIDE	WEST SIDE	
RONDA DEL ROSSMOOR (EAST)	16	16	32
RONDA DEL ROSSMOOR (WEST)	18	25	43

SOURCE: NADEL



FIGURE 2

EXISTING SITE PLAN AND PARKING SUMMARY
TAJ MAHAL MEDICAL CENTER, LAGUNA HILLS

TABLE 1
TENANT SUMMARY & CITY CODE PARKING CALCULATIONS
Taj Mahal Medical Center, Laguna Hills

Suite	Tenant	Existing Tenant Floor Area or Parking-Based GFA SF					Proposed Tenant Floor Area or Parking-Based Based GFA SF				Net Spaces (conversion of 13,448 SF of vacant gen office to med office and 1,642 SF of occupied gen office to med office)
		Vacant (General Office)	Medical Office	General Office, Storage	Retail	TOTAL	Medical Office	General Office, Storage	Retail	TOTAL	
B1	VACANT	2,934				2,934	2,934			2,934	
B2	Lawrence Cooke, MD		552			552	552			552	
B3	Healthcare Realty- Engineer			486		486		486		486	
B5/B9	VACANT	3,862				3,862	3,862			3,862	
B7	South Orange County Physical Therapy [a]			3,122		3,122		1,480		3,122	
B8	VACANT	3,969				3,969	3,969			3,969	
B10	Weiler and Sein Medical Group		1,252			1,252	1,252			1,252	
B11	Maria Barajas		704			704	704			704	
B12	VACANT	520				520	520			520	
100/115	Anhui Bocheng Healthcare Management		8,941			8,941	8,941			8,941	
101/110	Sand Canyon Medical Group		2,111			2,111	2,111			2,111	
102	Jennifer Channual, MD		2,096			2,096	2,096			2,096	
108	Senior Care Medical Associates		3,748			3,748	3,748			3,748	
112/35-2	Peter Abas, DDS- Dentist [b]		871	63		934	871	63		934	
113	Weiler and Sein Medical Group		1,290			1,290	1,290			1,290	
115A	Saint Mary Pharmacy, LLC				1,139	1,139			1,139	1,139	
200	Children's Hospital of Orange County		5,698			5,698	5,698			5,698	
210	Children's Hospital of Orange County		1,565			1,565	1,565			1,565	
204/204A	Andrew Messiha, M.D. Inc.		3,163			3,163	3,163			3,163	
205	Lida Ahmadi-Kashani, DDS		893			893	893			893	
206	Akash P. Lapsi, DDS Inc.		1,024			1,024	1,024			1,024	
207/208/25-1	Retina Associates of OC [c]		4,663	135		4,798	4,663	135		4,798	
209	VACANT	719				719	719			719	
301	VACANT	1,309				1,309	1,309			1,309	
302A	Audiology Distribution LLC		858			858	858			858	
302C	Quest Diagnostics		2,707			2,707	2,707			2,707	
303	Caring Cardiology Medical Group		2,436			2,436	2,436			2,436	
305	Eyecare Specialists Medical Group		3,058			3,058	3,058			3,058	
306	Natural Health Management		1,720			1,720	1,720			1,720	
308	Wei Jing		462			462	462			462	
309	Tayani Eye Institute		1,557			1,557	1,557			1,557	
310	Chi Whei Lin, MD		966			966	966			966	
300/311	Optum Care Management		2,495			2,495	2,495			2,495	
35-1	VACANT - STORAGE	135				135	135			135	
TOTAL		13,448	54,830	3,806	1,139	73,223	69,920	2,164	1,139	73,223	
<i>Land Use % Breakdown (excluding bank on site)</i>		<i>18%</i>	<i>75%</i>	<i>5%</i>	<i>2%</i>	<i>100%</i>	<i>95%</i>	<i>3%</i>	<i>2%</i>	<i>100%</i>	
CITY CODE PARKING RATIOS		1 space per 300 SF [a]	1 space per 150 SF [a]	1 space per 300 SF [a]	1 space per 200 SF		1 space per 150 SF [a]	1 space per 300 SF [a]	1 space per 200 SF		
TAJ MAHAL CITY CODE REQUIREMENTS		45	366	13	6	430	466	7	6	479	
Taj Mahal Parking Supply (344 sp on site, 29 sp CDL Plata)						373				373	
Taj Mahal Code-Based Surplus (+) or Deficiency (-)						(57)				(106)	
Bank City Code Requirements (4,868 SF @ 1 sp per 250 SF)						19				19	
Bank Parking Supply (31 sp on site)						31				31	
Bank Code-Based Surplus (+) or Deficiency (-)						12				12	
Taj Mahal Code-Based Surplus (+) or Deficiency (-)						(57)				(106)	
Bank Code-Based Surplus (+) or Deficiency (-)						12				12	
Residual Code-Based Surplus (+) or Deficiency (-)						(45)				(94)	
On-street spaces on Ronda Del Rossmoor West and East adjoining Taj Mahal (not Union Bank)						75				75	
Residual Code-Based Surplus (+) or Deficiency (-)						30				(19)	

Notes:

[a] City Code requires 1 space per 150 SF GFA for medical and dental offices, except that chiropractic, acupuncture, optometry, physical therapy and psychotherapy offices shall provide 1 space per 300 SF GFA.

[b] Includes 63 SF of storage (presumed the same City Code ratio for general office).

[c] Includes 135 SF of storage (presumed the same City Code ratio for general office).

TABLE 2
EXISTING PARKING SUPPLY¹
TAJ MAHAL MEDICAL CENTER, LAGUNA HILLS

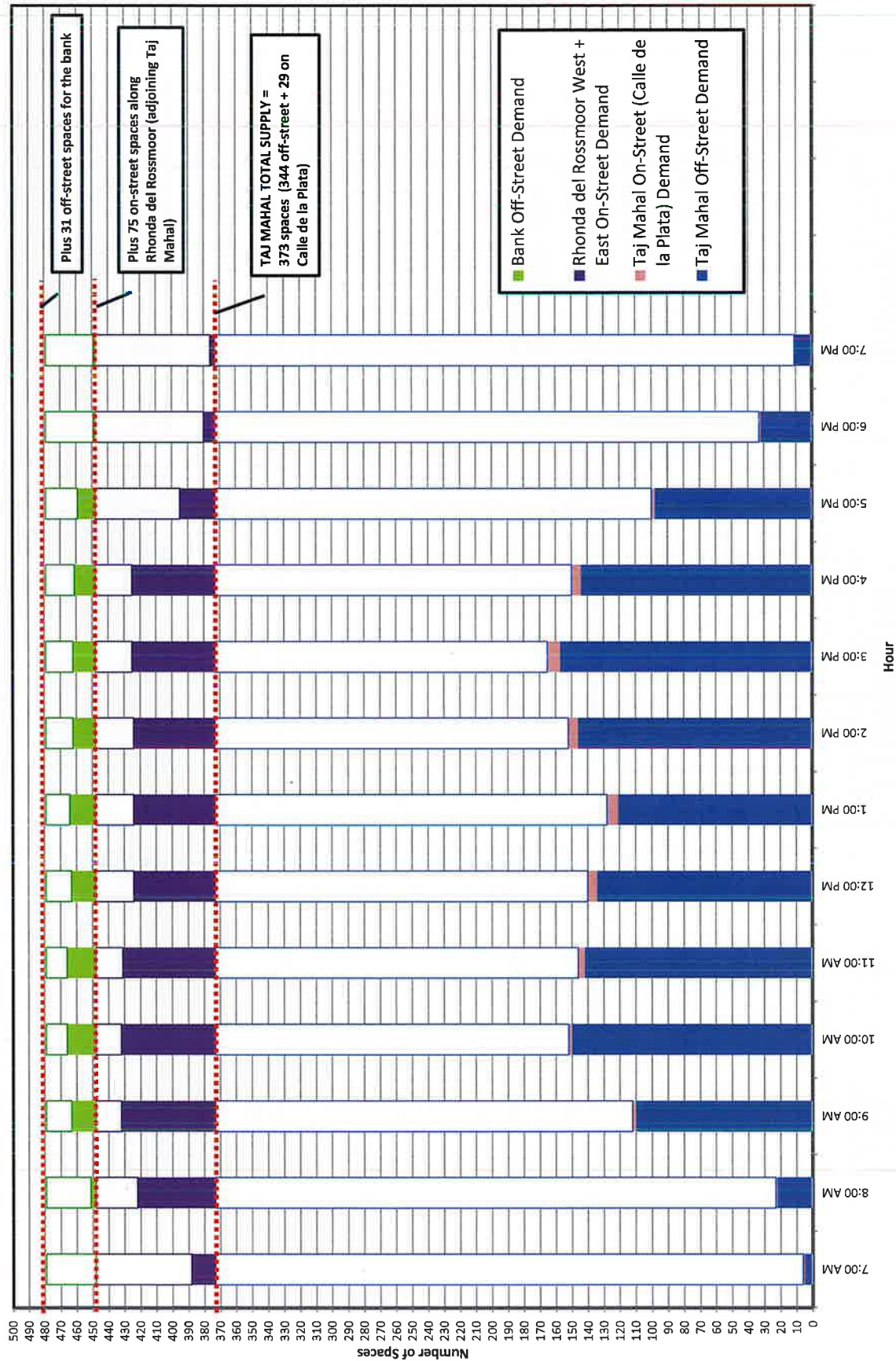
Parking Zone	Type of Parking Space and Space Count						Total
	Regular	Handicapped	Reserved	Patient Only	Loading / Deliveries	Permit	
A	80	6	--	9	4	--	99
B	97	--	--	--	--	--	97
C	50	4	--	15	--	9	78
D	56	--	--	14	--	--	70
Calle de la Plata	--	--	--	--	--	29	29
Taj Mahal Subtotal	283	10	--	38	4	38	373
Bank (Zone E)	19	2	10	--	--	--	31
Total	302	12	10	38	4	38	404

¹ Based on field inventory conducted by LLG in October 2023.

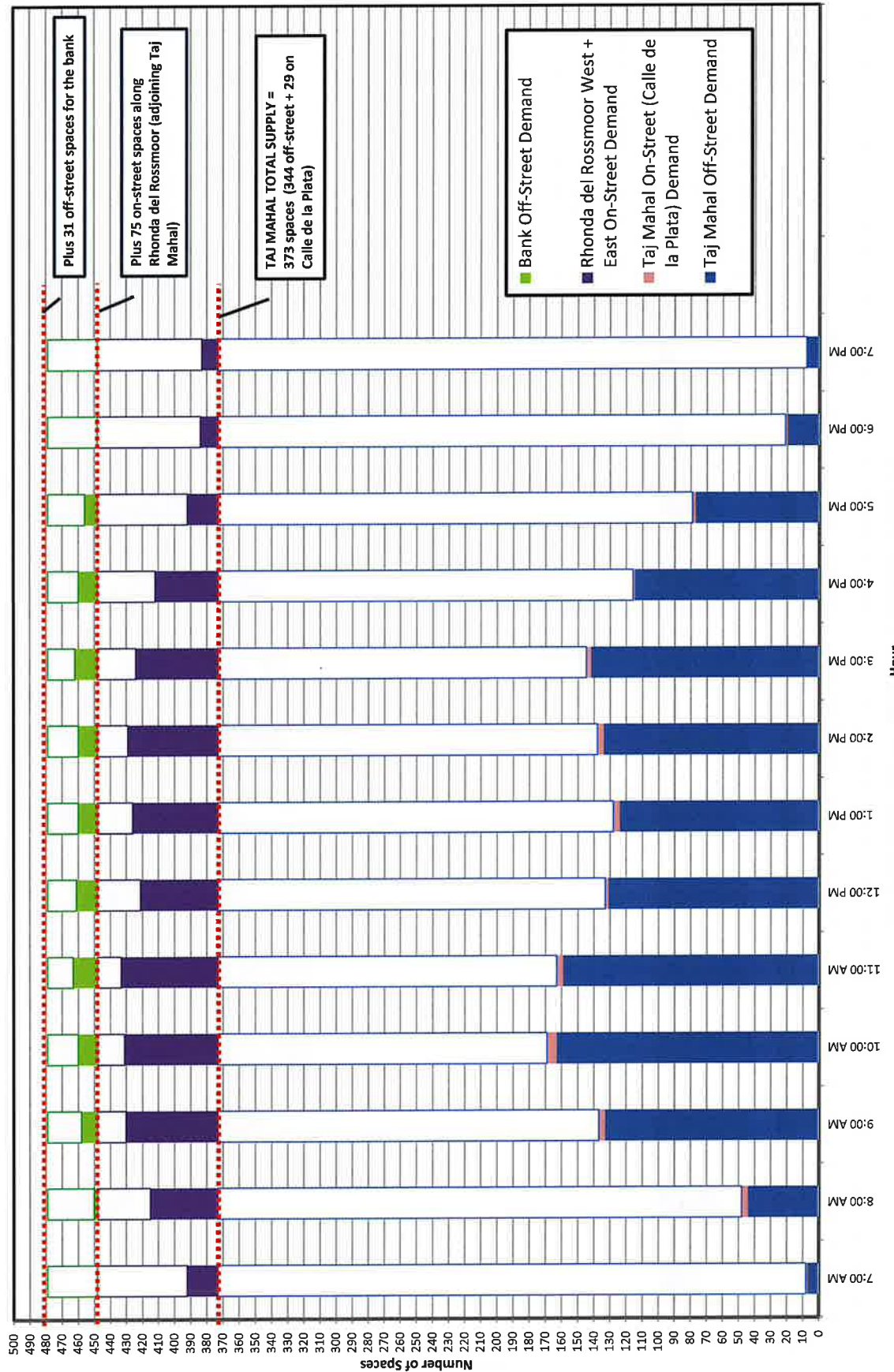
TABLE 3
OBSERVED DEMAND VS. EXISTING SUPPLY
Taj Mahal Medical Center, Laguna Hills

Tuesday (10-24-23)																
	Taj Mahal Off-Street		Taj Mahal On-Street (Calle de la Plata)		Taj Mahal Off-Street + On-Street (Calle de la Plata)		Rhonda del Rossmoor West On-Street (adjoining Taj Mahal)		Rhonda del Rossmoor East On-Street (adjoining Taj Mahal)		Rhonda del Rossmoor West + East (adjoining Taj Mahal)		Taj Mahal + Rhonda del Rossmoor (adjoining Taj Mahal) Total		Bank Off-Street	
	Demand (sp)	Surplus (sp)	Demand (sp)	Surplus (sp)	Total Demand (sp)	Total Surplus (sp)	Demand (sp)	Surplus (sp)	Demand (sp)	Surplus (sp)	RDR Total Demand (sp)	RDR Total Surplus (sp)	Total Demand (sp)	Total Surplus (sp)	Demand (sp)	Surplus (sp)
Supply (sp)	344		29		373		43		32		75		448		31	
7:00 AM	5	339	1	28	6	367	9	34	6	26	15	60	21	427	0	31
8:00 AM	22	322	1	28	23	350	34	9	15	17	49	26	72	376	3	28
9:00 AM	110	234	2	27	112	261	34	9	25	7	59	16	171	277	15	16
10:00 AM	150	194	2	27	152	221	34	9	25	7	59	16	211	237	18	13
11:00 AM	142	202	4	25	146	227	36	7	22	10	58	17	204	244	18	13
12:00 PM	134	210	6	23	140	233	27	16	24	8	51	24	191	257	15	16
1:00 PM	121	223	7	22	128	245	32	11	19	13	51	24	179	269	16	15
2:00 PM	146	198	6	23	152	221	30	13	21	11	51	24	203	245	14	17
3:00 PM	157	187	8	21	165	208	35	8	17	15	52	23	217	231	14	17
4:00 PM	144	200	6	23	150	223	32	11	20	12	52	23	202	246	13	18
5:00 PM	98	246	2	27	100	273	13	30	9	23	22	53	122	326	11	20
6:00 PM	32	312	1	28	33	340	5	38	2	30	7	68	40	408	1	30
7:00 PM	11	333	0	29	11	362	2	41	1	31	3	72	14	434	1	30
Peak Demand	157		8		165		36		25		59		217		18	
% Occupancy	46%		28%		44%		84%		78%		79%		48%		58%	
Surplus (+) or Deficiency (-)	187		21		208		7		7		16		231		13	
Wednesday (10-25-23)																
	Taj Mahal Off-Street		Taj Mahal On-Street (Calle de la Plata)		Taj Mahal Off-Street + On-Street (Calle de la Plata)		Rhonda del Rossmoor West On-Street (adjoining Taj Mahal)		Rhonda del Rossmoor East On-Street (adjoining Taj Mahal)		Rhonda del Rossmoor West + East (adjoining Taj Mahal)		Taj Mahal + Rhonda del Rossmoor (adjoining Taj Mahal) Total		Bank Off-Street	
	Demand (sp)	Surplus (sp)	Demand (sp)	Surplus (sp)	Total Demand (sp)	Total Surplus (sp)	Demand (sp)	Surplus (sp)	Demand (sp)	Surplus (sp)	RDR Total Demand (sp)	RDR Total Surplus (sp)	Total Demand (sp)	Total Surplus (sp)	Demand (sp)	Surplus (sp)
Supply (sp)	344		29		373		43		32		75		448		31	
7:00 AM	7	337	1	28	8	365	16	27	3	29	19	56	27	421	0	31
8:00 AM	44	300	4	25	48	325	32	11	10	22	42	33	90	358	2	29
9:00 AM	133	211	4	25	137	236	38	5	19	13	57	18	194	254	10	21
10:00 AM	163	181	6	23	169	204	36	7	22	10	58	17	227	221	12	19
11:00 AM	159	185	4	25	163	210	38	5	22	10	60	15	223	225	15	16
12:00 PM	131	213	2	27	133	240	34	9	14	18	48	27	181	267	13	18
1:00 PM	124	220	4	25	128	245	31	12	22	10	53	22	181	267	12	19
2:00 PM	134	210	4	25	138	235	33	10	23	9	56	19	194	254	12	19
3:00 PM	142	202	3	26	145	228	33	10	18	14	51	24	196	252	14	17
4:00 PM	115	229	1	28	116	257	24	19	15	17	39	36	155	293	12	19
5:00 PM	77	267	2	27	79	294	11	32	8	24	19	56	98	350	8	23
6:00 PM	20	324	1	28	21	352	8	35	3	29	11	64	32	416	0	31
7:00 PM	8	336	0	29	8	365	7	36	3	29	10	65	18	430	0	31
Peak Demand	163		6		169		38		23		60		227		15	
% Occupancy	47%		21%		45%		88%		72%		80%		51%		48%	
Surplus (+) or Deficiency (-)	181		23		204		5		9		15		221		16	
Thursday (10-26-23)																
	Taj Mahal Off-Street		Taj Mahal On-Street (Calle de la Plata)		Taj Mahal Off-Street + On-Street (Calle de la Plata)		Rhonda del Rossmoor West On-Street (adjoining Taj Mahal)		Rhonda del Rossmoor East On-Street (adjoining Taj Mahal)		Rhonda del Rossmoor West + East (adjoining Taj Mahal)		Taj Mahal + Rhonda del Rossmoor (adjoining Taj Mahal) Total		Bank Off-Street	
	Demand (sp)	Surplus (sp)	Demand (sp)	Surplus (sp)	Total Demand (sp)	Total Surplus (sp)	Demand (sp)	Surplus (sp)	Demand (sp)	Surplus (sp)	RDR Total Demand (sp)	RDR Total Surplus (sp)	Total Demand (sp)	Total Surplus (sp)	Demand (sp)	Surplus (sp)
Supply (sp)	344		29		373		43		32		75		448		31	
7:00 AM	6	338	1	28	7	366	18	25	5	27	23	52	30	418	0	31
8:00 AM	45	299	1	28	46	327	30	13	8	24	38	37	84	364	2	29
9:00 AM	126	218	2	27	128	245	38	5	17	15	55	20	183	265	9	22
10:00 AM	157	187	3	26	160	213	34	9	27	5	61	14	221	227	10	21
11:00 AM	148	196	7	22	155	218	35	8	23	9	58	17	213	235	10	21
12:00 PM	119	225	4	25	123	250	32	11	23	9	55	20	178	270	11	20
1:00 PM	113	231	3	26	116	257	28	15	19	13	47	28	163	285	10	21
2:00 PM	143	201	2	27	145	228	36	7	19	13	55	20	200	248	11	20
3:00 PM	143	201	5	24	148	225	35	8	22	10	57	18	205	243	12	19
4:00 PM	131	213	4	25	135	238	33	10	14	18	47	28	182	266	10	21
5:00 PM	86	258	4	25	90	283	17	26	15	17	32	43	122	326	9	22
6:00 PM	23	321	1	28	24	349	8	35	8	24	16	59	40	408	1	30
7:00 PM	10	334	1	28	11	362	6	37	3	29	9	66	20	428	0	31
Peak Demand	157		7		160		38		27		61		221		12	
% Occupancy	46%		24%		43%		88%		84%		81%		49%		39%	
Surplus (+) or Deficiency (-)	187		22		213		5		5		14		227		19	

Parking Demand Counts on Tuesday, 10-24-23



Parking Demand Counts on Wednesday, 10-25-23



Parking Demand Counts on Thursday, 10-26-23

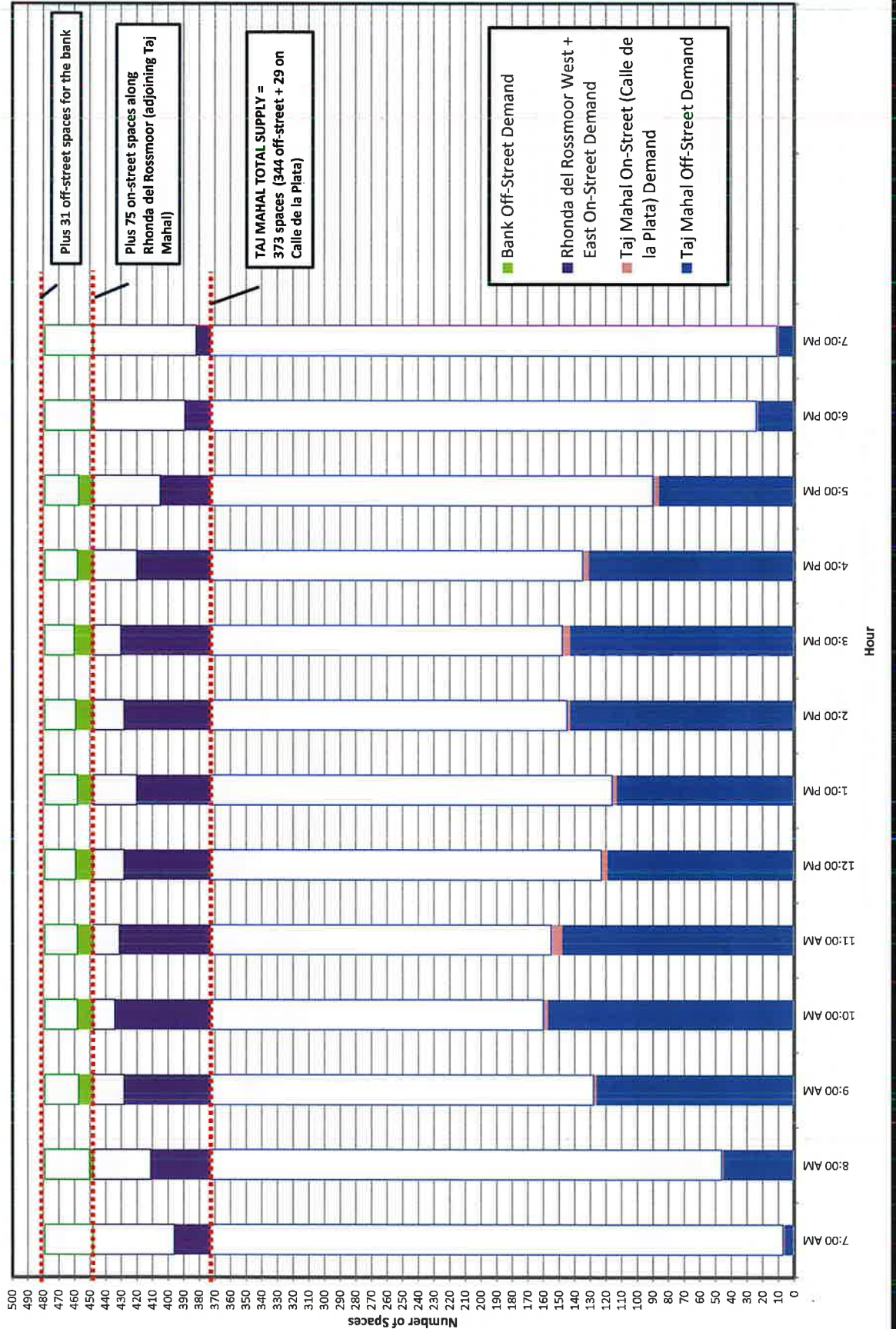


TABLE 4
OBSERVED DEMAND IN ZONES A THROUGH E VS. PERSON GROUP ARRIVALS
Taj Mahal Medical Center, Laguna Hills

	Tuesday (10-24-23)																	
	Zone B		Zone C		Zone B + Zone C		Person Group Arrivals at Southern Doorways	Total Demand Minus Person Group Arrivals	Zone A		Zone D		Zone A + Zone D		Person Group Arrivals at Northern Doorway	Total Demand Minus Person Group Arrivals	Zone E (Bank Off-Street)	
	Demand (sp)	Surplus (sp)	Demand (sp)	Surplus (sp)	Total Demand (sp)	Total Surplus (sp)			Demand (sp)	Surplus (sp)	Demand (sp)	Surplus (sp)	Total Demand (sp)	Total Surplus (sp)			Demand (sp)	Surplus (sp)
Supply (sp)	97		78		175				99		70		169				31	
7:00 AM	0	97	4	74	4	171	39	(35)	0	99	1	69	1	168	39	(38)	0	31
8:00 AM	9	88	10	68	19	156	61	(42)	2	97	1	69	3	166	101	(98)	3	28
9:00 AM	21	76	38	40	59	116	66	(7)	24	73	27	43	51	118	92	(41)	15	16
10:00 AM	26	71	53	25	79	96	41	38	32	67	39	31	71	98	73	(2)	18	13
11:00 AM	28	69	50	28	78	97	45	33	26	73	38	32	64	105	52	12	18	13
12:00 PM	26	71	49	29	75	100	41	34	25	74	34	36	59	110	76	(17)	15	16
1:00 PM	26	71	43	35	69	106	68	1	21	78	31	39	52	117	87	(35)	16	15
2:00 PM	30	67	48	30	78	97	48	30	31	68	37	33	68	101	75	(7)	14	17
3:00 PM	32	65	58	20	90	85	48	42	33	66	34	36	67	102	67	0	14	17
4:00 PM	29	68	46	32	75	100	19	56	32	67	37	33	69	100	31	38	13	18
5:00 PM	23	74	34	44	57	118	2	55	22	77	19	51	41	128	11	30	11	20
6:00 PM	10	87	11	67	21	154	1	20	5	94	6	64	11	158	7	4	1	30
7:00 PM	2	95	3	75	5	170			2	97	4	66	6	163			1	30
Peak Demand	32		58		90				33		39		71				18	
% Occupancy	33%		74%		51%				33%		56%		42%				58%	
Surplus (+) or Deficiency (-)	65		20		85				66		31		98				13	

	Wednesday (10-25-23)																	
	Zone B		Zone C		Zone B + Zone C		Person Group Arrivals at Southern Doorways	Total Demand Minus Person Group Arrivals	Zone A		Zone D		Zone A + Zone D		Person Group Arrivals at Northern Doorway	Total Demand Minus Person Group Arrivals	Zone E (Bank Off-Street)	
	Demand (sp)	Surplus (sp)	Demand (sp)	Surplus (sp)	Total Demand (sp)	Total Surplus (sp)			Demand (sp)	Surplus (sp)	Demand (sp)	Surplus (sp)	Total Demand (sp)	Total Surplus (sp)			Demand (sp)	Surplus (sp)
Supply (sp)	97		78		175				99		70		169				31	
7:00 AM	0	97	5	73	5	170	33	(28)	1	98	1	69	2	167	47	(45)	0	31
8:00 AM	6	91	12	66	18	157	96	(78)	11	88	15	55	26	143	85	(59)	2	29
9:00 AM	24	73	50	28	74	101	76	(2)	29	70	30	40	59	110	68	(9)	10	21
10:00 AM	29	68	58	20	87	88	48	39	41	58	35	35	76	93	66	10	12	19
11:00 AM	30	67	60	18	90	85	35	55	31	68	38	32	69	100	45	24	15	16
12:00 PM	23	74	52	26	75	100	42	33	25	74	31	39	56	113	61	(5)	13	18
1:00 PM	22	75	45	33	67	108	56	11	27	72	30	40	57	112	57	0	12	19
2:00 PM	28	69	48	30	76	99	46	30	28	71	30	40	58	111	56	2	12	19
3:00 PM	29	68	48	30	77	98	38	39	32	67	33	37	65	104	50	15	14	17
4:00 PM	27	70	41	37	68	107	9	59	21	78	26	44	47	122	20	27	12	19
5:00 PM	18	79	27	51	45	130	3	42	16	83	16	54	32	137	4	28	8	23
6:00 PM	4	93	6	72	10	165	0	10	5	94	5	65	10	159	6	4	0	31
7:00 PM	2	95	1	77	3	172			1	98	4	66	5	164			0	31
Peak Demand	30		60		90				41		38		76				15	
% Occupancy	31%		77%		51%				41%		54%		45%				48%	
Surplus (+) or Deficiency (-)	67		18		85				58		32		93				16	

	Thursday (10-26-23)																	
	Zone B		Zone C		Zone B + Zone C		Person Group Arrivals at Southern Doorways	Total Demand Minus Person Group Arrivals	Zone A		Zone D		Zone A + Zone D		Person Group Arrivals at Northern Doorway	Total Demand Minus Person Group Arrivals	Zone E (Bank Off-Street)	
	Demand (sp)	Surplus (sp)	Demand (sp)	Surplus (sp)	Total Demand (sp)	Total Surplus (sp)			Demand (sp)	Surplus (sp)	Demand (sp)	Surplus (sp)	Total Demand (sp)	Total Surplus (sp)			Demand (sp)	Surplus (sp)
Supply (sp)	97		78		175				99		70		169				31	
7:00 AM	1	96	5	73	6	169	31	(25)	0	99	0	70	0	169	36	(36)	0	31
8:00 AM	11	86	13	65	24	151	77	(53)	6	93	15	55	21	148	91	(70)	2	29
9:00 AM	27	70	55	43	62	113	59	3	32	67	32	38	64	105	108	(44)	9	22
10:00 AM	33	64	44	34	77	98	51	26	41	58	39	31	80	89	54	26	10	21
11:00 AM	38	59	46	32	84	91	37	47	27	72	37	33	64	105	42	22	10	21
12:00 PM	27	70	40	38	67	108	39	28	24	75	28	42	52	117	59	(7)	11	20
1:00 PM	26	71	37	41	63	112	57	6	25	74	25	45	50	119	78	(28)	10	21
2:00 PM	31	66	43	35	74	101	63	11	36	63	33	37	69	100	66	3	11	20
3:00 PM	30	67	41	37	71	104	38	33	40	59	32	38	72	97	50	22	12	19
4:00 PM	30	67	38	40	68	107	18	50	32	67	31	39	63	106	35	28	10	21
5:00 PM	18	79	25	53	43	132	2	41	23	76	20	50	43	126	9	34	9	22
6:00 PM	4	93	9	69	13	162	3	10	6	93	4	66	10	159	2	8	1	30
7:00 PM	2	95	3	75	5	170			1	98	4	66	5	164			0	31
Peak Demand	38		46		84				41		39		80				12	
% Occupancy	39%		59%		48%				41%		56%		47%				39%	
Surplus (+) or Deficiency (-)	59		32		91				58		31		89				19	

TABLE 5
FUTURE DEMAND VS. EXISTING SUPPLY
Taj Mahal Medical Center, Laguna Hills

	Parking Demand Counts on Wednesday (10-25-23) (PEAK DAY)							Net Hourly Demand by Converting 13,448 SF of Vacant Gen Office to Med Office and 1,642 SF of Occupied Gen Office to Med Office (49 spaces per Table 1)	Existing Demand (per 10-25-23 counts) + Net Hourly Demand from Conversion versus Taj Mahal Supply		Existing Demand (per 10-25-23 counts) + Net Hourly Demand from Conversion versus Taj Mahal Supply and Rhonda del Rossmoor On-Street Spaces	
	Taj Mahal Off-Street + On-Street (Calle de la Plata)		Rhonda del Rossmoor West + East (adjoining Taj Mahal)		Taj Mahal + Rhonda del Rossmoor (adjoining Taj Mahal) Total							
	Taj Mahal Total Demand (sp)	Taj Mahal Total Surplus (sp)	RDR Total Demand (sp)	RDR Total Surplus (sp)	Total Demand (sp)	Total Surplus (sp)			% of 227-space Peak Demand	Total Demand (sp)	Total Surplus (sp)	Total Demand (sp)
Supply (sp)	373		75		448				373		448	
7:00 AM	8	365	19	56	27	421	12%	6	33	340	33	415
8:00 AM	48	325	42	33	90	358	40%	20	110	263	110	338
9:00 AM	137	236	57	18	194	254	85%	42	236	137	236	212
10:00 AM	169	204	58	17	227	221	100%	49	276	97	276	172
11:00 AM	163	210	60	15	223	225	98%	48	271	102	271	177
12:00 PM	133	240	48	27	181	267	80%	39	220	153	220	228
1:00 PM	128	245	53	22	181	267	80%	39	220	153	220	228
2:00 PM	138	235	56	19	194	254	85%	42	236	137	236	212
3:00 PM	145	228	51	24	196	252	86%	42	238	135	238	210
4:00 PM	116	257	39	36	155	293	68%	33	188	185	188	260
5:00 PM	79	294	19	56	98	350	43%	21	119	254	119	329
6:00 PM	21	352	11	64	32	416	14%	7	39	334	39	409
7:00 PM	8	365	10	65	18	430	8%	4	22	351	22	426
Peak Demand	169		60		227				276		276	
% Occupancy	45%		80%		51%				74%		62%	
Surplus (+) or Deficiency (-)	204		15		221				97		172	

TABLE 6
PROJECT TRIP GENERATION ESTIMATES
Taj Mahal Medical Center, Laguna Hills

Description		Size	Weekday						
			Daily	AM Peak Hour			PM Peak Hour		
				In	Out	Total	In	Out	Total
<u>Trip Generation Rates [a]:</u>									
ITE 710: General Office (trips per 1,000 SF GFA)			10.84	88%	12%	1.52	17%	83%	1.44
ITE 720: Medical Office (trips per 1,000 SF GFA)			36.00	79%	21%	3.10	30%	70%	3.93
ITE 880: Pharmacy Drugstore without Drive Through Window (trips per 1,000 SF GFA)			90.08	65%	35%	2.94	49%	51%	8.51
<u>Existing Taj Mahal (Full Occupancy)</u>									
General Office		17,254 SF	187	23	3	26	4	21	25
Medical Office		54,830 SF	1,974	134	36	170	65	150	215
Pharmacy (Retail)		1,139 SF	103	2	1	3	5	5	10
Total Existing:		73,223 SF	2,264	159	41	200	74	176	250
<u>Future Taj Mahal (Full Occupancy)</u>									
General Office		2,164 SF	23	3	0	3	1	2	3
Medical Office		69,920 SF	2,517	171	46	217	82	193	275
Pharmacy (Retail)		1,139 SF	103	2	1	3	5	5	10
Total Future:		73,223 SF	2,643	176	47	223	88	200	288
Future Minus Existing (Net Trips):			379	17	7	24	14	24	38
Exceeds 50 Peak Hour Trip Threshold? (Yes/No):			-	-	-	No	-	-	No
Available Trip Budget [b]:			-	-	-	216	-	-	2,590

Notes:

[a] Source: *Trip Generation*, 11th Edition, Institute of Transportation Engineers (ITE), Washington, D.C. (2021).

[b] Source: *Traffic Impact Analysis for the Village at Laguna Hills Project*, dated September 1, 2020.



**CITY OF LAGUNA HILLS
VMT SCREENING FORM FOR LAND USE PROJECTS**

This Screening Form acknowledges the City of Laguna Hills requirements for the evaluation of vehicle miles traveled (VMT) under CEQA. The analysis provided in this form should follow the City of Laguna Hills approved VMT Guidelines, dated July 9, 2020.

I. Project DescriptionCase Number: Project Name: Project Location: Project Description:

(Please attach a copy of the project Site Plan)

Current GP Land Use: Proposed GP Land Use: Current Zoning: Proposed Zoning:

If a project requires a General Plan Amendment or Zone change, then additional information and analysis should be provided to ensure the project is consistent with RTP/SCS Strategies and RHNA Allocation Plan.

II. VMT Screening Criteria

A. Is the Project 100% affordable housing?	<table border="1"><tr><td>YES</td><td> </td><td>NO</td><td><input checked="" type="text" value="X"/></td></tr></table>	YES		NO	<input checked="" type="text" value="X"/>	Attachments:
YES		NO	<input checked="" type="text" value="X"/>			
B. Is the Project within 1/2 mile of qualifying transit?	<table border="1"><tr><td>YES</td><td> </td><td>NO</td><td><input checked="" type="text" value="X"/></td></tr></table>	YES		NO	<input checked="" type="text" value="X"/>	Attachments:
YES		NO	<input checked="" type="text" value="X"/>			
C. Is the Project a local serving land use?	<table border="1"><tr><td>YES</td><td> </td><td>NO</td><td><input checked="" type="text" value="X"/></td></tr></table>	YES		NO	<input checked="" type="text" value="X"/>	Attachments:
YES		NO	<input checked="" type="text" value="X"/>			
D. Is the Project in a low VMT area?	<table border="1"><tr><td>YES</td><td><input checked="" type="text" value="X"/></td><td>NO</td><td> </td></tr></table>	YES	<input checked="" type="text" value="X"/>	NO		Attachments:
YES	<input checked="" type="text" value="X"/>	NO				
E. Are the Project's Net Daily Trips less than 500 ADT?	<table border="1"><tr><td>YES</td><td><input checked="" type="text" value="X"/></td><td>NO</td><td> </td></tr></table>	YES	<input checked="" type="text" value="X"/>	NO		Attachments:
YES	<input checked="" type="text" value="X"/>	NO				

Low VMT Area Evaluation:

Citywide VMT Averages ¹		
Citywide Home-Based VMT =	21.6	VMT/Capita
Citywide Employment VMT =	25.1	VMT/Employee

Project TAZ	VMT Rate for Project TAZ ¹	Type of Project
1450	18.0 VMT/Capita	Residential:
	22.7 VMT/Employee	Non-Residential: <input checked="" type="text" value="X"/>

¹ Base year (2016) projections from OCTAM.**Trip Generation Evaluation:**Source of Trip Generation: **Project Trip Generation:**

	2,643	Average Daily Trips (ADT)		
Internal Trip Credit:	YES	NO	<input checked="" type="text" value="X"/>	% Trip Credit:
Pass-By Trip Credit:	YES	NO	<input checked="" type="text" value="X"/>	% Trip Credit:
Affordable Housing Credit:	YES	NO		% Trip Credit:
Existing Land Use Trip Credit:	YES	NO		Trip Credit:

Net Project Trip Generation:

379	Average Daily Trips (ADT)
-----	---------------------------

Attachments:

Does project trip generation warrant an LOS evaluation outside of CEQA?

YES		NO	<input checked="" type="text" value="X"/>
-----	----------------------	----	---

III. VMT Screening Summary

A. Is the Project presumed to have a less than significant impact on VMT?

A Project is presumed to have a less than significant impact on VMT if the Project satisfies at least one (1) of the VMT screening criteria.

Less Than Significant

B. Is mitigation required?

If the Project does not satisfy at least one (1) of the VMT screening criteria, then mitigation is required to reduce the Project's impact on VMT.

No Mitigation Required

C. Is additional VMT modeling required to evaluate Project impacts?

YES

NO

X

If the Project does not satisfy at least one (1) of the VMT screening criteria AND generates 2,400 or more net daily trips, then additional VMT modeling using OCTAM is required. If the project generates less than 2,400 net daily trips, the Project TAZ VMT Rate can be used for mitigation purposes.

IV. MITIGATION

A. Citywide Average VMT Rate (Threshold of Significance) for Mitigation Purposes:

N/A

N/A

B. Unmitigated Project TAZ VMT Rate:

N/A

N/A

C. Percentage Reduction Required to Achieve the Citywide Average VMT:

N/A

D. VMT Reduction Mitigation Measures:

Source of VMT Reduction Estimates:

Project Location Setting

VMT Reduction Mitigation Measure:		Estimated VMT Reduction (%)
1.		0.00%
2.		0.00%
3.		0.00%
4.		0.00%
5.		0.00%
6.		0.00%
7.		0.00%
8.		0.00%
9.		0.00%
10.		0.00%
Total VMT Reduction (%)		0.00%

(Attach additional pages, if necessary, and a copy of all mitigation calculations.)

E. Mitigated Project TAZ VMT Rate:

N/A

N/A

F. Is the project presumed to have a less than significant impact with mitigation?

N/A

If the mitigated Project VMT rate is below the Citywide Average Rate, then the Project is presumed to have a less than significant impact with mitigation. If the answer is no, then additional VMT modeling may be required and a potentially significant and unavoidable impact may occur. All mitigation measures identified in Section IV.D. are subject to become Conditions of Approval of the project. Development review and processing fees should be submitted with, or prior to the submittal of this Form. The Planning Department staff will not process the Form prior to fees being paid to the City.

Prepared By			Developer/Applicant		
Company:	Linscott, Law & Greenspan, Engineers		Company:		
Contact:	Trissa Allen, P.E., RSP		Contact:		
Address:	2 Executive Circle, Suite 250, Irvine CA 92614		Address:		
Phone:	949.825.6175 x234		Phone:		
Email:	allen@llgengineers.com		Email:		
Date:	9/24/2020		Date:		
Approved by:					
Laguna Hills Community Development Dept.			Laguna Hills Public Services Dept.		
Date			Date		



City of Laguna Hills City Council / Planning Agency Staff Report

Date: July 9, 2024
To: Chair and Agency Members
From: Larry Longenecker, Community Development Director
Issue: Parking Use Permit (PUP) No. 0131-2023, a Request by Diamond Star Associates, Inc., on Behalf of Healthcare Realty Trust, Inc., for Approval of a Joint Parking Use Permit for the Saddleback Professional Center Located at 24012 Calle de la Plata

Recommendation: That the Planning Agency:

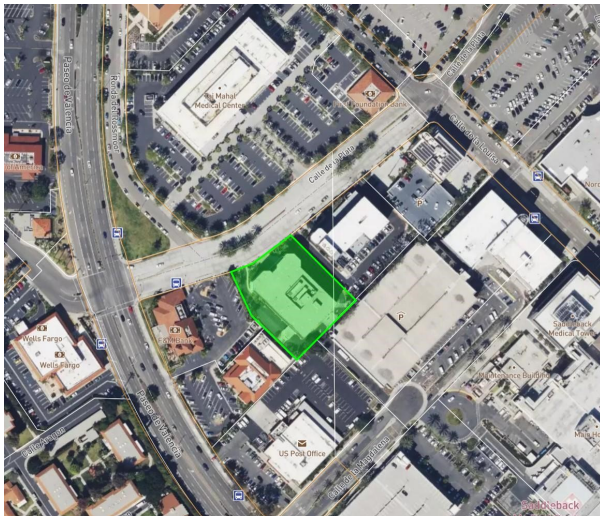
- 1) Conduct a public hearing;
- 2) Find and determine that the proposed project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 of Title 14, Chapter 3 of the California Code of Regulations (Class 1, Existing Facilities); and
- 3) Adopt a Resolution entitled: “A Resolution of the Planning Agency of the City of Laguna Hills, California, Approving Parking Use Permit (PUP) No. 0131-2023, a Request by Diamond Star Associates, Inc., on Behalf of Healthcare Realty Trust, Inc. for Approval of a Joint Parking Use Permit for the Saddleback Professional Center Located at 24012 Calle de la Plata, Including an Exemption from the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15301 of Title 14, Chapter 3 of the California Code of Regulations (Class 1, Existing Facilities).”

Background:

The Saddleback Financial Center (“Building”) is located near the corner of Paseo de Valencia and Calle de la Plata (24012 Calle de la Plata). The four-story building was approved and constructed in the early 1980s under County jurisdiction, and is part of a

larger development that includes: The Laguna medical office building, located adjacent to the Building, at 24022 Calle de la Plata; the Saddleback Medical Building, located further east at 23961 Calle de la Magdalena (fronting Calle De La Louisa); and a six-level parking structure, centrally located and shared by the three buildings. During 2020 and 2021, the current property owner, Healthcare Realty Trust (“Owner”), purchased all three office buildings and the parking structure (as well as the neighboring Taj Mahal building). The Owner subsequently renamed the Building from the Saddleback Financial Center to the Saddleback Professional Center. The 73,078-square-foot Building currently consists of a mix of medical, professional, and financial offices.

The original approved plans identify the Building as meant for banking/commercial offices. All three office buildings and the parking structure have remained essentially unchanged from their original approval, and the properties maintain coordinated circulation, parking, and landscaping. The Building sits on an approximately 1-acre property. The United States Postal Service facility abuts the subject property to the south, and both a bank and a medical office building abuts the subject property to the west. To the north, across Calle de la Plata, is the Taj Mahal building. The figure below is a vicinity map of the Project, with the subject property highlighted:



Visitors to the Building utilize the six-level parking structure shared by all three buildings. The structure can be accessed from an entrance directly behind the Building or at the main parking structure entrance on Calle de la Magdalena. The three buildings share the parking structure through a reciprocal ingress/egress agreement.

Authority:

The process the City must follow in reviewing a PUP is found in LHMC Chapter 9-44

Access and Parking, and LPMC Chapter 9-92 Application Process and Submittal Requirements. LPMC Section 9-44.070 (Joint Use of Parking Facilities) describes how the sharing of parking facilities can be approved, as long as there is sufficient parking for all existing and proposed uses within a site. The Planning Agency has review authority over the PUP process in accordance with LPMC Section 9-92.030.

The findings required for the application are found in LPMC Section 9-92.080.

Accordingly, Staff has prepared findings demonstrating that the application complies with the General Plan and Zoning Code as stated in the proposed Resolution (Attachment 1).

Proposal & Analysis:

The number of parking stalls required for a particular use or type of business are contained in LPMC Table 9-44.A (Number of Parking Stalls Required). The Code's approach to determining the amount of parking required for a use assumes businesses utilize 100% of the required parking at all times. This is a common approach that cities utilize in determining the parking needs for non-residential uses, but it can overstate required parking.

For commercial centers, required parking is based on the total parking needed to serve all businesses. The parking requirements are compared to the total parking inventory to determine if there is a surplus or deficit of parking stalls. Since commercial centers typically have a variety of uses that have differing parking demand periods during the day, the Code provides the opportunity for the joint use of parking facilities with an approved parking plan (LPMC Section 9-44.070). This approach to calculating parking demand is generally referred to as "shared parking", which is made possible through the approval of a Joint Parking Use Permit by the Planning Agency.

The Applicant requests approval of a Joint Parking Use Permit (PUP), which includes a Parking Study ("Study") prepared by Linscott, Law, & Greenspan Engineers (dated February 21, 2024) (Attachment 2). The purpose of the PUP is to accommodate a desired tenancy ratio of 95% medical office and 5% nonmedical office for the Saddleback Professional Center.

The Building currently consists of 33% general office (21,617 square feet), 32% vacant general office (20,837 square feet), 26% medical office (17,235 square feet), and 9% financial office/bank (6,231 square feet). The Owner would like the ability to convert the vacant and occupied general office space and half of the financial office space to medical office, resulting in a new tenancy ratio of 95% medical office (62,953 square

feet) and 5% financial office/bank (2,967 square feet). The total number of parking spaces required by the Laguna Hills Municipal Code (“LHMC” or “Code”) for the desired 95% medical office is 432 parking spaces.

Including the existing tenant mix in the other two buildings (The Laguna and Saddleback Medical Building), the total parking required by the LHMC for all three buildings is currently 1,453 parking stalls. With the proposed increase to 95% medical office space for the Building, the total parking required for all three buildings is 1,604 parking stalls. The six-level parking structure shared by the three buildings consists of 1,028 parking stalls, with an additional 71 surface parking stalls adjacent to the structure and utilized by visitors to the Saddleback Medical Building; in total, 1,099 parking stalls are available for the three buildings. This results in a Code-based deficiency of 505 parking stalls.

The Study prepared for the Applicant concludes that utilizing a “shared parking” approach results in an actual peak demand of 627 parking stalls. The methodology used in the Study is a blended approach to calculate parking by using observed actual demand for existing tenants, plus Code required parking for both the vacant office space and the proposed increase in medical office use. Parking counts were taken at hourly intervals over a three-day period (Tuesday - Thursday, October 24 – 26, 2023, from 7:00 a.m. to 7:00 p.m.). These three days were chosen to capture the busiest days of the week for medical and general office uses. The hours of observation were intended to capture the hours of operation for the busiest periods for tenants and visitors of the three buildings. The peak parking demand observed 627 parking stalls on Tuesday at 11:00am (approximately 55% of total capacity), resulting in a surplus of 472 parking stalls. With the proposed tenancy mix for the Building(95% medical office and 5% financial office), a projected surplus of 33 stalls would remain available.

Given the results of the Study, it is appropriate to establish a shared parking approach for the Building through the City’s PUPprocess, and allow the Applicant the opportunity to establish a more efficient approach for the use of the existing parking supply. This approach will provide the Applicant with the ability to use actual parking counts to determine parking need, rather than strictly utilizing the City’s standard parking requirements. Use of the shared parking approach will provide a degree of flexibility in how parking demand is calculated, enabling the Owner the opportunity to attract a complementary mix of tenant uses that have different peak parking demand times.

Conclusion:

Staff believes the Study demonstrates that there is adequate available parking within the parking structure for Saddleback Professional Center to accommodate the proposed

95% medical office-5% general office tenant mix. The Study has effectively shown that the Building's peak parking demand is far below the parking required by Code. Furthermore, Staff's observations of the parking structure's capacity are consistent with the conclusions made in the Study. Therefore, the approval of this PUP will reflect the Building's actual parking demand, and enable the Applicant to use the parking structure's surplus parking capacity for a wide range of potential new tenants that may require a higher parking demand, such as additional medical offices.

As a standard City practice for PUPs, staff requires applicants to address future changes in parking demand due to tenant turn over and change in the mix of uses once the PUP has been approved. For instance, Condition of Approval No. 12 provides the Community Development Director the ability to request an update to the Study if the tenant mixture at any time becomes problematic. Therefore, staff recommends approval, subject to the conditions of approval as listed in the attached Resolution.

Public Notice:

The proposed project was advertised in an adjudicated newspaper of general circulation on June 27, 2024. A total of 47 public hearing notices were mailed, which includes all property owners within a 300-foot radius of the subject property, as well as all tenants of the subject property. To date, no comments have been received. Any written comments received will be distributed at the Planning Agency Public Hearing.

CEQA Findings:

Staff has reviewed the proposed Project for compliance with the California Environmental Quality Act (CEQA) and determined that this project is categorically exempt from CEQA pursuant to Section 15301 of Title 14, Chapter 3 of the California Code of Regulations (Class 1, Existing Facilities). This exemption applies to the permitting or minor alteration of existing structures.

Fiscal Impact:

There is no cost to the City since Staff time and costs are reimbursed by the applicant.

Attachments:

1. Proposed Resolution of Approval
2. Parking Study prepared by Linscott, Law, & Greenspan (February 21, 2024)

RESOLUTION NO. PA2024-07-09-X

A RESOLUTION OF THE PLANNING AGENCY OF THE CITY OF LAGUNA HILLS, CALIFORNIA, APPROVING PARKING USE PERMIT (PUP) NO. 0131-2023, A REQUEST BY DIAMOND STAR ASSOCIATES, INC., ON BEHALF OF HEALTHCARE REALTY TRUST, INC. FOR APPROVAL OF A JOINT PARKING USE PERMIT FOR THE SADDLEBACK PROFESSIONAL CENTER LOCATED AT 24012 CALLE DE LA PLATA, INCLUDING AN EXEMPTION FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PER CEQA GUIDELINES SECTION 15301 OF TITLE 14, CHAPTER 3 OF THE CALIFORNIA CODE OF REGULATIONS (CLASS 1, EXISTING FACILITIES)

The Planning Agency of the City of Laguna Hills, California, hereby finds, determines, declares, and resolves as follows:

WHEREAS, Diamond Star Associates, Inc., on behalf of Healthcare Realty Trust, Inc. ("the Applicant") has filed an application for Parking Use Permit (PUP No. 0131-2023), a request to establish a Joint Parking Use Permit at the Saddleback Professional Center located at 24012 Calle de la Plata in the Village Commercial zoning district ("Project"); and

WHEREAS, the Project is hereby found to be Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Class 1, Existing Facilities) of Title 14, Chapter 3 of the California Code of Regulations. This exemption applies to the permitting or minor alteration of existing structures; and

WHEREAS, on July 9, 2024, the Planning Agency held a duly noticed public hearing and considered public comments and written and oral information and testimony presented by City staff, community residents, and other interested parties; and

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

NOW, THEREFORE, THE PLANNING AGENCY OF THE CITY OF LAGUNA HILLS, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. The above recitals are true and correct, and are incorporated herein by reference.

SECTION 2. That Planning Agency hereby determines that the required findings by the City for approval of Parking Use Permit PUP No. 0131-2023 have been met and made as follows:

Parking Use Permit

1. The proposed Joint Parking Use Permit is consistent with the intent and purpose of the Development Code.

The City's parking requirements are contained in LHMC Chapter 9-44. The intent of the parking requirements in the Development Code is to ensure that all land uses provide safe access and on-site circulation with adequate off-street parking facilities. The Development Code allows for shared use of parking facilities provided that it can be shown that adequate parking for all users is maintained. The Applicant has demonstrated that based upon the existing actual demand for existing uses, and the Code-required parking for vacancies and future uses, there is sufficient parking for the planned tenant mix, including uses that may have higher parking ratios. A comprehensive shared parking plan allows additional flexibility in leasing to a larger variety of users and allows a more efficient use of the existing parking supply. Condition of Approval No. 12 provides the Community Development Director with the ability to address parking and/or circulation issues relative to any change in any use or any portion of any use (i.e., change in tenant mix) to ensure the proposed Joint Parking Use Permit remains consistent with the requirements of the Development Code.

2. The Joint Parking Use Permit provides a reasonable and enforceable means for all uses to share parking facilities.

The shared parking approach proposed is enforceable upon all current and future tenants to ensure the parking is available. Any changes to the property affecting access or parking would require City approval, at which time the impact on shared parking would be evaluated. This Parking Use Permit is binding and enforceable against the property owner and all existing and future owner(s) and tenants of the property per the project conditions of approval. Additionally, the Community Development Director may evaluate the available parking supply for any change in tenant mix as provided for in Condition of Approval No. 12.

3. The requirement for parking established by the Joint Parking Use Permit shall assure that the parking demands for the participating uses are continually met.

This Parking Use Permit is binding and enforceable against the property owner and all existing and future owner(s) and tenants of the Center per the conditions of approval. Additionally, the Community Development Director may evaluate the available parking supply when any change in tenancy, or mix of uses is proposed at the subject site as provided for in Condition of Approval No. 12. Therefore, parking demand will continually be met. Should a parking issue occur resulting from a change in the tenancy or mix of uses, the Community Development Director, per Condition of Approval No. 12, can require the property owner to provide a parking study to demonstrate that parking is still sufficient.

4. The proposed use is consistent with the General Plan.

The Project is consistent with the goals and policies of the General Plan. In particular, with regard to parking, the General Plan under the Mobility Element (M-15) states the importance of utilizing a broad range of parking management tools to balance parking spillover effects and excessive parking requirements, to encourage efficient use of the land. Currently, the subject parking lot is often underutilized. Establishing formal shared parking will allow the property to accommodate the additional demand for medical office tenants, utilizing currently underused parking, while still providing adequate parking for all users.

5. The nature, condition, and development of adjacent uses, buildings, and structures have been considered and the proposed conditional use will not adversely affect or be materially detrimental to the adjacent uses, buildings, or structures.

Reciprocal ingress/egress and reciprocal use of parking lot areas has already been established between the multiple medical office buildings and shared parking structure and the subject proposal is to continue and expand the shared parking facilities in support of increasing the square footage of the subject Building with medical office use. Conditions of approval ensure the use of shared parking on the site will not be materially detrimental. For example, Condition of Approval No. 12 requires the property owner to update the parking and circulation study whenever a change tenancy, or a change in the mix of uses is proposed. These requirements will ensure sufficient parking is available on the site for current and future tenants and uses.

6. The proposed site is adequate in size and shape to accommodate the use and integrate it with the existing and planned uses in the vicinity.

The Project Site is improved with commercial buildings, parking lot, and landscaping around the perimeter and in interior areas of the site. The project site is typical of other medical and professional office buildings in Laguna Hills in terms of the nature of the improvements provided that result in a functioning office property.

If the Community Development Director determines insufficient parking exists on a site being considered for new tenants and uses due to the application of the City's standard parking ratios, the City's shared parking regulations contained in LHMC 9-44.070 allow property owners to base parking need on actual demand with the completion of a parking study to determine if a parking surplus exists on the property. The Applicant has submitted a parking study ("Study") to evaluate the actual parking demand for the Project Site. When factoring in the proposed tenant mix, there is a total parking demand of 627 stalls, resulting in a surplus of 33 parking stalls. Off-site uses in the vicinity will not be impacted by the proposed shared parking approach since the Project Site will maintain all of the improvements required to function. Condition of Approval No. 12 will allow the Community Development Director to evaluate the available parking supply for any change in tenants or change in use in the future, to ensure the Applicant's

implementation of a shared parking approach will not result in inadequate parking now or in the future.

7. All required development standards prescribed by the Development Code can be achieved.

The proposed Joint Parking Use Permit will enable the property owner to determine required parking based on actual parking demand, and enable the property owner to accommodate a wider range of potential new tenants, broadening the range of services to serve the public, that may have higher Development Code parking requirements, such as medical offices.

The Applicant, in cooperation with the property owner, has submitted a parking study ("Study") to evaluate the actual parking demand for the Project Site. When factoring in the proposed tenant mix, there is a total parking demand of 627 stalls, resulting in a surplus of 33 parking stalls. Off-site uses in the vicinity will not be impacted by the proposed shared parking approach since the Project Site will maintain all of the improvements required to function. Condition of Approval No. 12 will allow the Community Development Director to evaluate the available parking supply for any change in tenants or change in use in the future, to ensure the Applicant's implementation of a shared parking approach will not result in inadequate parking now or in the future.

8. The conditions and limitations placed upon the use are necessary to ensure compatibility with adjacent or abutting uses and the preservation of the public peace, safety, and welfare.

The conditions of approval will ensure that the approval of the Joint Parking Use Permit will not result in the conditions described above. Condition of Approval No. 12 will allow the Community Development Director to evaluate the available parking supply for any change in tenant mix and ensure the adequate parking will be available for all uses. The ability to evaluate required parking for any change in mix of uses, and require reasonable mitigation measures based on future updates to the parking study to be implemented by the Applicant will ensure that incompatible conditions with adjacent or abutting uses will not materialize as a result of the approval of a Joint Parking Use Permit, and ensure that the public peace, safety and welfare is maintained.

NOW, THEREFORE, based upon the above findings, the Planning Agency of the City of Laguna Hills does hereby approve PUP No. 0131-2023 subject to the following conditions:

General

1. The following Conditions of Approval shall be binding and enforceable against, and, whenever used herein, the term "Applicant" shall mean and refer to each of the following: Diamond Star Associates, Inc., on behalf of Healthcare Realty Trust, Inc., the owners(s) and tenant(s) of the property, and each of their respective successors and assigns.

2. Unless the context dictates otherwise, whenever the term “this Permit” is used in the following Conditions of Approval, it shall collectively refer to the Parking Use Permit (PUP) No. 0131-2023, approved pursuant to this Resolution, as well as the plans, studies, and exhibits submitted to the City by the Applicant to describe and depict the improvements to be constructed as a part of the project, and as otherwise modified by these Conditions of Approval.
3. Unless the context dictates otherwise, whenever the term “project” is used in the following Conditions of Approval, it shall collectively refer to the plans and exhibits submitted to the City by the Applicant to depict the project, as modified by these Conditions of Approval.
4. To the fullest extent permitted by law, the Applicant shall, at its sole cost and expense, protect, defend, indemnify, and hold harmless the City, its elected and appointed officers and officials, employees, agents, departments, agencies, authorized volunteers, consultants, attorneys, boards, commissions, and committees, and instrumentalities thereof ("Indemnitees"), from and against any and all claims, liabilities, losses, fines, demands, penalties, lawsuits, writs of mandamus, and any other claims or actions or proceedings of any kind whatsoever (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolution procedures (including, but not limited to, arbitrations, mediations, and other such procedures), judgments, orders and decisions (collectively "Claims" and "Actions"), brought against the Indemnitees, which seek to attack, challenge, modify, set aside, void, or annul any action of or any permit or approval issued by the Indemnitees (including actions approved by the voters of the City) for, in connection with, or concerning the approval of this Permit. It is expressly understood and agreed that the City shall have the right to approve, which approval will not be unreasonably withheld, the legal counsel providing the defense of the Indemnitees for the Claims and Actions, and that the Applicant shall promptly reimburse the City for all costs and expenses directly and necessarily incurred by the City in the course of the defense, including reasonable attorneys' fees. The City shall promptly notify the Applicant of any Claims and Actions brought against the Indemnitees and shall cooperate in the defense of any such Claims and Actions. If the Applicant fails to so defend the Claims and Actions, the City shall have the right but not the obligation to do so and, if it does, the Applicant shall promptly pay the City's full cost thereof.
5. Approval of this Permit constitutes approval of the proposed project only to the extent that it complies with the City's Development Code and any other applicable zoning regulations. Approval does not include any action or findings as to compliance or approval of the project regarding any other applicable ordinance, regulation, or requirement.
6. Failure to abide by and faithfully comply with any and all conditions of approval shall constitute grounds for revocation of this Permit by the Laguna Hills Planning Agency.
7. The Applicant shall agree in writing to these conditions of approval within 30 days of the Planning Agency's approval.

8. The conditions of project approval set forth herein include certain development impact fees and other exactions. Pursuant to Government Code §66020(d), these conditions constitute written notice of the amount of such fees, and/or exactions. The Applicant is hereby notified that the 90-day protest period in which the Applicant may protest the fees, dedications, reservation, or exactions imposed on this project through the Conditions of Approval, commencing from the date of approval of the project, has begun.
9. Pursuant to City Council Resolution No. 2017-07-11-2, the Applicant shall reimburse the City for any outstanding staff time spent on the processing of this Permit within 60 days of the Planning Agency's approval.
10. This Permit shall expire and be of no further force or effect if the Permit is not implemented within two years from July 9, 2024.
11. Within 48 hours from project approval, the Applicant shall submit to the City a check in the amount of \$50.00, made payable to the Orange County Clerk-Recorder, for filing the Notice of Exemption.

Joint Parking Use Permit

12. If at any time in the future the Community Development Director determines, in his or her sole discretion, that a parking and circulation study is necessary to address parking and/or circulation issues relative to any change in any use or any portion of any use (i.e., change in tenant mix) in the shopping center, the Applicant shall, at its sole cost and expense, be responsible for the cost of a parking and circulation study prepared by a licensed consultant selected by the City. The Applicant shall, at its sole cost and expense, be responsible for implementation costs of any reasonable mitigation measures deemed appropriate by the Director related to such impacts based on the findings of such study.

PASSED, APPROVED AND ADOPTED this 9th day of July 2024.

DAVE WHEELER, CHAIR

ATTEST:

JENNIFER LEE, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF LAGUNA HILLS)

I, Jennifer Lee, City Clerk of the City of Laguna Hills, California, DO
HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution
No. PA2024-07-09-X adopted by the Planning Agency of the City of Laguna Hills,
California, at a Regular Meeting thereof held on the 9th day of July 2024, by the following
vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

(SEAL)

JENNIFER LEE, CITY CLERK

HEALTHCARE REALTY

February 21, 2024

**Mayor Dave Wheeler; and,
Members of the City Council
City of Laguna Hills
24035 El Toro Road
Laguna Hills, CA 92653**

**Subject: Saddleback Professional/Financial Center
 24012 Calle del la Plata
 Request to Approve a "Joint Parking Use Permit"**

Dear Mayor Wheeler and Council Members:

Healthcare Realty Trust, a publicly traded REIT, is the largest owner of medical office buildings in the nation. We selected your city for long-term investment due to the proximity of Saddleback Medical Center and a diverse population needing high quality medical care. We currently own four medical office buildings in Laguna Hills and one in Laguna Woods. Our buildings are professionally managed and in great demand by medical professionals.

When some of our Laguna Hills buildings were built decades ago, including prior to City incorporation, the need for medical office space was less than today. However, as the population matures, we are experiencing greater demand for medical office while the demand for general office has dramatically decreased since the pandemic.

Prior owners of the "Saddleback Financial Center", which it was named prior to our purchase and naming "Saddleback Professional Center", filed an application in 2013 to seek City approval of 100% medical tenancy, but the City cautiously approved roughly 64% medical and 36% non-medical tenancy. With this "joint parking use permit" application, we are seeking an increase to 95% medical office and 5% non-medical.

In our analysis before purchasing the Saddleback Professional/Financial Center, we deemed more than sufficient parking was provided and to date we have never experienced "any shortage of parking" for our tenants or patients. The Saddleback Professional/Financial Center shares a six-level parking structure with two other medical buildings owned by Healthcare Realty Trust, "The Laguna Building" at 24022 Calle de la Plata and the "Saddleback Medical Building" at 23961 Calle de La Magdalena. The parking structure abuts all three medical office buildings and opens on its south side next to Saddleback Medical Center- Hospital. The structure has "never" been full, and the roof top "level six" is not used except for a stray parked car as evidenced by aerial photographs

for the past ten years. Additionally, half of the fifth level ramp to the roof is almost always vacant. However, medical office tenancy is in great demand since onsite physicians and patients can walk through the parking structure to the Saddleback Medical Center Hospital, and most of our physician tenants are affiliated with the Memorial Care Health System. We simply need City Council approval to increase our allowable medical tenancy to 95% and respond to the local need.

We retained the services of Donald Lamm, thirty-six years experienced "local government" city planning director, to process our application. Again, we would not be asking if it would damage our existing tenants or create any negative impacts on the surrounding community. While exploring options with City staff, we agreed with staff's recommendation to pursue approval of a "Joint Parking Use Permit" pursuant to Municipal Code Section 9-44.070, "Joint Use of Parking Facilities." It has been our experience that medical office buildings, in proximity to the Saddleback Medical Center and massive Laguna Woods Village, do not need excessive parking at one space for each 150 sqft of "gross" building floor area. Furthermore, we do not lease to high volume "industrial medical clinics" where dozens of patients wait and are processed in short visit intervals.

The local and national demand for "general office" tenancy has been diminishing since the pandemic. While exploring reasons why the City has not approved one hundred percent medical tenancy in the past, we have learned our three office buildings were previously owned by competing interests and mutual consent by owners could not be obtained. We now own all buildings and the parking structure, and fully consent to this "joint parking use permit."

To confirm we have more than sufficient parking to accommodate Saddleback Professional/Financial's increase in medical tenancy, we retained the services of Linscott, Law, and Greenspan Transportation Engineers (LLG) to conduct parking counts in 2022 on all levels in the parking structure as they counted in 2013. LLG performed parking counts on a Wednesday in January 2013 when our building tenancy was 22% medical tenants, and this year on a Wednesday in June 2022 with 63% medical tenants. In January 2013 during the highest demand peak hour on a Wednesday at 11:00am there were 567 empty spaces, and the structure was only 49% full. On a Wednesday at 10:00am in June 2022 with Saddleback Professional near 63% medical tenancy, parking demand decreased in the peak hour resulting in 633 empty parking spaces!

Our parking structure always has empty parking spaces throughout the day, and most of the fifth and sixth levels were verified as rarely used in 2013 and again in 2022. The top parking deck does not have any vehicle use marks or spots on the concrete, aerial photographs confirm a totally vacant parking deck that looks like new concrete, and two weeks of monitoring in 2022 only identified one car parked in a total of 205 roof top spaces.

Responding to staff's request in 2023, we again retained LLG to conduct an in-depth analysis of the parking structure and include Healthcare's two other medical office buildings. In total, their February 2024 parking study analyzes all three medical buildings

sharing the structure, detailing every tenant floor area, type of business, parking generation rates, and provides a complete analysis for existing and projection of what will occur at 95% medical in Saddleback Professional/Financial.

The building is currently approved for about sixty four percent (64%) medical office tenancy, however we used 60% to be conservative in projections. Unlike general office space, which typically has employees working 8:00AM-5:00PM, with the same number of parked vehicles, medical office tenants are service providers with variable staffing on various days and with late morning peak parking demand based on patient appointment times. Additionally, physician appointments typically decrease by mid-afternoon, and significantly drop-off thereafter.

Approving 95% medical office tenancy up from 60%+ is only a 35% increase in medical floor area. The Laguna Building and Saddleback Medical Buildings are already allowed 100% medical tenancy, only the Saddleback Professional/Financial is limited to about 60%. **The LLG study confirms there is more than sufficient onsite parking for 95% medical office tenancy at Saddleback Professional/Financial, and the other two buildings at 100% medical tenancy, even though some tenants are not "classified" as medical.**

The parking structure has 1,028 spaces and surface lots 71 spaces for a total of 1,099 spaces "jointly" shared by Healthcare's three medical office buildings. At present, the LLG Study confirms the "peak parking hour" to be on Tuesdays at 11:00am. At that time 587 cars were parked in the structure and 40 in surface lots, for a total of 627 cars where 1,099 spaces are available. Recognizing the three buildings have existing vacancies, and upon converting Saddleback Professional/Financial to 95% medical, the "absolute maximum" joint use shared parking need could be 963 spaces if all buildings are 100% leased/occupied, and with only 5% of one building being non-medical. With 1,099 spaces available, there is still vacant capacity of at least 136 spaces (12.4% of the spaces) during "the peak hour" on one day a week. The balance of the time parking decreasing from the one peak hour and day. Also, the parking structure vehicle counts included an unknown number of hospital visitors who enter the structure on the south side adjacent to the Medical Center. While the hospital has its own pay parking structure for employees and visitors fronting Paseo Valencia at Calle de La Magdalena, Healthcare Realty's structure is closer to the hospital and is open for "guest parking" without differentiating between their guests/patients or Medical Center guests/patients. (See attached LLG Parking Study-Table 4)

Your neighboring Laguna Woods Village, with a population of 18,500 residents over fifty-five years old, has a regularly scheduled shuttle transportation system which brings residents directly to the Taj Mahal and stops on Calle de La Plata in front of our buildings. Their transportation system is extensive and presumably beneficial to their residents, while our medical offices experience less traffic and lower parking demand thanks to the shuttle. While we do not have exact information on the number of seniors, we presume our medical buildings are important for the community's medical care. Additionally, future

residents at the Laguna Hills Mall "residential village" will appreciate having high quality medical services within walking distance of their homes.

Healthcare Realty provides considerable opportunities for "small businesses" to thrive in the medical profession. Additionally, "general office", as a land use, greatly impacts roadways with peak traffic generated during employee commute hours of 7-9AM and 4-6PM which are the standard AM and PM peak traffic hours in Orange County. Those are also peak traffic congestion hours on El Toro Road for your residents and regional commuters. Our "medical office tenants" have "peak hours" after 9:00am and before 4:00pm with far less impact than general office on surrounding roadways. Therefore, medical tenants have a lower impact on traffic congestion during peak hours on El Toro Road in Laguna Hills.

We sincerely appreciate your consideration and approval of our "joint parking use permit" for the Saddleback Professional/Financial Center. We will be present at your meeting to introduce ourselves as members of your community and to answer any questions. Healthcare Realty Trust is significantly invested in Laguna Hills and plans to remain as such.

Should you have any questions prior to the meeting, please do not hesitate to contact me or our representative and authorized agent Don Lamm at 949 838-7038.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeffrey A. Rieger', with a long horizontal stroke extending to the right.

Jeffrey A. Rieger
Director of Real Estate

Attachments:

Directory maps
LLG Parking Study Table 4
Parking Structure Roof Deck Photographs
LLG 2024 Saddleback Professional/Financial Center Parking Study

Cc:

Jarad L. Hildenbrand, City Manager
Larry Longenecker, Community Development Director
Joseph Ames, Public Works Director/City Engineer
Felix Mendez, Healthcare Realty Trust
Donald D. Lamm, AICP, Diamond Star Associates, Inc.

Saddleback Professional/Financial Center

Legend

- Other buildings that share parking structure
- Parking Structure
- Saddleback Professional Building

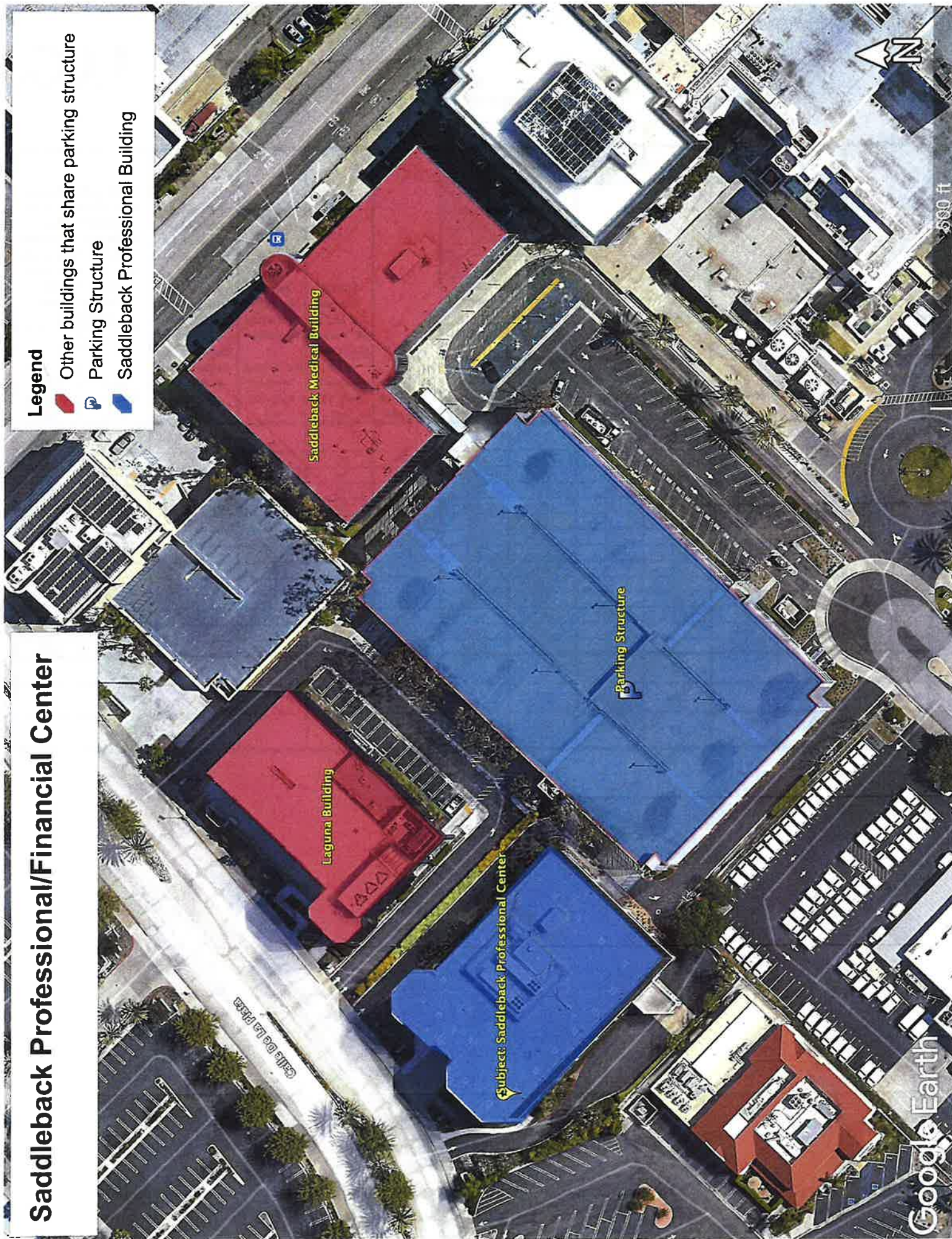


TABLE 4
FUTURE DEMAND VS. EXISTING SUPPLY
Saddleback Financial Center, Laguna Hills

	Parking Demand Counts on Tuesday (10-24-23) (PEAK DAY)									Net Hourly Demand by Converting 20,837 SF of Vacant Gen Office to Med Office and 21,617 SF of Occupied Gen Office to Med Office (151 spaces per Table 1)	Existing Demand (per 10-24-23 counts) + The Laguna Vacancy + Saddleback Med Office Vacancy + Net Demand from SFC Conversion versus Parking Structure & Surface Lots Supply	
	Parking Structure Levels 1 to 6		Surface Lots Adjoining Parking Structure		Parking Structure Levels 1 to 6 + Surface Lots Total						Total Demand (sp)	Total Surplus (sp)
	Demand (sp)	Surplus (sp)	Demand (sp)	Surplus (sp)	Total Demand (sp)	Total Surplus (sp)						
Supply (sp)	1,028		71		1,099						1,099	
7:00 AM	58	970	13	58	71	1,028	11%	10	10	17	108	991
8:00 AM	301	727	31	40	332	767	53%	49	49	80	510	589
9:00 AM	486	542	46	25	532	567	85%	78	79	128	817	282
10:00 AM	525	503	48	23	573	526	91%	84	85	137	879	220
11:00 AM	587	441	40	31	627	472	100%	92	93	151	963	136
12:00 PM	500	528	40	31	540	559	86%	79	80	130	829	270
1:00 PM	504	524	43	28	547	552	87%	80	81	131	839	260
2:00 PM	564	464	46	25	610	489	97%	89	90	146	935	164
3:00 PM	538	490	43	28	581	518	93%	86	86	140	893	206
4:00 PM	488	540	29	42	517	582	82%	75	76	124	792	307
5:00 PM	236	792	11	60	247	852	39%	36	36	59	378	721
6:00 PM	86	942	7	64	93	1,006	15%	14	14	23	144	955
7:00 PM	26	1,002	9	62	35	1,064	6%	6	6	9	56	1,043
Peak Demand	587		48		627						963	
% Occupancy	57%		68%		57%						88%	
Surplus (+) or Deficiency (-)	441		23		472						136	

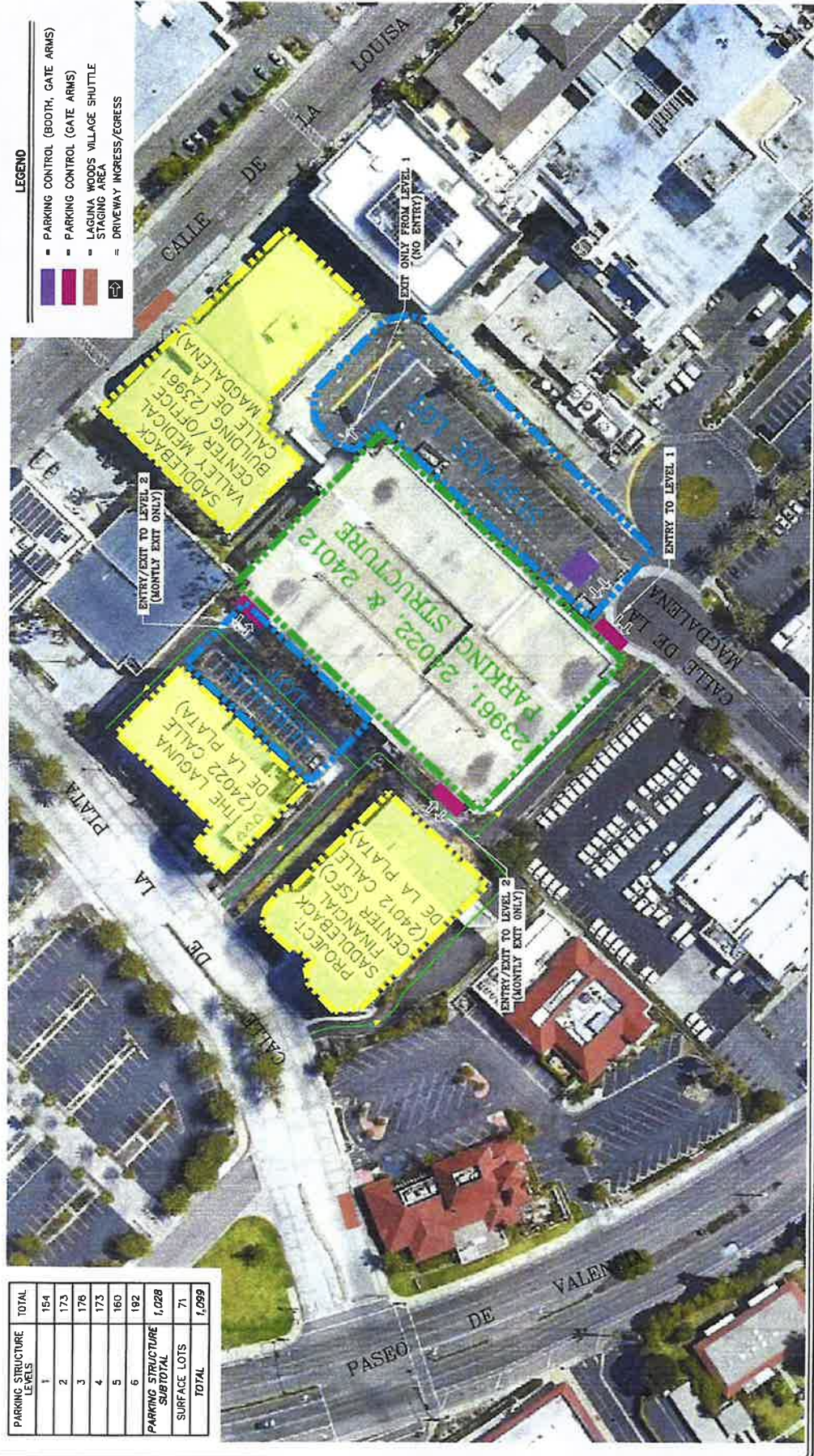


FIGURE 2

EXISTING PARKING SUMMARY

SADDLEBACK FINANCIAL CENTER, LAGUNA HILLS

SOURCE: GOOGLE

UIC No SCALE

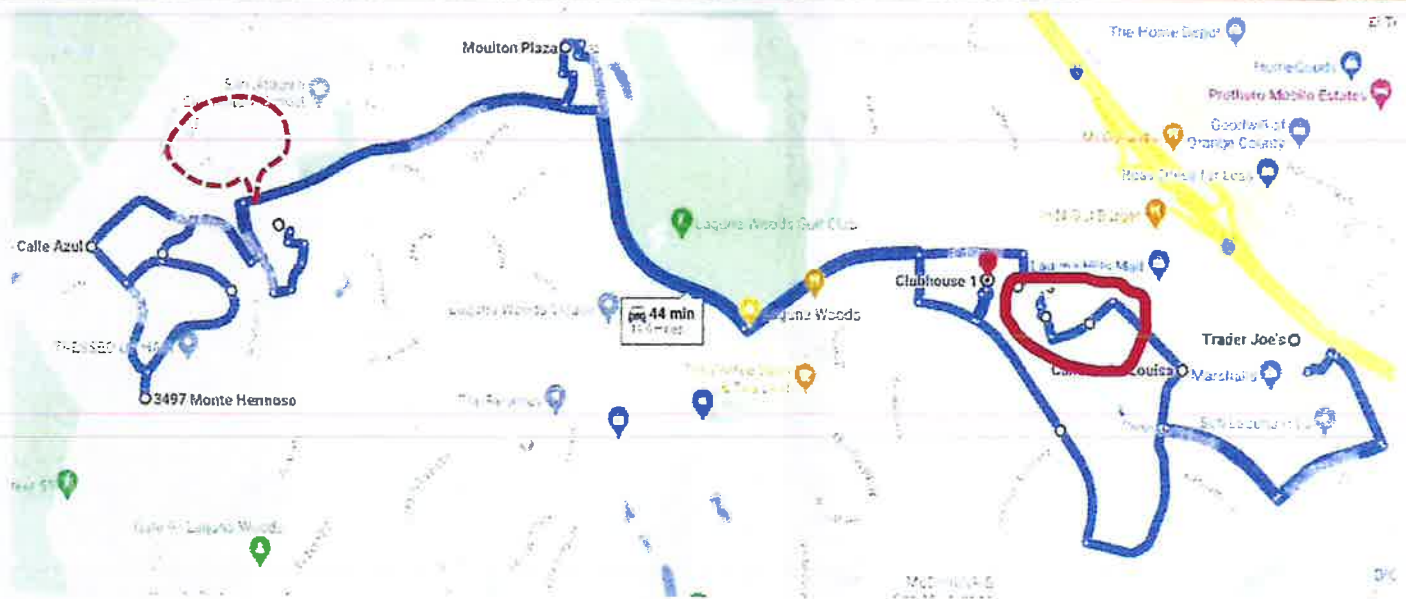






EASY RIDER FIXED BUS ROUTE 1 CONTINUED

DESIGNATED ROUTE		ETA
Avenida Sosiega		:21
Towers		:23
Gate 10		:25
Gate 11 Avenida Despacio / Avenida del Sol	(R)	:27
Moulton Plaza / FSSC / El Toro Pharmacy		:29
El Toro / OCTA Bench		:38
CVS		:40
Transfer Point to Wellness		
Calle de La Plata		:42
**Taj Mahal (Drop Off Only)		:43
Calle de La Louisa (Medical Buildings)		
Trader Joe's		:45
Health Center Dr. enter Gate 2		:46
Via Estrada (CDS 21 - 24)		:48
Calle Aragon (CDS 39-30)		:50
Clubhouse 1 (Transfer Point)		



Neighborhood routes will not operate between 12:30 and 1 p.m. to provide bus drivers a lunch break.

Bus Route Hours: 9AM - 5PM Monday through Friday

Transportation: 949-597-4659



Laguna Woods Village®

CDS Cul-De-Sac

(R) Special Request only

EASY RIDER WELLNESS ROUTE

COMMERCIAL EAST AND WELLNESS			
DESIGNATED ROUTE	ETA	DESIGNATED ROUTE	ETA
Clubhouse 1 (Starting Point)	0:00	Clubhouse 1 (Starting Point)	0:30
Calle Aragon (CDS 29)	0:01	Calle Aragon (CDS 29)	0:31
CVS/Mother's Market	0:05	CVS/Mother's Market	0:35
Hospital (Rear Loop) (R)	0:09	Hospital (Rear Loop) (R)	0:39
Post Office (R)		Post Office (R)	
Farmers and Merchant Bank (R)		Farmers and Merchant Bank (R)	
California Bank & Trust (R)		California Bank & Trust (R)	
Laguna Building (24022 Calle De La Plata)		Laguna Building (24022 Calle De La Plata)	
Taj Mahal (R)		Taj Mahal (R)	
Fish House Restaurant / In 'N Out (R)		Fish House Restaurant / In 'N Out (R)	
Glass Building / Harvard Eye Center	0:12	Glass Building / Harvard Eye Center	0:42
Memorial Care Center (R)		Memorial Care Center (R)	
OCTA Transportation Center	0:15	OCTA Transportation Center	0:45
Rehab Center (R)		Rehab Center (R)	
Oakbrook Village / Marshalls	0:20	Oakbrook Village / Marshalls	0:50
Trader Joes	0:22	Trader Joes	0:52
Oakbrook Medical (R)		Oakbrook Medical (R)	
Medical Arts Building (R)		Medical Arts Building (R)	
Dental Plaza (R)		Dental Plaza (R)	
Meridian at Laguna Hills (Villa Valencia) (R)		Meridian at Laguna Hills (Villa Valencia) (R)	
Laguna Hills City Hall / Medical Building (R)		Laguna Hills City Hall / Medical Building (R)	
Walgreens (R)		Walgreens (R)	
St George's Episcopal Church (R)		St George's Episcopal Church (R)	
Clubhouse 1 (Transfer Point)	:30	Clubhouse 1 (Transfer Point)	0:00

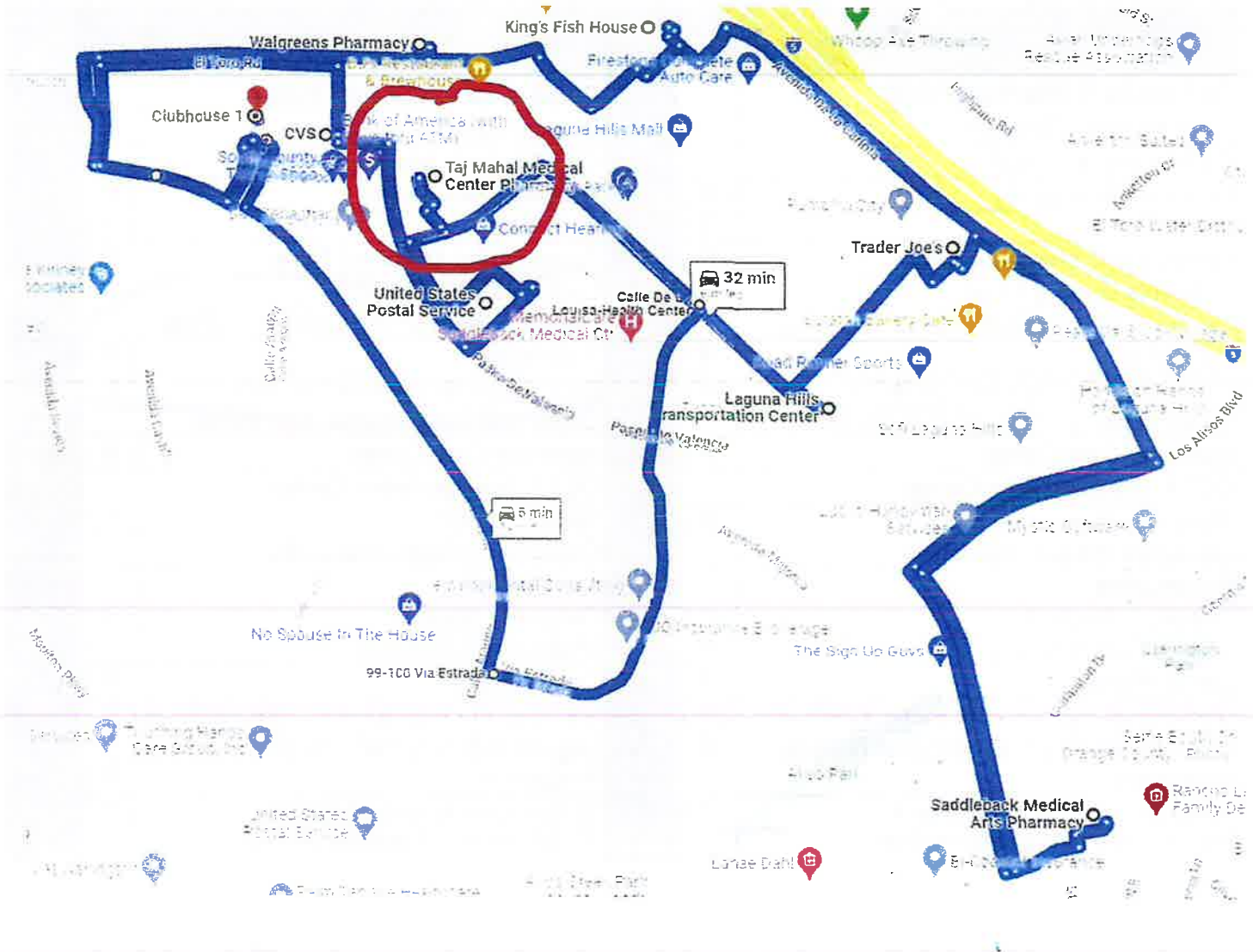
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February 21, 2024

Mr. Jeff Rieger
Healthcare Realty
23961 Calle de la Magdalena, Suite 440
Laguna Hills, CA 22653

LLG Reference: 2.23.4720.1

Subject: **Parking Study, Trip Generation Assessment, and VMT Screening
for Saddleback Financial Center**
Laguna Hills, California

Dear Mr. Rieger:

As requested, Linscott, Law & Greenspan, Engineers (LLG) is pleased to submit findings for the Parking Study, Trip Generation Assessment, and VMT Screening we completed for the Saddleback Financial Center (SFC), which is an existing medical office/professional office building located at 24012 Calle de la Plata in the City of Laguna Hills.

The proposed Project, as envisioned by Healthcare Realty, includes the renovation, re-tenancy and re-occupancy of existing general office space with medical office uses, which would increase the increase existing medical office tenancy to 95%. Based on this, the focus of this evaluation is to determine whether existing supply would be adequate in meeting the parking demand that could be generated by a target mix of 95% medical office and 5% general office uses at full occupancy of SFC in the future.

In addition, the trip generation potential for the proposed medical office conversion was estimated, compared against a 50-peak hour trip threshold (to determine if an LOS-based traffic analysis is warranted), and compared against remaining trip budgets in the Urban Village Specific Plan area. In order to determine the need for a CEQA-based VMT impact assessment, VMT screening was conducted for the Project using City-prescribed methodology and worksheet.

Our method of analysis, findings, and recommendations are detailed in the following sections of this report.

David S. Shender, PE
John A. Boarman, PE
Richard E. Barretto, PE
Keith D. Maberry, PE
KC Yellapu, PE
Dave Roseman, PE
Shankar Ramakrishnan, PE
An LG2WB Company Founded 1966

Briefly, our findings indicate that a minimum parking surplus of 472 spaces during peak demand conditions (surpluses would be greater during all other hours of a weekday and weekend) in the parking structure and adjoining lots would be adequate in meeting a future, net additive demand of 151 spaces generated by a future tenancy scenario of 95% medical office for SFC.

Project Description

Based on floor area calculations prepared by Healthcare Realty, the existing SFC building has a total of 73,078 square feet (SF) of Gross Building Floor Area. Per the City of Laguna Hills Municipal Code, the Parking-Based GFA, less elevator shafts and restrooms, for SFC is calculated to total 65,920 SF (also defined as “Tenant Floor Area” in development tabulations provided by Healthcare Realty).

Table 1, located at the end of this letter report, summarizes the existing tenant mix and associated floor areas for the SFC building. The existing land use breakdown consists of the following:

- 32% vacant general office (20,837 SF)
- 26% medical office (17,235 SF)
- 33% general office (21,617 SF)
- 9% bank (6,231 SF)

In order to achieve a future tenancy scenario of 95% medical office for SFC, the 20,837 SF of vacant general office, 21,617 SF of occupied general office, and 3,264 SF of occupied bank space would need to be converted to medical office uses. The resulting land use mix for the future would be as follows:

- 95% medical office (62,953 SF)
- 5% bank (2,967 SF)

Parking Supply

Figure 1 presents the existing aerial photograph of the SFC building (24012 Calle de la Plata), The Laguna Building (24022 Calle de la Plata), Saddleback Medical Building (also known as Saddleback Valley Medical Center/Office Building or SVMC; 23961 Calle de la Magdalena), parking structure and adjoining surface lots shared by SFC, The Laguna, and Saddleback Medical Building, and an inset table describing parking space types/designations. Use of the parking structure and adjoining lots is shared by SFC, The Laguna Building, and Saddleback Medical Building/SVMC, with the general public informed accordingly through visible

signage. All parking structure access points have overhead signage that indicate “23961 24022 24012 ENTRANCE”. Parking spaces within the structure and in the lots that are restricted to specific tenants, parking time limits, and/or space type have pavement markings and signs posted on each space to enforce the restriction.

Figure 2 provides a parking supply summary and illustrates the existing parking supply layout, driveway ingress and egress, parking controls, and Laguna Woods Village shuttle staging areas.

As shown on *Figure 2*, gate-arm controlled (with ticket dispenser) entry into the structure from Calle de la Magdalena is provided on the southeast corner of the structure, providing direct access to Level 1. Signage at this entry on the southeast corner of the parking structure provide clarification that: “This is not the parking lot for the hospital or for 24411 Health Ctr. Dr. If you park here you will be charged accordingly. NO EXCEPTIONS”. The exit-only driveway on Level 1 is located on the northeast corner of the parking structure, is the only way for visitors to exit the structure, and extends onto the pickup/dropoff area serving Saddleback Medical Building/SVMC and parking lot (with unrestricted spaces and those designated for UCI Health visitors) located north of the parking booth and gate-arm controlled exit at Calle de la Magdalena (the Calle de la Magdalena exit serves both visitors and monthly parkers).

Figure 2 also illustrates that entry into the parking structure from Calle de la Plata is available via the one-way entry driveway serving SFC (this is the northerly one of SFC’s two inbound-only driveways along Calle de la Plata) that extends to the parking structure entrance (gate-arm controlled, with ticket dispenser) located on the southwest corner of the structure (Level 2), and through The Laguna Building’s one-way entry driveway (this forms a one-way loop around the back of The Laguna Building and exits back out onto Calle de la Plata) providing access to a parking lot (with 2-hour parking, accessible spaces, and EV spaces) behind The Laguna Building and the parking structure northwest corner entry onto Level 2 (gate-arm controlled, with ticket dispenser). The gate-arm controlled (with card reader/transponder units) exits on the northwest and southwest corners of the parking structure are restricted to “Monthly Exit Only”. Monthly parkers exiting through the northwest corner have direct access to Calle de la Plata. Monthly parkers exiting through the southwest corner are required to make a u-turn onto the one-way eastbound driveway leading to Calle de la Magdalena.

Parking rates are as follows: \$1 for each 30 minutes, \$10 maximum. These parking fees are the same as at Taj Mahal.

Table 2 presents a breakdown of the existing parking supply provided in the parking structure and in adjoining parking lots.

Based on the latest field inventory, the existing parking supply in the six-level structure totals 1,028 spaces. Older parking agreements allocated 295 spaces within the structure to SFC (can be increased to 310 spaces upon request. Currently, on Level 2 (which has direct/street-level access to the SFC building), California Bank & Trust (one of SFC's existing tenants) has 23 spaces designated for their customers and 13 spaces reserved for their employees. On Level 1, there are 62 spaces designated for Saddleback Medical Building/SVMC visitors, 65 spaces for Harvard Eye patients, and 12 spaces for UCI Health visitors. Based on the field supply inventory, the remaining 853 spaces in the structure are not signed/allocated to specific tenants of SFC, The Laguna, or Saddleback Medical Building/SVMC.

In addition to the 1,028 spaces inside the parking structure, there are an additional 71 spaces that exist in the parking lots that adjoin the parking structure, of which 12 spaces are designated for UCI Health visitors.

The total supply for all three buildings is 1,099 spaces, comprised of 1,028 spaces in the structure and 71 spaces in lots adjoining the structure.

City Code Parking Requirements

As presented on the bottom portion of *Table 1*, the Code-required spaces of the Project were first calculated based on the application of "standalone" Municipal Code requirements, applied to the Project's Parking GFA.

Parking ratios from the City Code relevant to the Project site in either its current or proposed development pattern are as follows:

- | | |
|--|--------------------|
| • Medical and dental office: | 1 space/150 SF GFA |
| • Business and professional office (excludes medical, but includes chiropractic, acupuncture, optometry, physical therapy, and psychotherapy): | 1 space/300 SF GFA |
| • General Retail (applied to pharmacy): | 1 space/200 SF GFA |
| • Financial Services (banks): | 1 space/250 SF GFA |

The City Code parking ratios above were applied to the parking GFA of each component of SFC to calculate the City Code parking requirements under existing and future conditions.

As *Table 1* indicates, the City Code requirements for the existing land use breakdown of SFC would total 281 spaces. The future land use mix for SFC at a 95% medical office tenancy would total 432 spaces. A key finding from *Table 1* is highlighted on

the right-hand column, which reports the net number of spaces (151) generated by the conversion of 20,837 SF of vacant general office, 21,617 SF of occupied general office, and 3,264 SF of occupied bank space into medical office uses in order to achieve a future tenancy scenario of 95% medical office for SFC.

Because parking for the parking structure and adjoining lots is shared by SFC, The Laguna Building, and Saddleback Medical Building/SVMC, it was important to calculate City Code requirements for The Laguna Building and Saddleback Medical Building/SVMC, in addition to SFC, in this study. Detailed tenant summaries for the other two buildings are included as an attachment to this study. The bottom portion of *Table 1* presents the application of City Code ratios to the existing land use breakdown for the two buildings (based on an existing Tenant Floor Area or Parking-Based GFA of 52,301 SF for The Laguna Building and 124,994 SF for Saddleback Medical Building/SVMC). As indicated, The Laguna Building's City Code requirements total 349 spaces. The City Code requirements for Saddleback Medical Building/SVMC total 823 spaces.

The total City Code requirement for all three buildings, including SFC, is 1,453 spaces under existing conditions, and 1,604 spaces under future conditions (with SFC's proposed 95% medical office tenancy). Comparing these Code requirements against the total parking supply for all three buildings of 1,099 spaces corresponds to a Code-based deficiency of 354 spaces under existing conditions and 505 spaces under the future tenancy scenario for SFC.

Observed Parking Demand

Consistent with study parameters specified in the City Code, as well as the scope of work approved by the City for this study, field studies of actual parking demand in the parking structure and adjoining lots serving the three buildings were conducted to evaluate current parking conditions, and to develop insights as to actual parking surplus or deficiency.

Hourly counts were conducted of the number of vehicles parked in each of the parking zones over a three-day period (Tuesday/October 24, 2023, Wednesday/October 25, 2023, and Thursday/October 26, 2023) from 7:00 AM through 7:00 PM by Counts Unlimited, Inc. under the guidance of LLG.

Table 3 presents the parking demand survey results, and compares observed demand against existing parking supply. As indicated, the peak demand condition occurred on Tuesday at 11:00 AM with a total demand of 627 spaces (comprised of 587 spaces in the parking structure, and 40 spaces in the lots). These counts indicate that the

parking structure and adjoining lots were only 55% occupied during the peak condition observed. Parking occupancy was less during all other hours and survey dates. Comparing the 627-space peak demand against the existing supply of 1,099 spaces corresponds to an observed surplus of 472 spaces. Parking surpluses were greater during all other hours and days observed.

To further illustrate actual parking demand characteristics that were observed, a bar graph for each survey date was prepared. Each graph shows Level 1 demand in dark blue, Level 2 demand in peach, Level 3 demand in purple, Level 4 demand in green, Level 5 demand in aqua, significant surpluses on Level 5 in white (below the supply line at 836 spaces), no demand on Level 6 (only one car was observed to park on Level 6/roof on Wednesday and Thursday), significant surpluses on Level 6 in white (below the supply line at 1,028 spaces), and surface lot demand in orange.

Table 3 and each of the three graphs clearly show significant surpluses on site that could support the net additive spaces for SFC in the future of 151 spaces.

It should also be noted that the minimum surplus observed of 472 spaces is more than enough to offset the total Code-based deficiency for all three buildings of 354 spaces under existing conditions. Comparing the 505-space Code-based deficiency under the future tenancy scenario (95% medical office) for SFC against the 472-space minimum surplus results in a difference of only 33 spaces.

Future Parking Demand

Table 4 presents the parking demand survey results for the peak day condition (Tuesday, October 24, 2023), derives the hourly demand profile from those parking demand counts, estimates the net spaces to account for current vacancies at The Laguna Building (92 spaces) and Saddleback Medical Building/SVMC (93 spaces), applies the empirical hourly profile to those net additive spaces plus the 151 net spaces to be generated by SFC's proposed conversion from general office to medical office to achieve a 95% medical office tenancy, adds the net spaces to observed demand, then compares the resulting sum to existing parking supply.

As indicated on *Table 4*, the peak demand observed was 627 spaces. Adding the 92, 93, and 151 net spaces to the 627-space demand results in a total peak demand of 963 spaces. Comparing the 963-space peak demand against the existing total supply of 1,099 spaces corresponds to a surplus of 136 spaces.



Based on the above findings, it is concluded that a minimum parking surplus of 472 spaces during peak demand conditions (surpluses would be greater during all other hours of a weekday and weekend) in the parking structure and adjoining lots would be adequate in meeting a future, net additive demand of 151 spaces generated by a future tenancy scenario of 95% medical office for SFC.

Furthermore, given the robust surpluses in existing supply, no specific parking control and management measures are recommended at this time.

Trip Generation Assessment

Traffic generation is expressed in vehicle trip ends, defined as one-way vehicular movements, either entering or exiting the generating land use. Trip generation equations and/or rates used in the traffic forecasting procedure are found in the 11th Edition of *Trip Generation*, published by the Institute of Transportation Engineers (ITE) [Washington D.C., 2021].

As presented in **Table 5**, the ITE trip rates for general office, medical office, and bank were applied in estimating the Project's tripmaking potential.

As shown in **Table 5**, existing SFC trip generation forecasts are estimated to be 1,705 daily trips on a typical weekday, 180 AM peak hour, and 260 PM peak hour trips.

Presuming the target land use mix of 95% medical office and 5% non-medical uses, future SFC trip generation forecasts are estimated to be 2,564 daily trips on a typical weekday, 225 AM peak hour, and 310 PM peak hour trips.

The net trips for the Project correspond to 859 daily trips on a typical weekday, 45 AM peak hour, and 50 PM peak hour trips. The net peak hour trips do not exceed the 50-peak-hour-trip threshold, but match the threshold during the PM peak hour. Based on this, further coordination with City staff will be needed in order to determine whether this would warrant the preparation of an LOS-based traffic study.

It should further be noted that the 45 AM peak hour, and 50 PM peak hour trips generated by the Project would fit within the remaining available trip budgets of 216 AM peak hour trips and 2,590 PM peak hour trips for the Urban Village Specific Plan/UVSP area that SFC is located within.

Vehicle Miles Traveled (VMT) Screening Analysis

The purpose of this VMT screening analysis is to evaluate the Project based on Senate Bill 743 (SB 743) requirements consistent with the *Technical Advisory on Evaluating Transportation Impacts In California Environmental Quality Act* (CEQA), December 2018, prepared by the State of California Governor's Office of Planning and Research (OPR). The OPR Technical Advisory provides project screening criteria and guidance for analysis of VMT assessments under SB 743. With the adopted guidelines, transportation impacts are to be evaluated based on a project's effect on vehicle miles traveled. Lead agencies are allowed to continue using their current impact criteria, or to opt into the revised transportation guidelines. However, the new guidelines must be used starting July 1, 2020, as required in CEQA section 15064.3.

The City of Laguna Hills has adopted criteria for evaluating VMT impacts under CEQA, and they are presented in the *City of Laguna Hills Vehicle Miles Traveled Analysis Guidelines under the California Environmental Quality Act* (July 9, 2020).

Based on the application of the City's screening criteria, and using the City's spreadsheet tool developed for project screening purposes, it was determined that the Project is located in a low VMT area, does not exceed a net daily trip threshold of 500 ADT, and is therefore screened out from further VMT Project-level assessment because it can be presumed to have less-than-significant impact on VMT. The City's VMT screening form for the Project is included at the end of this letter report.

As detailed in the City's VMT analysis guidelines, potential impacts to active transportation (pedestrian and bicycle) and public transit facilities and circulation can be evaluated by determining whether a project conflicts with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decreases the performance or safety of such facilities.

The proposed Project would not have an impact on the existing multimodal network; specifically, it would not: (1) conflict with a plan, ordinance, or policy related to bicycle, pedestrian, and public transit; (2) substantially increase hazards due to a geometric design feature; and (3) result in inadequate emergency access.

The site plan for the Project will maintain existing sidewalks and access to public transit, pedestrian connections on site and with adjoining uses, and will continue to meet City design standards regarding site access, multimodal connectivity within the internal site circulation system, emergency access, and on-site parking.

Summary of Findings and Conclusions

1. The existing land use breakdown consists of the following:
 - 32% vacant general office (20,837 SF)
 - 26% medical office (17,235 SF)
 - 33% general office (21,617 SF)
 - 9% bank (6,231 SF)
2. In order to achieve a future tenancy scenario of 95% medical office for SFC, the 20,837 SF of vacant general office, 21,617 SF of occupied general office, and 3,264 SF of occupied bank space would need to be converted to medical office uses. The resulting land use mix for the future would be as follows:
 - 95% medical office (62,953 SF)
 - 5% bank (2,967 SF)
3. Use of the parking structure and adjoining lots is shared by SFC, The Laguna Building, and Saddleback Medical Building/SVMC. The total supply for all three buildings is 1,099 spaces, comprised of 1,028 spaces in the structure and 71 spaces in lots adjoining the structure.
4. The total City Code requirement for all three buildings, including SFC, is 1,453 spaces under existing conditions, and 1,604 spaces under future conditions (with SFC's proposed 95% medical office tenancy). Comparing these Code requirements against the total parking supply for all three buildings of 1,099 spaces corresponds to a Code-based deficiency of 354 spaces under existing conditions and 505 spaces under the future tenancy scenario for SFC.
5. The net number of spaces generated by the conversion of 20,837 SF of vacant general office, 21,617 SF of occupied general office, and 3,264 SF of occupied bank space into medical office uses in order to achieve a future tenancy scenario of 95% medical office for SFC is 151 spaces.
6. A minimum parking surplus of 472 spaces during peak demand conditions (surpluses would be greater during all other hours of a weekday and weekend) in the parking structure and adjoining lots would be adequate in meeting a future, net additive demand of 151 spaces generated by a future tenancy scenario of 95% medical office for SFC.
7. The minimum surplus observed of 472 spaces is more than enough to offset the total Code-based deficiency for all three buildings of 354 spaces under existing conditions. Comparing the 505-space Code-based deficiency under the future



tenancy scenario (95% medical office) for SFC against the 472-space minimum surplus results in a difference of only 33 spaces.

8. Given the robust surpluses in existing off-street supply, no specific parking control and management measures are recommended at this time.
9. The net peak hour trips for the Project (45 AM peak hour trips, 50 PM peak hour trips) do not exceed the 50-peak-hour-trip threshold, but match the threshold during the PM peak hour. Based on this, further coordination with City staff will be needed in order to determine whether this would warrant the preparation of an LOS-based traffic study.
10. The 45 AM peak hour and 50 PM peak hour trips generated by the Project would fit within the remaining available trip budgets of 216 AM peak hour trips and 2,590 PM peak hour trips for the Urban Village Specific Plan/UVSP area that SFC is located within.
11. Based on the application of the City's screening criteria, and using the City's spreadsheet tool developed for project screening purposes, it was determined that the Project is located in a low VMT area, does not exceed a net daily trip threshold of 500 ADT, and is therefore screened out from further VMT Project-level assessment because it can be presumed to have less-than-significant impact on VMT.

We appreciate the opportunity to prepare this analysis. Please call us at (949) 825-6175 if you have any questions or comments regarding this letter report.

Sincerely,

Linscott, Law & Greenspan, Engineers

A handwritten signature in blue ink, reading 'Trissa (de Jesus) Allen'.

Trissa (de Jesus) Allen, P.E., RSP
California Registration: Traffic 2231
Road Safety Professional (RSP): 981
Senior Transportation Engineer



Parking Structure Levels	Type of Parking Space and Space Count													Total
	Regular	Compact	Handicap	EV	20 Minute Parking	30 Minute Parking	2 Hour Parking	Saddleback Valley Medical Center (Visitor Only)	Harvard Eye (Patient Only)	UCI Health (Visitor Only)	California Bank & Trust (Customer Only)	California Bank & Trust (Reserved Bank Employee Only)	Sperry Hauser & Associates, LLP	
1	--	--	3	--	--	12	--	62	65	12	--	--	--	154
2	127	7	2	--	--	--	--	--	--	--	23	13	1	173
3	166	8	2	--	--	--	--	--	--	--	--	--	--	176
4	172	--	1	--	--	--	--	--	--	--	--	--	--	173
5	199	--	1	--	--	--	--	--	--	--	--	--	--	160
6	192	--	--	--	--	--	--	--	--	--	--	--	--	192
Parking Structure Subtotal	816	15	9	--	--	12	--	62	65	12	23	13	1	1,028
Surface Lot	26	--	14	2	3	--	14	--	--	12	--	--	--	71
Total	842	15	23	2	3	12	14	62	65	24	23	13	1	1,099

SOURCE: GOOGLE

FIGURE 1

EXISTING ON-SITE PARKING ZONES
SADDLEBACK FINANCIAL CENTER, LAGUNA HILLS





TABLE 1
TENANT SUMMARY & CITY CODE PARKING CALCULATIONS
 Saddleback Financial Center, Laguna Hills

Suite	Saddleback Financial Center (24012 Calle de la Plata)	Existing Tenant Floor Area or Parking-Based GFA SF						Proposed Tenant Floor Area or Parking-Based GFA SF					Net Spaces (conversion of 20,837 SF of vacant gen office, 21,617 SF of occupied gen office, and 3,264 SF of occupied bank, to med office)
		Vacant (General Office)	Medical Office	General Office, Storage	Bank	Retail	TOTAL	Medical Office	General Office, Storage	Bank	Retail	TOTAL	
110	MemorialCare Surgical Center		1,392				1,392	1,392				1,392	
120/465	Interventional Spine Center [a]		1,968	135			2,103	2,103				2,103	
135	Saddleback Valley Podiatry Group		1,584				1,584	1,584				1,584	
140	California Bank & Trust				6,231		6,231	3,264		2,967		6,231	
150	Saddleback Valley Neuroscience		3,574				3,574	3,574				3,574	
200	Phynet Dermatology		2,218				2,218	2,218				2,218	
210	Daniel S. Bandaria, MD		2,150				2,150	2,150				2,150	
215	Connect Hearing		919				919	919				919	
220	State of California Dept. of Rehabilitation [b]			7,840			7,840	7,840				7,840	
230	Infusion Management, Inc.		2,619				2,619	2,619				2,619	
240	SG Homecare, Inc. [b]			1,358			1,358	1,358				1,358	
300	Vacant	2,121					2,121	2,121				2,121	
320	Sports Clinic Orthopaedic [b]			1,890			1,890	1,890				1,890	
330	Vacant	1,860					1,860	1,860				1,860	
345	Vacant	4,411					4,411	4,411				4,411	
350	Vacant	3,984					3,984	3,984				3,984	
370	Vacant	2,873					2,873	2,873				2,873	
400	Nabli International			3,388			3,388	3,388				3,388	
407	Anesthesia Business Consultants [b]			1,453			1,453	1,453				1,453	
410	Cooper, Muscarelli & Associates			2,052			2,052	2,052				2,052	
430	Kintsugi Health [b]			1,275			1,275	1,275				1,275	
440	Robert J. Aldridge			440			440	440				440	
450	Windstone Health Services [b]			1,786			1,786	1,786				1,786	
460	Kenneth Lynn, MD		811				811	811				811	
485	Vacant	5,588					5,588	5,588				5,588	
TOTAL Land Use % Breakdown		20,837 32%	17,235 26%	21,617 33%	6,231 9%	0 0%	65,920 100%	62,953 95%	0 0%	2,967 5%	0 0%	65,920 100%	
CITY CODE PARKING RATIOS		1 space per 300 SF [b]	1 space per 150 SF [b]	1 space per 300 SF [b]	1 space per 250 SF	1 space per 200 SF		1 space per 150 SF [b]	1 space per 300 SF [b]	1 space per 250 SF	1 space per 200 SF		
SFC CITY CODE REQUIREMENTS		69	115	72	25	0	281	420	0	12	0	432	151
The Laguna Building (24022 Calle de la Plata) Vacant medical office SF Occupied medical office SF Total Medical Office SF:			13,732 38,569 52,301				52,301	13,732 38,569 52,301				52,301	
THE LAGUNA CITY CODE REQUIREMENTS			349	0	0	0	349	349	0	0	0	349	
Saddleback Medical Building (23961 Calle de la Magdalena) Vacant SF Occupied SF Total Medical Office SF:			13,876 107,316 121,192	2,481	0	1,321	124,994	13,876 107,316 121,192	2,481	0	1,321	124,994	
SADDLEBACK MED BLDG CITY CODE REQUIREMENTS			808	8	0	7	823	808	8	0	7	823	
SFC + LAGUNA + SADDLEBCK MED CITY CODE REQ'S. Parking Supply (1,028 structure sp, 71 surface sp) Code-based Surplus (+) or Deficiency (-)							1,453 1,099 (354)					1,604 1,099 (505)	

Notes:

[a] Includes 135 SF of storage (presumed the same City Code ratio for general office).

[b] City Code requires 1 space per 150 SF GFA for medical and dental offices, except that chiropractic, acupuncture, optometry, physical therapy and psychotherapy offices shall provide 1 space per 300 SF GFA.

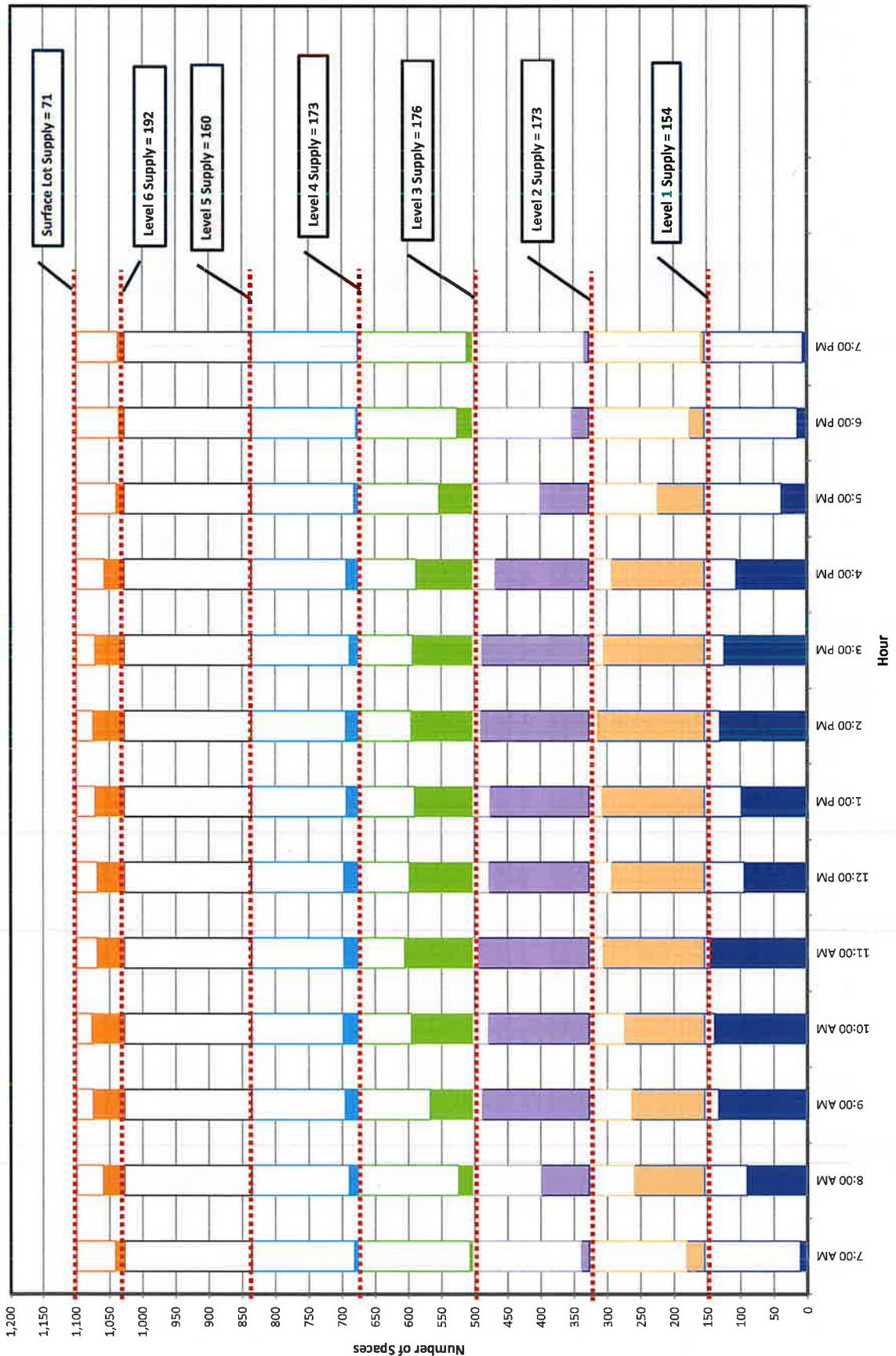
TABLE 2
EXISTING PARKING SUPPLY¹
SADDLEBACK FINANCIAL CENTER, LAGUNA HILLS

Parking Structure Levels	Type of Parking Space and Space Count													Total
	Regular	Compact	Handicap	EV	20 Minute Parking	30 Minute Parking	2 Hour Parking	Saddleback Valley Medical Center (Visitor Only)	Harvard Eye (Patient Only)	UCI Health (Visitor Only)	California Bank & Trust (Customer Only)	California Bank & Trust (Reserved Bank Employee Only)	Sperry Bauer & Associates, LLP	
1	---	---	3	---	---	12	---	62	65	12	---	---	---	154
2	127	7	2	---	---	---	---	---	---	---	23	13	---	173
3	166	8	2	---	---	---	---	---	---	---	---	---	---	176
4	172	---	1	---	---	---	---	---	---	---	---	---	---	173
5	159	---	1	---	---	---	---	---	---	---	---	---	---	160
6	192	---	---	---	---	---	---	---	---	---	---	---	---	192
Parking Structure Subtotal	816	15	9	---	---	12	---	62	65	12	23	13	1	1,028
Surface Lots	26	---	14	2	3	---	14	---	---	12	---	---	---	71
Total	842	15	23	2	3	12	14	62	65	24	23	13	1	1,099

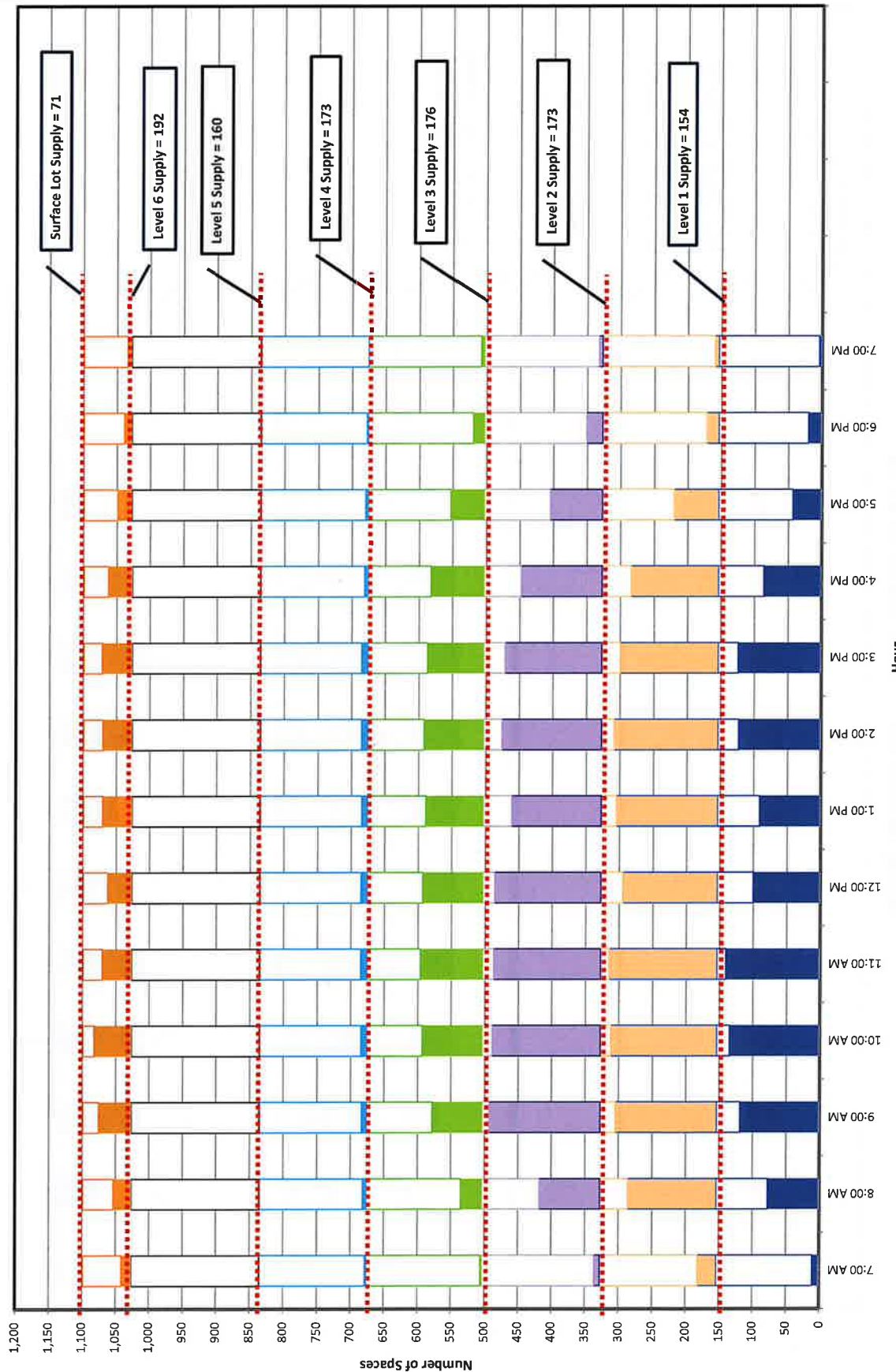
¹ Based on field inventory conducted by LLG in October 2023.

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Parking Demand Counts on Tuesday, 10-24-23



Parking Demand Counts on Wednesday, 10-25-23



Parking Demand Counts on Thursday, 10-26-23

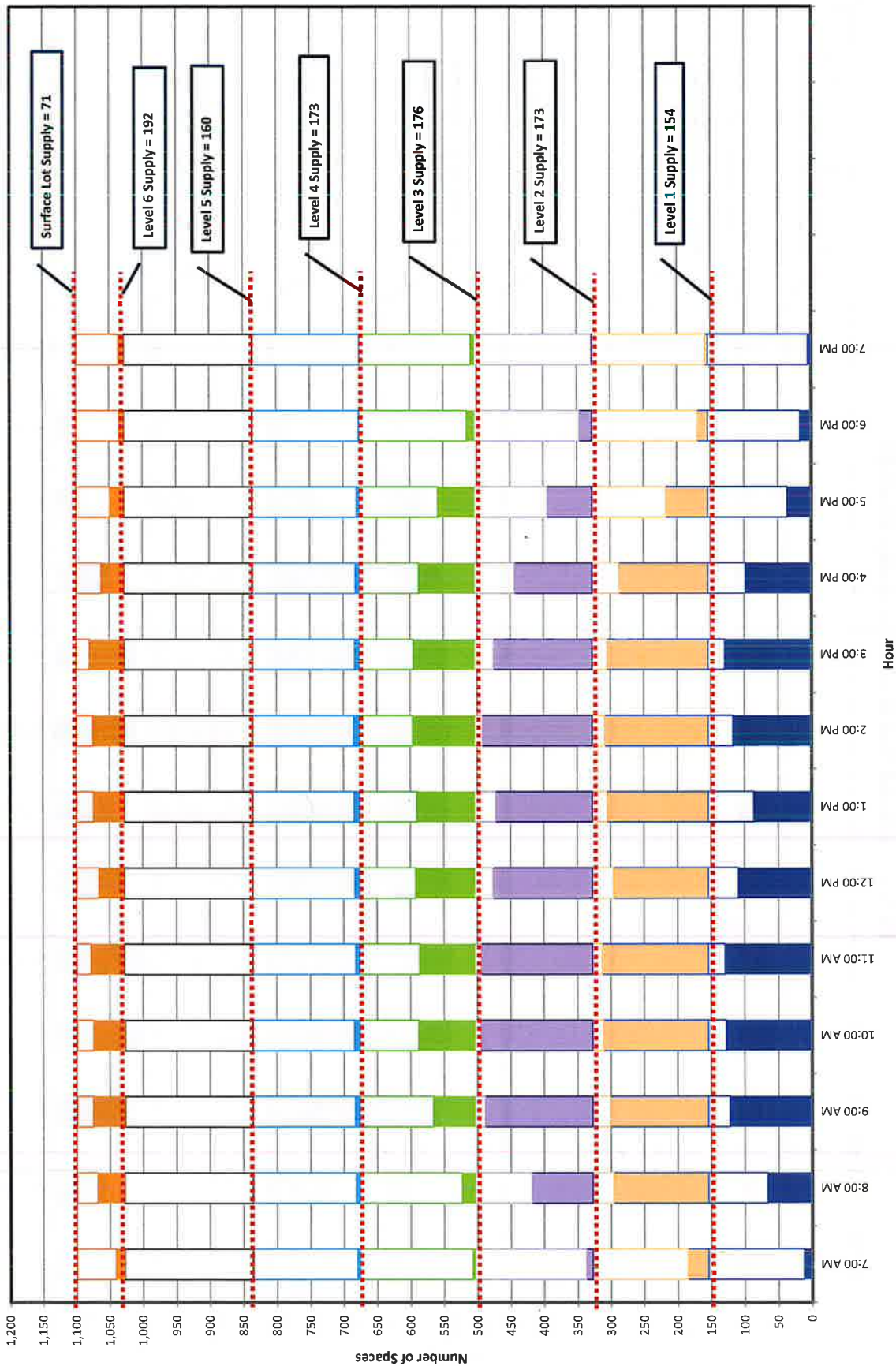


TABLE 4
FUTURE DEMAND VS. EXISTING SUPPLY
Saddleback Financial Center, Laguna Hills

	Parking Demand Counts on Tuesday (10-24-23) (PEAK DAY)									Net Hourly Demand by Converting 20,837 SF of Vacant Gen Office to Med Office and 21,617 SF of Occupied Gen Office (151 spaces per Table 1)	Existing Demand (per 10-24-23 counts) + The Laguna Vacancy + Saddleback Med Office Vacancy + Net Demand from SFC Conversion versus Parking Structure & Surface Lots Supply	
	Parking Structure Levels 1 to 6		Surface Lots Adjoining Parking Structure		Parking Structure Levels 1 to 6 + Surface Lots Total						Total Demand (sp)	Total Surplus (sp)
	Demand (sp)	Surplus (sp)	Demand (sp)	Surplus (sp)	Total Demand (sp)	Total Surplus (sp)						
Supply (sp)	1,028		71		1,099						1,099	
7:00 AM	58	970	13	58	71	1,028	11%	10	10	17	108	991
8:00 AM	301	727	31	40	332	767	53%	49	49	80	510	589
9:00 AM	486	542	46	25	532	567	85%	78	79	128	817	282
10:00 AM	525	503	48	23	573	526	91%	84	85	137	879	220
11:00 AM	587	441	40	31	627	472	100%	92	93	151	963	136
12:00 PM	500	528	40	31	540	559	86%	79	80	130	829	270
1:00 PM	504	524	43	28	547	552	87%	80	81	131	839	260
2:00 PM	564	464	46	25	610	489	97%	89	90	146	935	164
3:00 PM	538	490	43	28	581	518	93%	86	86	140	893	206
4:00 PM	488	540	29	42	517	582	82%	75	76	124	792	307
5:00 PM	236	792	11	60	247	852	39%	36	36	59	378	721
6:00 PM	86	942	7	64	93	1,006	15%	14	14	23	144	955
7:00 PM	26	1,002	9	62	35	1,064	6%	6	6	9	56	1,043
Peak Demand	587		48		627						963	
% Occupancy	57%		68%		57%						88%	
Surplus (+) or Deficiency (-)	441		23		472						136	



TABLE 5
PROJECT TRIP GENERATION ESTIMATES
Saddleback Financial Center, Laguna Hills

Description		Size	Weekday						
			Daily	AM Peak Hour			PM Peak Hour		
				In	Out	Total	In	Out	Total
<u>Trip Generation Rates [a]:</u>									
General Office (trips per 1,000 SF GFA)			10.84	88%	12%	1.52	17%	83%	1.44
Medical Office (trips per 1,000 SF GFA)			36.00	79%	21%	3.10	30%	70%	3.93
Drive-In Bank (trips per 1,000 SF GFA)			100.35	58%	42%	9.95	50%	50%	21.01
<u>Existing SFC (Full Occupancy)</u>									
General Office 42,454 SF		460	57	8	65	10	51	61	
Medical Office 17,235 SF		620	42	11	53	20	48	68	
Bank 6,231 SF		625	36	26	62	65	66	131	
Total Existing: 65,920 SF		1,705	135	45	180	95	165	260	
<u>Future SFC (full occupancy)</u>									
General Office 0 SF		0	0	0	0	0	0	0	
Medical Office 62,953 SF		2,266	154	41	195	74	173	247	
Bank 2,967 SF		298	17	13	30	31	31	62	
Total Future: 65,920 SF		2,564	171	54	225	105	205	310	
Future Minus Existing (Net Trips):		859	36	9	45	10	40	50	
Exceeds 50 Peak Hour Trip Threshold? (Yes/No):		-	-	-	No	-	-	No	
Available Trip Budget [b]:		-	-	-	216	-	-	2,590	

Notes:

[a] Source: *Trip Generation*, 11th Edition, Institute of Transportation Engineers (ITE), Washington, D.C. (2021).

[b] Source: *Traffic Impact Analysis for the Village at Laguna Hills Project*, dated September 1, 2020.



**CITY OF LAGUNA HILLS
VMT SCREENING FORM FOR LAND USE PROJECTS**

This Screening Form acknowledges the City of Laguna Hills requirements for the evaluation of vehicle miles traveled (VMT) under CEQA. The analysis provided in this form should follow the City of Laguna Hills approved VMT Guidelines, dated July 9, 2020.

I. Project DescriptionCase Number: Project Name: Project Location: Project Description:

(Please attach a copy of the project Site Plan)

Current GP Land Use: Proposed GP Land Use: Current Zoning: Proposed Zoning:

If a project requires a General Plan Amendment or Zone change, then additional information and analysis should be provided to ensure the project is consistent with RTP/SCS Strategies and RHNA Allocation Plan.

II. VMT Screening Criteria

A. Is the Project 100% affordable housing?	<table border="1"><tr><td>YES</td><td></td><td>NO</td><td>X</td></tr></table>	YES		NO	X	Attachments:
YES		NO	X			
B. Is the Project within 1/2 mile of qualifying transit?	<table border="1"><tr><td>YES</td><td></td><td>NO</td><td>X</td></tr></table>	YES		NO	X	Attachments:
YES		NO	X			
C. Is the Project a local serving land use?	<table border="1"><tr><td>YES</td><td></td><td>NO</td><td>X</td></tr></table>	YES		NO	X	Attachments:
YES		NO	X			
D. Is the Project in a low VMT area?	<table border="1"><tr><td>YES</td><td>X</td><td>NO</td><td></td></tr></table>	YES	X	NO		Attachments:
YES	X	NO				
E. Are the Project's Net Daily Trips less than 500 ADT?	<table border="1"><tr><td>YES</td><td></td><td>NO</td><td>X</td></tr></table>	YES		NO	X	Attachments:
YES		NO	X			

Low VMT Area Evaluation:

Citywide VMT Averages ¹		
Citywide Home-Based VMT =	21.6	VMT/Capita
Citywide Employment VMT =	25.1	VMT/Employee

Project TAZ	VMT Rate for Project TAZ ¹	Type of Project	
1450	18.0 VMT/Capita	Residential:	
	22.7 VMT/Employee	Non-Residential:	X

¹ Base year (2016) projections from OCTAM.**Trip Generation Evaluation:**Source of Trip Generation: Project Trip Generation:

2,564	Average Daily Trips (ADT)
-------	---------------------------

Internal Trip Credit:	YES		NO	<input checked="" type="text" value="X"/>	% Trip Credit:	
Pass-By Trip Credit:	YES		NO	<input checked="" type="text" value="X"/>	% Trip Credit:	
Affordable Housing Credit:	YES		NO		% Trip Credit:	
Existing Land Use Trip Credit:	YES		NO		Trip Credit:	

Net Project Trip Generation:

859	Average Daily Trips (ADT)
-----	---------------------------

 Attachments: Does project trip generation warrant an LOS evaluation outside of CEQA?

YES		NO	X
-----	--	----	---

III. VMT Screening Summary

A. Is the Project presumed to have a less than significant impact on VMT?

A Project is presumed to have a less than significant impact on VMT if the Project satisfies at least one (1) of the VMT screening criteria.

Less Than Significant

B. Is mitigation required?

If the Project does not satisfy at least one (1) of the VMT screening criteria, then mitigation is required to reduce the Project's impact on VMT.

No Mitigation Required

C. Is additional VMT modeling required to evaluate Project impacts?

YES

NO

X

If the Project does not satisfy at least one (1) of the VMT screening criteria AND generates 2,400 or more net daily trips, then additional VMT modeling using OCTAM is required. If the project generates less than 2,400 net daily trips, the Project TAZ VMT Rate can be used for mitigation purposes.

IV. MITIGATION

A. Citywide Average VMT Rate (Threshold of Significance) for Mitigation Purposes:

N/A

N/A

B. Unmitigated Project TAZ VMT Rate:

N/A

N/A

C. Percentage Reduction Required to Achieve the Citywide Average VMT:

N/A

D. VMT Reduction Mitigation Measures:

Source of VMT Reduction Estimates:

Project Location Setting

VMT Reduction Mitigation Measure:		Estimated VMT Reduction (%)
1.		0.00%
2.		0.00%
3.		0.00%
4.		0.00%
5.		0.00%
6.		0.00%
7.		0.00%
8.		0.00%
9.		0.00%
10.		0.00%
Total VMT Reduction (%)		0.00%

(Attach additional pages, if necessary, and a copy of all mitigation calculations.)

E. Mitigated Project TAZ VMT Rate:

N/A

N/A

F. Is the project presumed to have a less than significant impact with mitigation?

N/A

If the mitigated Project VMT rate is below the Citywide Average Rate, then the Project is presumed to have a less than significant impact with mitigation. If the answer is no, then additional VMT modeling may be required and a potentially significant and unavoidable impact may occur. All mitigation measures identified in Section IV.D. are subject to become Conditions of Approval of the project. Development review and processing fees should be submitted with, or prior to the submittal of this Form. The Planning Department staff will not process the Form prior to fees being paid to the City.

Prepared By			Developer/Applicant		
Company:	Linscott, Law & Greenspan, Engineers		Company:		
Contact:	Trissa Allen, P.E., RSP		Contact:		
Address:	2 Executive Circle, Suite 250, Irvine CA 92614		Address:		
Phone:	949.825.6175 x234		Phone:		
Email:	allen@llgengineers.com		Email:		
Date:	9/24/2020		Date:		
Approved by:					
Laguna Hills Community Development Dept.			Laguna Hills Public Services Dept.		
Date			Date		

THE LAGUNA BUILDING

24022 Calle de la Plata

Laguna Hills, CA 92653

Effective 12-1-23

TENANT NAMES BY FLOOR	SUITE #	BUSINESS TYPE	TENANT OFFICE AREA	DAYS OF WEEK OPEN	HOURS OF OPERATION
Health Diagnostics of California	100	Medical Services	5,905	Mon - Fri Sat	8am - 5pm 8am - 2pm
Laser Eye Care Center of California	180	Medical Services	5,766	Mon - Fri	8am - 5pm
VACANT	200A		4,542		
VACANT	200B		6,755		
Laser Eye Care Center of California	300	Medical Services	3,937	Mon - Fri	8am - 5pm
South Coast Eye Care Centers	305	Medical Services	7,474	Mon - Fri	8am - 5pm
VACANT	405		2,435		
Neda Arjomandi Podiatry	410	Medical Professionals	981	Mon - Fri	8am - 5pm
Orange County Orthopaedics	415	Medical Services	1,113	Mon - Fri	8am - 5pm
Flora Simtcheva, DDS	425	Medical Services	2,576	Mon - Fri	8am - 5pm
Orange County Retina Medical Group	475	Medical Services	2,315	Mon - Fri	8am - 5pm
Via Vitae MSO, LLC	500	Medical	7,041	Mon - Fri	8am - 5pm
Ly & Associates	510	Medical Services	1,462	Mon - Fri	8am - 5pm
		TENANT FLOOR AREA	52,301		
		GROSS BUILDING FLOOR AREA	57,573		

SADDLEBACK MEDICAL BUILDING
23961 Calle de la Magdalena
Laguna Hills, CA 92653
Effective 12-1-23

TENANT NAMES BY FLOOR	SUITE #	BUSINESS TYPE	TENANT OFFICE AREA	DAYS OF WEEK OPEN	HOURS OF OPERATION
Saddleback Valley Pharmacy	100	Retail	1,321	Mon-Fri	9AM-6PM
Healthcare Realty Engineer	101	General Office	357	Mon-Fri	8AM-5PM
Hanger Prosthetics & Orthotics Inc.	115	Medical Services	3,624	Mon-Fri	8AM-5PM
H2O Orthopedic Physical Therapy	119	Medical Services	2,840	Mon-Fri	7AM - 5PM
Rad Net Management Inc.	130	Medical	10,783	Mon-Fri	8AM-5PM
VACANT	143		2,350		
Rad Net Management Inc.	153	Medical Services	1,831	Mon-Fri	8AM-5PM
Regents of University of California	200	Medical	20,521	Mon-Fri	8AM-5PM
Beach Imaging Group, LLC	243	Medical Services	4,920	Mon-Fri	8AM-5PM
Harvard Eye Associates	300	Medical Services	25,796	Mon-Fri	7AM-5PM
Lab Corp of America	400	Medical Services	2,811	Mon-Fri Sat	7AM-4PM 7AM-11AM
M. Polly McKinstry, MD	402	Medical Professionals	1,667	Mon-Fri	7AM-4PM
Frazad Massoudi, MD	405	Medical Professionals	4,150	Mon-Fri	8AM-5PM
VACANT	412		2,337		
Everside Health	415	Medical Services	986	Mon-Fri	8AM-5PM
Gene L. Syn, MD	417	Medical Professionals	1,035	Mon-Tue, Thurs, Fri	9AM-5PM
Healthcare Realty Storage	419	Storage	311		
Discovery Medical Services, Inc	420	Medical Professionals	1,529	Mon-Fri	7AM-5PM
VACANT	424		766		
Ali Tabatabai, MD, Inc.	426	Medical Professionals	1,208	Mon-Fri	9AM-5PM
Senior Clinical Trials	429	Medical Services	1,871	Mon-Thurs Fri	8AM-5PM 9AM-5PM
Dr. Abedi, Dr. Javaheri & Dr. GHA	430	Medical Professionals	1,510	Mon-Fri	8AM-5PM
Healthcare Realty Management	440	General Office	1,813	Mon-Fri	8AM-5PM
VACANT	445		3,129		
Orange County Urology Associates	500	Medical Professionals	7,805	Mon-Fri	8AM-5PM
Compassionate Cancer Care	501	Medical Services	5,248	Mon-Fri	7AM - 5PM
VACANT	503		1,324		
VACANT	504		3,970		
Michelle A. Algarian, MD. Inc.	520	Medical Professionals	2,212	Mon-Fri	8AM-5PM
Integra Health, PC	530	Medical Services	4,970	Mon-Fri	8AM-5PM
		TENANT FLOOR AREA	124,994		
		GROSS BUILDING FLOOR AREA	135,904		



City of Laguna Hills City Council / Planning Agency Staff Report

Date: July 9, 2024
To: Mayor and Council Members
From: Joe Ames, Public Works Director/City Engineer
Issue: Confirmation of 2024 Weed Abatement Cost Report

Recommendation: That the City Council That the City Council:

- 1) Conduct a public hearing regarding the 2024 Weed Abatement Cost Report; and
- 2) Adopt a Resolution entitled: "A Resolution of the City Council of the City of Laguna Hills, California, confirming the 2024 Weed Abatement Cost Report and providing for the collection of weed abatement assessments on the next regular tax bill levied against the subject parcels for municipal purposes."

Background:

The objective of the Weed Abatement Program is to declare by Resolution as a public nuisance and abate all weeds, rubbish, refuse, and dirt upon the streets, sidewalks, parkways, or private property in the City, as identified and described in the 2024 Weed Abatement List. This is done for the purpose of health and safety, management of fire hazards, and to provide a reasonable degree of fire safety to both improved and unimproved properties. The Weed Abatement Program is administered by the Public Works Department under the direction of the Public Works Director and with the assistance of Code Enforcement. The City Council adopted Resolution Nos. 2024-04-09-1 and 2024-05-14-3 in April and May of this year, respectively, which authorized the annual Weed Abatement Program.

Property owners of properties that were identified as containing materials needing abatement under this program were notified by letter dated April 10, 2024, to clear their properties by May 31, 2024. Extensive public relations efforts were made by the

City's Code Enforcement Officer to reduce the number of properties to be cleared by the City contractor. All properties that had not implemented weed abatement in a timely manner were also contacted by a door hanger and telephone contact to further encourage voluntary abatement compliance. City staff's extensive efforts to assure private property compliance, in addition to good public response this year, resulted in 541 of the 542 private properties identified for weed abatement clearing their own parcels. One property owner did not abate their weeds and the City performed the necessary weed abatement as described on the attached Cost Report. The City has also completed its annual weed abatement on all City-owned properties and City easements throughout the City.

The Weed Abatement Public Hearing Notice for confirmation of 2024 Weed Abatement Cost Report was published and posted as required by state law. It is recommended that the City Council open the public hearing, receive testimony, close the public hearing and adopt the Resolution confirming the Cost Report associated with the clearing of properties as authorized.

Fiscal Impact:

The total cost to be assessed for one private property abated is \$1,453.01. This cost is comprised of direct contractor charges and a City \$503.01 per parcel administrative charge. The City will be reimbursed for the \$1,453.01 in costs through property tax collection procedures. Weed Abatement on City owned parcels has proceeded in accordance with the FY2023/2024 Operating Budget.

Attachments:

1. Proposed Resolution Confirming the 2024 Weed Abatement Cost Report including Exhibit A, 2024 Weed Abatement Cost Report

RESOLUTION NO. 2024-07-09-X

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, CONFIRMING THE 2024 WEED ABATEMENT COST REPORT AND PROVIDING FOR THE COLLECTION OF WEED ABATEMENT ASSESSMENTS ON THE NEXT REGULAR TAX BILL LEVIED AGAINST THE SUBJECT PARCELS FOR MUNICIPAL PURPOSES

WHEREAS, on April 9, 2024, the City Council adopted Resolution No. 2024-04-09-1, thereby commencing the Weed Abatement Program for 2024 in accordance with the requirements and procedures set forth in Government Code Section 39560 *et seq.*; the objective of the Weed Abatement Program is to declare by resolution as a public nuisance and abate all weeds growing upon the streets, sidewalks, or private property in the City, and all rubbish, refuse, and dirt upon parkways, sidewalks, or private property in the City, as identified and described in the 2024 Weed Abatement List, for health and safety purposes, for management of fire hazards, and to provide a reasonable degree of fire safety to both improved and unimproved properties; and

WHEREAS, Resolution No. 2024-04-09-1 commenced the 2024 Weed Abatement Program by declaring the weeds, rubbish, refuse and/or dirt on specified parcels of land identified in the 2024 Weed Abatement List to be a public nuisance and authorized the City Clerk to send written notice of the proposed public nuisance abatement to all persons owning property identified and described in the 2024 Weed Abatement List and advising them to remove any and all weeds, rubbish, refuse and/or dirt that, when dry, become a fire hazard; and

WHEREAS, on April 10, 2024, the City sent the legally required notice to destroy weeds and remove rubbish, refuse, and dirt to all affected property owners identified on the 2024 Weed Abatement List; the notice provided that if the public nuisance is not abated and removed by the owners of the affected parcels of land by May 31, 2024, such nuisances will be abated and removed by City authorities in accordance with the abatement procedures set forth in Government Code §39560 *et seq.*, in which case the cost of such removal shall be assessed upon the parcel of lands from which or in front of which such weeds, rubbish, refuse, and/or dirt are removed and that upon confirmation such cost will be constitute a lien upon such parcel or lands until paid; and

WHEREAS, the legally required mailed notice sent to the affected property owners provided that the City Council would hear and consider all property owner objections and protests to the proposed public nuisance abatement as part of a Public Hearing process conducted on May 14, 2024; and

WHEREAS, during the May 14, 2024 Public Hearing, the City Council was to have heard and considered all objections and protests presented by property owners and other interested parties to the proposed public nuisance abatement and removal of all weeds, rubbish, refuse, and/or dirt on specified parcels identified and described in the 2024 Weed Abatement List; however, no public testimony was received; and

WHEREAS, on May 14, 2024, the City Council adopted Resolution No. 2024-05-14-3, thereby: 1) determining not to allow any objections; 2) issuing an abatement order and authorizing the Public Works Director to abate and remove by use of City authorities all weeds, rubbish, refuse, and/or dirt on specified parcels as identified and described in the 2024 Weed Abatement List; 3) acquiring jurisdiction to proceed and perform the work of weed, rubbish, refuse, and/or dirt removal on specified parcels; 4) declaring that it is the intention of the City Council to assess the amount of the City's cost for the abatement of the public nuisances upon the specified parcels of land identified and described on the 2024 Weed Abatement List, which assessments against the respective parcels of land shall constitute a lien; and 5) ordering the Public Works Director to keep an accounting of the cost of abatement on each separate parcel of land where removal work is performed and to submit to the City Council for confirmation an itemized written report showing such abatement costs; and

WHEREAS, pursuant to Resolution Nos. 2024-04-09-1 and 2024-05-14-3, the Public Works Director did abate such nuisances and/or caused the same to be abated by having such weeds removed; and

WHEREAS, the Public Works Director kept an accounting of the cost of such abatement in front of or upon each separate parcel of land in the form of an itemized cost report submitted this date to the City Council showing the cost of removing the weeds in front of or upon each separate lot, parcel, or piece of land, or both ("2024 Weed Abatement Cost Report"), said report having been posted in the manner and for the time required by law; and

WHEREAS, the City Council duly considered the 2024 Weed Abatement Cost Report, along with any objections of the property owners liable to be assessed for the abatement, on this 9th day of July 2024.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. The City Council has received and considered the 2024 Weed Abatement Cost Report prepared by the Public Works Director, which is attached hereto as Exhibit "A", and hereby confirms the report without modification.

SECTION 2. The City Clerk is hereby directed for each subject parcel, to record this Resolution in the office of the County Recorder and also to promptly forward a certified copy of this resolution confirming the 2024 Weed Abatement Cost Report along with a certified copy of the 2024 Weed Abatement Cost Report to the Orange County Auditor-Controller and County Tax Collector, who shall add the amount of the assessments to the next regular tax bill levied against the subject parcels for municipal purposes.

PASSED, APPROVED, AND ADOPTED this 9th day of July 2024.

DAVE WHEELER, MAYOR

ATTEST:

JENNIFER LEE, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE)
CITY OF LAGUNA HILLS)

I, Jennifer Lee, City Clerk of the City of Laguna Hills, California, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. 2024-07-09-X adopted by the City Council of the City of Laguna Hills, California, at a regular meeting thereof, held on the 9th day of July 2024, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

(SEAL)

JENNIFER LEE, CITY CLERK

2024 Weed Abatement Cost Report
Exhibit A
(Privately Owned Parcels)

AP Number:	Address:	Work Date:	Hand Work Cleared (sf):	Mow Work Cleared (sf):	Admin. Fee:	Hand Charges:	Mowing Charges:	Debris Removal Charges:	Total Charged:	City/District Code:
588-141-06	Behind 23092 Mill Creek Rd	6/4/2024	2400.00	0	\$503.01	\$950.00	\$0	\$0	\$1,453.01	081



City of Laguna Hills City Council / Planning Agency Staff Report

Date: July 9, 2024
To: Mayor and Council Members
From: Jarad Hildenbrand, City Manager
Issue: Approval of Design and Budget for 3rd Battalion, 5th Marines Darkhorse Bronze Memorial Sculpture

Recommendation: That the City Council:

- 1) Approve the 3/5 Memorial Sculpture Design;
 - 2) Authorize the Mayor to execute the Amended and Restated Agreement to Commission Original Work of Art with Brittany Ryan Studio, LLC; and
 - 3) Allocate all available Public Art Funds to the 3/5 Memorial Sculpture, and transfer \$48,000 from the City's unassigned General Fund balance to the Public Art Fund, and direct the Finance Director to amend the budget accordingly.
-

Background:

The Laguna Hills City Council voted unanimously in 2008 to adopt the 3rd Battalion, 5th Marines (commonly known as Darkhorse) based at Camp Pendleton. The purpose of the adoption was to generate ongoing community support for the Battalion's Marines, Sailors, and their families, both when the Darkhorse Battalion is at Camp Pendleton and when they are deployed. Following the City Council's adoption, Laguna Hills Team Darkhorse was formed. Team Darkhorse is a 501(C)(3) non-profit organization dedicated to providing encouragement, relief, and comfort to the 3/5 Marines, Sailors, and their families.

In 2012, the annual Laguna Hills Memorial Day Half Marathon was officially named in honor of Darkhorse Marines. In 2014, Team Darkhorse created tribute banners

displayed on City streets to honor each of the 25 Marines who died in the 2010 Sangin, Afghanistan deployment. Team Darkhorse and members of the 3/5 are present at nearly all City events.

Over the years, the story and partnership have evolved. In March 2022, the City Council established the 3/5 Battalion Memorial Ad Hoc Committee—comprised of then Mayor Heft and Council Member Caskey—to develop a permanent monument in the plaza area at the Laguna Hills Civic Center to recognize the 3/5 Battalion and our Nation’s Armed Forces.

On June 27, 2023, the City Council approved a contract with Brittany Ryan Studios (Artist) to commission the original sculpture. Since then, the 3/5 Ad Hoc Committee has met several times, consulting with the Artist, Marines from the unit, and representatives of Team Darkhorse to obtain their input and guidance regarding the design, theme, and narrative of a memorial monument. At a meeting on August 28, 2023, the 3/5 Ad Hoc Committee, Team Darkhorse, and members of the 3/5 unanimously selected a conceptual sketch rendering.

At the September 12, 2023 meeting, the City Council accepted the proposed sculpture conceptual renderings. Since then, based on the approved conceptual renderings, the Artist has fabricated a 12” maquette for approval by the City’s 3/5 Battalion Memorial Ad Hoc Committee, and now has fabricated a 30” version of the proposed bronze sculpture for approval by the City Council.

The proposed sculpture includes two arched 16’ by 5’ bronze relief-style sculptures depicting a landscape and figures of Marines in Sangin. One arch features a group of Marines engaging enemy positions. The scene is set against a rugged terrain backdrop similar to Sangin, with the Marines positioned in various poses, reflecting the intensity and solemnity of their situation. The other arch features Marines walking along a path in Ranger file while conducting a patrol, an almost daily occurrence in Sangin. The bronze sculpture will be mounted to a concrete base. The intricacy of the details and the realistic portrayal of the Marines convey a powerful narrative, emphasizing themes of bravery, struggle, and camaraderie.

The sculpture is proposed to be displayed outdoors in the plaza area at the Laguna Hills Civic Center to recognize the United States Marines of the 3rd Battalion, 5th Marines (3/5 Battalion), celebrating and honoring their bravery, heroism, victories, and many sacrifices, and in recognition of our Nation’s Armed Forces.

Upon approval of the 30” version of the proposed bronze sculpture, the Artist will begin

the final sculpting phase, which is expected to take up to 9 months. During this phase, the Artist will create the three-dimensional sculpture forms by shaping and combining materials. Once the sculpting phase is completed, the Artist will begin the molding and casting phase, which is expected to take an additional 9 months. Molding is the process of creating a negative impression of the sculpted object to reproduce it, and casting is the process of creating a positive reproduction of the original sculpture using the mold. Each phase requires attention to detail and specific skills, and mastering these techniques allows for the creation of intricate and precise reproductions of original sculptures.

Fiscal Impact:

The City Council has allocated \$150,000 from the Special Revenue Public Art Funds for the sculpture project, with \$15,000 already spent. The total fee for the completed bronze sculpture is \$625,000.

Currently, the City's Public Art Fund balance is approximately \$562,000, of which \$135,000 is allocated to the sculpture project. To cover the cost of the bronze sculpture, it is recommended that the City Council allocate all available Public Art Funds to the 3/5 Memorial Sculpture. Additionally, it is recommended to transfer \$48,000 from the City's unassigned General Fund balance to the Public Art Fund, and direct the Finance Director to amend the budget accordingly.

The City will be responsible for all costs related to transporting the finished bronze sculpture from the foundry to the installation site at the Laguna Hills Civic Center Plaza. This includes all costs associated with the installation, such as site preparation, the creation of the wall or base structure for mounting the sculpture, and the surrounding landscape and lighting in consultation with the artist. The City plans to engage a landscape architect to provide conceptual designs for City Council approval before developing construction plans and documents for bidding. However, the costs and funding for this work have not been identified.

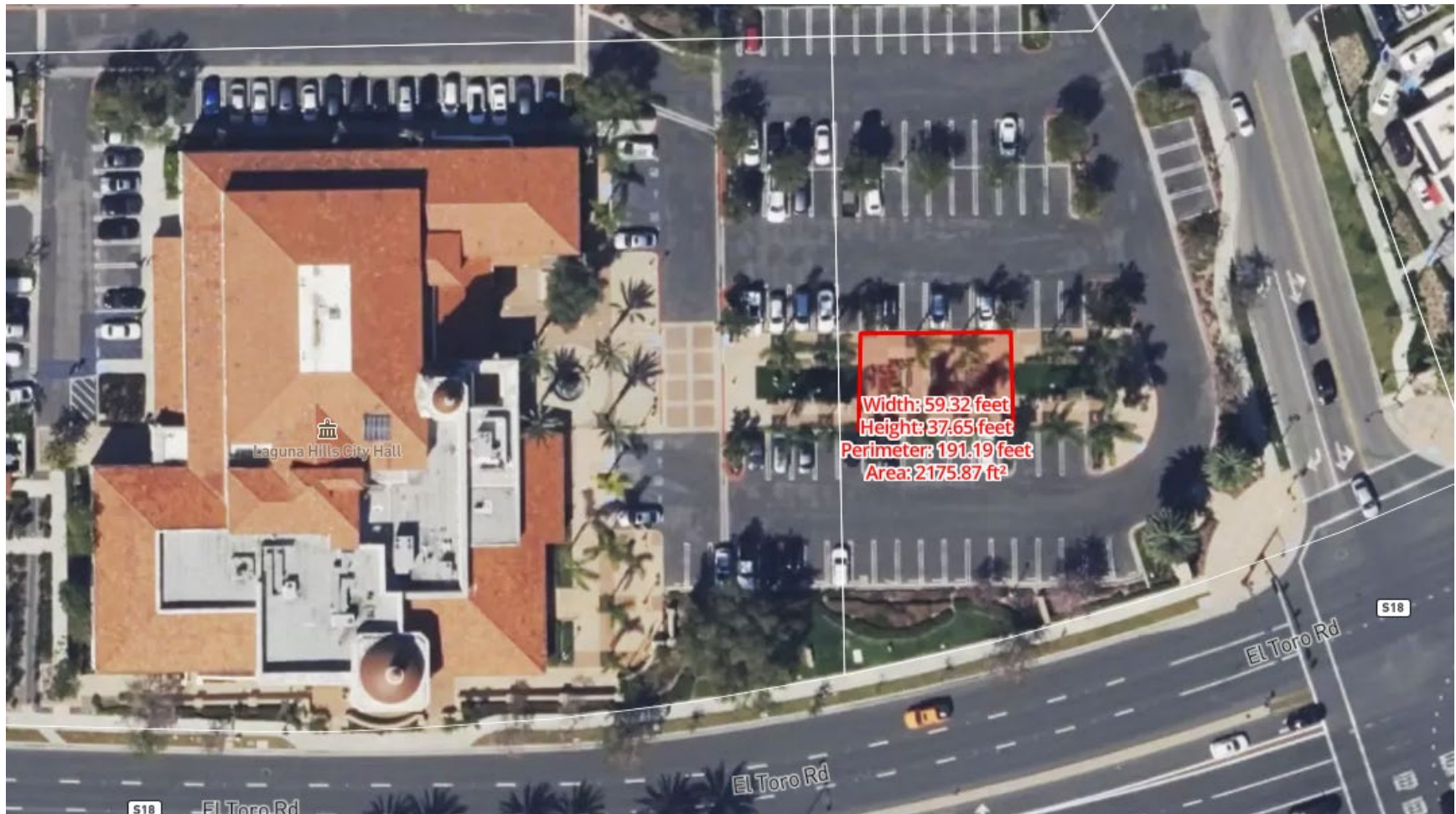
Attachments:

1. Sculpture Renderings and Site Map
2. Amended and Restated Agreement with Brittany Ryan Studios





Location Map



**AMENDED AND RESTATED AGREEMENT TO
COMMISSION ORIGINAL WORK OF ART**
Laguna Hills Public Art Program
(3rd Battalion, 5th Marines Darkhorse Bronze Memorial Sculpture)

THIS AMENDED AND RESTATED AGREEMENT FOR CREATION, SALE, AND ASSIGNMENT OF ALL RIGHTS IN ARTISTIC WORK (the "Agreement") is made and entered into as of this 9th day of July 2024, by and between the CITY OF LAGUNA HILLS, a municipal corporation organized and existing under the laws of the State of California ("City"), and BRITTANY RYAN STUDIO, LLC, a Nevada Limited Liability Company ("Artist"). City and Artist are sometimes hereinafter referred to as "Party" and are hereinafter referred to collectively as the "Parties."

RECITALS

A. The City requires the services of an experienced and reputable artist with specialized expertise in designing, creating, and fabricating bronze memorial sculptures for the Laguna Hills Public Art Program.

B. The City wishes to commission the design, creation, and fabrication of a large-scale bronze memorial sculpture to be displayed outdoors in the plaza area at the Laguna Hills Civic Center to recognize the United States Marines of the 3rd Battalion, 5th Marines (3/5 Battalion) in celebration and honor of their bravery, heroism, victories, and many sacrifices and in recognition of our Nation's Armed Forces and the special relationship between this marine battalion unit and the City of Laguna Hills (the "Project").

C. The 3/5 Battalion, nicknamed "Darkhorse," is based in nearby Camp Pendleton, was formally adopted by the Laguna Hills City Council in 2008.

D. Artist is qualified by virtue of her experience, education, training, expertise, and reputation to design, create, and fabricate original works of art and to provide the necessary artistic services to City for the Project and has agreed to provide such services, and City desires to retain the services of Artist for the Project.

E. The purpose of this Agreement is to set forth the terms and conditions under which the City will commission and Artist will design, create, and fabricate, and supervise the installation of, an original work of art for the Project consisting of a large-scale bronze sculpture in honor of the 3/5 Battalion to be displayed outdoors in the Laguna Hills Civic Center Plaza, and transfer to City all of the rights in the commissioned artwork created by Artist as hereinafter provided.

NOW, THEREFORE, in consideration of the promises and mutual obligations, covenants, and conditions contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

Section 1. Description of Commissioned Art.

A. Commissioned Art. Brittany Ryan is a locally known artist and sculptor (“Artist”). The Artist is hereby commissioned by the City to design, create, fabricate, and supervise the installation of a large-scale bronze memorial sculpture to be displayed outdoors in the plaza area at the Laguna Hills Civic Center to recognize the United States Marines of the 3rd Battalion, 5th Marines (3/5 Battalion) in celebration and honor of their bravery, heroism, victories, and many sacrifices and in recognition of our Nation’s Armed Forces and the special relationship between this marine battalion unit and the City of Laguna Hills (the “Work”). Artist shall perform all services described in the Scope of Services required under this Agreement to the highest professional standards and in a manner reasonably satisfactory to the City. All services rendered under this Agreement shall be provided by Artist in accordance with all applicable federal, state, and local laws, statutes, and ordinances and all lawful orders, rules, and regulations promulgated thereunder. The Work shall be a work for hire. The Scope of Services is attached hereto as Exhibit “A” and is incorporated herein by reference.

B. Familiarity with Work. By executing this Agreement, Artist warrants that Artist (a) has thoroughly investigated and considered the Scope of Services to be performed, (b) has carefully considered how the Work should be performed, and (c) fully understands the facilities, difficulties, and restrictions attending performance of the services and Work under this Agreement. If the services and Work involve work upon any site, Artist warrants that Artist has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of any services hereunder. Should Artist discover any latent or unknown conditions that will materially affect the performance of the services and Work hereunder, Artist shall immediately inform the City Representative of such fact and shall not proceed except at Artist’s risk until written instructions are received from the City. Notwithstanding the foregoing, City understands and acknowledges that Artist is not an expert in construction or soil analysis, erosion, or ground settlement and therefore relies on City to select a suitable and appropriate outdoor site for displaying the Work.

Section 2. Artist’s Work Schedule.

The Artist shall complete the Work in accordance with the Schedule of Performance attached hereto as Exhibit “C” and incorporated herein by reference, along with any other work schedule and/or project timeline agreed upon in writing by the City and Artist.

Section 3. Compensation.

As full payment for Artist’s services for performing the Scope of Services, including the completed Work, and for all rights granted or waived by the Artist pursuant to this Agreement, and subject to the conditions set forth herein, the City shall pay the Artist a total amount not to exceed Six Hundred and Twenty-Five Thousand Dollars (\$625,000.00) (“Artist’s Fee”). The Artist’s Fee is more particularly described in Payment and Payment Schedule, which is attached hereto as Exhibit “B” and is incorporated herein by reference. Payments shall be made by City in

accordance with the Payment Schedule set forth in Exhibit “B”. City shall not withhold applicable federal or state payroll or any other required taxes, or other authorized deduction from each payment made to Artist. Upon payment, Artist shall sign a written acknowledgement of receipt of said monies and such document shall be incorporated in this Agreement. No claims for additional services performed by Artist that are beyond the Scope of Services will be allowed unless such additional work is authorized by the City in writing prior to the performance of such additional services. Under no circumstances shall City be required to pay Artist for any services or Work that has not been completed to the reasonable satisfaction of the City.

Section 4. Personnel, Facilities, and Equipment.

Artist agrees that she will be responsible for completing all services described in the Scope of Services and for providing the personnel necessary for such services. Artist shall be solely responsible for the satisfactory work performance of the personnel engaged in performing the services required by this Agreement. Artist shall, at her sole cost and expense, furnish all facilities and equipment that may be required for creating the Work pursuant to this Agreement.

Section 5. Term and Timelines.

Artist shall commence performing the Scope of Services on the Commencement Date (See Exhibit “C”, Schedule of Performance) and shall perform all services and produce all Work in conformance with the Schedule of Performance set forth in Exhibit “C”, which is attached hereto and is incorporated herein by reference. City acknowledges that any material changes to the Work requested by City, or delays in granting approvals by City, may result in Artist being unable to meet the timelines set forth in Exhibit “C”, as such delays are beyond the control of Artist. In the event of such delay, Artist will not be held responsible for a failure to meet the Schedule of Performance set forth in Exhibit “C”. This Agreement shall be effective when fully executed by the Parties and shall terminate when the Scope of Services are completed, unless sooner terminated as provided in Section 18 herein.

Section 6. City Representative.

For purposes of this Agreement, the contract administrator and City representative shall be the City Manager (hereinafter the “City Representative”). It shall be the Artist’s responsibility to ensure that the City Representative is kept fully informed of the progress made in performance of the services and the production and delivery of the Work pursuant to this Agreement. Artist shall timely refer any decisions which must be made by the City to the City Representative. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the City Representative.

Section 7. Transfer of Rights of Reproduction.

Artist hereby transfers all rights of reproduction, as that term is defined in California Civil Code Section 982, in the fine art Work, including but not limited to the right to claim statutory copyright in the Work and the right to reproduce the Work in any manner whatsoever for

commercial and non-commercial purposes. Hereinafter, Artist shall not acquire or claim any rights in or to the Work, any uses, reproductions, or derivatives thereof or any proceeds therefrom.

Section 8. Waiver of Moral Rights.

Artist hereby waives, releases, and disclaims any rights, demands, or claims as may arise at any time and under any circumstances against City, its officers, employees, agents, successors, and assigns arising under the federal Visual Artists Rights Act (17 U.S.C. §§ 106A and 113(d)), the California Art Preservation Act (Cal. Civil Code § 987 *et seq.*), and any other local, state, federal, or international laws that convey rights of the same nature as those conveyed under 17 U.S.C. Section 106A, California Civil Code Section 987 *et seq.*, or any other type of moral right protecting the integrity of works of art. Artist acknowledges and agrees that City, in its sole and exclusive discretion, may, among other acts, temporarily or permanently modify, alter, change, or destroy the Work.

Section 9. Copyrights.

Artist hereby irrevocably assigns exclusively to City, and its successors and assigns, all right, title, and interest in the copyright of the Work, and all extensions and renewals thereof in the United States and in all foreign countries. Artist hereby waives all moral rights relating to each such Work including, but not limited to, any and all rights of identification of authorship and any and all rights of approval, restriction, or limitation on use or subsequent modifications. From time to time upon City's request, Artist shall confirm such assignment by execution and delivery of such assignments, confirmations of assignment, or other written instruments as City may request. City, and its successors and assigns, shall have the right to obtain and hold in its or their own name(s) all copyright registrations and other evidence of rights that may be available for the Work.

Section 10. City's Sole and Exclusive Ownership Rights.

A. Ownership of Works. Artist shall not retain ownership of or any right, title, or interest in any of the Work, including, but not limited to, in any related trademarks, copyrights, or other proprietary rights. The Parties agree that the Work and all such rights, title, and interest in or to the Work shall belong to and are being sold and assigned in their entirety to the City for whatever use it desires, and that City does and shall at all times own, solely and exclusively, complete and unencumbered, all right, title, and interest in and to all of the Work worldwide, any modifications thereto and any derivative works based thereon (including, but not limited to, all patent, copyright, trademark, service mark, and trade secret rights). Nothing contained herein shall be deemed to constitute a mere license or franchise in City. The Parties further agree that City will be free to use, modify, distribute, sell, license, or otherwise exploit all such Work and any modifications to or derivative works based thereon without any restrictions or limitations or any obligations or payments to Artist and that Artist shall have no such rights.

Section 11. Originality of Work.

Artist hereby represents and warrants that (i) the Work is and will be original; (ii) at the time of transfer hereunder, Artist is the sole owner of the Work and of all rights therein including copyright, trademark, and other proprietary rights therein; (iii) Artist is and will be the sole creator of the Work; (iv) Artist has and will have full and sufficient right to assign all rights granted herein and to waive all rights relinquished herein; (v) Artist is not under any obligation to transfer or sell any of the Work to any third party; (vi) the Work has not been and will not be published under circumstances which have or will cause a loss of any copyright, trademark, or other proprietary rights therein; and (vii) the Work does not and will not infringe any patent, copyright, trademark, or other proprietary rights, privacy rights, or other rights of any third party, nor has any claim (whether or not embodied in a legal action, past or present) of such infringement been threatened or asserted, nor is such a claim pending, against Artist (or, insofar as Artist is aware, against any entity from which Artist has obtained any rights).

Section 12. Risk of Loss.

Artist bears the sole risk of damage to or loss of the Work to be produced by Artist pursuant to this Agreement until such Work is delivered to and received by the artworks foundry, anticipated to be located in Oxnard, California, and the City accepts such Work as satisfactorily completed pursuant to the Scope of Services set forth in Exhibit "A".

Section 13. Maintenance and Warranty of Works.

A. Artist shall provide City with a written description of a recommended routine maintenance program for the Work, if Artist determines that such routine maintenance of the Work may be required.

B. Artist hereby warrants that the Work will be free of defects in workmanship (due to faulty design, fabrication, and/or installation), materials and finish, including inherent vice, and that the Artists will, at the Artist's own expense, remedy, repair, or replace any such defects in workmanship, materials, and finish, including inherent vice, and if necessary replace the Work, which appear within a period of ten (10) years of the date the Work is delivered to and accepted by the City. The term "inherent vice," as used in this section, shall mean a quality within the material or materials which comprise the Work which, either alone or combination, results in the tendency of the Work, including without limitation the finish, to deteriorate.

Section 14. Artist's Credit.

Upon written request by the City, a public notice, approved in advance by the City Representative, including the Artist's name and website and mention of the City's sole ownership of the Work, shall be designed by the Artist and publicly displayed with the Work.

Section 15. Indemnification.

To the fullest extent permitted by law, Artist shall defend (at Artist's sole cost and expense), indemnify, protect, and hold harmless City, its elected officials, officers, employees, agents, and volunteers (collectively the "Indemnified Parties"), from and against any and all

liabilities, actions, suits, claims, demands, losses, costs, judgments, arbitration awards, settlements, damages, demands, orders, penalties, and expenses including legal costs and attorney fees (collectively "Claims"), including but not limited to Claims arising from injuries to or death of persons (Artist's employees, agents, and volunteers included), for damage to property, including property owned by City, from any violation of any federal, state, or local law or ordinance, which Claims arise out of, pertain to, or are related to the negligence, recklessness, or willful misconduct of Artist, her agents, employees, volunteers, or subcontractors, or arise from Artists negligent, reckless, or willful performance of or failure to perform any term, provision, covenant, or condition of this Agreement, but excluding such Claims arising from the negligence, recklessness, or willful misconduct of the City, its elected officials, officers, employees, agents, and volunteers. Notwithstanding the foregoing, the indemnification under this section shall not include any personal injuries sustained by members of the public or third parties after the Work has been installed at its permanent location in the Laguna Hills Civic Center.

Section 16. Independent Contractor.

Neither City nor any of its employees shall have any control over the manner, mode, or means by which Artist, her agents, employees, or volunteers, perform the services required herein, except as otherwise set forth herein. Artist shall perform all services required herein as an independent contractor of the City and shall not be an employee of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role; however, City shall have the right to review Artist's final work product. Artist shall not at any time or in any manner represent that she or any of her agents or employees or volunteers are agents or employees of City.

Section 17. Addresses for Notices.

Any notice, bills, invoices, demand, or document which any Party is required or may desire to give or deliver to the other hereunder, shall be in writing and may be delivered personally or given by facsimile or overnight courier service, postage prepaid, addressed as follows:

To Artist: Brittany Ryan Studios, LLC
 Attention: Brittany Ryan, Artist
 22221 Camino Tiburon
 Laguna Hills, California 92653

To City: City of Laguna Hills
 Attention: City Manager
 24035 El Toro Road
 Laguna Hills, California 92653
 Telephone: (949) 707-2600
 Facsimile: (949) 707-2633

Either Party shall have the right to designate a different address by written notice similarly given. Any notice, demand, or documents shall be deemed received on: (a) the day of delivery if delivered by hand or overnight courier service during the party's regular business hours; or (b) the

day of delivery if delivered by facsimile during the parties' regular business hours. City assumes no responsibility to search for Artist if Artist cannot be reached at the address of record.

Section 18. Termination.

A. City shall have the right to terminate this Agreement, with or without cause, upon ten (10) calendar days written notice to Artist. If terminated, Artist agrees to cease all work under this Agreement on or before the effective date of such notice. All completed and uncompleted Work up to the date of receipt of written notice of termination shall become the property of City.

B. In the event of termination of this Agreement by City, due to no fault or failure of performance by Artist, Artist shall be compensated based on the percentage of services satisfactorily performed and/or the Work satisfactorily produced at the time of termination. In no event shall Artist be entitled to receive more than the amount that would be paid to Artist for the full performance of the services and the Work required by this Agreement.

Section 19. Attorneys' Fees.

In the event either Party shall commence any action against the other Party relating to this Agreement, or for the breach of any obligation contained herein, the prevailing Party shall be entitled to recover from the losing Party reasonable attorneys' fees, expenses, and court costs.

Section 20. Prohibition Against Assignment.

Artist shall not delegate, transfer, subcontract, or assign her duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Artist. The City understands and acknowledges that Artist anticipates to have the Work fabricated by a foundry located in Berkeley, California.

Section 21. Successors and Assigns.

The terms of this Agreement shall be binding upon and inure to the benefit of the respective heirs, successors in interest, and assigns of the Parties hereto.

Section 22. Entire Agreement.

This Agreement represents the entire integrated agreement between the City and the Artist, and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both the City and the Artist.

Section 23. Severability.

Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law. If any provision of this Agreement is determined by a court

of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.

Section 24. Governing Law; Jurisdiction.

This Agreement shall be governed by and construed in accordance with the laws of the State of California. In the event of litigation between the Parties, venue in State trial courts shall be exclusively in Orange County, California. In the event of litigation in a United States District Court, exclusive venue shall lie in the Central District of California.

Section 25. Execution.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

Section 26. Authority.

Each of the undersigned individuals represent and warrant that (i) the Party for which he or she is executing this Agreement is duly authorized and existing, (ii) he or she is duly authorized to execute and deliver this Agreement on behalf of the Party for which he or she is signing, (iii) by so executing this Agreement, the Party for which he or she is signing is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which the Party for which he or she is signing is bound.

Section 27. Recitals.

The recitals above are hereby incorporated by reference in the Agreement as though fully set forth herein, and each Party acknowledges and agrees that such Party is bound, for purposes of this Agreement, by the same.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

“CITY”
CITY OF LAGUNA HILLS, a California
municipal corporation

DAVE WHEELER,
Mayor

ATTEST:

(SEAL)

JENNIFER LEE,
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

GREGORY E. SIMONIAN,
City Attorney

JARAD L HILDENBRAND,
City Manager

“ARTIST”

BRITTANY RYAN STUDIO, LLC, a
Nevada Limited Liability Company

BRITTANY RYAN, Artist

EXHIBIT “A”

SCOPE OF SERVICES

COMMISSIONING OF ORIGINAL WORK OF ART: The Artist is hereby commissioned by the City to design, create, fabricate, and supervise the installation of a large-scale bronze memorial sculpture to be displayed outdoors in the plaza area at the Laguna Hills Civic Center to recognize the United States Marines of the 3rd Battalion, 5th Marines (3/5 Battalion) in celebration and honor of their bravery, heroism, victories, and many sacrifices and in recognition of our Nation’s Armed Forces and the special relationship between this marine battalion unit and the City of Laguna Hills (the “Work”).

MEDIUM: Bronze sculpture.

DISPLAY LOCATION: Laguna Hills Civic Center, Outdoor Plaza Area, 24035 El Toro Road, Laguna Hills, California 92653.

DESCRIPTION OF COMMISSIONED ARTWORK: Two arched 16’x5’ bronze relief style sculptures depicting a landscape and figures of Marines in Afghanistan to be displayed outdoors in the plaza area at the Laguna Hills Civic Center to recognize the United States Marines of the 3rd Battalion, 5th Marines (3/5 Battalion) in celebration and honor of their bravery, heroism, victories, and many sacrifices and in recognition of our Nation’s Armed Forces.

COMMISSIONING PROCESS AND PROCEDURE:

- ▶ Artist shall provide City up to five (5) preliminary sketch renderings/drawings of the proposed bronze sculpture for submission to and approval by the City’s 3/5 Battalion Memorial Ad Hoc Committee.
- ▶ Artist shall participate in a review of the preliminary sketch renderings of the proposed sculpture with the City’s 3/5 Battalion Memorial Ad Hoc Committee.
- ▶ The final sketch rendering of the proposed bronze sculpture shall be subject to review and approval by the City Council.
- ▶ Upon acceptance of the final completed sketch rendering of the proposed bronze sculpture, Artist shall design, create, and fabricate up to two rounds of changes to a 12” maquette for approval by the City’s 3/5 Battalion Memorial Ad Hoc Committee.
- ▶ Upon approval of the 12” maquette by the City’s 3/5 Battalion Memorial Ad Hoc Committee, Artist shall create and fabricate a 30” version of the proposed bronze sculpture for approval by the City Council.
- ▶ Upon approval of the 30” version of the proposed bronze sculpture, Artist shall begin the final version of the sculpture.

- ▶ Artist shall be responsible for transportation of the proposed sculpture mold to the artwork's foundry.
- ▶ City shall be responsible for all costs related to the transportation of the finished bronze sculpture from the foundry to the installation site at the Laguna Hills Civic Center Plaza, including the procurement of insurance.
- ▶ City shall be responsible for all costs related to the installation of the finished bronze sculpture, including lighting, leveling, creation of wall/base structure the bronze will be mounted to, and surrounding landscape, in consultation with Artist. Artist shall supervise the installation of the finished bronze sculpture.
- ▶ Upon delivery and installation of the completed Work and acceptance of the by the City, City shall assume ownership and control of the Work.
- ▶ Upon completion of the Work, Artist shall provide City with a detailed written schedule and instructions for the routine care, maintenance, and preservation of the Work. All maintenance and routine care shall be the responsibility of the City in all respects.
- ▶ Artist shall participate as requested by the City in a ribbon-cutting ceremony and/or media outreach.

EXHIBIT “B”

PAYMENT AND PAYMENT SCHEDULE

As full payment for Artist’s services for performing the Scope of Services, including the completed Work, and for all rights granted or waived by the Artist pursuant to this Agreement, and subject to the conditions set forth in the Agreement, the City shall pay the Artist a total amount not to exceed Six Hundred and Twenty-Five Thousand Dollars (\$625,000.00) (“Artist’s Fee”), which sum shall include all costs associated with Artist designing, creating, fabricating, supervising the installation of the Work.

Artist will be paid by City the specified installment payments set forth below upon submitting an invoice and documentation substantiating satisfactory completion of each phase of the Work as described below. Each invoice from Artist to City shall include a written progress summary report with a detailed narrative discussion of all project activities and progress occurring during the reporting period, as well as photographic or schematic documentation substantiating completion of each work phase. Progress payments shall be made by City as follows:

Payment 1: Amount
\$15,000

Paid by City on XXXX.

Payment 2: Amount
\$210,000

Progress payment due and payable upon the initiation of Creating/Sculpting Phase.

Payment 3: Amount
\$100,000

Progress payment due and payable upon the initiation of Molding Phase.

Payment 4: Amount
\$250,000

Progress payment due and payable upon the initiation of Casting Phase.

Payment 5: Amount
\$50,000

Final payment due upon the installation of sculpture and acceptance by City.

Total Payments: \$625,000

EXHIBIT “C”**SCHEDULE OF PERFORMANCE**

TIMELINE	ACTIVITY	ARTIST WORK TIME
DESIGN PHASE	Contract Approval Signed	June 27, 2023
	Design Drawings presented to City for approval	1-2 Months
	12” maquette presented to the City for approval	1 Month
	30” version of Sculpture presented to City for approval	1-2 Months
SCULPTING PHASE		
	Scanning and foam enlargement	1 Month
	Final size version of sculpture	6-9 Months
MOLDING & CASTING PHASE		
	Molding	1-2 Months
	Casting	6-9 Months
FINAL	Final installation of sculpture	1 Month
	(Overall anticipated timeline 18-27 months)	



City of Laguna Hills City Council / Planning Agency Staff Report

Date: July 9, 2024
To: Mayor and Council Members
From: Janine Heft, Council Member
Don Caskey, Council Member
Issue: Exploring the Potential of a Digital Billboard at the Former Globe Property (APN: 616-022-04)

Recommendation: Council Members Heft and Caskey recommend that the City Council direct staff to explore the potential of a digital billboard at the former Globe Property (APN: 616-022-04).

Background:

In accordance with City Council Policy 120, Councilmembers Heft and Caskey have added this item to the agenda.

As Laguna Hills seeks innovative ways to increase revenue and enhance community engagement, digital billboards present a promising opportunity. This report seeks the City Council's support to explore the development, construction, operation, and maintenance of a digital billboard on the former Globe Property (APN: 616-022-04)

Revenue Generation

One of the primary advantages of installing a digital billboard on the former Globe Property is the significant revenue potential. Drawing from similar projects, such as the cities of Westminster and Fountain Valley, the minimum annual revenue guarantee to be collected could exceed \$700,000. This steady revenue stream could be allocated to various City projects, including infrastructure improvements, public safety services, and community programs, ultimately enhancing the quality of life for residents.

Strategic Location

The former Globe Property is City-owned and ideal for the installation of a digital billboard (site map attached). Positioned to capture traffic from I-5, this site can maximize visibility and impact. The location ensures that both residents and visitors are exposed to the dynamic content displayed, increasing the effectiveness of the messaging and advertisements. At approximately 8,300 square feet, the property may be declared exempt surplus lands under recent amendments to the Surplus Lands Act.

Enhanced Communication and Community Engagement

Digital billboards offer dynamic content capabilities, enabling the City to communicate important information effectively. This includes emergency alerts, public service announcements, and community event promotions. The flexibility to update content in real-time ensures that residents and visitors are always informed about critical updates and opportunities, fostering a more connected community.

Economic and Developmental Impact

The presence of digital billboards on the former Globe Property can also stimulate local economic activity. Businesses can utilize the advertising space to reach a broader audience, driving traffic to local establishments. This can lead to increased sales and potentially attract new businesses to the area, contributing to economic growth and job creation.

Conclusion

The City of Laguna Hills stands to gain substantial benefits from the development of a digital billboard at the Globe Property. The significant revenue potential, coupled with enhanced communication capabilities and economic benefits, presents a compelling case for consideration.

It is recommended that the City Council approve the preliminary steps to explore this opportunity further. This includes issuing a Request for Proposals (RFP) to identify potential partners, conducting a thorough evaluation of the proposals received, and engaging with stakeholders to address any concern. By doing so, Laguna Hills can harness the advantages of digital billboards, contributing to the City's growth and prosperity while maintaining its commitment to community engagement and environmental stewardship.

CEQA Findings:

None at this time.

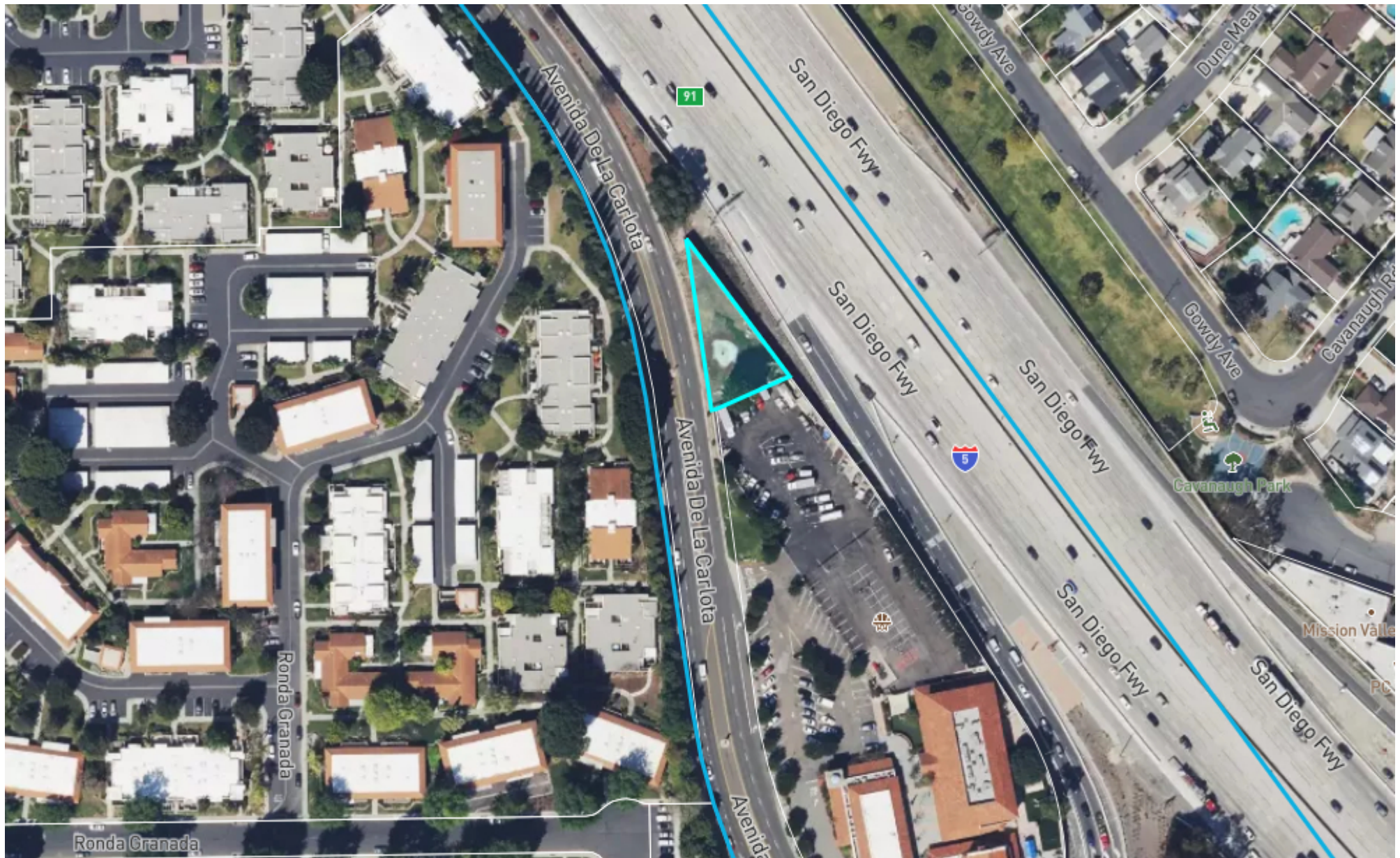
Fiscal Impact:

There is no fiscal impact with this item.

Attachments:

1. Site Map of former Globe Property

Former Globe Property



1" = 175 ft

APN: 616-022-04

07/01/2024



This map may represent a visual display of related geographic information. Data provided here on is not guarantee of actual field conditions. To be sure of complete accuracy, please contact the responsible staff for most up-to-date information.



City of Laguna Hills City Council / Planning Agency Staff Report

Date: July 9, 2024
To: Mayor and Council Members
From: Jennifer Lee, City Clerk
Issue: Committee Assignment Reports

Recommendation: That the City Council receive reports from City Council Members on the City Council Committee Assignments listed in the staff report.

Background:

The following are recent meetings and events attended by the City Council for their City Council Committee Assignments.

Southern California Association of Governments (SCAG)
Community, Economic & Human Development Committee
Council Member Caskey
June 6, Regular Meeting

Orange County Fire Authority (OCFA)
Board of Directors
Mayor Pro Tempore Sweeney
June 27, Regular Meeting

Association of California Cities - Orange County (ACC-OC)
Legislative & Regulatory Committee
Mayor Wheeler
June 27, Regular Meeting

Fiscal Impact:

The City does not provide any additional compensation to City Council Members for serving on outside agency boards or committees.

Attachments:

None